



BULLETIN

Vol. XXIII, No. 2

<http://www.state.hi.us/hirec>

August 1999

Newly enacted laws may affect real estate licensees

Here is a summary of laws enacted in 1999 that may affect real estate licensees.

The summaries in this article are not intended to be an exhaustive list or to cover all provisions of an act.

Interested readers may access the Legislature's Web site, www.capitol.hawaii.gov, for listings of bills or to read the full text of the bills.

Copies of the acts may also be obtained from all public libraries; Senate Printshop, State Capitol Rm. 012A; House Clerk's Office, State Capitol Rm. 027; Lieutenant Governor's, State Capitol 5th floor; the Supreme Court Library, 417 S. King Street; and the William S. Richardson School of Law Library, 2525 Dole Street; all in Honolulu, Hawaii.

Licensing

Act 240 (S.B. No. 238)

Act 240 makes numerous changes to the real estate licensing law, Chapter 467, HRS, addressing continuing education, preliminary decisions on individual license applications, broker experience requirements, condominium hotel operators, and branch and site offices. The act makes the following changes:

a. Transfers the responsibility for certification of continuing education instructors from the Commission to CE providers. Providers must certify that an instructor meets the requirements of the Commission. In addition, providers are responsible for assuring that instructors are current in their knowledge of the subject matter and that the course is based on current information, laws and rules.

b. Adds language to provide for licensing of limited liability companies. The real estate activities of a limited liability

company must be under the direction of a principal broker who is a member of a member-managed company or a manager of a manager-managed company.

c. Authorizes the Commission to issue a preliminary, non-binding decision on an individual's license application. An individual with potentially disqualifying factors (reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing) would get an indication of whether the Commission would approve an application before undertaking the expense of completing a prelicense course and taking the examination. The individual must submit an application, pay the non-refundable application fee, and provide all requested information. The preliminary decision provides advisory guidance only, is not binding, and is not subject to appeal. The individual seeking a preliminary decision is not considered an applicant for licensure. An unfavorable preliminary decision will not preclude the individual from submitting a license application upon successful completion of all prelicensing requirements.

d. Changes the requirements for licensing of branch offices and registration of site offices. Branch offices are now required to be registered rather than licensed. Site offices are no longer required to be registered.

e. Eliminates the requirement that associating salespersons' licenses be displayed at the office. The broker's license must be displayed but associating salespersons' licenses need only be available upon request.

f. Changes the broker experience requirement to experience as a full-time salesperson under a Hawaii broker for three years prior to the examination. The only equivalency available will be for a portion of the three years for experience in another state. The former requirement was two years full-time experience and evidence of participation in 10 Hawaii transactions, and included numerous equivalencies. (See the article on page 7 for more information).

g. Permits the Commission flexibility in administration of the licensing examination, including requiring passage of

The Professional & Vocational Licensing Division has advised the Commission that its computer licensing system is fully Y2K compliant.

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only specific sections of the examination for out of state licensees, as an equivalency to the CE requirement, or for restoration or reinstatement of license.

h. Allows the Commission to set a renewal deadline prior to the December 31 license expiration. For example, the Commission could require that renewals be submitted by November 30 so that licensees would receive pocket cards before December 31.

i. Simplifies the requirements for restoration of licenses. Restoration applicants whose licenses were forfeited for one to four years are required to complete a Commission-approved course or pass the examination. If a license has been forfeited for more than four years, passage of the examination is required. Applicants must also complete the CE requirement for one prior period and pay all back renewal fees. (See the article on page 11 for more information).

j. Adds limited liability company to the entities that can register as condominium hotel operators. Allows the Commission to set re-registration deadlines for condominium hotel operators prior to the December 31 expiration. Requires condominium hotel operators to obtain a fidelity bond and keep it current. Requires evidence of the fidelity bond upon request by the Commission.

k. Adds limited liability company as an entity that can be licensed as a real estate broker.

l. Adds a requirement to the list of requirements an aggrieved person must show the court to obtain payment from the recovery fund. In addition to other requirements, where the licensee is a debtor in a bankruptcy proceeding, the aggrieved person must obtain an order from the bankruptcy court declaring the judgment against the licensee to be non-dischargeable.

The Act was approved by the Governor and took effect on July 2, 1999.

Act 47 (H.B.791)

This act amends Hawaii Revised Statutes Chapter 467. The act includes a new section codifying the responsibilities of principal brokers, combines continuing education provisions into a new section for easier review and understanding, increases the flexibility and options for providing continuing education courses, makes continuing education providers responsible for certifying their instructors, and directs the Hawaii Association of Realtors® to convene a work-study group to discuss continuing education issues and to make proposals to the next Legislature.

The new principal broker responsibility section incorporates the existing requirements of Hawaii Administrative Rules §16-99-71 and requires principal brokers to develop a training program and to ensure that associated licensees are up to date on licensing laws and rules.

Principal brokers must develop policies for handling real estate transactions and for continuing education requirements

for associated licensees, in compliance with the statutory requirement.

The act deregulates continuing education instructor certification by making the providers responsible for certifying that their instructors meet Commission requirements. It incorporates the definition of “continuing education” into the new, consolidated continuing education section and includes courses certified by the Association of Real Estate License Law Officials. The act clarifies Commission authority with respect to setting the number of hours of credit per course, setting content and other requirements for courses, providers and instructors, and specifying mandatory core courses or equivalencies.

The act was approved by the Governor and took effect April 26, 1999.

Condominium

Act 236 (S.B. 36 S.D.2,H.D.1, C.D.1)

This bill, in summary, affects two condominium governance areas — collection of delinquent assessments for common expenses and investment of the association of apartment owners’ funds.

