

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, July 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, Public/Honolulu Commissioner
Louis Abrams, Vice Chair, Broker/Kauai Commissioner
Carol Ball, Broker/Maui Commissioner
Mitchell Imanaka, Broker/Honolulu Commissioner
Kathleen Kagawa, PhD, Broker, Honolulu Commissioner
Michele Sunahara Loudermilk, Public/Honolulu Commissioner
Trudy Nishihara, Broker/Honolulu Commissioner
John Ohama, Broker/Honolulu Commissioner

Calvin Kimura, Supervising Executive Officer
Neil Fujitani, 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
David Grupen, Condominium Specialist
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary

Others: Wayne Richardson, RE3LLC
Janice Lind, RE3LLC
Nicki Ann Thompson, Hawaii Association of REALTORS
Karen Iwamoto, Hawaii Association of REALTORS
Tom Gill, Coldwell Banker Pacific Properties
Mary Begier, Hawaii Association of REALTORS
George Sumner, Bank of Hawaii

Absent: Vern Yamanaka, Broker/Hawaii Island Commissioner

Call to Order: The Chair called the meeting to order at 9:02 a.m., at which time quorum was established.

Chair's Report: Chair Okawa turned the meeting over to REC Chair Ohama.

REC Chair Ohama welcomed Commissioner Carol Ball, who is the Maui Commissioner and Commissioner Loudermilk, who is the public Commissioner.

Upon a motion by Commissioner Abrams, seconded by Commissioner Imanaka, it was voted on and unanimously carried to accept the Commission's Organization memo, dated July 1, 2004.

REC Chair Ohama turned the meeting back to Chair Okawa.

Chair Okawa welcomed Commissioners Ball and Loudermilk aboard the Commission.

SEO's Report:

Announcements, Introduction, Correspondence, and Additional Distribution

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

4. Program of Work, FY05
 - f. Legislative and Government Participation Report – Legislative Report No. 6

The SEO reported that due to the Commission's inability to establish a quorum at the June 7, 2004 Laws and Rules Review Committee meeting, the meeting was not held. Some of the agenda items and distributions were placed on this agenda for consideration.

The Commissioners were reminded to turn in to staff the dates that they are unavailable for the period of July through December 2004. This information will assist staff in scheduling meetings or events and will allow staff to know when a Commissioner is unavailable should a situation arise. The REC Chair reported that he had represented the Commission at a bill signing ceremony, which was scheduled on short notice.

Minutes of Previous Meetings

Upon a motion by Commissioner Abrams, seconded by Commissioner Kagawa, it was voted on and unanimously carried to accept the minutes of the May 11, 2004 Laws and Rules Review Committee meeting.

Budget and Finance Report:

Investment Report

George Summer of Bank of Hawaii was present at the meeting to discuss the selection of the Commission's investment options.

Mr. Sumner thanked the Commissioners for giving Bank of Hawaii the opportunity to represent the Commission's trust fund investments.

Mr. Sumner also asked for guidance on the type of investment the Commission was seeking and if it were interested in being a conservative, defensive or aggressive investor.

Commissioner Kagawa moved to recommend that the Commission consider taking a conservative/defensive position in the investment of the trust funds, or possibly a combination of both. Commissioner Imanaka seconded the motion.

Commissioner Imanaka stated that the Commission would like to preserve its capital and is not in a position to risk the funds.

Commissioner Kagawa amended her motion and Commissioner Imanaka amended his second to recommend that the Commission proceed with investing the trust funds through the Bank of Hawaii with a conservative portfolio.

Mr. Sumner was asked if he had an opportunity to review the contract. He answered that he had and he did not think that there would be any challenges.

Program of Work, FY05:

The approved Program of Work and Budget for Fiscal Year 2005 was distributed to the Commissioners for their use and reference. The SEO briefly touched on the changes in the program of work.

Legislative and Government Participation

The SEO provided an updated report on the status of the bills before the Governor for signature.

