

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, March 8, 2006

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 (Late arrival)
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
Ryan Yamashiro, Real Estate Specialist
David Grupen, Condominium Specialist
Cheryl Leong, Condominium Specialist
Shari Wong, Deputy Attorney General (Late arrival)
Irene Kotaka, Secretary

Others: Nicki Ann Thompson, Hawaii Association of REALTORS
Alicia Maluafiti, Hawaii Association of REALTORS
Carol Egan, All Islands Real Estate School

Absent: None.

Order: The Chair called the meeting to order at 9:01 a.m., at which time quorum was established.

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

Commissioner Kuriyama arrived.

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

Upon a motion by Commissioner Okawa, seconded by Commissioner Nishihara, it was voted on and unanimously carried to accept the minutes of the March 8, 2006 Laws and Rules Review Committee meeting.

Program of Work
FY06:

Neighbor Island Outreach

The next neighbor island outreach is scheduled to be held in Hilo, Hawaii on May 10, 2006. The Laws and Rules Review Committee will convene at 9:30 a.m., to be followed upon adjournment by the Education Review Committee and the Condominium Review Committee meetings. The meetings will be held at the University of Hawaii at Hilo, Campus Center Conference Rooms 306/307, 200 West Kawili Street, Hilo, Hawaii. The Specialists Office for the Day will also be held in conjunction with the meetings.

Division and Department Programs

ARELLO has, for many years, been trying to offer an investigative training program in one of the Western States, including Hawaii. The last time ARELLO had an Investigator Training Workshop in Hawaii was in the mid 1980's, in which RICO investigators participated. SEO has previously served on ARELLO's Investigator Training Board as well as its Chair. ARELLO will be discussing with RICO the possibility of offering the workshop in Hawaii to their investigators. In addition, we will be proposing to ARELLO the feasibility of an Attorney Workshop along with the Investigator's Workshop. The Commissioners, REB Staff, Deputy AG, and PVL will also be invited to attend the workshop. If the discussion between ARELLO and RICO is favorable, RICO will be requesting funding from the Real Estate Education Fund to subsidize the costs of the workshop fees.

One of the trainers mentioned for the attorney workshop is Tom Miller, the Chief Legal Counsel of the North Carolina Real Estate Commission. Chair Abrams stated that Mr. Miller is an outstanding speaker on legal issues and case law, and would benefit RICO.

Mr. Miller has just completed an ARELLO brochure on the "Simple Rules of Procedure for Occupational Licensing Agencies" that would be very helpful to the Commissioners and any Board Member.

The SEO reported that he had participated in a number of ARELLO Investigator's Workshops in the past and attended one with a Public Member Commissioner.

Subcommittee on Agency and other Related Issues
Ad Hoc Committee on Consumer-Broker Relationships

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

1. Washington: Real Estate Brokerage Relationships
2. Alaska: Licensee Relationships
3. Oklahoma: Broker Relationships
4. Know Your Risk: National Association of REALTORS
5. Virginia Minimum Services' Proposal
6. Wisconsin Legislation on Designated Agency and Proposal on Minimum Services

This information will be passed on to the members of the Consumer Broker Relationships Ad Hoc Committee.

Chair Abrams reported that the next CBRAHC meeting should conclude the discussion of the old laws, current laws and the other State's laws. They should be ready to start discussing what needs to be done. Most of the States are amending the common law and are entering a statutory relationship, which is a major trend.

The Deputy Attorney General arrived.

The SEO reported that Alaska still permits dual agency with a number of requirements. They removed vicarious liability. There are minimum duties for the buyer's and seller's agent. There are states that have designated or transaction brokerage that still permit dual agency with a lot of requirements and a trend for first contact disclosure/agreement with the consumer as to the type of representation.

Chair Abrams had originally wanted to look only at the States in the 9th Circuit, but Mr. Stice had suggested that the committee look at information from the State of Oklahoma. The Committee will see how different States compare in duties and standards.

Virginia defines minimum services. Oklahoma withdrew their proposed rules on minimum services. Wisconsin will be proposing designated agency. ARELLO has stated "do not rush to change" as a number of states have had to reverse the original course and/or were induced to withdraw by FTC or the Department of Justice. Overall, a good number of States are irresolute on the issues of minimum services, duties and responsibilities of real estate licensees, and other issues that affect the relationship between the licensee and the consumer.

Chair Abrams stated that he had a vision of the responsibilities under agency agreements being allowed to be bifurcated. This is different from Hawaii's law.

Commissioner Okawa stated that this issue impacts all 50 states in the examination and education area. The definitions need to be examined.

Commissioner Nishihara asked if ARELLO would be looking at this issue to ensure uniformity among the jurisdictions. The SEO reported that ARELLO is looking at the Canadian Task Force Report, which is still being reviewed by the various Canadian provinces and no province has officially adopted the recommendations of the report. Canada has the best chance of any uniform definitions and uniform consumer relationship practices as they have only a few provinces and 90% plus of the Canadian real estate licensees are members of the Canadian Association of Realtors. The United States have 50 states, D.C., and some territories and very little uniformity. Unless ARELLO and NAR can work together and take the lead, the only force that can dictate uniformity would be the Federal Government.

Chair Abrams reported that ARELLO is working with other countries who are interested in creating real estate agencies in their country.

ARELLO has also been working more closely with the National Association of REALTORS. With the changes in real estate brokerage business models, electronic age and the internet, transactions and agents crossing state lines through the electronic age, recognition of common issues, a greater respect for the roles of each, Federal intervention, ARELLO and NAR are in a very cooperative and collaborative mode. NAR has requested that ARELLO and each State member participate in the NAR Midyear meetings which will be held in May 2006, in Washington, D.C. Representatives from NAR and NAR members have also begun attending the ARELLO meetings and conferences, as well as being an agenda participant. The ARELLO/NAR arena has changed dramatically over the past years.

Bernard Bays Article – Bernard Bays had submitted an article, and he requested that it be published in the Real Estate Bulletin. The article will be shared with the CBRAHC.

The publication of the article in the Bulletin may be setting a precedent. In the past, the Commission has published articles submitted or written by organizations or governmental agencies, not individuals.

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

No report was presented.

ARELLO Midyear, District Meeting, Annual Meeting and Reports

No report was presented.

ARELLO, Other Organizations and Jurisdictions:

Special Issues:

None.

Open Forum:

None.

Budget and Finance Report:

Upon a motion by Commissioner Okawa, seconded by Commissioner Nishihara, it was voted on and unanimously carried to accept the financial report of the Real Estate Recovery Fund for the period ending December 31, 2005.

Next Meeting:

Wednesday, April 12, 2006
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 9:25 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

April 12, 2006
Date

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

CK/isk 060316