Common Expense Provisions

For a number of legislative sessions, condominium governance organizations, attorneys for association of apartment owners, board members, and managing agents and other interested parties have been urging various committees of the House and Senate for passage of some type of relief from the long standing problems of increasing delinquent maintenance fees and the related collectible problems. In passing S.B. 36 S.D.2, H.D.1, C.D.1 the Legislature made several findings.

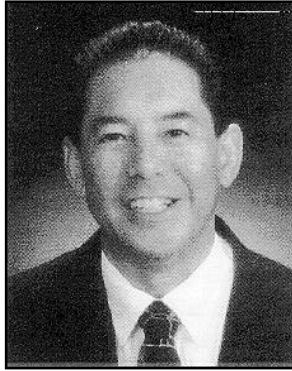
The findings include that “ ... association of apartment owners (AOAOs) are increasingly burdened by the costs and expenses connected with the collection of delinquent maintenance and other common expenses. ... number of foreclosures in this State has greatly increased, and that AOAOs are often required to bear an unfair share of the economic burden when purchasers in foreclosure actions exercise rights of ownership ... without paying their share of common maintenance fees and assessments ... more frequently AOAOs are having to increase maintenance fee assessments due to increasing delinquencies and related enforcement. ... and is particularly inequitable when a delinquent owner is also an occupant (including the rental of the apartment) who has benefited from the common privileges and services. ... ” This bill is intended to provide some relief to the non-delinquent apartment owners who have been making up for the shortfall.

The purpose of the bill is to: allow associations of apartment owners to collect delinquent maintenance and common expenses directly from the tenant of a delinquent owner; clarify when a purchaser in a foreclosure action becomes responsible for assessment and maintenance fees; allow associations of

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The Chair's Message

This summer, we say farewell to a commissioner and welcome aboard a new commissioner. This year, I thank Helen Lindemann for all her hard work. Helen, who was the Education Review Committee's vice chair, devoted many hours of her own time to the committee's program of work. We wish Helen well and know that she will continue to contribute to our industry in her many roles. Now, we welcome Patricia Choi, principal broker of Patricia Choi Realty, as our newest commissioner and look forward to working with her. We have already assigned her responsibility for a number of the Commission's programs.



This fiscal year, Nora Nomura, a public member, will be the Commission's vice chair. The leadership for the Commission's three standing committees will be as follows:

The Education Review Committee will be chaired by Charles Aki, a Big Island broker, with John Ohama, an Oahu broker, as vice chair; the Condominium Review Committee will be chaired by Alfredo Evangelista, a public member from Oahu, and Mitchell Imanaka, an Oahu broker, will be vice chair; the Laws and Rules Review Committee will be chaired by Michael Ching, a Kauai broker, with Iris Okawa, an Oahu public member as vice chair.

The Commission's substantial program of work is carried out by the standing committees with the chair and vice chair of each committee responsible for overseeing the work of their committees. The committees meet once each month and encourage the public's input. Twice a year, the committee meetings are convened on a neighbor island. The meeting schedules and agendas can be found at the Commission's Web site.

We now know which of the 1999 Legislature's bills have been enacted into law. Act 47 and Act 240 are the major pieces of licensing law legislation to come out of the last session. Highlights of the new laws are discussed in the accompanying article. This year, we are devoting more space to and providing more detail about the new laws. The article also lists some real estate related bills that were not enacted into law.

If you are not a regular visitor to the Commission's Web site, I encourage you to be. The site is regularly updated and provides a myriad of information concerning your Commission and services available.

You will find many of the Commission's application forms available on the site. Look for it at www.state.hi.us/hirec. Before I leave the technology discussion, you should know that

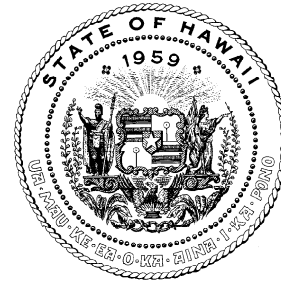
the Professional and Vocational Licensing Division has informed the Commission that the Licensing Branch records, which include all real estate licensing records, are fully Y2K compliant.

This is my final year as a Commissioner, with my term ending on June 30, 2000. We have a superior staff, which you can call to assist with your real estate questions and concerns.

I have enjoyed working with them and the other commissioners and look forward to a productive year into the new millennium.

Sincerely,

Alvin M. Imamura
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 586-2645 to submit your request.

Laws that were passed by Hawaii's 1999 Legislature

Continued from page 2

apartment owners an alternative remedy—the withholding of common privileges and termination of common services to owner-occupied apartments until the delinquent sums are paid; and clarify that AOAOs may enforce liens for unpaid common expenses by non-judicial and power of sale foreclosure procedures.

Investment Provisions

As reserves have accumulated and as the deadline date for reserves approach, many AOAOs have reported to the Legislature that they needed clarification and increased options as to where they may place and invest the reserve funds. In response, the Legislature passed this portion of the bill providing for additional investment options and depositories for the fund. Among other provisions, in general, the bill amends where the AOAOs funds may be deposited, held by, and if held for the benefit of the AOA conditions for such; and specifies the types of permitted investments to include obligations of the United States government or State of Hawaii and their respective agencies, and mutual funds comprised solely of investments in obligations of the United States government or State of Hawaii.

Act 242 (No 513 S.D.2, H.D.2, C.D.1)

By way of background information, Act 303 (SLH 1996) for zoning purposes considered family child care homes a residential use of property and permitted family child care homes in all residentially designated zones. The Act voided every recorded restriction or prohibition entered into whether by way of covenant, conditions, upon use or occupancy, or upon transfer of title to residential real property, which directly or indirectly restricted or prohibited family child care homes on residential real property. However, condominiums and townhouses were exempt from the restrictions or prohibitions.

