



# BULLETIN

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

June 2009

## New Legislation Will Affect Real Estate Licensees

The following legislation passed by the 2009 Hawaii State Legislature will impact the practice of every real estate licensee.

### Act 4 - HB 520 (HD1) (SD1) on Buildings

This bill repeals the amendments made by Act 228, Session Laws of Hawaii 2008, which required the taking of archival photographs before conducting any demolition, construction, or alteration of any building over 50 years old or any building listed, or eligible for listing, on the Hawaii or National Register of Historic Places.

Act 228 was enacted in 2008 to help chronicle and preserve historic sites. However, it was later found to be overly broad and an obstacle to timely alterations, repairs, and demolition. The Act was repealed because:

- In many cases, the 50-year-old buildings have no historic value.
- Obtaining archival quality photos was very difficult and expensive.
- It created another processing barrier.
- The Historic Preservation Office was not staffed to handle the added workload imposed by Act 228.

### Act 10 - SB 298 (SD1) on Condominiums

This bill doubles the maximum amount of delinquent maintenance fees that condominium associations may recover from a condominium unit foreclosure purchaser, from \$1,800 to \$3,600, subject to a limit of no more than six months of delinquencies.

The original bill proposed an increase of up to \$2,400, but the figure was raised to \$3,600 because maintenance fees have been increasing sharply, association fees and foreclosures have been rising, and associations are often not able to recover what is due them even with this levy on foreclosure purchasers.

The increase should enable the associations to recover a higher percentage of maintenance fee delinquencies attributable to foreclosed units and relieve other condominium unit owners of such burden.

### Act 59 - HB 1741 (HD1) (SD1) (CD1) on Conveyance Tax

This bill temporarily reduces the distribution portions of the Conveyance Tax transferred to the Rental Housing Trust Fund and the Natural Area Reserve Fund. It increases the conveyance tax rate for certain sales. The tax on non-owner

occupant single family and condo sales of \$1 million or more will rise to a maximum of \$1.25 per \$100. Other conveyances of \$2 million or more will be taxed at a higher rate of up to \$1.00 per \$100. Rates are based on a sliding scale.

This bill also reduces by 5%, through June 2012, the amount of conveyance tax that will be transferred to the Rental Housing Trust Fund and the Natural Area Reserve Fund. The two funds currently receive 55% of all conveyance taxes.

The increase and reductions will be shifted to the general fund to help balance the budget. The expected gain over the next two years is \$8 million.

### Act 61 - SB 1111 (SD1) (HD1) (CD1) on Taxation

This bill increases the rate of transient accommodations tax (TAT) on operators of transient rental facilities by one percentage point (to 8.25%) on July 1, 2009, and by two percentage points (to 9.25%) on July 1, 2010.

The additional revenues collected from the increases will be deposited into the general fund. The expected gain over two years is \$89 million. The TAT was created in 1987 and was 5%. It was increased to 6% in 1994 and to 7.25% in 1999. Currently, of the TAT revenue:

- 45% goes to the counties.
- 34% supports tourism.
- 17% goes to the convention center.
- 4% goes to the state general fund.

The entire increase provided by SB 1111 will go to the general fund, none to tourism.

### Act 66 - SB 34 (SD1) (HD1) on Mortgage Rescue Fraud Prevention

This bill excludes licensed real estate brokers and salespersons from the definition of distressed property consultants in the Mortgage Foreclosure Rescue Fraud Prevention Act (Act 137, 2008 session) under specified conditions. However, it prohibits certain conduct relating to the acquisition of an ownership interest in distressed property by licensed real estate brokers and salespersons (e.g., licensees must wait at least one year from the date their listing expires or is terminated before they can acquire such an interest).

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## New Legislation Will Affect Real Estate Licensees

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Act 137 was passed in 2008 to protect homeowners from equity skimming and foreclosure rescue scams. However, it created a disservice to homeowners facing possible foreclosure by severely restricting assistance on the part of real estate licensees. Once deemed a “distressed property consultant,” the licensee became subject to onerous requirements and penalties under the law.

