



BULLETIN

<http://www.hawaii.gov/hirec>

April 2007

The New Condominium Law

Chapter 514B, HRS: Building on the Past

The new condominium law, Chapter 514B, Hawaii Revised Statutes (HRS) became effective July 1, 2006. The new recodified law includes some provisions carried forward from Chapter 514A, the old law, some completely new revisions, and some valuable lessons gleaned from court decisions.

Condominiums created prior to July 1, 2006, under the old condominium law, Chapter 514A, HRS, may amend their existing declarations, bylaws, condo map, and other governing documents to adopt the differences (majority vote or written consent) *subject to exceptions*.

By board resolution, the condo association may restate its declarations and bylaws to conform to the new law to include the differences as long as the restatement does not conflict with the original declaration, bylaws, and prior amendments.

Some Things Remain the Same

Developers and their real estate brokers will still have to provide purchasers and prospective purchasers with:

- A true copy of the Developer's Public Report including amendments with an effective date issued by the Commission
- A notice and receipt of their thirty-day cancellation right on a form prescribed by the Commission
- Disclosure of all material facts about the condominium project including changes reported in amendments and annual updates to the developer's public report
- Offer at least 50% of residential units to prospective owner occupants either chronologically or by lottery.
 - NOTE: No developer, employee or agent of the developer, or any real estate licensee shall release any information or inform any prospective owner occupant about the publication of the owner occupant offering

- Exception – developer may disclose in any pre-registration solicitation whether units will be offered to owner occupants and whether a chronological or lottery system will be used.
- Managing agents remain fiduciaries with respect to managed property and must among other requirements:
 - Be actively licensed as a real estate broker; or
 - Be a corporation authorized as a trust company
- Distribute any commission-generated information, documents of the association, its board, or units owners, at the association's cost

Managing Agent Duties Include Keeping

- At its office, accurate copies of declaration, bylaws, any house rules
 - Master lease, sample of original conveyance document
 - All developer's public reports including amendments
 - Detailed, accurate records, in chronological order of common element receipts and expenditures
 - Monthly statements indicating current delinquent amount of any unpaid assessments
 - Written contract for managing the operation of the property expressing exact agreements
 - Current list of members of the association with current addresses, names and addresses of agreement of sale vendees
 - Provide owners, prospective purchasers and their prospective agents copies of association records that are required by law to be maintained
- Condominium Hotel Operators who are active licensed real estate brokers are not required to register with the

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Chapter 514B, HRS: Building on the Past

Commission or obtain a fidelity bond.

On resales of condominium units, associations and managing agents are not required to provide a disclosure statement for the seller or the seller's agent. Sellers are still required to provide the seller's disclosure statement required by Chapter 508D, HRS, "Mandatory Seller Disclosures in Real Estate Transactions" which includes information about the AOA. Real estate licensees are still required to "ascertain and disclose all material facts concerning every property for which the licensee accepts the agency."

Upon payment of reasonable costs, managing agents or an association designated person shall provide copies to owners, prospective purchasers and their agents, of declarations, bylaws, house rules, if any, master lease, original conveyance document, developer's public reports and amendments.

The legislative intent of the condominium law (Chapters 514A and 514B) is based on the overriding principles of self-governance by the association, and provides very limited involvement by government.

Owners, for the most part, have the responsibility of enforcement, and the majority rules. The condominium law provides owners, boards, and managing agents use of mediation and mandatory arbitration; including use of the pilot Condominium Dispute Resolution program which is limited to 30 cases.

Licensees need to continually emphasize and remind prospective purchasers that *prior to signing a sales contract*, prospective purchasers must read the condominium's declaration, bylaws, and house rules.

Real estate licensees are governed and regulated by Chapter 467, HRS, and Chapter 99, HAR, the rules for real estate brokers and salespersons, Chapter 514B, HRS, the "new condominium law," and other laws. Real estate licensees are held to more standards than a developer in the sale of real estate.

Licensed real estate brokers as agents of developers may find themselves marketing a condominium project using **one** developer's public report form that is **non-expiring**. **For condominiums created prior to July 1, 2006, project sales include the use of three different developer's public reports:**

- Preliminary—subject to meeting certain requirements can take non-binding reservations; "test the waters"
- Contingent Final—Binding contracts for 9 months only
- Final—binding contracts for 13 months and may be renewed until initial inventory is sold

With the new condominium law, Chapter 514B, HRS, real estate brokers may find themselves advertising the condominium project prior to registering with the Real Estate Commission. If so, licensees must be sure to secure a written contract with the developers to offer to sell the units/condominium project (in some cases the condominium project has not been legally created). Include specific written authority to list and advertise the condominium project or proposed project/resale.

Real estate licensees must ensure that all advertisements, even those handled by the developer, are in compliance with real estate advertising laws and rules. Ensure the listing broker appears in all advertisements for the sale of the condominium project or proposed condominium project/units. This includes advertising in the preregistration solicitation phase.

Developers cannot offer to sell (including advertising in the preregistration solicitation phase) unless the sale offering is made through a duly licensed real estate broker pursuant to a written listing agreement.

Real estate brokers may take non-binding preregistration agreements from prospective purchasers, provided no monies are collected and the agreements do not become a sales contract.

For condominiums created after July 1, 2006, or existing condos subject to the new condominium law, Chapter 514B, HRS, real estate brokers may continue to sell condo projects when there are changes to the developer's public report, provided the developer does the following:

- Advises the real estate broker or brokers of the changes, **and**
- Discloses the changes to purchasers;
- Submits immediately to the Commission any amendment to the developer's public report or an amended developer's public report.