Chair Okawa recognized Commissioners Ohama and Abrams for their work in passing the license recognition bill. She also recognized Commissioner Imanaka for the extensive amount of time he devoted to condominium issues.

Interactive Participation with Organizations

The SEO reported that staff was contacted by Laura Bose of the Environmental Protection Agency to request assistance in informing the public of the changes in the law regarding cesspools. Information on the new laws has been posted on the Commission's website and in the Condominium and Real Estate Bulletins.

Neighbor Island Outreach

The next neighbor island outreach is scheduled for Wednesday, September 8, 2004, on the island of Kauai. The meetings will be held in Conference Rooms A, B and C of the State Office Building, located at 3060 Eiwa Street, Lihue, Kauai.

Commissioner's Education Program

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

1. Hawaii Ethics Commission
 - a. Gifts Disclosure Statement Memo, dated May 3, 2004
 - b. The High Road, May 2004
2. Office of Information Practices
 - a. OpenLine, March & April 2004
 - b. OpenLine, May-June 2004

The Commissioners were reminded to turn in their Gift Disclosure Statements by June 30, 2004 to the Hawaii State Ethics Commission.

Based on a number of prior Ethics Commission's opinions that have similar circumstances, it was previously reported that staff/Commissioners were unable to accept an honorarium and travel reimbursements above and beyond what the State would provide for when participating in item writing because it is a part of the Commission's program of work and is also considered a part of their duties.

The Office of Information Practices will be offering training on the Sunshine Laws on August 5, 2004, from 9 a.m. to 12 Noon. The Commissioners were invited to attend the training.

Chair Okawa reminded the Commissioners that if they had questions on ethics, they could contact the State Ethics Commission for assistance.

ARELLO, Other
Organizations and
Jurisdictions:

ARELLO

ARELLO Conference Report - A copy of the ARELLO Conference Report, which was submitted by Chair Okawa and the SEO, was distributed to the Commissioners for their information. The SEO reviewed the information that was presented at the ARELLO Mid-Year Conference, which was held on April 21 to 24, 2004, in Omaha, Nebraska.

The SEO noted that real estate is becoming more global because the transactions are now crossing countries, not just borders. There are agency issues, jurisdictional issues involved.

Chair Okawa is the incoming Vice President of ARELLO's District IV (formerly Western District).

ARELLO Annual Conference – Upon a motion by Commissioner Abrams, seconded by Commissioner Imanaka, it was voted on and unanimously carried to recommend approval of up to three Commissioners/staff to the ARELLO Annual Conference, to be held in Pittsburgh, Pennsylvania, on October 2 to 5, 2004, subject to the Governor's fiscal policy and budgetary approval.

Special Issues:

Pennsylvania's and Mississippi's Request for Reciprocal License Agreement

Commissioner Abrams stated that the Commission is not ready to enter into a license-for-license agreement. The Commission needs to set up guidelines on reviewing the agreements so that it is consistent.

Reciprocal agreements that some other states have may involve the taking in and investigating of complaints against licensees. Since the Commission is a part of an umbrella agency, it would have to determine what services it would be able to provide, if any, to the other state.

Commissioner Ohama suggested forming a subcommittee that will meet with RICO and start to propose guidelines to follow in entering into reciprocal license agreements.

Commissioner Abrams stated that he did not mind being on the subcommittee. He requested that staff research the matter prior to the subcommittee meeting.

Upon a motion by Commissioner Ohama, seconded by Commissioner Abrams, it was voted on and unanimously recommend that the Subcommittee on Referral Fees/License Recognition look into the license recognition issues and that Commissioner Loudermilk be added on as a member of the subcommittee. It was also recommended that staff inform the Pennsylvania Real Estate Commission and the Mississippi Real Estate Commission that they are looking into this matter and will not be entering into an agreement at this time.

Section 16-99-4(a)(d), Hawaii Administrative Rules

Real Estate Specialist Yamashiro reported that he had received an inquiry recently on whether or not a neutral escrow depository needed to be located in the State of Hawaii.