**The following are some of the pending bills that are awaiting the Governor’s signature. These bills may have an indirect impact on licensee’s daily practices.**

### **HB 271 (SD2) (CD1) on Real Property**

This bill would permit the registrar of the Bureau of Conveyances to:

1. Accept electronic documents with electronic signatures for recording.
2. Provide electronic documents in response to a request.
3. Convert existing records to electronic format.

**Note:** that the proposed Uniform Real Property Electronic Recording Act does not apply to land court documents.

### **HB 1071 (11D3) (SD2) (CD1) on Mortgage Servicers**

This bill would provide for the licensing and regulation of mortgage servicers that service residential mortgage loans secured by real property located in the State of Hawaii, and specify prohibited mortgage servicer practices. The Commissioner of Financial Institutions would administer the statute. Note that “mortgage servicers” are to be distinguished from “mortgage loan originators” (See SB 1218). This bill is aimed at controlling the activities of those who assist mortgage lenders in collecting payments from borrowers and remit them to loan owners, not those who make or originate mortgage loans.

More specifically, HB 1071 defines a mortgage servicer as “the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of any residential mortgage loan, including amounts for escrow accounts . . . , and/or making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of mortgage servicing loan documents or servicing contracts. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this chapter, servicing includes making payments to the borrower.”

### **SB 521 (SD2) (HD1) on Real Property**

This bill would require the Registrar of the Bureau of Conveyances to provide within 10 days after each week and free of charge, an image and index of all documents and instruments that have been recorded in the Registrar’s office that week relating to regular system land in all the counties, to the county designated in a memorandum of understanding agreed upon by the counties to act as a separate clearinghouse. The bill would formalize an arrangement that has already been worked out between the Bureau and counties and should result in faster and more convenient public access to information on recent transactions and documents filed at the Bureau.

### **SB 1218 (SD2) (HD2) (CD1) on Mortgage Loan Originators**

This bill would allow the Commissioner of Financial Institutions to regulate, license, examine, and enforce laws regulating mortgage loan originators. It would exempt mortgage loan originators from Chapter 454, HRS, relating to mortgage brokers and solicitors.

SB 1218 would bring Hawaii into compliance with federal law by implementing the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Mortgage Licensing Act of 2008). The purpose of the S.A.F.E. Mortgage Licensing Act of 2008 is to “increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud” by encouraging the states to regulate the mortgage industry.

This measure is based on a model act prepared by the Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators that the United States Department of Housing and Urban Development (HUD) has approved as compliant with the federal law.

Under the S.A.F.E. Mortgage Licensing Act of 2008, failure of a state to implement conforming legislation would result in abdication of that state’s right to regulate the mortgage industry and assignment of that right to HUD.

### **SB 1352 (SD2) (HD2) (CD2) on Bureau of Conveyances.**

The main purpose of this bill is to reduce the backlog in land court recordations and registrations and promote departmental efficiencies. It would transfer fee timeshare interests from the land court system to the regular system, allow an owner to “opt out” of land court and deregister land to the regular system. The Bureau of Conveyances would be authorized to charge a fee for deregistration of a fee timeshare interest. The bill would also:

- Allow electronic filing of land court and regular system documents and instruments.
- Establish a working group to resolve implementation issues and a 2-1/2 year pilot program to implement electronic recording of fee timeshare interests

### **SB 1461 (SD2) (HD1) (CD1) on Taxation**

This bill would:

1. Advance the date of filing of monthly, quarterly, and semi-annual general excise tax returns from the last day of the calendar, quarterly, or semi-annual month to the 20<sup>th</sup> day.
2. Require any person required to electronically file or remit a federal return or taxes to also electronically file and remit a state return of all state taxes to the Department of Taxation.
3. Require any employer required to remit any withheld taxes to the federal government on a semi-weekly schedule to also remit the complete amount of tax withheld to the Department of Taxation on a semi-weekly schedule.

In effect, this bill would advance the date of filing of general excise monthly tax return from the last day of the calendar month following the month in which the taxes accrue to the 20<sup>th</sup> day of that month in order to generate a one-time windfall in revenue due to earlier collection of taxes within the fiscal year.

## The Chair's Message

Aloha!