As a practical reminder, when a real estate licensee ascertains or knows of changes to the developer's public report prior to the developer's advising of the changes, the real estate licensee has a duty to act, disclose, and notify the developer, prospective purchaser, and the Commission of these changes. (To be continued in next issue.)

For current information, visit the Commission's website at <http://www.hawaii.gov/hirec>. Contact any condominium specialist with questions regarding Chapters 514B and 514A, HRS.

Contact any real estate specialist with questions regarding Chapter 467, HRS.

(808) 586-2643, email: hirec@dcca.hawaii.gov

The Chair's Message

Congratulations to all licensees who renewed on-line during the 2006 renewal period. Not only was the online process simple, quick, and safe, it also included a "customer appreciation credit" of \$32.50 to \$37.50, depending on type of license. For



Trudy Nishihara

the first time, branch office renewals were made available online. Real estate licensees comprise the second largest professional group licensed by the State, just barely behind nurses. (The total number of real estate licensees is just 34 less than the total number of nurses.) There were 5,678 broker and 12,366 salesperson licenses that were renewed by the December 31, 2006 renewal deadline. This represents a 13% increase in broker licenses, and a 23% increase

in salesperson licenses, from December 31, 2004.

Of the 18,044 total real estate licenses renewed, 15,321 licenses, or 85%, were successfully renewed online. This represents nearly double the rate in 2004, when 43% renewed online. 93.91% of broker licenses (entity, sole proprietor, principal broker, broker-in-charge, broker-salesperson) were renewed, of these 81.47% renewed online. 83.37% of salesperson licenses were renewed, and of these, 86.49% chose the online route.

The Commission distributed its 2006 Annual Report to all brokerages and REALTOR® Boards, as well as to the State Legislature, and Governor Lingle. Of importance to note are the statistics from Administrative Actions taken against real estate licensees. In FY 2006, 4 licenses were revoked, 1 license was suspended, 33 licenses were fined and 7 licenses were subject to other sanctions. Categories in which licenses were disciplined included 8 - General Brokerage, 8 - Property Management, 1 - DUI Conviction, 1 - Criminal Conviction, 1 - Failure to Disclose Disciplinary Action, 5 - Failure to Report Judgment, 1 - Filing False Statement, 5 - License Requirements, and 5 - Failure to Ensure Current/Active License.

The above represents a 40% increase of disciplinary actions taken in FY 2005 and a total of \$195,950 in fines assessed.

The Regulated Industries Complaints Office (RICO) investigated 95 real estate complaints as compared to 115 in FY 2005. The three most common *statutory violations* found under HRS Chapters 467:

Section 467-1.6 Principal brokers shall have direct management and supervision of the firm and its licensees

Section 467-14(13) Violating this chapter, chapters 484 (Uniform Land Sales Practices), 514A (Condominium Property Regimes), 514E (Time Share) or 515 (Disclosures in Real Property

Transactions) or section 516-71 (Residential Leaseholds), or the rules adopted pursuant thereto.

Section 467-14(8) Conduct constituting fraudulent or dishonest dealings.

The two most common *rules violations* (Hawaii Administrative Rules, Chapter 99) are:

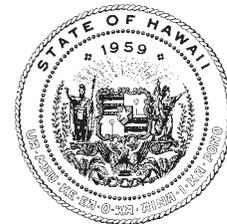
Section 16-99-3(b) Licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field.

Section 16-99-3(f) Licensee shall see that financial obligations and commitments are in writing.

On the national level, the five major areas of concern as reported by NAR attorney Laurie Janik are: (1) Misrepresentation (2) Agency (3) RESPA (4) Fair housing (5) Anti-trust.

As the real estate market tightens up with the stabilization of prices and consumers having bought with creative financing, the legal community predicts an increase of complaints based on the above. As usual, with the slowing down of any market, more licensees will go inactive and place the burden of protecting the integrity of the industry on active licensees.

Trudy Nishihara, Chair



State of Hawaii Real Estate Commission

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This material can be made available to individuals with special needs. Please call the Senior Real Estate Specialist at 586-2643 to submit your request.

New Condo Law Records Information

Records (§514B-154(d), HRS)	Where To Get Records (§514B- 154(d), HRSP	Time Within Which to Make Available	Costs, if Any
Declaration, bylaws, house rules (if any) sample conveyance document, public reports and amendments (accurate copy of)	Managing Agent's office or Board-designated individual or entity	Normal business hours	Reasonable to defray any administrative or duplicating costs
Receipts and expenditures affecting the common elements. Monthly statements indicating current delinquent amount of any unpaid assessments for common expenses (Detailed accurate records in chronological order of)	Managing Agent's office or Board-designated individual or entity	Normal business hours	Reasonable to defray any administrative or duplicating costs
Management Contract	Managing Agent's Office or Board-designated individual or entity	Normal business hours	Reasonable to defray any administrative or duplicating costs
Current list of members of the association, addresses, and the names and addresses of agreement of sale vendees; conditions of availability as provided in the declaration, bylaws, or house rules, or in any case subject to unit owner executing an affidavit	Managing Agent's Office, Board-designated individual, or resident manager	Normal business hours and/or as provided in the declaration, bylaws, and house rules	Reasonable to defray any administrative or duplicating costs, and/or as provided by declaration, bylaws, and house rules
Most current financial statement	Managing Agent's office, or Board-designated individual; at a Board-designated convenient location	24-hour loan	No cost or on 24-hour loan
Board of Directors' Meeting Minutes, once approved, for the current and prior year	Managing Agent's office or Board-designated individual; at a Board-designated convenient location	24-hour loan or within 15 days of a unit owner's request, transmitted either as indicated by the unit owner	No cost or reasonable fee for administrative costs for handling the request by regular mail, email, fax
Financial statement, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the association for the duration records are kept by the association and delinquencies of ninety days or more; subject to unit owner executing an affidavit as may be required by the Board	Managing Agent's office or Board-designated individual; at a Board-designated convenient location	Available for examination at convenient hours during normal business hours	Unit owners shall pay for administrative costs in excess of eight hours per year; reasonable fee for duplication, postage, stationery, and other administrative costs
Proxies, tally sheets, ballots, owners' check-in lists, certificate of election after any association meeting (not earlier); subject to certain conditions-within 30 days of association meeting; subject to unit owner executing an affidavit as may be required by the Board; and payment of administrative costs	Managing Agent's office or Board-designated individual	Normal business hours	Administrative costs in excess of eight hours per year; reasonable fee for duplicating, postage, stationery, and other administrative costs for copies
Examination of other documents of the association not specifically listed in the new law	Written request to the Board	Within 30 days of request, board shall give written authorization or refusal with an explanation	
Distribution of Commission-generated information	Request from the Commission	After reasonable period of time after receipt of request	Cost assessed to the Association

