

**LAWS AND RULES REVIEW COMMITTEE**  
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, November 9, 2005

**Time:** 9:00 a.m.

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

**Present:** Louis Abrams, Chair, Broker/Kauai Commissioner  
Kathleen Kagawa, Vice Chair, Broker/Honolulu Commissioner  
Carol Ball, Broker/Maui Commissioner  
Stanley Kuriyama, Broker/Honolulu Commissioner  
Michele Sunahara Loudermilk, Public/Honolulu Commissioner  
Trudy Nishihara, Broker/Honolulu Commissioner  
Iris Okawa, Public/Honolulu Commissioner  
Vern Yamanaka, Broker/Hawaii Commissioner

Calvin Kimura, Supervising Executive Officer  
Neil Fujitani, Executive Officer  
Diane Choy Fujimura, Senior Real Estate Specialist  
Cynthia Yee, Senior Condominium 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:** Myoung Oh, Hawaii Association of REALTORS®  
Alicia Maluafiti, Hawaii Association of REALTORS®  
Marsha Shimizu, Hawaii Association of REALTORS®  
Milton Motooka  
Surita Savio

**Absent:** None

**Call to Order:** The Chair called the meeting to order at 9:04 a.m., at which time quorum was established.

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

SEO's Report:

**Announcements, Introduction, Correspondence, and Additional Distribution**

**Additional Distribution**

The following material was distributed to the Commissioners prior to the start of the meeting:

4. Program of Work, FY06
  - w. Subcommittee on Applicants with Background Issues; Criminal History Records Checks
    - 1) Colorado License Application

**Announcements, Introduction, Correspondence, and Additional Distribution**

Commissioners Nishihara and Abrams will be leaving the meeting at 11 a.m. to meet with department staff to discuss consumer relationship issues. It was recommended that the Condominium Review Committee consider issues which require a vote at the beginning of their meeting.

**Minutes of Previous Meetings**

Upon a motion by Commissioner Okawa, seconded by Commissioner Kagawa, it was voted on and unanimously carried to accept the minutes of the October 12, 2005 Laws and Rules Review Committee meeting.

**Certificate of Appreciation**

Upon a motion by Commissioner Okawa, seconded by Commissioner Nishihara, it was voted on and unanimously carried to recommend issuance of a Certificate of Appreciation to Sharon Dolfo, Licensing Branch Chief, in recognition of her contributions to real estate.

Program of Work  
FY06:

**Licensing, Registration, and Certification Administration**

Geographic Report - A copy of the latest geographic report of real estate licensees as of October 14, 2005, was distributed to the Commissioners for their information.

Inactive Proposal – PVL will be submitting a proposed bill to the Legislature regarding inactive licensees. If the bill passes, rulemaking is expected to follow.

The Commission is concerned about the effects that the proposed bill and rulemaking may have on the Commission's program of work and will continue to monitor the progress of the proposals.

### **Neighbor Island Outreach**

The next neighbor island outreach will be held on Wednesday, January 11, 2006, at the REALTORS Association of Maui's offices, located at 441 Ala Makani Place, Kahului, Maui. The Laws and Rules Review Committee meeting will convene at 9:30 a.m., to be followed by the Education Review Committee and the Condominium Review Committee meetings. The Real Estate and Condominium Specialists' Office for the Day program will also be offered in conjunction with the meetings.

A copy of the report on the previous neighbor island outreach and Specialists' Office for the Day, which was held on September 14 and 15, 2005, was distributed to the Commissioners for their information.

### **Subcommittee on Agency and Other Related Issues**

Subcommittee Chair Abrams reported that HAR would like to meet with staff and some of the Commissioners to discuss agency and other related issues. Prior to the meeting with HAR, Commissioners Abrams, Nishihara will be meeting with REB staff, RICO staff, and the Deputy Attorney General to discuss the Department's position.

A copy of Colorado's statutes relating to brokerage relationships was distributed to the Commissioners for their information and reference. Colorado is a single licensing state, which is different from Hawaii. The State of Colorado also prepared the forms for their licensees to use to address brokerage relationships.

Commissioner Nishihara suggested forming an ad hoc committee to study the issue further. She also noted that any changes to the laws governing agency will also affect other types of individuals in the industry or in other related industries. She recommended that the Commission invite those from all areas of real estate to participate in the process. The Commission needs to consider what is in the best interests of the licensees as a whole. There are currently 13,000 active real estate licensees and 5,000 inactive licensees. HAR represents approximately 8,000 licensees. The Commission needs to consider the other 8-9,000 licensees who do not belong to HAR also. Commissioner Nishihara also suggested inviting legislators, representatives from each discipline of the industry and consumer groups to participate in the ad hoc committee. Legislators should be invited to participate so that they will understand the laws that they will be passing.

Subcommittee Chair Abrams stated that informed consent needs to be addressed so that the consumer understands it.