In addition, Act 303 required the Department of the Attorney General, and other state agencies, including the Real Estate Commission, to review, discuss, and submit a report on the “issues of tort liability, the Americans with Disabilities Act, and any constitutional concerns” as they relate to voiding of recorded restrictions or prohibitions against family child care homes. S.B. No 513 S.D.2, H.D.2, C.D.1 appears to have addressed the bulk of the recommendations made and concerns expressed by the Department of the Attorney General.

Of particular note, among other amendments, this bill repeals the exemption provided by Act 303 (SLH 1996) which allowed the governing documents of condominiums and townhouses to prohibit or restrict the operation of family child homes. This bill, subject to certain conditions, allows family child care homes in condominium projects and planned communities with the approval of a majority of the owners. In comparison, the bill subject to certain conditions prohibits an association of a townhouse project (including associations with townhouses that are condominium apartments located in a

building of less than three stories) from prohibiting the operation of a family child care home. The bill also provides for a new chapter in the Hawaii Revised Statutes entitled “Family Child Care Homes” and amends other provisions of HRS to implement the new chapter.

Act 241 (S.B. 285, S.D.1, H.D.1, C.D.1)

Act 241 is intended to facilitate the association of apartment owners’ efforts to acquire on a voluntary basis the leased fee interest at a more affordable price. The bill allows the association of apartment owners to negotiate directly with the project’s lessor for a bulk purchase of the lessor’s interest and specifies the boards of director’s powers in connection with the purchase. Of particular interest to condominium apartment owners is this. The bill prohibits any condominium apartment owner from being excused from paying common expenses incurred in acquiring the lease fee interest to the land, or to service any related debt (i.e. mortgage) even when the condominium apartment owner elects not to purchase the lease fee interest.

Other Legislation of Interest

Act 185 (H.B.77, H.D.1, S.D.1)

Adds industrial property to types of property covered by the structure position discrepancy law. Provides that the owner of the property upon which the improvement is substantially located is responsible when the owner who constructed the improvement is not readily identifiable.

Act 50 (H.B.1072, H.D.1)

Establishes provision relating to reverse mortgage loans. Requires lenders to refer every borrower to counseling from an approved housing counseling agency, and receive certification that the borrower has received counseling. Provides criteria. Defines reverse mortgage loan.

Act 161 (S.B. 949, S.D.1, H.D.2)

Establishes uniform unincorporated nonprofit association law to provide for acquisition, encumbrance, or transfer of real and personal property by unincorporated non-profit associations. Establishes criteria for recording and disposition of estates and interests in property, rights in civil proceedings, and immunity to liability for members and officers.

Act 301 (S.B. 1016 S.D.1, H.D. 1)

Establishes provisions relating to fee for copies and limitation. Provides that any agency may establish and charge fees for copies of proposed rules, rule amendments, adopted rules, statutes or agency rules, provided that the fees shall reflect actual reproductions costs and in any case not exceed the rate of 10 cents a page plus actual mailing costs. Exempts copies of agency rules obtained from the office of the Lieutenant Governor. Provides that the cost of reproduction shall not include charges for search and actual time for reproducing a government record. Further provides that as of January 1, 2000, through the office of the Lieutenant Governor, the

may have an impact on many real estate licensees

proposed rulemaking action and the full text of the proposed rule and the changes to existing rules shall be posted on the World Wide Web internet site.

Act 239 (S.B. 236 S.D. 1 H.D. 1 C.D. 1)

Prohibits the offering of a prize in a drawing or sweepstakes without a written and conspicuous disclosure that some or all of the prizes may not be awarded and indicating the dates on which a winner will be determined. Requires the filing of a minimum \$10,000 bond by the offeror of a prize of real property.

Act 295 (H.B.1649 H.D. 2 S.D. 1 C.D. 1)

Exempts from the conveyance tax, transfers of real property or any interest therein, in connection with a merger or consolidation, or in connection with the dissolution of a limited partnership to a corporate general partner.

Act 250 (S.B. 1142 S.D. 2 H.D. 1)

Enables corporations, partnerships, and limited liability companies to seek administrative relief against other entities that have registered or are using a name that is substantially identical or confusingly similar.

Act 170 (S.B. No. 947)

Prohibits specified unfair or deceptive telemarketing acts or practices, and abusive telemarketing acts or practices. Provides civil penalties. Requires that telephone solicitors keep certain records that shall be made available upon demand of authorized governmental agencies. (See article on page 9 of this issue.)

The following bills did not pass; however, they may be considered by the 2000 Legislature.

S.B. 112, S.D. 1

Requires mortgage holders to pay common expenses to the association while foreclosure proceedings are pending, if the unit is being rented pending the foreclosure. Increases membership of Real Estate Commission by two members who must represent interests of condominium governance organizations; clarifies that moneys in condominium management education fund shall be used exclusively for purposes of the condominium management education fund.

S.B. 1510 S.D. 1

Requires insurance commissioner to study feasibility of requiring real estate professionals to maintain liability insurance in exchange for exclusion from joint and several liability. Requires insurance commissioner to collect tort claim data. Allows insurance commissioner to adjust rates.

H.B. 1021 H.D. 2

Clarifies that projects created as condominium property regimes are subject to county zoning and other county building and development ordinances and rules.

H.B. 657 H.D. 2 S.D. 1

Allows director of the Department of Commerce and Con-

sumer Affairs to issue a one-year preliminary permit to allow developer to begin public offerings, subject to conditions.