Many More Licensees Are Renewing Online

The 2006 renewals offered for the third time to all real estate licensees the opportunity to renew their licenses online.

The online renewal availability extended from October 30, 2006 to December 31, 2006. Discounts ranging from a savings of \$32.50 to \$37.50 were offered for the first time. The amount of savings depended on the type of license sought. Also, branch office renewals were available online for the first time.

The Department of Commerce and Consumer Affairs' (DCCA) Professional and Vocational Licensing Division (PVL) announced the 2006 renewal results for real estate brokers and salespersons. The Department reported a significant increase in the number of licensees choosing to renew their license online.

Real estate licensees comprise the second largest professional group licensed by the State, behind nurses. (The total number of real estate licensees is just 34 fewer than the total number of nurses.)

Fully 5,678 broker and 12,366 salesperson licenses were renewed by the December 31, 2006 renewal registration deadline.

This represents a 13% increase in broker licenses and a 23% increase in salespersons licenses from December 31, 2004.

Of the 18,044 total real estate licenses renewed, 15,321 licenses, or 85%, were successfully renewed online. Said Mark Recktenwald, DCCA Director: "This is nearly double

the rate in 2004, when 43% renewed online. The continuous increase in online renewals has been remarkable." 93.91% of broker licenses (entity, sole proprietor, principal broker, broker-in-charge, broker-salesperson) were renewed, and 81.47% of these were renewed online. Fully 83.37% of salesperson licenses were renewed. Exactly 86.49% of these licensees chose the online route.

There were 543 renewal applications still pending as of January 2, 2007 because of a deficiency in application requirements—431 salespersons and 112 brokers.

Of the 543 pending applications, 392 of the applications were pending due to "dependencies." This means that a brokerage, or principal broker or broker-in-charge failed to renew its or his or her license, resulting in the inability of those persons hanging their license with the brokerage to also renew their licenses.

Of course, Hawaii real estate licensing laws and rules prohibit anyone without a properly renewed and active real estate license form engaging in real estate sales, leasing and other activities governed by Section 467-11, HRS.

This has obvious negative consequences for the unlicensed salesperson or broker but may also impact the license salesperson or broker who may deal with the unlicensed person.

Under Section 436B-19(6) HRS, the licensee who deals with an unlicensed agent may jeopardize his or her license by "aiding and abetting" the unlicensed agent.

The Commission therefore recommends that if you engage in any real estate activity with another broker or salesperson, you check the PVL database to determine whether that person's license is in fact active and current for the 2007-2008 licensing biennium.

You may check the current status of any licensee by going to www.ehawaii.gov/pvlsearch.

Here are some comparative figures on exam candidates

In Fiscal Year 2006, 4,838 candidates took the salesperson's licensing exam, a 13% increase over the FY 2005 figure of 4,283 salesperson candidates. A total of 714 broker candidates took the broker's licensing exam, a decrease of 30.1% over the FY 2005 figure of 1022 broker candidates.

In FY 2006, broker candidates had a 31.1% passage rate on the first try, and salespersons achieved a 56.2% passage rate. In FY 2005, brokers had a 35.2% passage rate, and salespersons a 59.9% passage rate.

The overall number of current real estate licenses increased 16.6% by the end of FY 2006. In FY 2006, active licenses increased 12.2% over last year while inactive licenses increased 29.5%. There was an 11.6% increase of active licenses on Oahu and growth on the neighbor islands, with Hawaii increasing 14.8%, Maui 10.3%, and Kauai 10.2%. Based on the FY 06 figures, there are over 20,000 licensees in the state.

In the Future . . .

- You may look forward to mandatory post-licensing courses for brokers.
- The addition of "Broker Management" to the current list of course categories for continuing education elective course applications
- Changes to the Prelicense Education Equivalency categories, including restricting the availability of the Prelicense Education Equivalency only to salesperson candidates.

These were some of the recommendations made by the Commission's Education Evaluation Task Force (EETF) at its February 27, 2007 meeting.

Your comments are always welcome at hirec@dcca.hawaii.gov.

Can Licensees Sell their Own Property?

Here's a common question received at the Real Estate Branch: "I'm a real estate licensee. Can I sell property I own?"

Yes, you can. And, if you do, the following information will help guide you through the process.

- (1) §467-1, HRS, definition of "real estate salesperson" states, "... Every real estate salesperson shall be under the direction of a real estate broker for **all** real estate transactions."

§467-1.6(b), HRS, states that "The principal broker shall be responsible for: ... (5) Developing policies and procedures for the brokerage firm concerning the handling of real estate transactions and the conduct of the associated real estate licensees and the other staff, ..."

