

REAL ESTATE COMMISSION
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes.

Date: Friday, June 25, 1999

Time: 9:00 a.m.

Place: Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Present: Alvin Imamura, Chair
Charles Aki, Member
Michael Ching, Member
Alfredo Evangelista, Member
Mitchell Imanaka, Member
John Ohama, Member
Iris Okawa, Member (Late Arrival)

Calvin Kimura, Supervising Executive Officer
Christine Rutkowski, Executive Officer
Pamela Garrison, Senior Real Estate Specialist
Lee Ann Teshima, Real Estate Specialist
Russell Wong, Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Morris Atta, Condominium Specialist
Gina Watumull, Condominium Specialist
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary

Nicki Ann Thompson, Hawaii Association of REALTORS
Cay Singleton
Christopher B. Singleton
Larry C. Clutter

Excused: Nora Nomura, Vice Chair
Helen Lindemann, Member

Call to Order: The Chair called the meeting to order at 9:05 a.m., at which time quorum was established.

Chair's Report: No Chair's report was presented.

Executive Officer's Report: **Announcements, Introductions, Correspondence and Additional Distribution**

Additional Distribution

The following materials were distributed to the Commissioners prior to the start of the meeting:

3. Executive Officer's Report
 - b. Minutes of Previous Meetings
4. Committee Reports
 - a. Laws and Rules Review Committee
 - 1) Neighbor Island Outreach
 - 2) Program of Work and Budget FY2000
 - b. Education Review Committee
 - 1) Neighbor Island Outreach
 - 2) Program of Work and Budget FY2000
 - 3) Possible Fee Refunds of Continuing Education Instructors
 - c. Condominium Review Committee
 - 1) Neighbor Island Outreach
 - 2) Program of Work and Budget FY2000

Additions to the Agenda

Upon a motion by Commissioner Evangelista, seconded by Commissioner Ching, it was voted on and unanimously carried to add the following item to the agenda:

4. Committee Reports
 - c. Condominium Review Committee – CAI Seminar – 1999 Legislative Update

A copy of a letter from Sharon On Leng, RICO Complaints Enforcement Officer, was distributed to the Commissioners for their information. Ms. Leng will be leaving RICO at the end of June and thanked the Commissioners for their support.

Organization of the Real Estate Commission

A copy of the memorandum from the Chair, regarding the organization of the Real Estate Commission, was distributed to the Commissioners.

Upon a motion by Commissioner Evangelista, seconded by Commissioner Ohama, it was voted on and unanimously carried to approve the organization of the Real Estate Commission as follows:

Real Estate Commission:

Chair - Alvin M. Imamura

Vice Chair - Nora A. Nomura

Laws and Rules Review Committee:

Chair - Michael G. Ching

Vice Chair - Iris Okawa

Members - Charles H. Aki, Alfredo G. Evangelista, Alvin M. Imamura, Mitchell Imanaka, Nora A. Nomura, John Ohama, and Patricia Choi

Education Review Committee

Chair – Charles H. Aki

Vice Chair – John Ohama

Members – Michael G. Ching, Alfredo G. Evangelista, Alvin M. Imamura, Mitchell Imanaka, Nora A. Nomura, Iris Okawa and Patricia Choi

Condominium Review Committee

Chair – Alfredo G. Evangelista,

Vice Chair – Mitchell Imanaka

Members – Charles H. Aki, Michael G. Ching, Alvin M. Imamura, John Ohama, Iris Okawa and Patricia Choi

Committee
Reports:

Laws and Rules Review Committee

Upon a motion by Commissioner Ching, seconded by Commissioner Ohama, it as voted on and unanimously carried to accept the report of the June 9, 1999 Laws and Rules Review Committee meeting as follows:

1. Chair's Report - **Recommend** that an Award of Appreciation be presented to outgoing Commissioner Helen Lindemann.
2. Hawaii Real Estate Research and Education Center Report - **Recommend** that the HREREC forward a copy of the Laws and Rules Manual subscriber list to the Commission.
3. Program of Work, FY99
 - a. Program of Work, FY00 – Neighbor Island Outreach – The first neighbor island outreach for FY00 will be held on Maui, at the Outrigger Wailea Resort on Thursday, July 8, 1999. The meetings will be held in conjunction with the Hawaii Association of REALTORS' Mini Convention.
 - b. Division and Department Programs - **Recommend** that a Certificate of Appreciation be issued to Sharon On Leng, Complaints Enforcement Officer of the Regulated industries Complaints Office.
4. Budget and Finance Report - Real Estate Recovery Fund - **Recommend acceptance** of the Real Estate Recovery Fund Report as of April 30, 1999.
5. Next Meeting: **Thursday, July 8, 1999**
9:30 a.m.
Outrigger Wailea Resort
3700 Wailea Ala Nui
Wailea, Maui

