

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

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, January 12, 2011

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

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: Wyeth Matsubara, Matsubara & Kotake
Ron Tsukamaki, Atlas Insurance Agency
Michael Ayson, Atlas Insurance Agency
Aron Espinueva, Hawaii Association of REALTORS®
Marsha Shimizu, Hawaii Association of REALTORS®

Absent: Donna Apisa, Broker / Kauai Commissioner
Carol Ball, Broker/Maui Commissioner
Mark Suiso, Public/Honolulu Commissioner
Scott Sherley, Broker/Hawaii Commissioner

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

Chair's Report: The Chair announced that the Commission may move into executive session to consider and evaluate personal information relating to individuals applying for licensure in accordance with Section 92-5(a)(1), HRS, and/or 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 Apisa, Ball, Suiso, and Sherley were excused from today's meeting. Prior notice of their non-attendance was received. Commissioner Sherley informed staff this morning that his flight from Hilo has been delayed.

SEO's
Report:

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 December 8, 2010, Laws and Rules Review Committee meeting as circulated.

Program of
Work, FY11:

Real Estate Recovery Fund – Pacific Island Realty LLC

Executive Session:

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Nishihara, it was voted on and unanimously carried to enter into executive session 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 Nishihara, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to move out of executive session.

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Nishihara, it was voted on and unanimously carried that the committee concur with the position taken by the Commission's Real Estate Recovery Fund Attorney, Wyeth Matsubara, and the draft memorandum of opposition presented. The committee also informed Mr. Matsubara that he may also engage in conversation with the plaintiff's attorney.

Rule Making, Chapter 99, HAR, Real Estate Brokers and Salespersons

Executive Officer Pangilinan reported that the second preliminary draft attempts to implement the following:

- Required rule changes that resulted from statutory amendments to Chapter 467, HRS, relating to CE hours;
- Proposed changes in sections affecting CE courses;
- REC's informal non-binding interpretations
- Changes in prelicensing education equivalency categories as recommended by the REC in 2008;
- Clarification on the required minimum passing score for incoming instructors;
- Proposed changes in requirements for current instructors;
- Clarification on surety bond requirement to register real estate schools providing independent study prelicense courses only;
- Exemption of individual owners of transient lodging apartments or units from registering as a condominium hotel operator or from providing a fidelity bond as long as the unit is in the individual owner's name;
- Clarification on condominium hotel operations and condominium hotel operator registrations;

- Grammatical and technical corrections for clarity and brevity and update on language affected by changing technology.

Executive Office Pangilinan also noted that there are several more proposals to add which were not included in the second draft. Staff to also include a provision to address the involuntary inactive license status for brokerage firms; and consideration of potential penalties for CE providers not reporting timely.

Senior Real Estate Specialist Fujimura reported that HAR §16-99-58(g) requires a prelicense instructor, every three years, take and pass an instructor's exam as a condition of recertification. In 2006 a request was received from a long-time prelicense instructor to delete the requirement. The Commission's EETF approved the recommendation to delete the instructor's exam requirement after the initial instructor's exam was taken and passed to initially qualify as a prelicense instructor. The Education Review Committee approved this recommendation of the EETF at its October 2006 meeting.

The prelicense instructor's exam rule is recommended for deletion in the upcoming rule making process. Can the current rule, HAR §16-99-58(g) be waived or a moratorium imposed by the Commission subject to further review of the instructor's exam requirement to re-take the exam every three years and the rule making process?

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

Legislative Acts and Resolutions

The article entitled "Panel advocates foreclosure protections" from the December 30, 2010 online issue of the Honolulu StarAdvertiser was distributed for informational purposes.

Commissioners' Education Program

The December 2010 issue of the OIP's OpenLine was distributed for informational purposes.

Division and Department Programs

A copy of the Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Order in the matter of the Petition for Declaratory Relief of Financial Asset Services, Inc., case REA-DR-2009-1, was distributed for informational purposes. Chair Gendrano reported that in regards to broker price opinions (BPO), Chapter 466K stands and does not allow for paid BPOs at this time.

ARELLO,
Other
Organizations
And
Jurisdictions:

California Department of Real Estate

The Message for Commissioner Davi entitled "The Benefit of the Doubt" provided in the Summer 2010 issue of California Department of Real Estate's Real Estate Bulletin was distributed for informational purposes.

Special
Issues:

None.

Budget and Finance Report: No report presented.

Executive Session: Upon a motion by Commissioner Kuriyama, seconded by Commissioner Harvey, it was voted on and unanimously carried to enter into executive session 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 Kuriyama, seconded by Commissioner Nishihara, it was voted on and unanimously carried to move out of executive session.

Rule Making, Chapter 99, HAR, Real Estate Brokers and Salespersons

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Nishihara, it was voted on and unanimously carried that no moratorium will be imposed on HAR §16-99-58(g) and that the requirement will need to be deleted through the formal rule making process. It was also noted that there may be other alternatives to the current instructor exam other than that offered through the State's contracted testing company.

Next Meeting: Wednesday, February 9, 2011
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 9:51 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

Neil K. Fujitani
Supervising Executive Officer

January 25, 2011

Date

Approved as is.
 Approved with amendments. See minutes of _____ meeting.