Chair Okawa stated that the intent of Section 16-99-3, HAR, is to protect the public. The intent is to protect the real estate transaction in the State of Hawaii. It would be better served that the neutral escrow depository be located in the State of Hawaii.

The Deputy Attorney General pointed out that the intent of Section 16-99-4(a), HAR, is to protect the real estate transaction in the State of Hawaii. It would be better served that the neutral escrow depository be located in the State of Hawaii.

The Deputy Attorney General pointed out that the references mentioned in Section 16-99-4(d), HAR, do not specify that the trust funds needs to be maintained in the State, which would be consistent with §16-99-4(a), HAR.

The Deputy Attorney General asked what state the transaction takes place it. Does it take place in the buyer's state or in the seller's state?

Commissioner Abrams stated that if the property is in Hawaii, it would take place here. The only difference is in the exchanges. A Hawaii escrow company handles any property located in Hawaii. The buyer and the seller will ask that the funds be transferred after the transaction has closed.

The SEO reported that it is normally where the property is located.

Commissioner Nishihara stated that it is the seller's prerogative.

Chair Okawa suggested clarifying the rules and placing this item on the Commission's program of work.

The SEO reported that upon a review of the laws and rules and the intent, it was never intended for it to be deposited in an escrow outside the State of Hawaii if the property is located in Hawaii.

Chair Okawa noted that the language in Section 16-99-4(a), HAR, provides the guidance that the moneys must be in this State. It would be appropriate that the neutral escrow depository should also be located in this State.

The Deputy Attorney General informed the Commissioners could add, "or if the property is in another state, the state where the property is located."

Commissioner Imanaka suggested that the Commission consider offering an informal, non-binding opinion on the circumstances outlined pending revision of the rules.

Real Estate Specialist Yamashiro stated that the requestor did not expound on the history or background of the inquiry. He stated that the property is located in this State and the requestor had asked if they needed to use a cooperating broker in this State.

Commissioner Ball stated that if the property was located out of state, the client was in Hawaii and an out-of-state escrow was used, the Hawaii broker would not be involved except on a referral basis because they would not need to be licensed in the other state.

Commissioner Imanaka moved on behalf of Commissioner Abrams to recommend that staff respond to the requestor that based upon the information provided, the rules would indicate that to the extent that the properties are located in Hawaii, the escrow depository would need to be located in Hawaii and that the Commission will review the laws and rules regarding neutral escrow depositories. Commissioner Nishihara seconded the motion. The motion was voted on and unanimously carried.

Chair Okawa suggested that when the law/rule changes are drafted, the Commission could include in the definition that the property must be located in this state in order to avoid unnecessary repetition.

Open Forum:

Ms. Thompson asked when the Commission anticipated completing the guidelines for the license recognition since they have been receiving inquiries.

The SEO reported that in his discussions with ARELLO members, he did not feel that the Commission would be able to successfully enter into license recognition agreements with many states. The other states would like to see a license-for-license agreement, but that is not possible since the Commission is a part of an umbrella agency. Those states that are successful in entering into and maintaining license recognition agreements are those who are not a part of an umbrella agency.

The bill was an enabling piece to allow the Commission to consider entering into license recognition agreements. As the subcommittee progresses, the Commission may be able to give a time frame for implementation.

Ms. Iwamoto reported that the 2004 Legislative Committee has been providing legislative updates to their members. The next one is scheduled for Friday, July 16, 2004, on Maui. Kauai and Windward Oahu will be having their legislative updates in August.

Budget and Finance Report:

Real Estate Recovery Fund – March 31, 2004

Upon a motion by Commissioner Ohama, seconded by Commissioner Kagawa, it was voted on and unanimously carried to recommend acceptance of the Real Estate Recovery Fund Report, dated March 31, 2004.

Open Forum:

Ms. Iwamoto also reported that they are expecting the first draft of their agency bill on Friday. The Committee will be working on the draft after it is released and they hope to have the legislation submitted for consideration by the 2005 Legislature.

Next Meeting:

Wednesday, August 11, 2004
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 10:13 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

August 11, 2004

Date

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