

REAL ESTATE COMMISSION
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.hawaii.gov/hirec

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes.

Date: Thursday, December 16, 2010

Time: 9:00 a.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Present: Trudy Nishihara, Chair, Broker/Honolulu Commissioner
Donna Apisa, Broker/Kauai Commissioner
Carol Ball, Broker/Maui Commissioner
Walter Harvey, Broker/Honolulu Commissioner
Michele Sunahara Loudermilk, Public/Honolulu Commissioner
Scott A. Sherley, Broker/Hawaii Island Commissioner

Neil K. Fujitani, Supervising Executive Officer
Jon Ellis M. Pangilinan, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Amy Endo, Real Estate Specialist
David J. Grupen, Real Estate Specialist
Benedyne Stone, Condominium Specialist
Shari Wong, Deputy Attorney General
Karyn Takahashi, Recording Secretary

Others: Patrick Kelly, Esq., Regulated Industries Complaints Office
Ezra Quendinan, Esq., Regulated Industries Complaints Office
Marsha Shimizu, Hawaii Association of REALTORS®
Myoung Oh, Hawaii Association of REALTORS®
Wayne Thorburn, PSI
Peter Chen
Sandy Xay
Kalani Deacon
Cynthia Nakamura, Esq.
Jhanna Kanoa

Absent: Stanley Kuriyama, Vice Chair, Broker/Honolulu Commissioner
Frances Gendrano, Broker/Honolulu Commissioner
Mark Suiso, Public/Honolulu Commissioner

Call to Order: The Chair called the meeting to order at 9:05 a.m., at which time quorum was established.

Chair's Report: The Chair announced that the Commission may move into executive session to consider and evaluate personal information relating to individuals applying for licensure in accordance with section 92-5(a)(1), HRS, and/or to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities in accordance with section 92-5(a)(4), HRS.

Executive Officer's Report: The Executive Officer (EO) informed the Commissioners that the original applications with any original associated documents to be considered at the meeting were available for review.

Announcements

The Commissioners were reminded to submit their schedule of non-accessible dates for the period of January to June 2011 by December 16, 2010.

EO Pangilinan introduced Mr. Wayne Thorburn of PSI.

SEO Fujitani reported that the interim Director appointed by Governor Abercrombie, Ms. Keali'i Lopez, will begin on December 20, 2010.

Additional Distribution

The following was distributed as additional distribution:

4. Committees and Program of Work
 - a. Laws and Rules Review Committee
 - c. Education Review Committee

Minutes of Previous Meeting

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Sherley, it was voted on and unanimously carried to accept the minutes of the November 24, 2010 meeting.

Committees and
Program of Work:

Laws and Rules Review Committee

Online Licensing Applications

SEO Fujitani reported that he would like to apprise the Commission of the status of the former Director's online licensing application proposal.

The Chair deferred discussion to executive session.

Hawaii Association REALTORS® Proposed Legislation on Broker Price Opinions (BPOs)

A copy of HAR's initial proposed legislation for BPOs was distributed to the Commissioners. Mr. Myoung Oh was present.

Mr. Oh stated that HAR is planning to propose legislation permitting BPOs for a fee with appropriate disclosures not for loan origination or lending.

Mr. Oh was asked how they are proposing to accomplish some of these proposals, for example signatures, as most BPOs are done online. Mr. Oh responded that the system will allow for digital signatures and they were assured that the system will be changed to accommodate any state laws and rules.

Commissioner Loudermilk was concerned on how this would affect the consumer and the fact that the definition of a BPO seems very vague. Mr. Oh responded that based on their legal counsel, they modeled their proposal after Nevada's legislation.

Chair Nishihara was concerned that valuation comes under the real estate appraisal law and this proposal should be under that law and NOT the real estate licensing law. Mr. Oh responded that they sent an identical letter to the appraisal board and they have not yet received a response. He added that they also sent letters to the appraisal institute, bankers association, etc.; however, their boards have not met yet and no responses have been received.

