

**LAWS AND RULES REVIEW COMMITTEE**  
REAL ESTATE COMMISSION  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii  
[www.hawaii.gov/hirec](http://www.hawaii.gov/hirec)

**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: Wednesday, August 11, 2010

Time: 9:00 a.m.

Place: Queen Liliuokalani Conference Room  
King Kalakaua Building  
335 Merchant Street, First Floor  
Honolulu, Hawaii

Present: Frances Gendrano, Chair, Broker/Honolulu Commissioner  
Walt Harvey, Vice Chair, Broker/Honolulu Commissioner  
Michele Sunahara Loudermilk, Public/Honolulu Commissioner  
Stanley Kuriyama, Broker/Honolulu Commissioner  
Trudy Nishihara, Broker/Honolulu Commissioner  
Scott Sherley, Broker/Hawaii Commissioner

Neil Fujitani, Supervising Executive Officer  
Jon Ellis Pangilinan, Executive Officer  
Diane Choy Fujimura, Senior Real Estate Specialist  
Amy Endo, Real Estate Specialist  
David Grupen, Real Estate Specialist  
Cynthia Yee, Senior Condominium Specialist  
Cheryl Leong, Condominium Specialist  
Benedyne Stone, Condominium Specialist  
Shari Wong, Deputy Attorney General  
Tammy Norton, Recording Secretary

Others: Myoung Oh, Hawaii Association of REALTORS ®

Absent: Carol Ball, Broker/Maui Commissioner  
Mark Suiso, Public/Honolulu Commissioner

Call to Order: The Chair called the meeting to order at 9:00 a.m., at which time quorum was established.

Chair's Report: The Chair announced that the Committee may move into executive session to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.

Commissioners Ball and Suiso were excused from today's meeting. Prior notice of their non-attendance was received.

SEO's  
Report:

It was reported that the Governor has appointed Donna Apisa as interim Commissioner representing the island of Kauai. Ms. Apisa will be in attendance at the September committee meetings.

### **Minutes of Previous Meetings**

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Harvey, it was voted on and unanimously carried to accept the minutes of the July 14, 2010, Laws and Rules Review Committee meeting as circulated.

Program of  
Work, FY10:

### **Rulemaking, Chapter 99, HAR, Real Estate Brokers and Salespersons**

EO Pangilinan reported that a memorandum seeking comments was sent to former Commissioners. Deadline for receipt of comments and suggestions is August 31, 2010. Input has been received from the Hawaii Association of Realtors. To date there are approximately 29 possible recommendations. HAR will appear at the committee's September 8, 2010 meeting to discuss its recommendations.

Commissioner Nishihara requested a rulemaking timeline as processing of the rules is of utmost importance.

Deputy Attorney General Wong responded that August 31<sup>st</sup> is the comment deadline. Staff will incorporate comments and provide a draft for the committee's review at its September 8, 2010 committee meeting. At its September 23, 2010 Commission meeting, the commission can then vote to accept or request changes to the draft. Once the Commission agrees upon a draft, it will then start the 28 step administrative rulemaking process.

### **Meetings**

Commissioner Nishihara, as Chairperson of the Real Estate Commission, received a letter from DCCA's Director thanking the Commission members for their dedicated public service and noting that they are aware that the neighbor island members have the additional burden of commuting to Honolulu for the Commission meetings. The Department has recently purchased a new video conferencing system which would link multiple sites over the internet. The Director is strongly encouraging Board members to utilize the video conferencing system for future Board meetings. The video conferencing equipment can be utilized for Board meetings between the islands of Oahu, Hawaii, Maui, and Kauai.

SEO Fujitani reported that the video conferencing system was tested with the Kauai Medical and Optometry board members and most of PVL's EOs. He noted that there was a slight delay or lag in communication between the Oahu and neighbor island site. This split second delay created a conversational barrier among all participants. In the experience of one participant, the member found that he would constantly need to stop the conversation and ask those on the other side of the system to repeat themselves and ask for clarification on who was speaking. He explained it was easier for the members of the main group of the meeting to communicate with each other and subconsciously disregard those neighbor island board members via video.

Also, the public would only be able to attend a neighbor island site if a Commissioner were present to attend the meeting. This could cause a security problem in that if it is a single Commission member, they would be responsible for handling executive session, dealing with handouts, and dealing with a possible irate applicant alone.

Commissioner Nishihara questioned if the reason for change was due to the restricted travel policy. She noted that by not attending the meeting physically, the commission member would miss out on the synergy of the meeting. As has been in the past, it's important for the Commission to be able to work as a cohesive group and not just a group of individuals. She would like to see this continue. She noted that she has participated in video conferencing on the company level which is different from a public meeting. At the company level, the direction is normally one-sided and not very interactive. She stated that her concern would be with the public and the applicant's presence, the neighbor island member having to keep the peace and stay focused on the meeting. Commissioner Nishihara stated that she feels it would be premature to use the video conferencing system for a public body; there are too many unresolved issues to contend with.

Deputy Attorney General Wong questioned whether the Commission provided testimony on Senate Bill No. 906 regarding Administration's efforts to allow board members to participate in meetings without being physically present by use of interactive conference technology. She further noted that the bill did not pass.

SEO Fujitani responded that the Commission did not provide testimony.

Commissioner Kuriyama noted that based on his experience in the use of video conferencing, he would not want to participate in video conferencing for the Commission meetings for all of the reasons previously noted.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Loudermilk it was voted on and unanimously carried to not participate in video conferencing. It was noted that the committee does not feel that it will be productive or helpful during the meetings. The Commission and committee meetings to remain status quo.

#### **Ad Hoc Committee on Consumer-Broker Relationships**

A copy of the Texas Real Estate Commission's form entitled "Information about Brokerage Services" form TREC No. OP-K was distributed for informational purposes. The Texas law requires all real estate licensees to give the Information about Brokerage Services to prospective buyers, tenants, sellers and landlords. This form would be distributed upon the first meaningful contact between the licensee and buyer/seller.

ARELLO,  
Other  
Organizations  
And  
Jurisdictions:

#### **ARELLOGram and Other Informational Reports**

The articles entitled "Fair Housing Update: HUD Issues LGBT Guidelines, Vows to Clarify Definition of 'Family'" and "ARELLO® Fraud Alert: Earnest Money Scam Re-Emerges" from the recent electronic issue of ARELLOGram were distributed for information purposes.

### ALQ Real Estate Intelligence Report

The following articles from the July 2010 issue of ALQ Real Estate Intelligence Report was distributed for informational purposes: "Fannie Mae gets tough on strategic defaults," "Chinese government teaching how to buy U.S. homes," and "Court says real estate is not a profession."

Special  
Issues:

None.

Budget and  
Finance Report:

No report presented.

Next  
Meeting:

Wednesday, September 8, 2010  
9:00 a.m.  
Queen Liliuokalani Conference Room  
King Kalakaua Building  
335 Merchant Street, First Floor  
Honolulu, Hawaii'

Adjournment:

With no further business to discuss, the Chair adjourned the meeting at 9:33 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

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Neil K. Fujitani  
Supervising Executive Officer

August 18, 2010

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Date

Approved as is.

Approved with amendments. See minutes of \_\_\_\_\_ meeting.