

**LAWS AND RULES REVIEW COMMITTEE**  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii  
[www.hawaii.gov/hirec](http://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, September 10, 2008

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  
Frances Gendrano, Broker/Honolulu Commissioner  
Stanley Kuriyama, Broker/Honolulu Commissioner  
Carol Ball, Broker/Maui Commissioner  
Trudy Nishihara, Broker/Honolulu Commissioner  
Annette Aiona, Broker/Hawaii Commissioner  
William Chee, Broker/Honolulu Commissioner  
Mark Suiso, Public/Honolulu Commissioner – late arrival

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

Others: Judge Robert Klein, Hawaii Association of Realtors  
Myoung Oh, Hawaii Association of Realtors  
Marsha Shimizu, Hawaii Association of Realtors

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 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 next neighbor island outreach will be held in Hilo on November 12, 2008.

SEO's  
Report:

### **Minutes of Previous Meetings**

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Ball, it was voted on and unanimously carried to accept the minutes of the August 13, 2008, Laws and Rules Review Committee meeting as circulated.

Program of  
Work, FY09:

### **Legislative and Government Participation Report**

Legislative Report No. 7 was distributed to the Commissioners for their information.

### **Licensing Renewal**

Specialist Endo provided a 2008 renewal timeline for the Commissioners information. She noted that the Commission will be promoting its online renewal by offering discounts ranging from \$26.50 to \$39.00, depending on the type of license, for those who renew online.

It was also reported that the Online Real Estate Continuing Education System was rolled out on August 25<sup>th</sup> and allows the licensees to check on their continuing education status and allows Principal Brokers to monitor which of their licensees have met their requirement.

A flyer of the upcoming Real Estate Commission 2008 Renewal Workshops was distributed for informational purposes. Renewal workshops will be held on Oahu as well as the neighbor islands during October and November.

### **Subcommittee on Background Issues and Criminal History Records**

Commissioner Loudermilk reported this program of work item was to consider and evaluate possible changes to the legislature to require new applicants to submit to criminal history background checks. Commissioner Loudermilk provided for the committee's information copies of HRS §846-2.7, Criminal history records checks (Criminal Data Center) and HRS §321-15.2, Criminal history records check (Department of Health).

Deputy Attorney General Wong noted that HRS §846-2.7 (16) includes DCCA on applicants for private detectives or private guard licensure and questioned whether the Commission has had any direction from PVL on the inclusion of real estate.

Commissioner Abrams replied that at the time this issue was initially discussed, PVL did not want to get involved because it was so difficult to get background checks. But since the 9-11 incident the system has been streamlined and we may want to open discussions again with PVL.

Commissioner Nishihara responded that in her discussions with PVL, it seemed that they were looking for a unified effort with industry. PVL may be more open to discussion with a unified effort.

Commissioner Abrams stated that the background checks could be started on new licensees first and then possibly looking into providing checks on the existing licensees.

Commissioner Kuriyama questioned whether doing background checks is warranted and also questioned how you differentiate between a real estate licensee and other professions that do not require a criminal background check.

Deputy Attorney General Wong informed the committee that the Real Estate Commission had previously delegated this issue to a subcommittee to research and bring its findings back to the commission for presentation and discussion. The subcommittee consisted of Commissioners Loudermilk, Gendrano, and Nishihara.

Commissioner Suiso arrives at 9:10 a.m.

The subcommittee is to look further into the issue and report back its findings.

ARELLO,  
Other

#### **Internet Real Estate Best Practices Study Group**

Organizations  
and  
Jurisdictions:

Chair Abrams reported that this issue was discussed at the April ARELLO Mid Year meeting. The study group wanted to poll all of the states. A draft of the survey was sent to members of the study group for suggestions and/or changes. The survey will then be modified and sent to all jurisdictions and the results will be made available for discussion at the October conference.

Special  
Issues:

#### **Supreme Court Rule Amendments**

Judge Robert Klein representing the Hawaii Association of Realtors was present to discuss HAR's ongoing battle with the unauthorized practice of law rule. Judge Klein informed the committee that HAR has been working with the Hawaii State Bar Association (HSBA) to provide input received from realtors to HSBA to incorporate into their draft rule proposal to the Supreme Court.

The initial proposed draft rule submitted by HSBA to the Supreme Court would have required someone filling out a purchaser's agreement to have a law license, if not it would be considered unauthorized practice of law. HAR's and the Commission's dissatisfaction of the draft proposal reached the Supreme Court who in turn shuffled the proposed rule back to HSBA to come up with a new proposal satisfactory to its stakeholders. This would not only affect real estate agents, but other trades which require written agreements to be completed.

Judge Klein noted that HAR has taken the position to improve the rule. Real estate licensees currently fall under HRS Chapter 467, and question why is there a need for real estate licensees to fall under another law or rule.

Through HAR's legislative efforts it tried late in the 2008 legislative session to incorporate language into a moving bill to encompass an exemption for real estate licensees. The statutes say you cannot practice law without a license, but the statute does not define the "practice of law." Stakeholders are trying to get a definition possibly to exclude the practice of real estate. The vehicle passed the Senate, went to conference and was gutted then vetoed by the Governor.

Judge Klein reported that there is a need to be vigilant and provide a joint effort towards coordinated legislation, possibly by creating a subcommittee of REC and HAR to study a legislative approach.

Commissioner Suiso questioned what was the genesis of the rule amendment.

Judge Klein replied that it was an opportunity for HSBA to clarify the rule. HSBA claims to have been working on this issue for the past ten year.

Commissioner Nishihara suggested working together on drafting proposed legislation and noted that she would be happy to serve as a member of a subcommittee on behalf of the REC, and the consumer protection issue.

### **Mortgage Rescue Fraud Prevention Act**

Judge Klein also reported that HAR is working on an addendum to the purchase agreement to address the Mortgage Rescue Fraud Prevention Act. The Standard Forms Committee will come up with something to help those filling out the forms.

Commissioner Ball reported that at the recent EETF meeting she was surprised to find out that realtors were deliberately left out of Act 137 and that it was upon the recommendation of DCCA's Office of Consumer Protection.

SEO Fujitani reported that he met with Representative Herkes and Steve Levins of the Office of Consumer Protection. At that meeting, Mr. Levins stated that real estate licensees were left out of Act 137 because complaints received were mostly from licensees. He further reported that Mr. Levins informed them that OCP would be moving forward with legislation to take out short sales from Act 137.

Upon a motion by Commissioner Ball seconded by Commissioner Nishihara, it was voted on and unanimously carried to invite Steve Levins of DCCA's Office of Consumer Protection to the next CRC meeting to relate its decision making process of eliminating real estate licensees from Act 137.

Open Forum: None.

Budget and Finance Report: Upon a motion by Commissioner Ball, seconded by Commissioner Suiso, it was voted on and unanimously carried to accept the Real Estate Recovery Fund Financial Report for the period ending June 30, 2008.

Next Meeting: Wednesday, October 8, 2008  
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 9:50 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

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Neil K. Fujitani  
Supervising Executive Officer

September 17, 2008

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Date

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