Chair Nishihara brought up a concern that this proposal will create a conflict with the real estate appraisal law. Although Mr. Oh responded that this is an attempt to pre-empt the appraisal rules, similar to the unauthorized practice of law situation, the REC noted that circumventing licensing rules through the amending of another licensing statute is an inappropriate way to create an exemption. Deputy AG Wong stated that there is an appraisal chapter in the Hawaii Revised Statutes ("HRS") with promulgated rules.

SEO Fujitani inquired if HAR is only proposing to amend chapter 467, HRS. Mr. Oh responded that because rule amendment process is long, HAR's committee decided to take their proposal through the statutes rather than waiting for administrative rule changes. The REC suggested changing the real estate appraisal statute instead.

Commissioner Loudermilk questioned whether a fiduciary duty on the part of the licensee. Mr. Oh responded that he would need to do some research, but noted that the BPO is done just as a "service."

Mr. Oh was questioned why they were bringing this proposal without receiving a response from the appraisal board. Mr. Oh responded that the proposal was circulated to all parties at the same time.

Commissioner Apisa stated that there is a need for this legislation, but opined that this proposal is very limited as there may be more instances that a licensee may be asked to do a BPO than those listed in the proposal, for example, property tax disputes, marriage, divorce, estate planning, etc.

Commissioner Loudermilk stated that she would be more comfortable if it were more specific.

SEO Fujitani inquired if there is a change in the law, would it invalidate any existing rules. Deputy AG Wong responded that it would take precedence over the rules and new rules would need to be drafted.

There were concerns that if this passes, will there be an overlap and potential conflict with the appraisal law/rules.

Deputy AG Wong noted that it would be a new licensing area and possibly adding a new fiduciary duty to the practice of real estate.

Chair Nishihara suggested that HAR propose to amend chapter 466K, HRS. Mr. Oh responded that they will look at it, but noted that chapter 466K mostly defers to the federal law.

Deputy AG Wong stated that licensing professions should stay within their own licensing chapter and the appropriate licensing chapter should contain any amendments.

Mr. Oh questioned if a licensee provided a BPO without compensation is there still a fiduciary duty. Commissioner Loudermilk opined yes, as it depends on the individual circumstance.

Mr. Oh stated that they are willing to add/modify the language as they are still awaiting comments from other industries and they will keep the Commission apprised on those comments.

Application – Course – “Disclosure;” Author/Owner/Provider: Hawaii Association of REALTORS® ; Course Categories: Real Estate Law, Risk Management; Clock Hours: 6 (previously certified for 3 hours)

Upon a motion by Commissioner Harvey, seconded by Commissioner Sherley, it was voted on and unanimously carried to approve “Disclosure” as a six credit hour continuing education course under the course categories Real Estate Law and Risk Management.

Application – Course – Revised Continuing Education Course Certification Form

A copy of the revised application form was distributed to the Commissioners. Senior Specialist Fujimura reported that the revised form asks the applicant to identify sections of the course meeting the requirements as set forth in section 16-99-100, Hawaii Administrative Rules. The applicant may utilize the form attached with the application to identify the amount of continuing education hours by using the course’s table of contents.

Senior Specialist Fujimura stated that the review process has been streamlined for a more efficient review as compared to the past when continuing education was first implemented. She also pointed out that section 16-99-100(b), HAR, provides for the use, if necessary, of an advisory committee or consultant for the review of courses.

Commissioner Nishihara suggested that a maximum number of hours be set for course approval because it may become too challenging to scrutinize courses as it is very subjective and people review courses from different perspectives.

Commissioner Nishihara added that the continuing education requirement was increased to 20 hours to increase the skills of the licensee and questioned if a 15 hour course would justify the goal.

It was concluded that the form will be utilized and revisions be made as necessary.

Administration of Examinations – PSI

Mr. Wayne Thorburn was present.

SEO Fujitani reported that he had asked Mr. Thorburn to address the issue of accepting examination questions from prelicense instructors and Mr. Thorburn agreed to speak with his staff and give feedback on the issue.

Mr. Thorburn stated that PSI is very appreciative of working with the Hawaii Real Estate Commission.

