

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 14, 2007
- 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
Michele Sunahara Loudermilk, Vice Chair, Public/Honolulu Commissioner
Annette Aiona, Broker/Hawaii Commissioner (Late Arrival)
Carol Ball, Broker/Maui Commissioner
William Chee, Broker/Honolulu Commissioner
Frances Gendrano, Salesperson/Honolulu Commissioner
Stanley Kuriyama, Broker/Honolulu Commissioner
Trudy Nishihara, Broker/Honolulu Commissioner
Mark Suiso, Public/Honolulu Commissioner (Early Departure)
- Calvin Kimura, Supervising Executive Officer
Neil Fujitani, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Lorene Kimura, Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
David Grupen, Condominium Specialist
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary
- Others: Ronald Michioka, Recovery Fund Attorney
Myoung Oh, Hawaii Association of REALTORS
Chris Catanzaro, Digital Learning Center, LLC
David Catanzaro, Dower School of Real Estate – Windward
Kenneth Chong
- Absent: None.
- Call to Order: The Chair called the meeting to order at 9:03 a.m., at which time quorum was established.
- Chair's Report: The Chair announced that the Commission may move into executive session to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.
- REC Chair's Report: Pursuant to §467-4(8), HRS, the standing committees do have the authority to make decisions, the decisions can be effective as of the date of the committee meetings and will be the decision of record. The Committee can also reserve the

right to take an issue to the Real Estate Commission meeting after proper notice has been provided.

There may be times when items will need to be considered at the Real Estate Commission meeting due to timing issues and concerns.

The Deputy Attorney General stated that the Committee agendas that are filed are detailed and properly noticed. The Commission's agenda did not provide sufficient information of the issues to be covered under the Committee reports.

Commissioner Aiona arrived.

All decisions will be finalized at the Committee level unless the Committee decides that the Commission needs to act further on the decision.

If a new REC Chair is appointed and it is decided that the Committees would be made up of fewer than the current nine members, the Commission may have to readdress this issue. The Deputy Attorney General advised the Committee members that even if the Committee were composed of fewer than the nine members, there would still need to be at least five members (quorum of the nine-member Commission) to either make a final decision or a recommendation to put the issue on the REC meeting agenda.

The Commission hopes that this process will help those who attend the meetings to be at the appropriate meeting.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Suiso, it was voted on and unanimously carried to recommend this matter to the March 30, 2007 Real Estate Commission meeting for approval.

SEO's Report:

Additional Distribution

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

4. Program of Work, FY07
 - f. Legislative and Government Report
 - 1) REB Report
5. ARELLO, Other Organizations and Jurisdictions
 - b. National Association of REALTORS and Other Boards of REALTORS

Minutes of Previous Meetings

Upon a motion by Commissioner Suiso, seconded by Commissioner Nishihara, it was voted on and unanimously carried to accept the minutes of the February 14, 2007 Laws and Rules Review Committee meeting.

Program of Work,
FY07:

Real Estate Recovery Fund – Opinion Request – Ronald Michioka, Esq.

Executive Session:

Upon a motion by Commissioner Chee, seconded by Commissioner Aiona, it was voted on and unanimously carried to enter into executive session, pursuant to §92-5(a)(4), HRS, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities."

Upon a motion by Commissioner Aiona, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to move out of executive session.

Program of Work,
FY07:

Real Estate Recovery Fund – Opinion Request – Ronald Michioka, Esq.

Upon a motion by Commissioner Chee, seconded by Commissioner Nishihara, it was voted on and unanimously carried to recommend that the Commission take no action on the request at this time.

The Commission has concerns that a licensee who has been on inactive status for a long period of time, some as much as 20 years inactive, may reactivate their license by merely completing ten hours of continuing education courses. Does the licensee have sufficient knowledge to conduct real estate activity and is the consumer protected?

If the licensee is inactive, RICO would pursue a complaint against an inactive licensee for conducting real estate activity with an inactive license as well as any other applicable statutory sections. Section 467-14, HRS, states that "Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or real estate salesperson, or on the licensee's own behalf." HAR Section 16-99-2 (definitions), states "inactive" means the status of a current license that is not forfeited, suspended, revoked, or terminated, the holder of which cannot transact any real estate business until the license status is changed to "active" status. HAR Section 16-99-3(a), "To fully protect the general public in its real estate transactions, every licensee shall conduct business, including the licensee's own personal real estate transactions, in accordance with this section."

The question is whether a personal real estate transaction by an inactive licensee is covered under the real estate recovery fund? Or what type of actions by an inactive licensee handling a personal real estate transaction affect coverage under the real estate recovery fund?

Legislative and Government Participation Report

Legislative Report No. 4 was distributed to the Commissioners for their information.

Discussion of the report was deferred to the Condominium Review Committee as the majority of the bills are condo-related.

Commissioner Nishihara's reappointment hearing is scheduled for March 15, 2007

Neighbor Island Outreach

The next neighbor island outreach is scheduled for June 2007 on the island of Kauai.

Commissioner Suiso was excused from the meeting.

Ad Hoc Committee on Consumer-Broker Relationships

Chair Abrams reported that the next meeting will be held on March 30, 2007, at 1 p.m. in the Queen Liliuokalani Conference Room. The Committee is currently working on drafting rules and hopes to have something ready by June.

A copy of The Gallup Poll's Business and Industry Sector Ratings was distributed to the Commissioners for their information.

The Commission needs to address issues relating to internet advertising but has put it on the side until issues involving VOWs are settled.

Principal brokers are responsible for the licensees that are under them.

Does the listing broker's name need to appear on every page of the advertising? It was recalled that in 2002, the policy was yes.

The Commission will have to address the topic of internet advertising soon. It will also have to determine what is considered advertising as it relates to the internet. Is it considered advertising when a consumer is requesting information and the information appears?

The Canadian provinces have specific laws and rules on internet advertising.

ARELLO, Other
Organizations and
Jurisdictions:

Meetings, Workshops, and Reports

A copy of the NAR Annual Meeting report was distributed to the Commissioners for their information. The Commission acknowledged receipt of the NAR Annual Conference report submitted by Commissioner Nishihara and the SEO.

Special Issues:

Request for Formal Opinion – Rent.com

The Committee stands on its discussion from the previous meeting and recommends that the previous decision be approved at the March 30, 2007 Real Estate Commission Meeting.

Open Forum:

None.

Budget and Finance
Report:

Upon a motion by Commissioner Chee, seconded by Commissioner Nishihara, it was voted on and unanimously carried to accept the Real Estate Recovery Fund Report for the period ending December 31, 2006.

Next Meeting:

Wednesday, April 11, 2007
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 10:11 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

April 11, 2007
Date

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