Another legislative session is behind us with some noteworthy bills emerging that impact the real estate industry. Several bills of special interest include: Act 66, referred to as the Mortgage Rescue Fraud Prevention act, exempts real estate licensees from the definition of distressed property consultant. Act 228 (2008 legislative session), relating to historical sites, was repealed, and, in its place, Act 4, 2009 legislature, was signed into law on April 14, 2009. Act 4, 2009 legislature, did away with the requirement of archival quality photos for structures 50 years or older, and if the structure was undergoing any type of alteration. A conveyance tax increase for non-owner occupant dwellings was enacted via Act 59.



**Nishihara**

The above Acts and other 2009 legislation are part of the 2009-2010 Commission core course, "Real Estate Law Update and Personal Transactions," Part A, for 2 credit hours. To learn more about the new laws, licensees may register for the core course NOW. Part A of the 2000-2010 core course must be taken in 2009 if you prefer a live-classroom format. Part B 2010 Real Estate Law Update and Fair Housing and Discrimination course must be taken in 2010 to equal the 4



**Kuriyama**

Vice Chair. He is a broker, Oahu, and serves as the President of Alexander & Baldwin, Inc.

Newly appointed Commissioner, Walter Harvey, Broker, Oahu, will begin his tenure on July 1, 2009. Mr. Harvey is a broker associated with East Oahu Realty, and is originally from California, where he was a real estate licensee since 1981. He became a Hawaii real estate broker in 2003.

The Laws and Rules Review Committee, headed by Chair Louis Abrams, Broker, Kauai, and Vice Chair Frances Gendrano,

Broker, Honolulu, will be busy researching the possibility of fingerprinting and background checks for new licensees. The Hawaii Association of Realtors will work together with the Commission on this issue. Hawaii Revised Statutes, Chapter 467, and Hawaii Administrative Rules, Chapter 99, which apply to the duties and conduct of real estate brokers and salespersons, will be reviewed for updates and revisions.



**Harvey**

The Education Review Committee, chaired by Carol Ball, Broker, Maui, with the assistance of Vice Chair, Annette Aiona, Broker, Big Island, will work with the Education Evaluation Task Force (EETF) in developing CE core courses, post-license requirements for brokers, and review instructor and school evaluations. Hawaii falls in the bottom 10%, nationally, for CE requirements. There are many in our industry who believe an increase in the mandatory CE for real estate licensees is long overdue. The committee will also be working with the Hawaii Association of Realtors to create legislation towards this end.

The Condominium Review Committee, chaired by Michelle Loudermilk, Public Member, and Vice Chair, Mark Suiso, Public Member, will start drafting the Hawaii Administrative Rules for the new condominium law, Chapter 514B, with the help of interested parties. Since electronic filing for condominium developers may be required in the future, the Committee will be working closely with the Commission staff in developing an electronic processing system, a major undertaking.

As you can see, the Commissioners are charged with tremendous responsibility to maintain and update industry regulations and standards. The 2010 Program of Work with emphasis on legislation will be an important and challenging undertaking for the Commission's standing committees.

We thank the members on the Educational Evaluation Task Force (EETF), the Consumer Brokerage Relationship Ad Hoc Committee (CBRAHC), the Ad Hoc Committee on Condominium Education and Research, and the Condominium Consultants for their volunteer service and dedication to uphold the integrity of the industry and its professional standards. Much Mahalo! Should you have any questions, please contact the Real Estate Branch at 808-586-2643 or visit the Commission's website at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec).

A handwritten signature in black ink, appearing to read "Stanley Kuriyama".

## Administrative Actions

### **Alii Ohana Property Management, Inc., a real estate broker, Gwyn Fowler-Butchka, a real estate broker, and Brenda L. Ceria, a real estate salesperson—REC 2007-409-L**

In August 2008, RICO filed a First Amended Petition for disciplinary action against Respondents alleging that the principal broker was absent from Alii Ohana's principal place of business for more than three years and left a salesperson to handle property management during that time.

RICO further asserted it received a complaint that the absence of a principal broker to oversee the salesperson's work resulted in poor management advice to one company's board of directors.

Alii Ohana was licensed on December 13, 1989. At all relevant times, Fowler-Butchka was designated as the principal broker of Alii Ohana and Ceria was licensed as a real estate salesperson.

Her license had an expiration date of December 31, 2008, but was upgraded by the Commission to a broker license on May 27, 2008. Ceria has been serving as the principal broker of Alii Ohana since July 21, 2008.