§467-14, HRS, states "... 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**."

- (2) Hawaii Administrative Rules (HAR), "§16-99-3 Conduct. (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." (emphasis added)

This rule begins the "conduct" section in Hawaii Administrative Rules. Principal brokers should include a copy of the real estate laws, Hawaii Revised Statutes (HRS), Chapter 467, and HAR, Chapter 99 in the policies and procedures manual in the brokerage.

Here's more.

- (3) HAR, §16-99-3(g) states, "the licensee shall not acquire, rent, lease or exchange an interest in or buy, rent, lease, or exchange for one's self, any member of the licensee's immediate family or brokerage firm, or any entity in which the licensee has any ownership interest, property listed with the licensee, licensee's brokerage firm, or listed with any other brokerage firm or licensee without making the true position known in writing to the listing owner or property owner. When offering for sale, lease, exchange, or rental, property which the licensee owns or has an interest in, the licensee shall **fully inform the principal broker of the licensee's intention** to sell, lease, exchange, or rent, and of

the licensee's interest in the property. The licensee shall reveal the interest to the purchaser, lessee, or tenant in writing prior to accepting any offer."

The licensee selling his/her own property must inform his/her principal broker when he/she is selling (or leasing, exchanging, renting) his/her own property. The licensee must also disclose his/her ownership interest to the purchaser, lessee, or tenant in writing **prior to accepting any offer**.

Note that a licensee who is associated with one brokerage firm may list his/her property with another brokerage firm. The licensee's principal broker should be made aware of what's going on. It may be that the principal broker's policies and procedures require its associated licensees to sell personal real estate property through the brokerage. Check with the principal broker and the policies and procedures manual to be sure.

- (4) HAR, §16-99-11(b), states, "No licensee shall advertise "For Sale by owner," "For Rent by Owner," "For Lease by Owner," or "For Exchange by Owner."

A real estate licensee, **whether active or inactive**, is bound by the licensing laws and rules. A licensee cannot remove his/her licensee "hat." So, for the licensee who, for whatever reason, goes inactive, but then wants to sell his/her own property, any advertisement regarding the sale of his/her own property cannot include "for sale by owner." This also applies to the active licensee.

- (5) HAR §16-99-11(c), states, "Current individual real estate licensees, whether active or inactive, shall disclose the licensee's status as a real estate licensee in all advertising and promotional material."

Again, "whether active or inactive" is key. An inactive licensee must disclose his/her inactive status in all advertising, if they are selling their **own property**.

An inactive licensee may not engage in any other real estate activity, however, as they must be on active status and associated with a brokerage, if they are a salesperson or broker-salesperson. A real estate broker may be a sole proprietor, and on their own.

Administrative Actions

Donna I. Gutierrez—REC 2003-345-L

In 2006, RICO filed a petition for disciplinary action against Respondent for knowingly violating the conditions of her receipt of Department of Human Services (DHS) benefits. RICO asserted that Respondent knew full well what she needed to do to report her change in financial circumstances after having been convicted of felony theft and given five years probation in 1991. Respondent had been convicted of second degree theft because of her failure to report to the Department of Human Services (DHS) her purchase and ownership of a truck, 11 separate earnings payments, and the receipt of nine separate temporary disability insurance payments. Respondent was sentenced to five years probation and ordered to pay \$3,492 in restitution to DHS. When charges were brought by the Maui Prosecutor's Office in 2003 for the second time, the count of welfare fraud remained along with another count of theft in the second degree. Respondent pleaded no contest and was sentenced to 30 days in prison, placed on probation, and ordered to pay \$3,233 in restitution to DHS. RICO charged Respondent with the following violations: §467-14 (20) (Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity and fair dealing) and §436B-19(14) (Criminal conviction or a penal crime directly related to the qualifications, functions, or duties of the licensed profession). The Hearings Officer recommended that Respondent be fined \$1,000 and that payment of the fine be made a condition for relicensure. The Hearings Officer submitted his findings of fact and recommended order to the Commission on May 31, 2006. On July 21, 2006, Respondent filed exceptions to the proposed findings of fact and recommended order and requested a further hearing, asserting that she had made the required restitution and was in compliance with all the terms of conditions of her probation. On July 24, 2006, RICO filed a statement in support of the Hearings Officer's recommended decision.

Upon a review of the entire record of this proceeding, the Commission adopted the Hearings Officer's recommended decision as the Commission's Final Order on August 25, 2006. The Commission ordered that Respondent's real estate salesperson's license be revoked.

William L. Stedman—REC 2005-28-L

On September 21, 2005, RICO filed a petition for disciplinary action against Respondent's real estate salesperson's license. Having reviewed the evidence and arguments presented at the subsequent hearing, the Hearings Officer rendered the following findings of fact, conclusions of law, and recommended order. From November 2004 through mid-December 2004, Respondent worked as an independent contractor/real estate salesperson with SVC-Hawaii, LP (SVC). During that time, Respondent sold a club membership time share "right-to-use" to Joel Smith and his partner, Eileen Sherlock, who were vacationing on Kauai. Smith and Sherlock subsequently canceled their club membership time-share

purchase within the seven-day cancellation period. Before canceling, they went on a helicopter tour that Respondent had purchased and provided to them as a sales incentive for the time share purchase. Respondent made several telephone calls to the couple after they had returned to their Mainland home and tried to persuade them to either reconsider purchasing the club membership time share or pay him back for the helicopter tour he had purchased. Respondent continued to call even though the couple had complained to Respondent's employer and asked that Respondent be asked not to call them. The last two telephone calls occurred December 10, 2004, when Respondent left two voicemail messages. Here is an excerpt from the first message: "More than likely, I am never going to get the money back that I had given you and I just want to let you know that you are a coward! You and your wife don't deserve something as special as this, and just to let you know that if I ever saw you again, I'm going to mop up the floor with you! You and your wife shouldn't even bother having kids cause if they're going to (expletive) act like you guys, you are polluting the world." Here is an excerpt from the second voicemail: "I just want my money back from the helicopter ride that you accepted . . . I'd like my money back or we can go to small claims court. Well, I'm gonna keep calling. . . . We can go on for as long as you want cause I got your social security number and I got your credit cards, and I got everything that's yours, Joel." As a result of these messages, Smith and Sherlock canceled their credit card accounts and contacted the Social Security Administration to place a fraud alert on their social security numbers. They also informed SVC about the messages. Based on an internal investigation it conducted, SVC terminated its association with Respondent in December 2004.