The Governor vetoed the following bill:

S.B. 777, S.D.2, H.D.1, C.D.1

Amends provisions relating to the alternate power of sale foreclosure process. Amends provisions relating to notice of default. Requires foreclosing mortgagee to include with the first notice of default required public information or a copy of the alternate power of sale foreclosure process provision, with an exemption prior to January 1, 2000. Amends provision relating to conveyance of property on payment of purchase price and the distribution of sale proceeds. Requires the conveyance document be signed by the foreclosing mortgagee in the foreclosing mortgagee's name and as attorney in fact for the mortgagor. Amends provisions relating to affidavits after public sale. Repeals and replaces public information requirement. Repeals foreclosure under power of sale, notice to mortgage creditors, notice, construction, contents, affidavit as evidence, and application of this part provisions.

Big Island clarifies procedures regarding submerged lands

The Planning Department of the County of Hawaii has recently apprised the Real Estate Commission about information relating to submerged lands in the County of Hawaii. Excerpts from that letter appear here.

If a lot owner wants to build on a piece of property and a shoreline certification is needed, it may be denied or dismissed on the grounds that the shoreline is located inland of the property and the lot is considered submerged. Shoreline certifications are valid for one (1) year.

The State Surveyor may conduct a Shoreline Certification Survey of these areas to determine the true shoreline and clarify the State Land Use designation. However, since these lands are considered "private," approval from the owners to allow representatives of the State, including the State Surveyor, the right to enter the property to conduct a site inspection and verification of the shoreline is needed.

The lot owner is then directed to apply for a Conservation District Use Permit to build; however, it may be denied on the grounds that that building cannot be approved because it is located on submerged lands.

Another problem arises due to the non-disclosure of the submerged lands to potential buyers of these properties as there are no indications according to the tax maps that the lots are submerged because they are listed as State Land Use "Urban" District—yet they are submerged.

Administrative Actions

Kimo M. Dowsett—REC 98-48-L

RICO filed a petition for disciplinary action against Respondent on August 4, 1998. At a hearing November 24, 1998, the Hearings Officer found that when 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?" even though he had been convicted of assault in the third degree in 1996 and disorderly conduct in 1997.

The Hearings Officer concluded that although the evidence presented did not establish that Respondent intended to deceive the Commission, Respondent filed a document containing a material misstatement of fact, procured a license through misrepresentation, made untruthful statements, and falsified information on his Real Estate license application.

The Hearings Officer recommended that that Commission find that Respondent violated HRS §§467-14(13), (20), and 436B-19(2), (5), (12), (17), and HAR §16-99-25.

The Commission approved the Hearings Officer's Findings of Fact and Conclusions of Law on February 26, 1999. The Commission's April 14, 1999 Final Order specified that Respondent's real estate salesperson's license be revoked unless he voluntarily surrendered his license within 30 days of the Final Order.

Kaiman Realty, Inc. and Edward A. Neizman—REC-96-192-L; 97-56-L

RICO filed a petition for disciplinary action against Respondents on July 30, 1998. At a hearing held January 22, 1999, the Hearings Officer found violations on two counts.

Count 1: In August 1995, Respondent Neizman borrowed \$5,000 from one of his tenants to buy appliances for a property he was selling, promising to pay the tenant \$5,800 once the property was sold. Respondent gave the tenant a post-dated check for \$5,800 and a promissory note in the same amount. The check was subsequently returned for insufficient funds, and Respondents have not satisfied their obligations under the promissory note.

Count 2: In 1996, Respondent Neizman offered to help a couple sell their townhouse in Kihei, Maui so they could purchase a house in Kahului, Maui that Respondents had listed for sale. Neizman subsequently told the owners of the townhouse he had found a buyer for their property, and the sale was closed in escrow.

At the closing, the couple discovered that the buyer was not the person Neizman had identified as the buyer, but they executed an agreement of sale anyhow rather than jeopardize the sale of the townhouse. Following the sale of the townhouse, the couple purchased the house in Kahului that had been listed by Respondents.

In 1997, the couple was notified that the mortgage on the townhouse was in default by two installments. They also learned that the buyer was an elderly neighbor of Respondent

Neizman who was financially unable to make the monthly mortgage payments. However, Respondent Neizman assured the couple that the mortgage payments had been made and the account had been brought current. No mortgage payments were made, and the couple was forced to cancel the agreement of sale, thereby placing the townhouse back on the market. Before canceling the agreement of sale, the couple discovered that Respondents had rented out the townhouse.

The Hearings officer recommended the Commission find that Respondents violated HRS §§467-14(13) (violating this chapter; chapters 484, 514A, 514E, or 515; section 516-71; or the rules adopted pursuant thereto), and HAR §§16-99-3(a) (failing to protect the general public in its real estate transactions), (b) (failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field), and (f) (licensee shall see that financial obligations and commitments regarding real estate transactions are in writing and that copies of those agreements are place in the hands of all parties involved).

The Hearings Officer recommended that Respondents' licenses be suspended for six months, that they be fined \$1,000 jointly and severally, and, in Count 1, be ordered to pay restitution in the amount of \$5,800 within 60 days of the Commission's Final Order, with payment of restitution and the fine to be made a condition for relicensure.

The Commission approved the findings of the Hearings Officer on April 30, 1999.

Crystal Joy Acohido—REC 97-128-L

RICO received information from the Department of Taxation that Respondent was in default of her 1996 installment plan agreement for payment taxes owed. Respondent paid off her debt to the Department of Taxation in November 1998 and the Tax Department sent notice to RICO in February 1999.

Respondent disputes that RICO has sufficient cause to file a petition for disciplinary action against her license for violating HRS § 467-14(20) as she did not fail to maintain a reputation for a record of competency, honesty, truthfulness, financial integrity, and fair dealing.

Respondent is entering into this Settlement Agreement to avoid further controversy and to avoid the time and expense that she would otherwise incur to have this matter resolved by administrative hearing.