The SEO reported that the Commission's position on the HAR bill at the legislative hearing cited no support for the bill as RICO reported that agency and/or dual agency was not a problem and HAR did not provide

any facts/case law that it is a problem, and the Commission recommended a study be conducted by the Legislative Reference Bureau, a neutral third party, who has undertaken previous real estate studies. The recommendation was not supported.

While at the ARELLO meeting, the SEO reported that he initiated a discussion with Mike Gorham, former Executive Officer of the Colorado Real Estate Commission and former ARELLO President, who was a member of the Canadian Task Force on Agency. Mr. Gorham, an attorney, was also the lead on Colorado's law amendments to agency and transactional brokerage. He stated that other jurisdictions should not adopt a particular section of another state's law without reviewing the state law overall as compared their state law overall. A number of states have made the mistake of taking a section of another state's law that they like without any consideration to the other state's law overall, as well as their state law overall. If Hawaii wants to adopt the transactional brokerage concept, they should compare Colorado's law or laws overall versus Hawaii's law or laws. Adopting only one section may not work in the overall scheme and may require adopting other requirements. Colorado is a single licensing state that requires 168 hours of pre- and post-licensing education and a commitment to work full time in real estate brokerage for the initial two years of licensing for experience. Once this is completed, every licensee basically is at the level of a real estate broker. There is no salesperson level. Colorado requires FBI background checks for prelicensing and at renewals; has higher standards on criminal convictions for disqualifying a candidate or licensee; requires mandatory errors and omissions insurance; develops the real estate brokerage forms (DROA, listing, disclosures, etc.) and language and its mandatory use; and also has higher licensing standards than Hawaii. He feels that with all the aforementioned requirements and standards, Colorado has a more professional real estate licensee who can handle transactional brokerage with care. He stated that Colorado's experience with strict agency law that permits dual agency versus transactional brokerage, reflect that either type requires a very professional licensee who handles the parties/transaction with care. Some of the same problems under dual agency can happen with transactional brokerage, if not some different problems. There is no panacea for broker-consumer relationships, except restricting a real estate brokerage firm and its associating licensees from providing services to both parties in the transaction, no exceptions, just like attorneys. Licensees will have the same difficulty in explaining and ensuring that all parties in a transaction understand dual agency as transactional brokerage. In fact, the average consumer expects every licensee to represent their interests and can only easily understand a strict agency relationship. Does a car salesperson represent the interest of the consumer or the car dealer or self interest?

In addition, the SEO reported discussing the aforementioned with Scott Taylor, Oregon's Real Estate Commissioner and former ARELLO President. Oregon is a single licensing state. He reconfirmed and

agreed with the points raised by Mr. Gorham. Hawaii will be better off overall with single licensing. He stated that when dramatic changes are made or proposed to the law, the Commission should look at the law in total to see what is involved or affected by the changes and if the licensee can handle the new amendments.

As to the question on vicarious liability, only 13 states have abolished vicarious liability. In California, which did not abolish vicarious liability, the courts decide if an owner can be held liable for the acts of the broker just like Hawaii. HAR has not presented any Hawaii case law of vicarious liability in which the owner was held liable for the acts of the broker. ARELLO has very little case law on vicarious liability and one dealt with the broker being vicariously liable for the actions of its agents.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Yamanaka, it was voted on and unanimously carried to recommend forming an ad hoc committee to study brokerage relationships. The committee shall consist of representatives from the Hawaii Association of REALTORS, the local boards, industry members from various disciplines, RICO, legislators, the Hawaii State Bar Association, consumer groups, and two or three Commissioners.

Upon a motion by Commissioner Okawa, seconded by Commissioner Yamanaka, it was voted on and unanimously carried to recommend that Commissioners Abrams, Nishihara, and Kagawa be appointed to the ad hoc committee to represent the interests of the Commission.

The following articles were distributed to the Commissioners for their information:

1. Colorado Licensing Law
  - a. Enforcement
  - b. Single Licensing
  - c. Pre-Licensing Education
  - d. Mandatory Errors & Omissions Insurance
  - e. Real Estate Commission Mandatory Contract & Disclosure Forms
2. Inman News, Department of Justice and Federal Trade Commission Workshop (Competition Policy and the Real Estate Industry) with Real Estate Professionals, State Regulators, ARELLO, and other Officials, October 26, 2005

**Subcommittee on Applicants with Criminal/Financial/Legal  
Background Issues; Criminal History Record Checks**

The following information was distributed to the Commissioners for their information:

1. Colorado License Application
2. Colorado Mandatory Fingerprinting and Criminal History Record Check for New Licensee Applicants and Renewals of License

Colorado conducts FBI background checks on all applicants and upon renewing licenses. Hawaii does not have the authority to conduct any FBI or State Criminal background checks.

Budget and  
Finance Report:

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Nishihara, it was voted on and unanimously carried to accept the budget and finance report of the Real Estate Recovery Fund, for the month ending September 30, 2005.

Open Forum:

None.

Next Meeting:

Wednesday, December 7, 2005  
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 9:50 a.m.

Reviewed and approved by:

/s/ Calvin Kimura  
Calvin Kimura  
Supervising Executive Officer

December 7, 2005  
Date

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