RICO charged Respondent with violating the following provisions of the Hawaii Revised Statutes and the Hawaii Administrative Rules: §467-14 (The Commission may revoke or suspend any license for: (13) violating this chapter; chapters 484, 514A, 514E, or 515; section 516-71; or the rules adopted pursuant thereto; (20) failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing; §436B-19 (In addition, the licensing authority may revoke or suspend any license for any one of the following acts on the part of the licensee: (7) professional misconduct or manifest incapacity in the practice of the licensed profession; (9) conduct contrary to recognized stands of ethics; (12) failure to observe any law in a manner such that the licensing authority deems the holder to be an unfit or improper person to hold a license; (17) violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority; §16-99-3 (Conduct). (b) (The licensee shall protect the public against fraud, misrepresentation or unethical practices in the real estate field.) The Hearings Officer credited Respondent's assurances that his behavior was out of character, caused in part by personal problems, and would not be repeated. The Hearings Officer also gave weight to RICO's attorney's recommendations. Based on these considerations and for violations found, the Hearings

Administrative Actions

Officer recommended that Respondent's license be suspended for six months, that he pay a \$5,000 fine, and that he complete an education course or courses to be determined by the Commission.

On September 22, 2006, the Commission accepted the Hearings Officer's Findings of Fact and Conclusions of Law but modified the Recommended Order by issuing a Proposed Final Order that Respondent's license is to be suspended for two years; that as a condition of reinstatement, pursuant to §92-17(c)(3), HRS, Respondent shall undergo a psychiatric assessment by a psychiatrist certified by the American Board of Psychiatry and Neurology; that Respondent shall pay a \$5,000 fine, and that during his two-year suspension, Respondent shall successfully complete an education courses or courses to be determined by the Commission.

Christine Aquino—REC 2006-33-L

On February 23, 2006, RICO filed a petition for disciplinary action against Respondent's real estate salesperson's license. On June 22, 2006, a motion for summary judgment came up for hearing. Respondent failed to appear either in person or by representation. The Hearings Officer rendered the following findings of fact, conclusions of law, and recommended order: On August 30, 1996, Respondent was convicted of two felony counts of forgery, two felony counts of theft, and one misdemeanor count of theft in Fifth Circuit Court. The court has entered no order annulling or expunging the convictions. On July 24, 1998, Respondent applied for a real estate salesperson's license. On the application, Respondent falsely answered "no" to the question, "During the past 20 years have you ever been convicted of a crime where there has not been an order annulling or expunging the conviction?" Respondent did not disclose any of her five prior criminal convictions. On October 15, 1998, in the District Court of Kauai, Respondent was convicted of a petty misdemeanor charge of driving under the influence. On December 13, 1998, Respondent submitted a renewal application for her real estate salesperson's license. On the application, Respondent falsely answered "no" to the question, "In the past two years have you been convicted of a crime?" Respondent did not disclose her conviction for driving under the influence. On December 3, 2004, in the Fifth Circuit Court, Respondent was convicted on a guilty plea of one felony count of terroristic threatening, one misdemeanor count of reckless endangerment, and one petty misdemeanor count of operating a vehicle while intoxicated. The convictions have not been annulled or expunged. On March 7, 2005, Respondent submitted a renewal application for her real estate salesperson's license. On the application, Respondent falsely answered "no" to the question, "In the past two years, have you been convicted of a crime in which the conviction has not been annulled or expunged?" Respondent did not disclose her three convictions of December 2004. On January 7, 2005, Respondent's principal broker released Respondent as a salesperson for his office

and submitted a change form to inactivate Respondent's license. On April 4, 2005, Respondent and her principal broker submitted a change form to reactivate her license. On the same day, while Respondent's license was still inactive, Respondent conducted real estate activity without a valid license. RICO charged Respondent with violating the following provisions of the Hawaii Revised Statutes: §467-7 (No person shall act as a real estate broker or salesperson without a license previously obtained); §467-14 (The Commission may suspend or revoke any license for (3) pursuing a continued and flagrant course of misrepresentation or making of false promises; (8) (any other conduct constituting fraudulent or dishonest dealings.) (20) (It is unlawful to testify or file with the Commission any document that is untrue); §436B-19 (The licensing authority may deny, suspend, or revoke any license for (5) procuring a license through fraud, misrepresentation, or deceit; (8) failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity.) The uncontroverted evidence was sufficient to establish the following violations against Respondent: HRS §§467-7, 14(3), (8) and (20), and §436B-19(5). The Hearings Officer recommended that the Commission grant RICO's motion for a summary judgment and that a charge based on HRS §436B-19(8) be dismissed. The Hearings Officer recommended that Respondent's real estate salesperson's license be revoked and that Respondent pay a \$1,000 fine. On August 25, 2006, the Commission adopted the Hearings Officer's recommendation.

Harold Meltzer dba Real Estate Consultants of Kona, Principal Broker—REC 2004-51-L.