RICO asserted that Respondents' conduct, if proven at a hearing, might constitute violation of these laws: HRS §§467-1.6(a) (Principal broker shall have direct management and supervision of the brokerage firm); 467-14(8) (Conduct constituting dishonest dealings); 14(10) (Permitting an employee who does not hold a broker's license to have direct management of the brokerage business); 14(14) (Violating the chapter); 14-20 (Failure to maintain a reputation for or record of honesty); HAR §§16-99-3(m) (There shall be a principal broker or one or more brokers in charge, or both, at the principal place of business); (o) (Requirement of advance notice to the Commission of the broker's absence from the principal place of business and designation of a temporary broker by the Commission); 16-99-5.1(a)(6) (An individual's license shall be placed on involuntary inactive status when the principal broker is absent for more than 30 days and no Commission-approved temporary broker has been designated.)

On July 25, 2008, the Office of Administrative Hearings issued a Notice of Pre-Hearing Conference for September 8, 2008 and a Hearing for October 28, 2008.

Prior to the hearing date, the parties reached a Settlement Agreement after Filing of Petition for Disciplinary Action in which Respondents asserted they have cooperated with RICO since this matter began and offered the following explanation in defense of their actions:

In November 2004, Fowler-Butchka left Hawaii on what was to be a brief mainland trip to visit family.

It was expected that Ceria would take the broker's examination the following month and qualify to become licensed as a real estate broker.

But Fowler-Butchka's husband and son experienced serious illnesses, causing her to extend her mainland visit for months and eventually years. During that time she learned

that Ceria did not pass the broker's examination and that there was no resident principal broker on site for Alii Ohana.

During Fowler-Butchka's absence, she was in telephonic and electronic contact with Ceria at all times and participated in business decisions.

Respondents further asserted that the interests of their current clients would be impacted by the suspension of either the brokerage firm or Ceria's license.

Respondents did not admit violating any law or rule and entered into the Settlement Agreement as a voluntary compromise of the matter, to avoid the risk of further litigation, and to conserve on the expense of proceeding with an administrative hearing.

Under terms of the Settlement Agreement, Fowler-Butchka agreed to suspension of her license for three years. Ceria agreed to pay a \$10,000 fine, and Alii Ohana was fined \$5,000. Both Respondents agreed to take education courses to be determined by the Commission.

The Commission accepted the Settlement Agreement on December 19, 2008.

### **Mark R. Vansidener—REC 2008-71-L**

Respondent was licensed as a real estate salesperson on January 5, 2005. In October 1992, a Texas court placed Respondent on probation for six years after he pleaded guilty to possessing marijuana. In June 1998, a judgment adjudicating guilt was entered against Respondent because he failed to report to the probation office. Upon applying for a real estate salesperson's license, Respondent 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?" A police report signed by a Lahaina, Maui, detective reported that a search in California and Texas Respondent did not show a felony conviction. The report was generated because Respondent's residence had been the subject of an illegal search that turned up shotguns and bullets that Respondent denied owning. On February 15, 2008, Respondent pleaded no contest to a misdemeanor count of possessing a firearm without a permit and was sentenced to one year probation. Respondent testified he believed the Texas conviction on possession of marijuana was no longer on his record because he had been "honorably discharged" when he completed his probation.

The Hearings Office recommended that Respondent be charged with violating HRS §§467-14(20) (Failure to maintain a reputation or record of competency, honesty, truthfulness, financial integrity and fair dealing); 467-20 (Filing a document that contained a material misstatement of fact), 436B-19(5) (Procuring a license through misrepresentation); and 19(12) (Failure to comply with any law in such a manner that the licensing authority deems the applicant to be an unfit or improper person to hold a license.) The Hearings Officer recommended that other charges be dismissed, that

## Administrative Actions

Respondent's real estate salesperson's license be suspended for 10 days, that he pay a \$500 fine, and that he be required to disclose all convictions during the last 20 years that have not been annulled or expunged.

The Commission approved the Hearings Officer's recommended decision on December 19, 2008.

### **Sharon A. Seykota—REC 2006-36-L**

On November 14, 2007, RICO filed a petition for disciplinary action against Respondent.

