

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, October 10, 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
Carol Ball, Broker/Maui Commissioner
William Chee, Broker/Honolulu Commissioner
Frances Gendrano, Broker/Honolulu Commissioner
Stanley Kuriyama, Broker/Honolulu Commissioner
Trudy Nishihara, Broker/Honolulu Commissioner
Mark Suiso, Public/Honolulu Commissioner

Calvin Kimura, Supervising Executive Officer
Neil Fujitani, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Amy Endo, Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
David Grupen, Condominium Specialist
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary

Others: Verna Oda, Executive Officer, Contractors License Board
Joe Kindrich, Contractors License Board
Christopher Cavanaugh, IPX1031

Absent: Annette Aiona, Broker/Hawaii 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 report was presented.

The Chair announced that the Committee 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.

The Chair announced that Commissioner Aiona was excused from today's meeting. Prior notification of her non-attendance was received.

SEO's
Report:

The SEO reported that the 2008 Real Estate Commission meeting schedule was emailed to the Commissioners for their information and reference. The Commissioners were asked to notify staff of any conflicting dates.

Minutes of Previous Meetings

Upon a motion by Commissioner Chee, seconded by Commissioner Ball, it was voted on and unanimously carried to accept the minutes of the September 10, 2007, Laws and Rules Review Committee meeting.

Program of
Work, FY08:

Neighbor Island Outreach

The SEO reported that the next neighbor island outreach is scheduled for the island of Maui. Staff will work with Commissioner Ball in scheduling the meeting.

Ad Hoc Committee on Consumer-Broker Relationships

The Chair reported that the next AHCCBR meeting is scheduled for Friday, October 26, 2007, at 1 p.m., in the Queen Liliuokalani Conference Room. They are in the process of wrapping things up and hope to have a draft of the proposed rule changes relating to this issue available for the Commission's consideration at the November meeting.

ARELLO,
Other
Organizations
And
Jurisdictions:

Meetings, Workshops and Reports

The SEO reported that Commissioner Abrams was elected to serve on ARELLO's Board of Directors as the Vice-President.

Upon a motion by Commissioner Ball, seconded by Commissioner Nishihara, it was voted on and unanimously carried to approve sending Commissioner Abrams to the ARELLO Leadership Symposium and Board of Directors Meeting, to be held on January 11 and 12, 2008, in Orlando, Florida, subject to budget and DCCA approval.

Special
Issues:

Contractors License Board – Owner-Building Issues

Joe Kindrich, Contractors License Board ("CLB") member, and Verna Oda, Executive Officer of the Contractors License Board, were present at the meeting to discuss their concerns regarding owner-builder issues.

Ms. Oda informed the Commissioners that there were three areas that the CLB were proposing changes. The three areas are:

1. Requiring owner-builders to pay General Excise Tax ("GET") based on the value of the project;
2. Increase the length of time the owner-builder is prohibited from selling the property from one to two years; and
3. Requiring the seller to disclose whether the structure was built or improved under an owner-builder permit.

Requiring owner-builder to pay General Excise Tax based on the value of the project

The Department of Taxation would be added as one of the list of agencies on the owner-builder permit. The CLB was contemplating an exemption for the owner-builder in the spirit of the law. The value could be decreased from the permit application if the work is done by a family member. The current law states that now, but there is no method to do so.

Mr. Kindrich informed the Commissioners that unlicensed trade contractors either accompany the owner to purchase the materials or call the supplier with their credit card number. The unlicensed contractors are not paying the GET for labor. The intent of the owner-builder law was to allow the owners to build their own home. However, people are using it as an escape.

The law requires the owner-builder to pay all taxes but in reality, they do not. Licensed contractors are required to pay GET. The owner-builder has an advantage over the licensed contractor. If the owner-builder hires an unlicensed contractor and pays them cash, they must pay the GET for the unlicensed contractor that they hire. If they hire a licensed contractor, the licensed contractor pays the GET taxes.

Increasing the length of time the owner-builder is prohibited from selling the property from one to two years

The intent of this change was to make it consistent with the State and Federal capital gains tax that you have to live in the improvement for two years before being allowed to sell it. This was to prevent people from flipping it. The true owner-builder will not be flipping it.

Since the time of completion can be arbitrary, it was suggested that the two years be tied to the closing of the building permit.

Currently, when a homeowner applies for a permit, they are declared an owner-builder. Changing it to two years may curb the activities of those who are in it for speculative marketing. An owner-builder may declare that the work has been completed when it was not and they may be allowed to close the permit. This raises safety and consumer protection concerns. The CLB wanted the completion to be tied in to the completion of the job and the issuance of the certificate.

A question was raised as to whether or not the changes would cause a restriction of the owner's property rights. What would happen in the case of a person who gets divorced? Would they not be able to sell the property until two years have passed? The owner-builder may pay a fine if they sell before the two years are up. The fine is 40% of the value of the property. There are some mitigating circumstances, such as divorce or for the military, in which the CLB will not pursue the violation.

Plumbing and electrical work must be done by licensed electricians and plumbing contractors. The amendments are being proposed to address those in the construction area.

Mr. Kindrich was asked if he had information on the number of owner-builders applying for exemptions every month. He said that there were approximately 35 owner-builders

applying for exemptions monthly on Oahu. He was not certain how many applicants there were for the neighbor islands but said that he could get that information.

The Commissioners were informed that the CLB had submitted a bill previously to the Legislature, but it did not move out of committee. When asked who was in support of the bill, they were informed that the Building Industry Association and the Department of Taxation were in favor of the proposed legislation. They are not certain if there were any opposers because the bill did not make it out of the committee.

Mr. Kindrich and Ms. Oda were informed that the Commission would not testify on their first two proposals and recommended that they contact the Hawaii Association of REALTORS to obtain their support.

Requiring the seller to disclose whether the structure was built or improved under an owner-builder permit

The third proposal falls under Chapter 508D, Hawaii Revised Statutes, which is not under the Commission's jurisdiction. The Hawaii Association of REALTORS' Seller's Real Property Disclosure Statement asks if any improvements on the property were built under an owner-exemption permit (Item 66). However, not all licensees are members of the Hawaii Association of REALTORS and not all licensees may use the seller disclosure statement. The use of the form is the only way that a REALTOR would be able to find out if the seller is an owner-builder.

The Commission felt that the Hawaii Association of REALTORS would be interested in this proposal because they would want to make sure that everything is okay when they are involved in the transaction. If the property is sold through a REALTOR, the REALTOR would want to make sure that they are following the law and that the disclosure requirements are met. If the property is sold as a "for sale by owner," they may not follow the law. If a licensee does not use the seller disclosure form, but the disclosure requirement is put into Chapter 508D, HRS, it would apply to all real estate licensees, regardless of whether or not they belong to the Hawaii Association of REALTORS.

If an owner-builder hires an unlicensed contractor, the purchaser cannot file a claim with the Contractor's Recovery Fund. Another concern is that of safety. Owner-builders do not realize what could happen if they used an unlicensed contractor and things go wrong. If you hire an unlicensed contractor and they get hurt, the homeowner could get sued.

Mr. Kindrich informed the Commission that they are planning to have an education campaign and also wanted to tighten the laws that protect the homeowner.

The Commission offered to print an article in the Real Estate Bulletin regarding the CLB's concerns.

Budget &
Finance
Report: None.

Open Forum: None.

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Next Meeting: Monday, November 19, 2007
9:00 a.m.
King Kalakaua 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 9:32 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

October 15, 2007
Date

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