RICO and Respondent entered in a Settlement Agreement Prior to Filing of Petition for Disciplinary Action. RICO alleged that Burt Anderson was licensed and worked for Respondent and Principal Broker Meltzer as a real estate salesperson. In October, 2003, Anderson met with the owner of property at 88-129 Kai Avenue, Milolii Beach Lots Subdivision, South Kona, and eventually listed the property for sale via the Multiple Listing Service. Anderson's listing contained erroneous information that was not corrected until after the property was under contract for sale. Respondent also misplaced the original, executed DROA form for the transaction.

RICO asserted that these allegations, if proven at an administrative hearing, would constitute violations of at least the following statutes:

- HRS §436B-19(17) (violating the chapter, applicable licensing laws, or any rule or order of the licensing authority.)
- HRS §467-1.6(a) (Principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees.)
- HRS §467-1.6(b)(2) (Principal broker shall be responsible for the brokerage firm's records, contracts, and documents.
- HRS §467-1.6(b)(3) principal broker shall be responsible for all contracts and their handling by associate real estate salespersons.

Administrative Actions

- HRS §467-14(13) (violating the chapter).

Respondent did not admit to violating any law or rule but entered into the Settlement Agreement as a voluntary compromise of this matter and to conserve on the expense of proceeding with an administrative hearing.

Respondent agreed to pay a \$1,000 fine.

On September 22, 2006, the Commission accepted the Settlement Agreement.

Industrial Real Estate Consultants, Ltd., and Thomas C. Hajny, Principal Broker—REC-2004-233-L

On September 14, 2005, RICO filed a petition for disciplinary action against Respondents, alleging that Industrial Real Estate Consultants (IREC) and its principal broker violated several sections of the Hawaii Revised Statutes.

Respondents allegedly deposited amounts received from four clients as security deposits or rental money into a business checking account used to cover Respondent Hajny's business and personal expenses rather than into IREC's client trust account. In addition, RICO cited a 1996 civil judgment for \$40,000 against Respondent Hajny for alleged failure to meet the terms of a settlement agreement. In the lawsuit, *Archie K. Komae et al. v. Thomas C. Hajny*, Komae alleged that pursuant to the settlement agreement, Hajny agreed to pay Komae \$40,000 out of commissions Hajny was to receive from a transaction involving the exchange of real estate located in Campbell Industrial Park and Waipahu; that although the transaction was completed and Respondent Hajny received his commissions, he refused to pay Komae and threatened to refuse to allow the sale of the Waipahu property to close unless Komae dropped his demand for the \$40,000.

RICO alleged that Respondents failed to inform the Commission of this and two additional civil judgments against Respondent Hajny.

Among other violations, RICO charged Respondents with violating §467-1.6 (Principal broker responsible for disbursements from client trust accounts and for the firm's accounting practices); §467-14 (Commission may suspend or revoke any license for failure to account for the moneys of others in the licensee's possession, converting other people's moneys to licensee's own use, or failure to maintain a record of competency, honesty, truthfulness, financial integrity, and fair dealing); §436B-16 (Licensee to provide Commission with written notice of any judgment that finds licensee is liable for any loss caused by his conduct in the practice of his profession); §16-99-3 Conduct. (e) (The broker shall keep in special bank accounts moneys coming into the broker's possession in trust for other persons); §HRS 436B-17 and HAR §16-99-5(a) (Failure to inform Commission of current mailing, business, and home addresses).

The Hearings Officer recommended that Respondents each pay a \$25,000 fine. On November 22, 2006, the Commission adopted the Hearings Officer's recommended decision as the Commission's Final Order.

Keith Sheue—REC-2003-58-L

On October 7, 2005, RICO filed a petition for disciplinary action against Respondent's real estate salesperson's license alleging that before being licensed as a real estate salesperson in Hawaii, Respondent was convicted in California in separate trials of the following violations: Carrying a weapon, unlawful fighting or challenging another to fight in a public place, trespass with intent to injure property, and inflicting corporal injury on a spouse. RICO alleged that the California Real Estate Commissioner revoked Respondent's salesperson's license after finding that Respondent had represented in applying for his license that he had no prior criminal convictions other than the conviction for unlawful fighting or challenging another to fight in public.

Respondent applied for a real estate salesperson's license in Hawaii in April 1998 and did not disclose he had held a real estate license in California or that his California license had been revoked. He also failed to disclose his prior criminal convictions in California.

RICO charged Respondent with the following provisions of HRS §467-14 (20) (Failure to maintain a record of competency, honesty, truthfulness, financial integrity, and fair dealing); 467-20 (false statement); §436B-19(5) (Procuring a license through fraud, misrepresentation, or deceit). The Hearings Officer recommended that Respondent's real estate salesperson's license be revoked and that he pay a \$2,500 fine. The Commission adopted the Hearings Officer's decision on November 22, 2006.

Randall M. Parks—REC-2006-127-L

Respondent was licensed as a real estate salesperson and offered landscaping services in locally circulated publications. In June 2002, Respondent entered into a contract to landscape a customer's yard for \$58,995.86. In a letter received by RICO's investigator October 29, 2003, Respondent admitted he was not a licensed landscape contractor and said his customer knew this but hired Respondent to save money. RICO alleged that the customer notified Respondent that upon completion of the job, his services were no longer required.

RICO charged Respondent with violating HRS §§436B-19(8) (Failure to maintain a record of competency, trustworthiness, etc.); 467-14(3) (Pursuing a continued and flagrant course of misrepresentation), (8) (Any other conduct constituting fraudulent dealings), (20) (Failure to maintain a representation for competency, honesty, etc.)