A hearing in the matter was held on October 28, 2008.

Respondent was licensed as a real estate broker in May 2004. RICO alleged that in late 2003, Respondent offered to lease her home on Maui for \$1,800 a month and promised to provide the lessee with possession of the premises by late November 2003.

Respondent prepared a lease agreement but did not provide the lessee with a copy nor keep a copy in her records. Respondent received a payment of \$3,600 from the lessee.

The amount represented the first month's rent and the security deposit. Respondent deposited the money into her personal account and did not inform her broker, Landmark Maui Properties, Inc., of the transaction.

When the lessee arrived in late November 2003, Respondent was still living in the home but promised that the home would be available to him in January 2004.

However, in December 2003, Respondent informed the lessee that the home was no longer available for him to rent.

As a result, he was forced to look for another place to live. He eventually located another rental for \$2,000 per month, or \$200 per month more than he rent he had agreed to pay Respondent.

Respondent provided the lessee with a refund check of \$3,600, but the check failed to clear the bank due to insufficient funds.

Landmark's principal broker had discovered in late 2003 that Respondent had entered into an agreement to lease her home without his consent.

As a result, the broker released Respondent's license on January 2, 2004. Since the \$3,600 check had failed to clear the bank, Respondent returned \$1,800 to the lessee and promised to return the balance later.

On June 7, 2004, the lessee filed an ethics complaint with the Realtors Association of Maui, Inc. (RAMI) in an effort to recover the \$1,800 balance owed him.

On July 26, Respondent paid the lessee the \$1,800 balance owed him, and the lessee informed RAMI by letter that he was willing to withdraw his complaint. However, RAMI decided to proceed with the case.

The case came before an ethics hearing panel of the professional standards committee for hearing on March 15, 2006. The panel concluded that Respondent (1) failed to protect

the lessee's interests when she did not provide occupancy in the home as agreed upon; (2) was dishonest when she spent the lessee's \$3,600, resulting in her being unable to make restitution in a timely manner when she failed to provide occupancy; (3) failed to deposit the \$3,600 in her broker's client trust account; (4) should have returned his \$3,600 to him immediately but instead diverted the money for her unauthorized personal use; and (5) failed to mail a copy of the rental agreement to the client despite having acknowledged that she intended to do so.

The panel found that Respondent had violated Articles 1, 8, and 9 of the National Association of Realtors Code of Ethics and recommended disciplinary action that included a letter of reprimand, attendance at an educational course, placement of Respondent's Association membership on probation status for one year, and payment of a \$250 administrative processing fee.

RICO charged Respondent with violating the following provisions of law: HRS §§467-14 (7) (Failing within a reasonable time to account for any moneys belonging to others); 14(8) (Any other conduct constituting fraudulent or dishonest dealings); 14(16) (Converting other people's moneys to the licensee's own use); 14(20) (Failure to maintain a reputation for competency, honesty, truthfulness, financial integrity, and fair dealing); 436B-16 (Notice of judgments, penalties); 436B-19 (9) (Revocation of license for conduct contrary to recognized standards of ethics); HAR 16-99-3 (b) (Licensee shall protect the public against fraud, misrepresentation, or unethical practices); (g) (When offering licensee's property for rental, licensee shall reveal the interest in writing); (v) (Licensee shall not convert other people's moneys to licensee's own use); 16-99-4 (g) (A depositor's money is to be held in trust for his benefit); (i) (A broker-salesperson is not to handle trust properties in any way without the express written authorization of the principal broker); and (l) (Records for real estate transactions shall be retained for at least three years).

The Hearings Officer recommended that the Commission find that Respondent violated the foregoing provisions of law, that Respondent's broker's license be revoked, and that Respondent be ordered to pay a \$5,000 fine and \$1,400 in restitution.

Respondent's attorney filed written exceptions to the Hearings Officer's findings of fact on January 21, 2009, and Respondent's attorney presented oral argument on the filed exceptions. RICO filed a statement in support of the Hearings Officer's recommended finding.

A hearing was held at which witnesses presented oral testimony and at which RICO requested that the Commission reject or disregard Respondent's exceptions to the Hearings Officer's findings of fact and recommended order.