Education Review Committee

Upon a motion by Commissioner Aki, seconded by Commissioner Ching, it was voted on and unanimously carried to accept the report of the June 9, 1999 Education Review Committee meeting as follows:

1. Minutes of May 14, 1999 Meeting – **Accept.**

2. Hawaii Real Estate Research and Education Center Report - Acting Director's Report
Continuing Education 99-00 Core Course – **Recommend** that the Commission request that one or two Commissioners, along with selected REB staff be allowed to join the 1999-2000 CE Core Course Development committee to provide input and continuity to the development and implementation of the core course. Also **recommend** that REB staff review the laws and rules to determine if a refund of the instructor fees is possible.
3. ASI - Test Development – The test development session is scheduled for August 16 to 18, 1999, at the Hyatt Regency in Waikiki. Commissioners Aki, Ching and Ohama to participate.
4. Program of Work, FY99
 - a. HREREC Termination Transition - **Recommend** that any interested Commissioner accompany REB staff to the HREREC when it determines the final disposition of the reference materials and equipment located at the HREREC.
 - b. Neighbor Island Outreach - The first neighbor island outreach for FY00 will be held on Maui, at the Outrigger Wailea Resort, on Thursday, July 8, 1999. The meetings will be held in conjunction with the Hawaii Association of REALTORS' Outreach Program.
5. ARELLO, REEA and Other Organizations - ARELLO Education Award - Call for Nominations - **Recommend** that the Commissioners notify REB staff if there are any possible submissions for the ARELLO Education Award.
6. Continuing Education Administration, Curriculum, Courses, Providers and Instructors - Applications - 1999-2000 Continuing Education Providers, Instructors, and Courses Ratification List – **Recommend approval** of the following 1999-2000 Continuing Education Core course:

<u>Course</u>	<u>Effective Date</u>
"Legislative Update and Current Issues"	06/09/99
(Author/Owner/Provider: Hawaii Association of REALTORS)	
7. Budget and Finance Report – April 1999 Real Estate Education Fund Report – **Accept**.
8. Next Meeting: **Thursday, July 8, 1999**
10:30 a.m.
Outrigger Wailea Resort
3700 Wailea Ala Nui
Wailea, Maui

Condominium Review Committee

Upon a motion by Commissioner Evangelista, seconded by Commissioner Ohama, it was voted on and unanimously carried to accept the amended report of the June 9, 1999 Condominium Review Committee meeting as follows:

1. **Minutes of May 14, 1999** - Accept minutes.
2. **HREREC Report**

- a. Hawaii Condominium Bulletin - FY99 Vol. 7, Number 4, (Summer 1999) issue is targeted for distribution by June 15, 1999.
 - b. Ball park projection of RCUH return of Condominium Management Education Funds to REC \$9,400 + to \$13,000+.
3. **AOAO Registrations - Recommend approval** to ratify effective dates for registrations for:
- a. 1997 - 1999 Registrations through May 31, 1999.
 - b. 1999 - 2001 Registrations through May 31, 1999.
4. Condominium Bulletin - Recommend approval to accept the informal quotes for the printing, mail prep, postage, and mail out of the Hawaii Condominium Bulletin submitted by AAA Quality Services of Hawaii dated June 1, 1999 and June 7, 1999 and to execute a small purchase contract for such service for one year with the Real Estate Commission option to renew for another year.
5. **CPR Registration, Public Reports, Extensions Issued**
- a. **May 1999 - Recommend approval** to ratify issuance of effective dates for public reports and extensions for the month of May 1999.
 - b. **Condominium Names** - Donald H. Wilson, Esq. - **Recommend approval** to direct staff to write a letter informing Donald H. Wilson, Esq. that the Commission has declined to act on his client's request for rulemaking that would require developers of condominium projects to secure a name clearance from the Business Registration Division for the proposed condominium project; and that the REC understands that there are existing remedies available to address his client's concerns.
 - c. **Request for Informal Non-binding Opinion - Diamond Head Alii - Recommend approval** that the REC issue an informal, non-binding opinion that the conversion of the Diamond Heal Alii cooperative housing project to condominium status is not subject to (1) Part VI of Chapter 514A, HRS (relating to Sales to Owner-Occupants) and (2) the providing of a broker listing agreement; premised on the continuing existence of the following developer represented circumstances:
 - One hundred percent of the shareholders of record (prior to the conversion) have agreed to the conversion of the cooperative to a condominium property regime and will be parties to the submission of the property to the condominium property regime;
 - Upon conversion, the developer will not sell or offer to sell the apartments to the general public; and the developer is unable to sell or offer to sell the apartments to the general public;
 - With the exception of a few, existing shareholders, current shareholders and tenants will continue to reside in the apartments;