Under terms of a Settlement Agreement Prior to Filing of Petition for Disciplinary Action, Respondent agreed to pay a \$250 administrative assessment within 30 days of Commission approval of the Settlement Agreement.

The Commission approved the Settlement Agreement on May 27, 1999.

Castle Resorts & Hotels, Inc. and Sandra-Lee Jane Rarick—REC 99-34-L

RICO received a complaint alleging Respondents aided and abetted an unlicensed person by utilizing an unlicensed

Administrative Actions

carpet installation contractor at a Maui condominium. Respondents admit the violations but entered into a Settlement Agreement Prior to Filing of Petition for Disciplinary Action to avoid the time and expense of an administrative hearing. Under terms of the Settlement Agreement, Respondents agreed to pay a \$2,000 administrative fine within 30 days of Commission approval of the Agreement.

The Commission approved the Settlement Agreement on June 25, 1999.

Tri Investments Ltd., Roy I. Matsumoto, and Mary E. Matsumoto—REC 97-49-L

RICO filed a petition for disciplinary action against Respondents on December 11, 1998, and a hearing was held March 18, 1999.

RICO found that in 1989, the owner of a rental unit entered into an oral agreement with Respondents to manage the unit, collect rental payments, and remit them to him in return for a percentage of the rental amounts. Between January 1994 and November 1996, the dwelling was rented for \$850 a month and, except for two or three months, the tenant paid the monthly rental amounts to Respondents. However, the Respondents did not remit any of these rental payments to the unit owner.

The unit owner contacted the Respondents several times and was told the tenant had not made any payments. In late 1996, the unit owner terminated the property management agreement with Respondents and began efforts to recover his lost rental payments.

In July 1997, the unit owner filed a lawsuit in Circuit Court against Respondents and was granted a default judgment in the amount of \$24,245.00 plus \$6,569.49 in interest and \$10,000 in punitive damages. Respondents did not report this court judgment to the Commission.

The Hearings Officer found that Respondents violated HRS §§467-14(1) (making any misrepresentation concerning any real estate transaction), (2) (making any false promises concerning any real estate transaction of a character likely to mislead another), (3) (pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise), (7) (failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee), and (16)(converting other people's moneys to the licensee's own use); 436B-16, and HAR 16-99-3(b) (the licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field), (f) (the licensee shall see that financial obligations and commitments are in writing and placed in the hands of all parties involved), and (v) (the licensee shall not convert other people's moneys to the licensee's own use).

The Hearings Officer further recommended that each of the Respondents' real estate licenses be revoked and they be ordered to pay separate fines in the amounts of \$1,000 for each violation of HRS §467-14(1), (2), (3), (7) and (16) as

well as for each violation of HAR §16-99-3(b) and (f), and that pursuant to HRS §436B-16 each of the Respondents be ordered to pay separate fines in the amounts of \$249 for violating the provisions of that statute. All fines are required to be paid within 30 days of the Commission's Final Order.

The Commission accepted the recommendations of the Hearings Officer on June 25, 1999.

Edwin Artley

Mr. Artley's license was suspended due to non-compliance with the Child Support Enforcement Agency's order of support or failure to comply with a subpoena or warrant relating to paternity or child support proceeding. Mr. Artley's license was forfeited on January 1, 1999.

Anabel Cabebe

Ms. Cabebe's license was suspended effective April 9, 1999 due to non-compliance with the Child Support Enforcement Agency's order of support or failure to comply with a subpoena or warrant relating to paternity or child support proceeding.

Newly passed Act 240 alters the experience requirement for obtaining broker's license

One of the provisions of newly enacted Act 240 changes the experience required to obtain a broker's license from the two years and 10 transactions to three years within the three years immediately preceding the examination date.

Although there is no specific transaction requirement, the three years of experience must have been three years full-time experience as a licensed Hawaii salesperson under a Hawaii licensed broker and the applicant must have "practical real estate salesperson experience, as certified by the principal broker or principal brokers."

The only equivalency to the three years is for real estate license experience in another state. An applicant with out of state experience may receive a maximum of two years equivalency for a broker's license and one year for a salesperson's license.

One month of out of state broker's experience is equivalent to one month experience and three months of out of state salesperson's experience is equivalent to one month of experience. The experience must have been full-time and within the last three years.

A revised application form will be available on the Commission's Web site shortly.

Education Calendar

Scheduled Continuing Education Courses

An updated Continuing Education Courses schedule is regularly posted on the Commission's World Wide Web page as <http://www.state.hi.us/hirec>. Courses are subject to change or cancellation; please check directly with the provider to confirm date, time, and location.

