

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, April 9, 2008

Time: 9:00 a.m.

Place: King Kalakaua 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
Carol Ball, Broker/Maui Commissioner
Frances Gendrano, Broker/Honolulu Commissioner
Stanley Kuriyama, Broker/Honolulu Commissioner
Trudy Nishihara, Broker/Honolulu Commissioner
Mark Suiso, Public/Honolulu Commissioner (Late Arrival)

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

Others: Myoung Oh, Hawaii Association of REALTORS
Mark Hazlett, Esq.

Absent: William Chee, Broker/Honolulu Commissioner

Call to Order: The Chair called the meeting to order at 9:03 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.

Commissioner Chee was excused from today's meeting. Prior notice of his non-attendance was received.

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

Upon a motion by Commissioner Aiona, seconded by Commissioner Ball, it was voted on and unanimously carried to accept the minutes of the March 12, 2008, Laws and Rules Review Committee meeting.

Program of **Legislative and Government Participation Report**
Work, FY08:

Legislative Report No. 4 was distributed to the Commissioners for their information. Discussion on the report is deferred to the Condominium Review Committee meeting.

Neighbor Island Outreach

The next neighbor island outreach is scheduled for May 7, 2008, on the island of Maui. The meetings will be held at the REALTORS Association of Maui's Offices, located at 441 Ala Makani Place, Kahului, Maui. The Laws and Rules Review Committee meeting will begin at 9:30 a.m., immediately followed by the Education Review Committee meeting and the Condominium Review Committee meeting. The Specialists Office of the Day program will also be held from 9:30 a.m. to 11:30 a.m.

Commissioners' Education Program

The April 2008 issue of OpenLine was distributed to the Commissioners for their information.

ARELLO,
Other
Organizations
And
Jurisdictions:

No issues or reports were presented.

Special **Hawaii Supreme Court Rule Amendments**
Issues:

An article entitled, "Realtors hire former justice as 'practice of law' adviser," which appeared in the March 14, 2008 issue of the Pacific Business News, was distributed to the Commissioners for their information. A copy of an email containing the Hawaii State Bar Association's President's Message, dated April 4, 2008, was also distributed to the Commissioners for their information.

Cades Schutte Request Regarding Trust Company Operations

Mark Hazlett, Esq., representing Cades Schutte, was present to discuss his request for information regarding trust company operations. He represents one of the three state-chartered banks, which conducts trust company operations. He is not naming his client because all three banks perform the same functions.

Commissioner Suiso arrived.

Mr. Hazlett informed the Commissioners that Hawaii's financial law allows banks to conduct trust company operations with the Commissioner of Financial Institution's permission. However, they cannot engage in any business for which a real estate broker's license is required. Mr. Hazlett said that the real estate licensing law is very broad and the definition of a real estate broker includes any person who manages or offers to manage any real estate. Trust company operations involve the management of real estate trust assets.

The real estate licensing law grants an exception to any person who acts as a personal representative, or trustee acting under any trust agreement, deed of trust or will or otherwise acting under any order of authorization of any court. Mr. Hazlett said that the language is clear that a bank acting as a trustee under a trust may manage real estate without a license.

The first interpretation requested is that each Hawaii state bank with trust powers designated as a successor trustee in wills, trusts, or other estate planning instruments be considered a "trustee acting under any trust agreement" for purposes of Section 467-2(2), HRS, to the extent that banks perform related real estate services for which a broker's license would otherwise be required.

In some cases, the original trustee is temporarily incapacitated; the bank becomes the designated successor trustee in order to pay the taxes, the rent, etc. The bank views itself as the designated successor trustee.

The second interpretation requested is that to the extent that a bank is exercising agency trust powers pursuant to and subject to Section 412:8-202, no real estate licensing shall be required as long as the bank complies with the Trust Company Law.

Banks may act as an agent on behalf of a principal in the management of property. An example would be that the bank becomes a designated successor trustee because the trustee has passed away. The property that was part of the trust may be partially conveyed out to other parties who are not a part of the trust. The bank may be asked to act on behalf of the trust and those who have acquired title to the property but are not a part of the trust.

When asked about real estate transactions, Mr. Hazlett said that the bank may use a licensed real estate broker within their company to handle the sale of real estate or in some special cases; the bank may handle the sale directly because of a special relationship. They would not use a real estate broker to handle the management of the property.

Commissioner Suiso recused himself from the discussion.

The Commissioners expressed their concerns regarding the protection of the consumer if no real estate broker was used to handle the transaction.

Mr. Hazlett said that trust company laws and the laws governing financial institutions are higher than the real estate licensing laws. If the consumer has a problem with a financial institution, they could contact their attorney and file a civil complaint. They could also file a complaint with the Division of Financial Institutions who would investigate the matter.

Mr. Hazlett requested that if the Commission's decision were not favorable to what they are seeking, they would prefer that the Commission not provide an answer.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Ball, it was voted on and unanimously carried to take this matter under advisement.

Executive
Session:

Upon a motion by Commissioner Ball, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to enter into executive session, pursuant to Section 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 Loudermilk, seconded by Commissioner Gendrano, it was voted on and unanimously carried to move out of executive session.

Special
Issues:

Cades Schutte Request Regarding Trust Company Operations

Commissioner Loudermilk disclosed that she was a partner at Cades Schutte until approximately 2-1/2 years ago. Commissioner Kuriyama disclosed that he was a partner at Cades Schutte over 16 years ago. Both stated that they would be able to make a fair and impartial decision on the matter before them.

Based upon the lack of information provided to make a determination, Commissioner Kuriyama moved to recommend that Mr. Hazlett seek declaratory relief for a formal opinion and/or seek legislative assistance in resolving the conflict between the Code of Financial Institutions and the real estate licensing law. Commissioner Ball seconded the motion. The motion was voted on. Commissioner Loudermilk voted against the motion. The motion was carried.

Commissioner Suiso returned to the meeting.

Open Forum: None.

Next Meeting: Wednesday, May 7, 2008
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 10:16 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani
Neil K. Fujitani
Acting Supervising Executive Officer

May 7, 2008
Date

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