- Upon conversion, the existing tenants are permitted to continue their occupancy of the apartments, thus, complying with the purpose and intent of section 514A-105 (a), HRS;
- d. Consultant Workshops and Meetings - Recommend approval to accept CRC Chair and Vice Chair's recommendations from the condominium consultants meeting of May 25, 1999. The recommendations arrived at by consensus are as follows:
- 1) Staff's recommendation that the following disclosures be included in the Commission's approved developer's public report form: general governance and rights of apartment owners types of disclosures; non registration of AOA (impacts on standing to sue); reserves and the soon approaching deadline of January 1, 2000; and realities/tenets of condominium living (self governance, majority rules, limited government involvement).
 - 2) That Real Estate Branch notify pro se developers of its obligations and responsibilities and that the consultant is not available to assist, recommend, or advise developer on its project registration. Termination of processing application procedures.
 - 3) That the Commission adopt a policy requiring the developer to prepare and submit a separate developer's public report for each phase of a multi-phased condominium project.
 - 4) Commission facilitate a workshop for consultants at least twice a year, preferably in December and June. Suggest that consultants takes turns to lead the workshop as it should be more of a consultant developed workshop. The Commission and staff to help facilitate and provide support. The curriculum for the workshop should be developed at least a month in advance. The room should be conducive for a workshop and all Commissioners should be invited to participate.
 - 5) That consultants uniformly, where applicable, require developers to make the following disclosures:
 - a) In conversions, lead paint;
 - b) Sex offender (Megan's law);
 - c) SMA conditions;
 - d) Access to a public street or highway or to a common element or elements leading to a public street or highway;
 - e) Hawaiian burial and artifacts;
 - f) Hawaiian gathering rights especially where indicated in the title report;

Commissioner Evangelista noted that the proposed flyers do not indicate that this will be a Commission-sponsored seminar, funded through the Condominium Management Education Fund ("CMEF").

The Senior Condominium Specialist reported that the CAI – Hawaii Chapter will have to put this information on the flyer and publicity materials, per the agreement entered into by both parties. She noted that CAI – Hawaii Chapter is in a transition stage and implementation of the terms of the agreement will follow.

There are approximately 100+ people who attend the seminars presented by the CAI – Hawaii Chapter. There are sufficient funds in the CMEF budget to co-sponsor additional seminars throughout the year.

Upon a motion by Commissioner Evangelista, seconded by Commissioner Aki, it was voted on and unanimously carried to approve the CAI-Hawaii seminar, "CAI's 1999 Legislative and Legal Update", scheduled for Thursday, July 15, 1999, as a CMEF-funded seminar. The Commission also requires that the flyers and other promotional information state that the seminar is being subsidized by the CMEF. On the day of the seminar, announcements should be made at the beginning and end of the seminar that the Commission is co-sponsoring the seminar and that publicity that the seminar is subsidized by the CMEF is displayed at the seminar and announced orally at the beginning and end of the seminar.

Neighbor Island Outreach

A memorandum was distributed to the Commissioners informing them of the arrangements that were made for the next neighbor island outreach, which will be held on Thursday, July 8, 1999, at the Outrigger Wailea Resort.

Licensing and Registration - Ratification:

Upon a motion by Commissioner Ching, seconded by Commissioner Ohama, it was voted on and unanimously carried to ratify the attached list.

Licensing – Questionable Applications:

Cay Singleton Christopher B. Singleton

Cay Singleton and Christopher B. Singleton were asked if they wished to have their applications considered at the same time or if they wished to have their applications considered separately. Mr. Singleton stated that they would like it to be considered at the same time.

The parties were asked if they wished to have their applications considered in executive session. They declined the offer.