Date	Time	Subject	Provider	City	Instructor	Fee
OAHU						
09/10/1999	01:00pm	RESIDENTIAL PROPERTY MANAGE	DOWER SCHOOL OF REAL ESTATE	HONOLULU	DOWER	52.00
09/10/1999	06:00pm	DISCLOSURES IN HAWAII RESID	DOWER SCHOOL OF REAL ESTATE	HONOLULU	DOWER	52.00
09/10/1999	09:00am	LAW UPDATE/ETHICS 1997-98	DOWER SCHOOL OF REAL ESTATE	HONOLULU	DOWER	52.00
09/13/1999	08:30am	ESSENTIALS OF THE DROA	HAWAII ASSOCIATION OF REALTORS	HONOLULU	CHONG	84.00
09/18/1999	04:00pm	BASIC REAL ESTATE INVESTMEN	EDDIE FLORES REAL ESTATE	HONOLULU	GOODE JR	49.00
09/18/1999	09:00am	HOMEOWNER'S TAX STRATEGIES	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	49.00
09/18/1999	12:30pm	RESIDENTIAL PROPERTY MANAGE	EDDIE FLORES REAL ESTATE	HONOLULU	GOODE JR	49.00
09/24/1999	01:00pm	RESIDENTIAL PROPERTY MANAGE	DOWER SCHOOL OF REAL ESTATE	HONOLULU	DOWER	52.00
09/24/1999	06:00pm	LAW UPDATE/ETHICS 1997-98	DOWER SCHOOL OF REAL ESTATE	HONOLULU	DOWER	52.00
09/24/1999	09:00am	DISCLOSURES IN HAWAII RESID	DOWER SCHOOL OF REAL ESTATE	HONOLULU	DOWER	52.00
10/23/1999	04:00pm	DISCLOSURES IN HAWAII RESID	EDDIE FLORES REAL ESTATE	HONOLULU	CHING	49.00
10/23/1999	09:00am	BASIC REAL ESTATE INVESTMEN	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	49.00
10/23/1999	12:30pm	HAWAII LANDLORD-TENANT CODE	EDDIE FLORES REAL ESTATE	HONOLULU	CHING	49.00
11/20/1999	04:00pm	AVOID LITIGATION - HOW TO D	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	49.00
11/20/1999	09:00am	RESIDENTIAL PROPERTY MANAGE	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	49.00
11/20/1999	12:30pm	BASIC REAL ESTATE INVESTMEN	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	49.00
MAUI						
10/19/1999	09:00am	ESSENTIALS OF THE DROA	MAUI BOARD OF REALTORS INC	WAILUKU	WALLS	45.00
10/20/1999	09:00am	ESSENTIALS OF FINANCE	MAUI BOARD OF REALTORS INC	WAILUKU	MOORE	45.00
10/21/1999	09:00am	ESSENTIALS OF LISTING	MAUI BOARD OF REALTORS INC	WAILUKU	WALLS	45.00

Continuing Education Providers

ABE LEE SEMINARS	988-3751	JOHN REILLY	523-5030
AKAHI REAL ESTATE NETWORK LLC	331-5300	KAPIOLANI COMMUNITY COLLEGE	734-9211
DOWER SCHOOL OF REAL ESTATE	988-5445	LYNN W CARLSON	874-4064
DUPLANTY SCHOOL OF REAL ESTATE	737-5507	MAUI BOARD OF REALTORS INC	242-6431
EDDIE FLORES REAL ESTATE	521-3044	MAX SHERLEY REAL ESTATE CENTER	871-9714
HAWAII ASSOCIATION OF REALTORS	737-4000	UNIVERSITY OF HAWAII AT MANOA	956-8244
HONOLULU BOARD OF REALTORS	732-3000		

Governor approves regulation for telemarketing

Governor Cayetano has approved legislation that will regulate telemarketing activity affecting Hawaii's citizens. The law—Act 170—went into effect July 1, 1999.

The legislation is designed to combat the growing problem of fraudulent telemarketing solicitation by prohibiting specific deceptive and abusive telemarketing practices, and by establishing recordkeeping requirements and the maintenance of “do not call” lists.

“Too many of our citizens, particularly seniors, are being victimized by telemarketing criminals,” Governor Cayetano said. “This legislation will set a new standard of conduct for telemarketing activity in the State of Hawaii and will provide many of the necessary tools to punish violators.”

Jo Ann M. Uchida, Executive Director of the Office of Consumer Protection, said the legislation is the product of a collaborative effort between the Legislature, members of Hawaii's law enforcement community (including the Honolulu Police Department and the Honolulu Prosecutor's office), and the Office of Consumer Protection, members of the affected industries, including the Direct Marketing Association, and the American Association of Retired Persons.

“It was gratifying to note the level of concern each interested party had in protecting Hawaii's telemarketing victims from further harm,” Uchida said.

Recent FBI reports estimate that about \$40 billion is lost annually by U.S. citizens to fraudulent telemarketers. The FBI estimates that about 10 percent of the nation's telemarketing firms engage in fraudulent activity. In Hawaii, the predominant form of fraudulent telemarketing appears to come from Canadian firms that offer international lottery opportunities.

Among other things, the law provides for the following:

- Within the first three minutes of the call, telemarketers must disclose the purpose of the call, the goods or services being offered, and the identity of the caller.
- Telemarketers cannot misrepresent or fail to disclose the total costs to acquire the goods or services offered, any conditions of the offer, the terms of the seller's refund or cancellation policy, all material conditions incident to receiving a prize, any material aspect of an investment opportunity, and the quantity and any material aspect of the basic characteristics of any goods or services offered.
- Telemarketers cannot cause the telephone to ring more than 10 times in an outbound telephone call.
- Telemarketers cannot request or accept payment from a consumer until the consumer provides written verification of the transaction, except under specific circumstances.
- Telemarketers cannot use the services of a professional delivery, courier, or other pickup service to obtain immediate receipt of a consumer's payment.
- Telemarketers cannot threaten, intimidate, or use profane or obscene language.
- Telemarketers cannot receive advance payment to assist consumers in acquiring loans or recovering money lost in a prior telemarketing transaction.

- Telemarketers cannot call consumers if the person has stated previously that he or she did not wish to be called.
- Telemarketers cannot call a consumer's residence at any time other than between 8 a.m. and 9 p.m., based on the time at the consumer's location.

Certain activities are exempt from the requirements of the new chapter.

Persons interested in obtaining a copy of Act 170 (which was Senate Bill 947) may do so through the Office of Consumer Protection Website at www.state.hi.us/dcca/ocp.

