

LAWS AND RULES REVIEW COMMITTEE
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: Tuesday, January 6, 2004

Time: 9:30 a.m.

Place: Conference Room
REALTORS Association of Maui
441 Ala Makani Place
Kahului, Maui

Present: Iris Okawa, Chair
Louis Abrams, Vice Chair
Trudy Nishihara, Member
Peter Rice, Member
Vern Yamanaka, Member

Calvin Kimura, Supervising Executive Officer
Cynthia Yee, Senior Condominium Specialist
Diane Choy Fujimura, Senior Real Estate Specialist
Gordon Arakaki, Recodification Attorney
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary

Others: Fauziah Haron
Scott A. Sherley, Hawaii Association of REALTORS
Marsha Shimizu, Hawaii Association of REALTORS
Brian Thomas
Tracy Stice, Hawaii Association of REALTORS
Thomas Douma
Terry Tolman, REALTORS Association of Maui
Lois Janis
Harvey Janis

Excused: Marshall Chinen, Member
Mitchell Imanaka, Member
Kathleen Kagawa, Member
John Ohama, Member

Call to Order: The Chair called the meeting to order at 9:33 a.m., at which time quorum was established.

Chair's Report: The Chair thanked the REALTORS Association of Maui for allowing the Commission to use their facilities. She also thanked Commissioner Rice for his hospitality.

The Chair briefly explained the format of the meetings that will be held today for those present. She then introduced the Commissioners and staff to those who were present at the meeting.

SEO's Report:

Announcements, Introduction, Correspondence, and Additional Distributions

The SEO explained the purpose of each of the Committee meetings to those present.

Minutes of Previous Meetings

Upon a motion by Commissioner Abrams, seconded by Commissioner Yamanaka, it was voted on and unanimously carried to accept the minutes of the December 11, 2003 Laws and Rules Review Committee meeting.

Commissioners Schedule of Non-Availability

The Commissioners were asked to submit their schedule of non-availability to REB staff by January 15, 2004.

The SEO stated that the Administration's policy is to improve services to our customers who are the applicants, licensees, consumers, and the public. In trying to improve services to our customers, we need to review the December Real Estate Commission ("REC") meeting dates. There are 25 boards and commissions and an additional 20 programs. There are only a handful of meeting rooms. The Licensing Branch has to accommodate the timing of applications for all of the board and commission meetings. The agenda must be filed at least six days prior to the meeting date (internal deadline of eight days). The PVL policy has been that the REC's Committee meetings be held on the second Wednesday of the month and the Commission meeting is held on the fourth Friday of the month, except when there is an anticipated quorum problem or no available room in which to hold the meeting.

Over the years and especially during the renewal periods, staff receives comments and complaints regarding the December REC meeting date. The complaints mentioned that it was within ten days or so of the November REC meeting date and as much as seven weeks before the disciplinary cases, and other decision making issues will not make the December meeting, reflecting a very light agenda, and would have to wait until the January meeting. Applicants may not be able to practice real estate and make a living for seven weeks. It also places the Licensing Branch staff and REB staff in a precarious situation. It also affects the planning of the Deputy Attorney General, RICO, OAH, the Recovery Fund attorney, etc. In the case of a renewal year, there are a number of decision making issues before the Commission concerning renewal problems. If a decision is made at the January meeting, it causes the use of more resources by staff and it places licensees in a bad situation as they may or may not be backdated to December, so they may be at risk to practice real estate after January 1. Therefore, we

are suggesting that the Commission try to keep the standard PVL policy of meeting dates on the second Wednesday and the fourth Friday or compromise with the third Friday of December.

Commissioner Rice stated that he did not feel that the meetings should be rescheduled because notice of the meetings is published way in advance. He would prefer to keep the meeting dates as they are.

The Chair stated that discussion on the December meeting dates will be discussed further at the January Real Estate Commission meeting.

Program of Work, FY04:

Legislative and Government Participation

The SEO reported that the Commission's bill relating to license recognition was submitted for consideration as an Administration bill. However, staff has not been officially informed that it will be a part of the packet that will be submitted. When the bill is officially heard, the REC Chair will be testifying at the hearings. Commissioner Abrams will be talking with the legislators on this issue. Commissioner Abrams, along with the support of the Hawaii Association of REALTORS, should be able to answer any questions that the legislators may have.