Mr. Singleton stated that in addition to completing the terms of the Commission's Final Order, they have also completed their continuing education requirements for the prior biennium. Mr. Singleton stated that he did not have anything to add to what was already said or submitted.

Commissioner Ching asked REB staff and the Deputy Attorney General what a licensee's status would be if their licenses were suspended and it was not renewed at the end of the biennium. The EO informed him that when a license is suspended and a renewal occurs, the renewal application is not sent out to the licensee. If the period of suspension is over and the licensee wants to engage in real estate activity again, the licensee must apply for reinstatement of his/her license.

The Deputy Attorney General stated that if the required period of suspension has ended, but the licensee has not complied with the Commission's Final Order, the suspension would remain in effect. Hypothetically, if the fine had been paid, the suspension would have only been for the period that was required.

Upon a motion by Commissioner Aki, seconded by Commissioner Ohama, it was voted on and unanimously carried to take this matter under advisement.

Larry Clutter

Mr. Clutter was asked if he wished to have his application considered in executive session. He stated that he would like to have it considered in executive session.

Executive Session:

Upon a motion by Commissioner Evangelista, seconded by Commissioner Ohama, it was voted on and unanimously carried to enter into executive session, pursuant to Section 92-5(a),(1), HRS, "To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;".

Upon a motion by Commissioner Evangelista, seconded by Commissioner Ohama, it was voted on and unanimously carried to move out of executive session.

Upon a motion by Commissioner Evangelista, seconded by Commissioner Ohama, it was voted on and unanimously carried to take this matter under advisement.

Executive Session:

Upon a motion by Commissioner Evangelista, seconded by Commissioner Aki, it was voted on and unanimously carried to enter into executive session, pursuant to Section 92-5(a)(1), HRS, "To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;" and pursuant to Section 92-5(a)(4), HRS, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;".

Upon a motion by Commissioner Imanaka, seconded by Commissioner Ohama, it was voted on and unanimously carried to move out of executive session.

Chapter 91, HRS,

The Chair called for a recess from the meeting at 9:53a.m., to discuss

Adjudicatory
Matters:

and deliberate on the following adjudicatory matters, pursuant to Chapter 91, HRS:

In the Matter of the Real Estate Broker's Licenses of Castle Resorts & Hotels, Inc. and Sandra-Lee Jane Rarick, REC 99-34-L

Upon a motion by Commissioner Ching, seconded by Commissioner Aki, it was voted on and unanimously carried to approve the Settlement Agreement Prior to Filing of Petition for Disciplinary Action and the Commission's Final Order.

In the Matter of the Real Estate Broker's License of Robert H. Middleton, dba Kauai Isle Real Estate, REC-97-150-L

Commissioners Evangelista and Ching were excused from the meeting due to a conflict of interest.

Decision making on this matter was deferred to later in the meeting due to a lack of quorum.

Commissioners Evangelista and Ching returned to the meeting.

In the Matter of the Real Estate Broker's Licenses of Tri Investments, Ltd. and Roy I. Matsumoto and the Real Estate Salesperson's License of Mary E. Matsumoto, REC 97-49-L

Upon a motion by Commissioner Aki, seconded by Commissioner Ching, it was voted on and unanimously carried to accept the Hearings Officer's Findings of Fact, Conclusions of Law and Recommended Order.

Following the Commission's review, deliberation and decisions in these matters, pursuant to Chapter 91, HRS, the Chair announced that the Commission was reconvening its scheduled Commission meeting at 10:00 a.m.

Executive Session:

Upon a motion by Commissioner Evangelista, seconded by Commissioner Aki, it was voted on and unanimously carried to enter into executive session, pursuant to Section 92-5(a),(1), HRS, "To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;".

Commissioner Okawa arrived.

Upon a motion by Commissioner Ohama, seconded by Commissioner Aki, it was voted on and unanimously carried to move out of executive session.

Chapter 91, HRS.
Adjudicatory
Matters:

The Chair called for a recess from the meeting at 10:33a.m., to discuss and deliberate on the following adjudicatory matters, pursuant to Chapter 91, HRS:

In the Matter of the Real Estate Broker's License of Robert H. Middleton, dba Kauai Isle Real Estate, REC-97-150-L

Commissioners Evangelista and Ching were excused from the meeting due to a conflict of interest.