The Hearings Officer noted that evidence established that Respondent offered and performed contracting work without the proper license. She recommended that the charge that Respondent violated HRS §436B-19(8) be dismissed. She further recommended that Respondent's real estate salesperson's license be revoked and that he pay a \$1,500 fine.

On December 15, 2006, the Commission adopted the Hearing Officer's recommended decision.

Administrative Actions

Hawaiiana Management Company, Ltd., and Richard J. McDougal, Principal Broker—REC 2004-101-L

RICO and Respondents entered into a Settlement Agreement Prior to Filing of Petition for Disciplinary Action. RICO had alleged that while acting as property manager for the condominiums at 620 Sheridan in Honolulu, the executive who handled the 620 Sheridan account signed a contract with a fence contractor and authorized disbursements to this contractor without obtaining consent of the Association of Apartment Owners of 620 Sheridan. The executive, who was not a real estate licensee, is no longer employed by Respondent. RICO asserted that the allegations, if proven at an administrative hearing, would constitute violations of HRS §§467-1.6(a) (Principal broker shall have direct management and supervision of the brokerage firm) and 467-14(13) (violating the chapter). Respondents waived the right to contest the matter and agreed to dispose of the case with terms of the Settlement Agreement. The Hearings Officer recommended that Respondents pay a \$1,000 fine.

On December 15, 2006, the Commission accepted the Settlement Agreement.

Tricia J. Barnak, Linda T. Kilworth, and Hale Ohana Realty, LLC—REC 2005-123-L

RICO and Respondents entered into the Settlement Agreement Prior to Filing of Petition for Disciplinary Action. Respondent Kilworth and Hale Ohana Realty, LLC were licensed real estate brokers. Respondent Barnak was employed by the other two Respondents. The Commission informed RICO that Respondent Barnak's real estate salesperson's license had lapsed January 1, 2003 and was subsequently renewed effective March 10, 2005. Respondent Barnak alleged she was unaware that her license had lapsed. RICO alleged that Respondent Barnak failed to comply with the laws by engaging in real estate activity without a license. RICO further alleged that Respondents Kilworth and Hale Ohana Realty failed to supervise Respondent Barnak in violation of HRS §467-1.6(b)(7). RICO asserted that its allegations, if proven, would constitute violations of HRS §467-7 (license required) and 467-1.6(b)(7) (failure to ensure that associated real estate licenses are current and active).

Respondents waived their right to a hearing and agreed to dispose of the case in accordance with terms of a Settlement Agreement. Under terms of the agreement, Respondents Kilworth and Hale Ohana Realty agreed to pay a \$1,000 fine. Respondent Barnak agreed to pay a \$2,000 fine.

On December 15, 2006, the Commission accepted the Settlement Agreement.

Certified Management, Inc., and James E. McKellar—REC 2003-220-L and REC 2004-211-L.

In March 2006, Respondents entered into a partial settlement of charges brought by RICO, and the Commission

approved that partial settlement. A remaining charge in the petition (Count I) was considered at a hearing held August 31, 2006. The Hearings Officer reviewed and considered the evidence and arguments presented and rendered the following findings of fact, conclusions of law, and recommended order: Certified Management is the management agent for the Sun Rise condominium project. In September 2002, Respondent McKellar mailed a form letter to members of the Association of Apartment Owners (AOAO) encouraging them to vote for Tesha Malama, a senatorial candidate in the district where Sun Rise is situated. The letter was written on Certified Management stationery and signed by McKellar as president of Certified Management. Prior to sending the letter, Respondent Certified Management discussed the letters with AOAO directors, who did not object to the letter. RICO charged Respondents with violating HRS §467-14 (Violating this chapter; chapters 484, 514A, 514E, or 515; section 516-71; or the rules adopted pursuant thereto); and §436B-19 (Grounds for revocation or suspension of license), (9) (Conduct or practice contrary to recognized standards of ethics).

The Hearings Officer noted that RICO presented no evidence that Respondents actually used the membership list in mailing out the letter. According to the record, Respondents instead used information from a database owned by Respondent McKellar. The Hearings Officer concluded that RICO failed to prove, by a preponderance of the evidence, that Respondents used the membership list to send out the letter. Therefore, there was insufficient evidence to establish that Respondents engaged in unethical conduct or violated HRS §467-14(13). The Hearings Officer further said RICO did not sufficiently establish what the recognized standard of ethics for the profession is and what specific ethical considerations were breached. The Hearings Officer further noted that RICO charged that use of the membership list to mail out a political endorsement violated HRS §514A-83.3 and, as such, §467-14(13). However, the Hearings Officer said, nothing in §514A-83.3 precludes the use of the membership by the members of the AOAO or its managing agent but simply provides one method by which the list must be made available to a member. Based on his findings and conclusions, the Hearings Officer recommended that RICO's petition be dismissed as to Count I.

On December 15, 2006, the Commission accepted and adopted only the Hearings Officer's conclusion that RICO failed to demonstrate that Respondents violated §§467-14(13) and 436B-19(9) and neither accepts nor rejects the remaining conclusions of law, finding them irrelevant to the disposition of this matter.