The Commission unanimously approved the Hearings Officer's recommendations on March 27, 2009.

## 2009-2010 Core Course—Part A. Take It in 2009!

Part A, 2009-2010 Commission Core Course, “Personal Transactions” and the 2009 Legislative Update will be available about mid-June 2009. All licensees are strongly encouraged to take Part A in 2009! Come January 1, 2010, Part A of the 2009-2010 core course will ONLY be available in an ONLINE format. It will NOT be offered in a live-classroom format.

Based on statistics for the 2007-2008 Commission Core Course, when Part A became available in June 2007, only 372 licensees took Part A in 2007! Between June 2008, when Part B of the core course became available, and September 2008, 10,893 licensees took both Part A and Part B. Of the 10,893 licensees taking the two parts of the core course, 872 took the courses online, and 10,021 took the courses in a live classroom format.

Between October and November 30, 2008 (the licensing renewal deadline), 5,418 licensees took both parts of the core course. Of this total, 1,552 licensees went the online route, and 3,866 took the courses in a live classroom format.

Obviously, licensees still prefer a live classroom format for education purposes.

For the 2009-2010 Commission Core Course, the topic of

“Personal Transactions” will generate a lot of discussion. Why? What are your answers to the following questions? Are you a licensee who regularly buys, sells, rents, or leases on your own behalf? Do you buy, sell, rent or lease for family members? In these situations, is your principal broker aware of what you are doing? Do you run these real estate transactions through your broker? You should be running all of these transactions through your broker. Your principal broker cannot turn his back on what you are doing.

Based on reactions so far to this topic, there appears to be a consensus of opinion that most licensees do not follow the real estate licensing laws and rules when it comes to engaging in personal transactions.

Also, most principal brokers and brokers-in-charge fail to abide by the real estate licensing laws and rules when it comes to overseeing and having direct management over their licensees’ personal transactions. Violations of the licensing laws and rules are subject to review by the Regulated Industries Complaints Office (RICO), which may result in harsh penalties; i.e., license revocation.

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## 2009 Real Estate Commission Meeting Schedule

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

Wednesday, July 8, 2009 (Kauai)

Wednesday, August 12, 2009

Wednesday, September 9, 2009

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

Friday, July 31, 2009

Friday, August 28, 2009

Friday, September 25, 2009

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor, except the July 8, 2009 Committee meetings, which will be held at Conference Rooms A, B, and C of the State Office Building, 3060 Eiwa St., Lihue Kauai.

*Meeting dates, locations, and times are subject to change without notice. Please visit the Commission’s website at [www.hawaii.gov/hirec](http://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 (808) 586-2643 to submit your request.*

*Meeting dates are subject to change pending a decision on proposed furloughs for State employees. Updated information is available on the Commission’s website, [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec).*

# Transient Accommodations Taxes Increased

By Department of Taxation

Transient Accommodations taxes will increase from 7.25% to 8.25% on July 1, 2009, and to 9.25% on July 1, 2010.

Act 61, SLH 2009, passed on May 8, 2009, specifies the increases.

All **monthly** filers and **calendar year quarterly or semiannual** filers who received pre-printed TAT booklets should continue to use those forms for the rest of the year when filing the TA-1 (Periodic Transient Accommodations Tax Return). Under the "Rate" column, instead of multiplying by .0725, multiply by .0825.

**Fiscal year quarterly** and **semiannual** filers must use the *revised* TA-1 that will be available on our website in the summer of 2009. The website address is [www.hawaii.gov/tax](http://www.hawaii.gov/tax).

TAT tax return and payment due dates remain the same.

All calendar year and fiscal year filers must use the *revised*

TA-2 (Transient Accommodations Tax Annual Return and Reconciliation) that will be available on our website in the summer of 2009. The website address is [www.hawaii.gov/tax](http://www.hawaii.gov/tax).

Those taxpayers who requested to continue receiving a TAT booklet in the mail will not receive a new booklet until 2010. Additionally, any TAT taxpayer who cancelled his/her General Excise Tax license and no longer has a need to possess a TAT license, should complete Form GEWTARV-1, Notification of Cancellation of General Excise/Use, Withholding, Transient Accommodations, Rental Motor Vehicle and Tour Vehicle Accounts, so that his/her TAT license may be cancelled. Form GEWTARV-1 is available on our website at the address listed above.