Reciprocal beneficiaries law affects real property rights

A reciprocal beneficiary may hold title to land or any interest therein, or in any other type of property as joint tenants, tenants by the entirety, and tenants in common. Section 509-2, Hawaii Revised Statutes (HRS), has allowed this since July 8, 1997. The law defines a “reciprocal beneficiary” as an adult who is a party to a registered reciprocal beneficiary relationship in accordance with chapter 572C, and has a valid certificate of reciprocal beneficiary relationship that has not been terminated.

The purpose of the “reciprocal beneficiaries” law (Chapter 572C, HRS) was to extend certain rights and benefits that are presently available only to married couples to couples composed of two individuals who are legally prohibited from marrying under state law. Chapter 572C, HRS, defines “reciprocal beneficiaries” as two adults who are parties to a valid reciprocal beneficiary relationship and meets the requisites for a valid reciprocal beneficiary relationship.

In order to enter into a valid “reciprocal beneficiary” relationship it is necessary that:

1. Each of the parties be at least eighteen years old;
2. Neither of the parties be married nor a party to another reciprocal beneficiary relationship;
3. The parties be legally prohibited from marrying one another under chapter 572;
4. Consent of either party to the reciprocal beneficiary relationship has not been obtained by force, duress, or fraud; and each of the party's signs a declaration of reciprocal beneficiary relationship as provided in section 572C-5, HRS.

This article provides general information about “reciprocal beneficiary.” For more information readers are advised to read the full text of chapters 509 and 572C, Hawaii Revised Statutes.

A copy of the statutes may be obtained from the Hawaii State Libraries. Readers are advised that the Real Estate Commission does not have authority over, neither can it answer any questions about “reciprocal beneficiaries.” Questions should be directed to a competent professional.

Commission rules are explicit

When must a temporary principal broker be named?

The Commission's rules require the designation of a temporary principal broker in two cases: (1) when the principal broker will be absent for more than 14 calendar days, and (2) upon the death or incapacity of the principal broker. In either case, the designation may not exceed six months without the Commission's approval (§16-99-3(o)).

While this article will concentrate on the designation of temporary principal brokers, the same guidelines apply to temporary brokers-in-charge.

A principal broker who will be absent for more than 14 calendar days must designate a temporary principal broker. To designate a temporary principal broker, the principal broker must submit a letter to the Commission that includes, at a minimum, the following:

- a. A statement designating the temporary broker.
- b. Name and license number of the real estate sole proprietor, corporation, partnership, or limited liability company.
- c. Name and license number of the principal broker.
- d. Name and license number of the temporary principal broker.
- e. The time period covered (beginning and end dates).
- f. A statement signed by the temporary broker assenting to the designation.
- g. The letter must be signed by the principal broker.

Submit the original letter to the Commission prior to the start of the time period covered. Photocopies will not be accepted.

A temporary principal broker may be affiliated with another firm; however, if the temporary principal broker is a broker/salesperson, the principal broker of that firm must be notified of the designation. If the temporary broker's license is inactive, then the license must be activated with a change form, including payment of fees and submission of continuing education certificates.

In the event of a principal broker's death or incapacity, a temporary principal broker may be appointed. In the case of a corporation, partnership, or limited liability company, it may be prudent to appoint another principal broker rather than a temporary principal broker. The following requirements, in addition to those listed above, apply in the event of death or incapacity:

- a. The original letter must be signed by a corporate officer in the case of a corporation, or a general partner in the case of a partnership, rather than the principal broker.
- b. If the principal broker is incapacitated, a letter from a physician documenting the illness should be attached to the letter.
- c. If the principal broker has died, a copy of the death certificate should be attached to the letter.

Brokers who take on the responsibility of a temporary

principal broker should understand that they step into the shoes of the principal broker for the period covered.

If the temporary principal broker is a broker/salesperson affiliated with another brokerage, the principal broker of that brokerage must be informed of the temporary broker arrangement.

It is strongly recommended that all parties involved discuss any questions of potential liability with their attorneys and errors and omissions carriers.

(This article was originally published in the November 1993 issue of the Bulletin.)

Here's how names must appear on a license application

The license application for an individual real estate license requires the applicant's legal name (first name, middle initial, last name). That is also the name which will appear on the individual's wall certificate and pocket card.

The Commission has issued an informal interpretation regarding license names which can be summarized as follows:

1. The full surname must always be used.
2. A first name or first initial must always be used.
3. A middle name or middle initial is not required if the full first name is used.
4. A first initial may be used instead of a full first name if a middle name or middle initial is used.
5. Shortened versions of names are not acceptable (e.g. Jon instead of Jonathan).

The following are examples of acceptable and unacceptable license names for applicant Jonathan Quincy Penguin:

ACCEPTABLE

Jonathan Quincy Penguin
Jonathan Q. Penguin
J. Quincy Penguin
J. Q. Penguin
Jonathan Penguin

NOT ACCEPTABLE

Jon Penguin
Quincy Penguin
Q. Penguin
J. Penguin

Licensees who wish to change their license names, within the parameters above, may do so by submitting a change form. There is a \$25 fee for this change, and a new wall certificate and pocket card will be issued.

(This article was originally published in the January 1993 issue of the Bulletin.)

License restoration process has been streamlined

The procedures adopted by the Commission to implement the restoration provisions of Act 240 have eliminated a number of steps and streamlined the license restoration process.

The application packet provides detailed instructions and everything necessary to complete the process. Applicants can complete the entire process in the time it takes to finish three CE courses and pass the license examination.

Licensees whose licenses have been forfeited for over one year due to non-payment of fees and who want to restore their licenses must do the following:

1. Call or write to request a restoration application. Applications are customized for individual applicants. Call or write P&VLD, Licensing Branch at (808) 586-3000 or P.O. Box 3469, Honolulu, Hawaii 96801.

