

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: Wednesday, April 14, 2004

Time: 9:00 a.m.

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

Present: Iris Okawa, Chair
Louis Abrams, Vice Chair
Marshall Chinen, Member
Mitchell Imanaka, Member
Kathleen Kagawa, PhD, Member
Trudy Nishihara, Member
John Ohama, Member (Late Arrival)
Peter Rice, Member

Calvin Kimura, Supervising Executive Officer
Cynthia Yee, Senior Condominium Specialist
Diane Choy Fujimura, Senior Real Estate Specialist
Lorene Kimura, Real Estate Specialist
Ryan Yamashiro, Real Estate Specialist
Cheryl Leong, Condominium Specialist
Gordon Arakaki, Recodification Attorney
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary
Karyn Takahashi, Clerk-Stenographer

Others: Karen Iwamoto, Hawaii Association of REALTORS
Janice Lind, RE3LLC

Excused: Vern Yamanaka, Member

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

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

SEO's Report: **Minutes of Previous Meetings**

Upon a motion by Commissioner Abrams, seconded by Commissioner Rice, it was voted on and unanimously carried to accept the minutes of the March 10, 2004 Laws and Rules Review Committee meeting.

Program of Work, FY04:

Legislative and Government Participation

A copy of the impact statement on House Bill No. 1800, HD1, SD1, was distributed to the Commissioners for their information.

The Commission had submitted a supplemental budget request for \$180,000 from the Real Estate Education Fund based on recommendations from the Education Advisory Committee and also requested \$100,000 from the Condominium Management Education Fund based on recommendations from the Education Advisory Committee. The \$150,000 being requested for the recodification of Chapter 514A, HRS, was not included in this request.

The SEO reported that there is a bill to place all of the Compliance Resolution Funds ("CRF") into the General Fund. Both bills have passed. The Legislature is proposing to take \$30 million from the CRF. A portion of the fees paid by the real estate licensees, condo associations and developers are deposited into the CRF. Senate Bill No. 2525 proposes to place all funds into the General Fund. After the hearing, PVL was the only one who was an exception to the bill. The bill also proposes to rename the CRF to the Compliance and Regulation Education Special Fund.

Representatives from the Hawaii Association of REALTORS were present at the hearing and provided strong support for the Department to retain the CRF. The Department is hoping that those whom they service are happy with the services they receive.

The Legislature approved all budget requests from all of the divisions with the exception of the \$100,000 supplemental budget request from the Condominium Management Education Fund.

The real estate licensing bill was transmitted to the Governor.

The SEO thanked all those who were involved in working on the real estate licensing bill, the recodification bill, and the supplemental budget requests.

Neighbor Island Outreach

The next neighbor island outreach is scheduled for May 11, 2004, on the island of Hawaii. The meetings will be held in the State Office Building, located at 75 Aupuni Street, in Rooms A, B and C, Hilo, Hawaii.

Commissioners' Education Program

A copy of the February 2004 issue of The High Road was distributed to the Commissioners for their information.

Program of Work, FY05

The Commissioners were asked to look at their current program of work assignments and to notify staff if there are any changes or recommendations. Staff is hoping to finalize the program of work and budget for submission to the Directory by June 1, 2004. The SEO will be

talking with the Committee Chairs and hopes that the Committees will be able to give their approval at the May Committee meetings.

Commissioner Abrams mentioned that it was time to start accumulating proposed rule amendments. It is anticipated that the Commission and staff will begin considering possible amendments after the Legislature has concluded.

ARELLO, Other
Organizations and
Jurisdictions:

ARELLO

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

- Strategic Planning Survey Results
- Committee Assignments

Open Forum:

Ms. Iwamoto informed the Commissioners that most of the Hawaii Association of REALTORS' Executive Board Presidents and the Presidents-Elect will be unable to attend the May 11, 2004 Committee meetings as they will be in Washington, D.C., attending the National Association of REALTORS' Convention. They have arranged to have representatives present at the Commission's May 11, 2004 meetings in Hilo.

Ms. Iwamoto also reported that the Hawaii Association of REALTORS has sent out a call to their members to vote no on Senate Bill No. 2525. They are dissatisfied with the way that the bill was written. The construction of the bill is flawed. Ms. Iwamoto pointed out that there was another section that contradicts the saving of the fund.

The SEO reported that there is a section in the bill which has a serious error. Section 54 of S. B. No. 2525, HD 1, CD 1 proposes that the registration fees collected under Chapter 514A, HRS, be deposited into the "General Fund". The "General Fund" was never changed to the name of the new fund. If passed, all funds collected from the registration of associations and projects will go into the General Fund. They may be trying to correct this through the recodification bill as there is no other vehicle left in which to make the correction.

The Chair thanked Ms. Iwamoto for the support of the Hawaii Association of REALTORS.

Commissioner Ohama informed the Commissioners that he had received a letter which was sent to all of the real estate regulatory boards and commissions in all of the 50 states. There is a group of people from New Jersey who has voiced their concerns regarding reverse referrals as the referral person does not hold a real estate license.

Budget and Finance Report:

No report was presented.

Morgan Stanley Dean
Witter:

This issue was deferred from the last meeting. Mr. Choy arrived after the the March 25, 2004 Real Estate Commission meeting had concluded as he was off island.

Commissioner Rice reported that he has not been contacted by Mr. Choy. In previous conversations with Morgan Stanley Dean Witter ("MSDW"), MSDW had requested that the Commission given them complete control over the funds. There was a recommendation to move the moneys out of MSDW and to invest them with the financial institutions.

The Deputy Attorney General informed the Commissioners they do have exemptions from Chapter 103D, HRS.

The SEO reported that staff was unaware of what would be involved in taking the funds out of the State Treasury to invest them with a financial institution. Currently, the MSDW account has approximately \$500,000.

Commissioner Rice questioned whether the Commission would be meeting its fiduciary obligations.

Commissioner Kagawa asked if the Commission could request to change agents within MSDW.

Commissioner Rice stated that the contract had expired and MSDW will not agree to renew the contract under the same terms.

The Deputy Attorney General informed the Commission that changing the agents would not solve the problems the Commission is experiencing. The statute requires that the Commission manage and handle the funds. It allows the Commission to do the same types of investments as the Employees Retirement System. The minutes will reflect that the Commission has been trying to resolve these problems.

The Chair suggested that the Commission try to secure someone who will service the account better.

Commissioner Rice reported that he had not received any new information or proposals from MSDW.

Commissioner Okawa stated that even though there is language in the proposed contract that would absolve MSDW of any liability, MSDW does have a responsibility towards its clients.

The Commission considered recommending terminating any further dealings with MSDW and requesting that the funds be transferred back into the State Treasury. The Commission could also look into investing the funds with local financial institutions,

The moneys are currently in a passbook account at MSDW.

Commissioner Imanaka suggested having a clear plan of action prior to taking action on this matter.

REB staff will continue to work with the REC Chair and Commissioner Rice to investigate more thoroughly the procedural and policy aspects of this issue. This matter will be discussed at the next meeting.

Next Meeting: Tuesday, May 11, 2004
9:00 a.m.
Conference Rooms A, B & C
State Office Building
75 Aupuni Street
Hilo, Hawaii

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 9:36 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

May 11, 2004
Date

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

CK/isk 04/23/04