

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, December 7, 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
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
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: Nicki Ann Thompson, Hawaii Association of REALTORS®
Alicia Maluafiti, Hawaii Association of REALTORS®
Janice Lind, All Professional Hawaii Realty
John Sherman, All Professional Hawaii Realty
Elizabeth L. Dower, Dower School of Real Estate
Scott Provost
Manuela Summers

Absent: Stanley Kuriyama, Broker/Honolulu Commissioner

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 Kagawa, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to accept the minutes of the November 9, 2005 Laws and Rules Review Committee meeting.

Program of Work
FY06:

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.

SEO's Report:

Certificate of Appreciation

Sharon Dolfo, Licensing Branch Supervisor, was presented with a Certificate of Appreciation for the contributions that she has made for the real estate industry and its licensees. The Commissioners thanked Ms. Dolfo for her dedicated service and commitment to public service.

Program of Work
FY06:

Subcommittee on Agency and Other Related Issues

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

1. "Real Estate Brokerage – Factors that May Affect Price Competition," U.S. Government Accountability Office, August 2005
2. "GAO Study on Real Estate Brokerage Finds Internet Fosters Competition, Not Banks," REALTOR.org, September 29, 2005
3. "GAO Report Will Be Used To Club Realtors," Realty Times, October 4, 2005
4. "Justice Department, FTC get competitors talking," ALQ Real Estate Intelligence Report, October 2005
5. Federal Trade Commission/Department of Justice Workshop on Competition Policy and the Real Estate Industry
6. Department of Justice Anti-Trust Lawsuit Against NAR
7. Department of Justice and Federal Trade Commission Joint letter to Michigan Senate Committee on Consumer Choice in Real Estate Brokerage Services, October 20, 2005
8. Department of Justice Letter to the New Mexico Real Estate Commission, November 2, 2005
9. "Agency Policy...Defining the Solutions," Minnesota REALTOR, Spring 1994

10. Consumer Federation of America, Comments on HB 107
11. Arizona Agency Law

Subcommittee Chair Abrams noted that the State of Arizona has similar laws to Hawaii. Specialist Yamashiro reviewed Arizona's agency laws and reported that it has consumer dual agency based on common law. Fiduciary duties are written in the statute. It falls under professional conduct and compliance under Chapter 28 of the Commissioner's rules.

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. "Required Criminal Background Checks," Arizona Department of Real Estate, Volume 31, Issue 4
2. "Criminal pasts now displayed on Web," The Honolulu Advertiser, November 10, 2005

Staff is continuing its review on whether or not these types of services can be initiated.

The Deputy Attorney General informed the Commissioners that if the Commission decides to go in the direction of background criminal checks and fingerprinting, they would be shifting the paradigm. Currently, the applicant is required to submit the information. If the Department undertakes the search, then the Department would assume the liability if there were any claims of negligence.

Commissioner Okawa stated that it would be a burdensome undertaking for the Commission and its staff. A disclosure from the applicant is the more appropriate way to handle this because it is a part of a licensee's professional responsibility.

The SEO reported that more states have FBI and state criminal background checks and require fingerprinting before the application is submitted. Criminal background checks were a "hot" issue at the Legislature for other areas.

Normally, the background check and fingerprinting would have to be completed prior to submitting the application for licensure and the applicant would be responsible for bearing the cost.

If the Commission receives a positive response from the ARELLO Disciplinary Databank, the Commission would need to contact the state in which the disciplinary action was reported. The information is reported to the Commission when the applicant takes the exam, but the Commission will not act upon it until after the application for licensure is submitted.

Chair Abrams suggested talking with industry to see what they think would be appropriate. He also suggested discussing this with the FBI. Chair Abrams will meet with REC Chair Nishihara to discuss this matter further to see how to proceed on this.

ARELLO, Other
Organizations and
Jurisdictions:

ARELLO Midyear, District Meeting, Annual Meeting and Reports

Chair Abrams announced that he would be attending the ARELLO Board of Directors meetings in St. Petersburg, Florida, on January 13 and 14, 2006.

A copy of the report on the ARELLO 75th Annual Conference, by Commissioners Okawa and Abrams, Senior Specialist Fujimura and the SEO were distributed to the Commissioners for their information.

North Carolina Real Estate Commission

North Carolina has moved to single licensing and more states are continuing to do so.

Pennsylvania Real Estate Commission

A copy of a letter, dated November 7, 2005, from the Commonwealth of Pennsylvania, was distributed to the Commissioners for their review. The Commonwealth of Pennsylvania was requesting to enter into a reciprocal agreement with the State of Hawaii.

It was recommended that staff respond to the Commonwealth of Pennsylvania that the law permits license recognition agreements, not reciprocal agreements and the Commission will continue to study the issues entailed in license recognition agreements and will not be entering into any agreements at this time. Upon rectifying the issues, the Commission will notify all States and offer to negotiate license recognition agreements.

Budget and
Finance Report:

No report was presented.

Open Forum:

Ms. Thompson reported that HAR is looking at the consumer relationship issues and is in the process of revising House Bill No. 107. HAR hopes to have the draft completed prior to the January 11, 2006 meetings so that they Commission may provide their input at that time. HAR would like to continue its collaboration with the Commission on this bill.

Next Meeting:

Wednesday, January 11, 2006
9:30 a.m.
REALTORS Association of Maui
441 Ala Makani Place
Kahului, Maui

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 9:42 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

January 11, 2006
Date

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

CK/isk/051214