2. Complete the continuing education course requirement for the previous license biennium. If the Laws Update/Ethics 1997-1998 mandatory course is not available, you may substitute any elective courses. Inform the CE provider that you are taking the course to restore your license. You will be required to show the provider your restoration application before receiving your CE certificates. You will need one lime and two goldenrod certificates. Note that you must take an

additional 10 hours of CE courses to renew your license on active status at the end of 2000.

3. You may do this step before, after, or simultaneous with step 2 above. If your license has been forfeited over one but under four years, choose one of the following: (a) pass the license examination for the level of license that will be restored; or (b) complete the prelicense course for the level of license that will be restored; or (c) complete the three Essentials courses.

If you elect to take the license examination, you must preregister for the examination and show the restoration application at the test site.

If your license has been forfeited for more than four years, you must take the license examination for the level of license that will be restored.

4. Submit the restoration application with the fees indicated, three original CE certificates (two goldenrod and one lime), and original license examination score report or certificate(s) of completion.

If your license was forfeited for less than one year, you may restore using the renewal application and paying a \$10 penalty and the renewal fee.

It's time to get acquainted with Commission's Web site

If you have not been to the Commission's Web site, we would like to introduce you to "*hirec*." Readers who have been to the Web site will recognize "*hirec*" as being part of the site's address and know that all the latest news and forms are available there. Here's some news about *hirec*, which is regularly updated and continues to grow.

NEW ADDRESS

We have been using www.hawaii.gov/hirec as our address. While that address will still work, our new official address is www.state.hi.us/hirec.

What's new at "*hirec*"?

Do you know that you can now download and print the ubiquitous change form and office location form from *hirec*? You no longer have to call to have one mailed to you or dig one out of your files and wonder if it's the current version. Now, the current version is always available at *hirec*. Print one when you need it. Other forms now available include school, provider, and instructor application forms, and condominium project registration forms. More forms, including license applications, education waiver, and broker experience applications, will be added soon.

Do you remember once reading an article in the Bulletin about an issue you're now faced with? If you don't have all your back issues handy, check *hirec*. Back issues of the Bulletin and reprints of selected articles are all available. Same with the *Hawaii Condominium Bulletin*.

Can't find a copy of the rules for real estate salespersons and brokers (HAR Ch. 99) or condominium rules (HAR Ch. 107)? *hirec* has links to the Hawaii State Bar Association's

site where Chapters 99 and 107, as well as rules for most other boards and commissions that fall under the Department of Commerce and Consumer Affairs are available online.

Many of the articles in this issue of the Bulletin have been available at *hirec* for several months.

Patricia Choi appointed to Real Estate Commission

Patricia Choi has been appointed to a four-year term as a member of the Real Estate Commission. She is the founder, president, and principal broker of Patricia Choi Realty, Inc. and has been involved in the real estate industry in Hawaii for more than 20 years.

Ms. Choi is a Certified Commercial Investment Member (CCIM) and holds the designation of Certified International Property Specialist (CIPS). During the last 10 years, she has been a member of the Board of Directors of the Hawaii Association of Realtors® and the Honolulu Board of Realtors®.



Choi

She is the president of the International Section of the National Association of Realtors, Hawaii Chapter, and is the national representative for Korea.

Questions and Answers for real estate licensees

Q: I am a sole proprietor and want to change to a corporation. Which box on the change form do I check, and what is the fee?

A: When you form a corporation, you create a new legal entity which must have its own real estate license. An application for license for a corporation is the appropriate document to file, not a change form. Read the application's instructions carefully. The corporation must have a principal place of business and a principal broker who is an officer or employee of the corporation. A corporate resolution appointing the principal broker is also required. The instructions include sample language for the resolution. The fee for a corporation application is \$330 in odd-numbered years and \$235 in even-numbered years.

You must also submit a change form to transfer your individual broker's license to the corporation. There is no additional fee for this change form.

Q: Can I continue to work out of my home?

A: When you submit the license application for the corporation, you must also submit an office location form on which the principal broker certifies that the office location complies with the county zoning ordinances. It is the principal broker's responsibility to check with the appropriate county office regarding office locations. Most counties allow "home occupations" but place restrictions on signs, traffic, and employees. Generally, you may not have associating agents who do not reside at the residence. Also, you may want to consider that your office address is public information.

If you live in a condominium project, you must also be careful not to violate the condominium's governing documents (e.g., declaration, bylaws, house rules). Many associations prohibit commercial activity in condominium apartments.

Q: Can I transfer my trade name to the corporation?

A: Yes. This is a two-step process. First, file the appropriate form at the Business Registration Division to assign the

trade name to the corporation, then file a change form, with a copy of the Business Registration approval attached, with the Commission to add the trade name. Many of the Business Registration Division's forms are available at the State forms site at www.state.hi.us/forms, and the change form is available at the Commission's site at www.state.hi.us/hirec.

Here are Continuing Education requirements for 1999-2000

Licensees are required to complete 10 hours of approved continuing education courses each two-year license period. To renew a license on active status at the end of 2000, a licensee must complete 10 hours of approved courses in 1999 and 2000. At least one course must be a "core" course. You may take more than one core course as long as the courses are different.

In past years, there has been a single mandatory core course that every licensee was required to take. This biennium, licensees will be able to select from several "core" courses. The Hawaii Association of Realtors® legislative update course has been approved as a core course and has been offered at the organization's neighbor island outreach sessions.

Licensees will receive a gray certificate for elective courses and a hot pink certificate for core courses. CE providers must verify that a licensee has a current (unexpired) license pocket card before issuing a certificate.

If you failed to take CE courses last year and are trying to reactivate or restore a license, be sure to inform the provider. You need to obtain two goldenrod and one lime certificate from the provider. If restoring a license, the provider will ask to see your restoration application before issuing any certificates.

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