Upon a motion by Commissioner Ohama, seconded by Commissioner Aki, it was voted on and unanimously carried to accept the Hearings Officer's Findings of Fact, Conclusions of Law and issue the Commission's Proposed Final Order, requiring course completion within 120 days of the date of the Final Order and include language that if the license suspension occurs, the Commission may impose additional disciplinary sanctions.

Commissioners Evangelista and Ching returned to the meeting.

Following the Commission's review, deliberation and decisions in these matters, pursuant to Chapter 91, HRS, the Chair announced that the Commission was reconvening its scheduled Commission meeting at 10:45 a.m.

Licensing -
Restoration of
Forfeited Licenses:

Grant E. Ching

After a review of the information submitted by the applicant, Commissioner Ohama moved to accept completion of the three Essentials courses, despite its submission beyond the six-month deadline of March 31, 1999, based on the circumstances presented by the applicant. Commissioner Imanaka seconded the motion. The motion was voted on and unanimously carried.

Licensing -
Questionable
Applications:

Edwin U. Bonneau

After a review of the information submitted by the applicant, Commissioner Ohama moved to deny Edwin U. Bonneau's application for a real estate salesperson's license, unless within 60 days he submits proof of payment or an approved written payment plan with the Internal Revenue Service ("IRS") for all outstanding tax obligations. Commissioner Imanaka seconded the motion. The motion was voted on and unanimously carried.

Ann M. Mandaquit

After a review of the information submitted by the applicant, Commissioner Ohama moved to deny Ann M. Mandaquit's application for a real estate salesperson's license, unless within 60 days she submits proof of payment or an approved written payment plan with the Internal Revenue Service ("IRS") for all outstanding tax obligations. Commissioner Imanaka seconded the motion. The motion was voted on and unanimously carried.

Larry Clutter

After a review of the information presented by the applicant, Commissioner Aki moved to approve the real estate salesperson's license of Larry Clutter. Commissioner Ohama seconded the motion. The motion was voted on and unanimously carried.

Andrew D. Louis

After a review of the information presented by the applicant, Commissioner Aki moved to approve the real estate salesperson's license of Andrew D. Louis. Commissioner Ohama seconded the motion. The motion was voted on and unanimously carried.

David S. Elber

After a review of the information submitted by the applicant, Commissioner Evangelista moved to deny David S. Elber's application for real estate sole proprietor. The Commission determined that the limitations of the Settlement Agreement, dated February 24, 1995, did not include any attachments that the conditions be removed and the records do not show any compelling evidence to modify the Settlement Agreement, because if the sole proprietor application is approved, the requirement to report to his principal broker will be eliminated. Commissioner Ching seconded the motion. The motion was voted on and unanimously carried.

Cay Singleton

After a review of the information presented by the applicant, Commissioner Ching moved that Ms. Singleton's real estate salesperson's license be reinstated upon successfully completing the real estate salesperson's prelicensing course and successfully passing the real estate licensing examination. Commissioner Ohama seconded the motion.

Prior to the vote, the Deputy Attorney General pointed out that the rules relating to restoration may not pertain to the rules relating to the reinstatement of a suspended license.

Commissioner Ching withdrew his motion. Commissioner Ohama withdrew his second.

Upon a motion by Commissioner Evangelista, seconded by Commissioner Ohama, it was voted on and unanimously carried to defer decision making to the July 29, 1999 Real Estate Commission meeting for further review.

Christopher B. Singleton

After a review of the information presented by the applicant, Commissioner Evangelista moved to defer decision making to the July 29, 1999 Real Estate Commission meeting for further review, Commissioner Ohama seconded the motion. The motion was voted on and unanimously carried.

Chair's Report:

Upon a motion by Commissioner Ohama, seconded by Commissioner Evangelista, it was voted on and unanimously carried to present Steve Gilbert of the Hawaii Real Estate Research and Education Center with a plaque of appreciation.

Executive
Officer's
Report:

Minutes of Previous Meetings

Upon a motion by Commissioner Evangelista, seconded by Commissioner Ching, it was voted on and unanimously carried to approve the minutes of the May 27, 1999 Real Estate Commission meeting as circulated.

Next Meeting:

Thursday, July 29, 1999
9:00 a.m.
Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Adjournment:

With no further business to discuss, the Chair adjourned the meeting at 10:57a.m.

Reviewed and approved by:

/s/ Christine Rutkowski
Christine Rutkowski
Executive Officer

July 29, 1999
Date

- [X] Approved as circulated.
[] Approved with corrections; see minutes of _____ meeting.