Thomas E. Caprio—REC 2005-59-L

On September 29, 2005, RICO filed a petition for disciplinary action against Respondent's real estate broker's license. On June 13, 2006, RICO filed a motion for summary judgment, and Respondent filed a motion in opposition on

Administrative Actions

June 16, 2006. At a hearing on June 22, 2006, the Hearings Officer granted a motion for a summary judgment and ordered that the hearing proceed for the sole purpose of allowing the parties an opportunity to address the matter of sanctions. The hearing was held June 30, 2006. According to the findings of fact, Respondent was originally licensed by the Commission as a real estate broker in 2000. In 1993, Respondent was convicted of one count of kidnapping in a criminal case filed in First Circuit court. In 1995, Respondent was the subject of a complaint filed with RICO, but disciplinary action was not pursued on the basis of this complaint. In 1998, Respondent was the subject of a complaint designated as REC 1998-122-L and based on delinquent State tax obligations that resulted in a tax lien. In 1999, Respondent entered into a settlement agreement with the State Department of Taxation wherein he agreed to pay his outstanding taxes in installments. Based on the agreement, the case was settled in January 2005, and a \$500 fine was subsequently imposed. On November 15, 1999, Respondent applied for a real estate broker's license and, on his application, answered "no" to questions about prior charges and convictions.

In a letter dated December 23, 1999, the Commission's Real Estate Specialist inquired about his "no" answers in his application for a broker's license. Respondent acknowledged that his answers to the questions were not accurate and provided the Commission with an explanation for his responses. The explanation was accepted, and his broker's license was approved. On February 26, 2001, Respondent submitted an application for a mortgage solicitor's license and answered "yes" to questions about prior convictions that had not been annulled or expunged. The license was granted.

However, Respondent answered "no" to the question "Have you ever had any license suspended, revoked, or otherwise subject to disciplinary actions?" He did not disclose the 1998 complaint (REC 1998-122-L) that was based on his delinquent State tax obligations. On March 30, 2004, Respondent applied for a real estate broker's license for Caprio Real Estate, LLC. Respondent signed the application as principal broker and manager. In the application, Respondent answered "no" to questions in which he would have disclosed the 1995 and 1998 complaints against him if he had answered "yes," and he did not disclose his 1993 conviction of kidnapping, which had never been annulled or expunged. Respondent also did not disclose his outstanding tax obligation. Caprio Real Estate LLC's application for a broker's license was denied by the Commission.

RICO charged Respondent with violation of HRS §§467-14 (3) (Pursuing a continued and flagrant course of misrepresentation), (8) (Any other conduct constituting fraudulent or dishonest dealings), and (20) Failure to maintain a record of competency, honesty, truthfulness, financial integrity, and fair dealing); 467-20 (Filing any document that contains misstatement of fact); and 436B-19(8) (Failure to

maintain a record of competency, honesty, truthfulness, financial integrity, and fair dealing.)

The Hearings Officer recommended that Respondent's real estate broker's license be revoked and that he pay a \$5,000 fine.

On December 15, 2006, the Commission accepted the Hearings Officer's findings of fact, conclusions of law, and the RICO's motion for summary judgment. However, the Commission modified the Hearings Officer's recommendation for an appropriate sanction and ordered a \$15,000 fine and completion of the Hawaii real estate broker's prelicense course in person, not online, by June 30, 2007.

On January 29, 2007, RICO filed a Petitioner's Motion for Reconsideration of the Commission's Final Order of January 16 on grounds that the undisputed and adopted findings of fact and conclusions of law support the sanction recommended by the Hearings Officer. The Petitioner's Motion asserted that the sanction ordered by the Commission is not consistent with sanctions imposed for similar violations in prior cases. The motion requests that the Commission either adopt the Hearings Officer's recommended order or state with specificity the reasons for the modification of the Recommended Order.

Cindy L. Plemer, Peter A. Tegan, and Prosser Realty, Inc.—REC 2006-214-L

RICO and Respondents entered into a Settlement Agreement Prior to Filing of Petition for Disciplinary Action. Respondent Plemer was a real estate salesperson employed by Respondents Tegan and Prosser Realty. The other two respondents are real estate brokers.

RICO received information from the Commission that Respondent Plemer's license had lapsed on January 1, 2005. The license was subsequently restored by the Commission effective April 27, 2006.

Respondent Plemer stated she was unaware her license had lapsed. During the period the license was lapsed, Respondent Plemer had one sale. Her license was promptly restored upon learning that it had lapsed. Respondents Tegan and Prosser Realty have taken steps to ensure that all licensees associated with them are current and in good standing.

RICO alleges that Respondent Plemer failed to comply with HRS §467-7 (L license required) and Respondents Tegan and Prosser Realty failed to supervise her in violation of §467-1.6(b)(7) (Failure to ensure that associated licensees are current and active).

These allegations, if proven, would constitute violations of the statutes. Respondents entered into the Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing. Under terms of the Settlement Agreement, Respondents Tegan and Prosser Realty agreed to pay a \$1,000 fine and Respondent Plemer agreed to pay a \$500 fine.

On February 23, 2007, the Commission accepted the Settlement Agreement.

2007 Real Estate Commission Meeting Schedule

**Laws & Rules Review, Education Review
Committee, Condominium Review Committee
meet one after another, beginning at 9 a.m.**

Wednesday, April 11, 2007
 Wednesday, May 9, 2007
 Wednesday, June 13, 2007
 Wednesday, July 11, 2007
 Wednesday, August 8, 2007
 Wednesday, September 12, 2007
 Wednesday, October 10, 2007
 Wednesday, November 14, 2007
 Wednesday, December 12, 2007

**Real Estate Commission
9 a.m.**

Friday, April 20, 2007
 Friday, May 25, 2007
 Friday, June 29, 2007
 Friday, July 27, 2007
 Friday, August 24, 2007
 Friday, September 28, 2007
 Friday, October 26, 2007
 Friday, November 30, 2007
 Friday, December 21, 2007

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor, Honolulu, Hawaii.

Meeting dates, locations, and times are subject to change without notice. Please visit the Commission's website at www.hawaii.gov/hirec or call the Real Estate Commission Office at 586-2643 to confirm the dates, times, and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at a 586-2643 to submit your request.

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