Taxpayers who have questions may call our Customer Call Center at 587-4242 or toll free at 1-800-222-3229.

## Commission Signs with New Test Administrator

After more than 21 years with the same test administrator, the Real Estate Commission has approved a contract with PSI Services, LLC (PSI) to be its new test administrator, effective July 1, 2009.

PSI is headquartered in Burbank, CA.

The Commission's test administrator is responsible for administering the real estate licensing examinations for real estate salesperson and real estate broker candidates.

An instructor's exam for prelicense instructors is also administered by the test administrator.

PSI will charge a \$63 examination fee, as compared to the \$68 examination fee assessed by the current test administrator, Pearson VUE.

The transition is already taking place.

During the transition period, salesperson and broker candidates will be tracked and all required information transferred to PSI's database.

Hawaii's test candidates are allowed to retake the portion of the exam they did not pass as many times as necessary to pass the exam. However, they must pass both portions of the exam within two years of passing the first part of the examination.

Hawaii provides three equivalencies to test candidates: the Prelicense Education Equivalency, the Equivalency to the Uniform Section of the Hawaii Real Estate Licensing Exam, and the Broker Experience Certificate.

All of these equivalencies are good for a two-year period. If test candidates receive a Hawaii School Completion Certificate, the certificate is also good for two years.

PSI will establish new test sites on O'ahu, Kauai, Maui, and the Big Island, and out-of-state candidates will still be able to test at PSI test centers located on the mainland.

For 2008, the pass-fail rate for Hawaii first-time test takers

was 30.62% pass and 69.38% fail for broker candidates, and 66.92% pass and 33.08% fail for salesperson candidates.

For retakers, brokers had a 29.50% pass and 70.50% fail rate, and salespersons had a 54.79% pass and 45.21% fail rate.



### 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.

# Are Broker Price Opinions Legal?

## Some licensees may be illegally charging a fee for the BPOs they render

Recently, the Real Estate Branch has received numerous inquiries about Broker Price Opinions (BPOs) as to whether they are “legal” in Hawaii. While it appears that many Hawaii licensed real estate brokers provide BPOs in the course of their real estate practice, BPOs are not addressed in the real estate licensing laws and rules. BPOs are addressed in HRS Chapter 466K and HAR Chapter 114, the laws and rules for Real Estate Appraisers.

In some instances, Hawaii real estate licensees may be illegally charging a fee for the BPOs they render. These licensees are not licensed as real estate appraisers.

A real estate licensee must comply with the meaning of HAR section 16-114-74, which does not apply to a broker or salesperson “who, in the ordinary course of business, gives an opinion as to the recommended listing price of real estate or an opinion to a potential purchaser as to the recommended purchase price of real estate, provided:

- (1) The opinion shall not be referred to as an appraisal.
- (2) No compensation is charged for such opinion other than the normal brokerage fee rendered in connection with the sale of the property; or
- (3) No representation is made that the real estate broker or salesperson is a certified or licensed real estate appraiser.

Licensed brokers and salespersons may not receive compensation or assess a fee “other than the normal brokerage fee rendered in connection with the sale of the property.”

Therefore, if additional fees are being charged for the BPOs, this would constitute an illegal practice, and the licensee may be disciplined for this possible violation.

Other rules that may be cited as possible violations are HAR Section 1-99-3(a) and (b), which read: “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,” and “The licensee shall protect the public against fraud, misrepresentation or unethical practices in the real estate field. The licensee shall endeavor to eliminate any practices in the community which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the Commission in its efforts to regulate the practices of brokers and salespersons in this State.”

Finally, the licensee may be found in violation of HRS 467-14(8), which states that the Commission may revoke, suspend, or discipline a licensee for any conduct constituting fraudulent or dishonest dealings.

Hawaii licensees may be engaging in unlicensed real estate appraiser activity if they receive compensation other than the normal brokerage fee charged for the sale of a property.

The Real Estate Branch staff may be contacted via email at [hirec@dcca.hawaii.gov](mailto:hirec@dcca.hawaii.gov), or telephone 808-586-2643.

The Real Estate Appraisers program may be contacted at 808-586-2701.

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