Commissioners' Education Program

Copies of the following were distributed to the Commissioners for their information:

- OpenLine, November 2003 Issue
- The High Road, December 2003 Issue

ARELLO, Other
Organizations and
Jurisdictions:

REALTORS Association of Maui

Commissioner Rice informed the Committee members that he and Terry Tolman had discussed issues relating to MLS-only listings. He asked Mr. Tolman if he would like to inform the Committee of what was occurring.

Mr. Tolman stated that in a for-sale-by-owner listing, the seller pays a flat fee to the licensee to be able to put the listing into the MLS system. Every licensee has every right to have any business listing that they want as long as it falls within the parameters of the law. The seller enters into an agreement with the licensee to have their property listed in the MLS for a flat fee, but does not enter into an agreement to be represented by the licensee. Confusion occurs when the listing is brought to the agent and they are told to take it to the seller. The buyer and the seller can get involved in an unintended dual agency relationship. The MLS is used as an advertising vehicle only. It is not the same as advertising a for-sale-by-owner in a newspaper. The seller must have a licensee involved in order to get the listing into the MLS system. The agency responsibility evaporates as it goes into the MLS. There is a danger with the buyer's agent and the broker getting involved in a dual agency relationship without proper disclosures being made.

Chair Okawa stated that the Hawaii Association of REALTORS, through its task force, submitted issues relating to agency relationship to the Commission for consideration. In a joint effort, the Hawaii Association of REALTORS and the Commission will be looking at these issues.

Tracy Stice, Chair of the Hawaii Association of REALTORS' Legislative Committee, informed the Committee members that the Legislative Committee will be meeting on January 27, 2004, at 11 a.m., at the Hawaii Association of REALTORS' office. He stated that this issue could be included as part of the discussion at the meeting. He invited the Commissioners and staff to be present at the meeting as he would like it to be a team effort between the Commission and the Hawaii Association of REALTORS. The Legislative Committee will be starting at the beginning and will be discussing their plan of attack at the meeting.

It was mentioned that it would be good for the lead Commissioner assigned to the program, staff members and representatives from RICO be present at the meeting.

The Chair informed Mr. Stice that the Commission agreed to look at this issue thoroughly.

Mr. Stice stated that it will be a long education process among the membership. They have spent many hours reviewing the various task forces around the country. The proposals that they are considering is based upon what is in place.

Commissioner Abrams asked Mr. Stice if they could look into limited service issues as it is also related to what they will be discussing.

Mr. Stice stated that he anticipated that they would probably be submitting a proposed bill in the fall of 2004. They would like for it to be proposed as an administration bill, if possible, as they feel that it would have a better chance of being passed. The Hawaii Association of REALTORS would submit testimony in support of the bill.

Commissioner Yamanaka stated that he had the same concerns as Commissioner Abrams. Commissioner Yamanaka also stated that Commissioner Abrams would be the logical person to have as the lead Commissioner for this issue.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Yamanaka, it was voted on and unanimously carried to recommend that Commissioner Abrams be appointed as the lead Commissioner to work with the Hawaii Association of REALTORS on concerns relating to agency issues.

Commissioner Rice stated that the person who prepares the MLS agreement only is trying to write themselves out of being held responsible. He does not think that they can tell people after that they do not have an agency relationship. The agency relationship is created

once the licensee is given the right to list the property on the MLS. Those writing the agreements continue to have a responsibility.

Mr. Tolman stated that the National Association of REALTORS has developed five points in order to be considered a full-service listing. Anything less is considered a limited-service listing.

Special Issues:

None.

Open Forum:

None.

Budget and Finance Report:

No report was presented.

Next Meeting:

Wednesday, February 11, 2004
9:00 a.m.
Queen Liliuokalani Conference Room
335 Merchant Street, First Floor
Honolulu, Hawaii

Adjournment:

With no further business to discuss, the Chair adjourned the meeting at 10:02 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

February 11, 2004
Date

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

CK/isk 1/15/04