Mr. Thorburn stated that he knew that the Commissioners had concerns with the examination pass rate. He reported that the Hawaii's uniform section pass rate is consistent with other states. He realized there is a disparity in the state portion and PSI has worked on tightening up the state portion, which resulted in a lower pass rate.

In regards to integrating instructors in developing the Hawaii portion of the examination, Mr. Thorburn proposed the following:

1. The Commission or staff will select four to ten real estate instructors to take part in the process of developing new items.
2. Those selected will then participate in a webinar conducted by PSI test development staff. The webinar will cover the essentials of item writing for a defensible licensing examination.
3. Each instructor will then be asked to construct new items in a specific content area where additional items would be helpful. Either PSI, the Commissioner, or Commission staff can assign the content area topics.
4. The completed new items written by instructors will be submitted to Commission staff and will be discussed and reviewed/modified at the next test development session before being added for pre-testing on the exam.

Mr. Thorburn stated that this is a workable, viable way to have the instructors participate in the process.

Chair Ball agreed and stated that it would help PSI to know/understand what the instructors are teaching.

Mr. Thorburn stated that the instructors are doing a good job in teaching the uniform portion as those scores are consistent. He noted that they try to remind the subject matter experts that the exam is for entry level individual, but it is difficult.

Mr. Thorburn was asked if any other states include instructors in the item writing process. He responded not many, but some do. He stated that he did not have the statistics with him, but he could find out.

Licensing –
Ratification:

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Ball, it was voted on and unanimously carried to ratify the attached list.

Licensing –

The Executive Officer informed the Commissioners that the information

Applications: provided to the Commissioners is related only to the issue that is before the Commission for consideration. The other materials submitted are available for the Commissioners review should they desire to review it. If the applicants have an issue, which is personal in nature, they have the right to request that their application be considered in executive session.

Jhanna L. K. Kanoa

The Chair asked Ms. Kanoa if she wished to have her application for real estate salesperson license considered in executive session. She declined the offer.

When asked about her plans if granted a license, Ms. Kanoa stated that she plans to work for full-time for Century 21 All Islands.

Ms. Kanoa stated that she has had no incidents since the 2007 incident she reported.

After review of the information presented by the applicant, Commissioner Loudermilk moved to approve the real estate salesperson's license of Jhanna L. K. Kanoa. Commissioner Sherley seconded the motion. The motion was voted on and unanimously carried.

Peter Chen

Mr. Chen was asked if he wished to have his application for real estate salesperson license considered in executive session. Mr. Chen declined the offer.

Specialist Endo reported that Mr. Chen was previously denied a license at the August 26, 2010, meeting and he is re-applying at this time as his circumstances have changed.

Mr. Chen thanked the Commission and stated that he wanted to show the Commission the effort he made in paying his outstanding child support.

Mr. Chen stated that if he is granted a license he will disclose to his employer his association with Omni Capital Group ("Omni"). He stated that he is still affiliated/an employee with Omni Capital Group.

Mr. Chen was asked about his current employment. He responded that he is managing a property in Kona which Omni purchased. Omni has not had any real estate transaction since March.

When asked about his plans if granted a license, Mr. Chen stated he will be working with LT Services and plans to put more time into real estate since Omni is not too busy.

Mr. Chen was asked if he believed there would be a conflict with him being employed as a real estate salesperson and his affiliation with Omni. Mr. Chen responded that he does not believe there would be a conflict. He stated that Omni would hire another broker for any future real estate transactions.

Mr. Chen stated that Omni is looking for business ventures, but not in real estate—possibly retail or restaurant investments.

Mr. Chen was asked if his position with Omni requires that he hold a real estate license. He responded no. He noted that he has friends asking him to help find properties, which is why he is seeking a license.

Mr. Chen was asked about the current nature of his employment with Omni. He responded that he maintains the property on Kona, coordinates stays—he does not engage in rental management. He noted that there is a management office and they conduct all the management.

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

Kalani Deacon

Mr. Deacon was asked if he wished to have his request considered in executive session. Mr. Deacon accepted the offer.

Executive Session:

Upon a motion by Commissioner Sherley, seconded by Commissioner Apisa, it was voted on and unanimously carried to enter into executive session, pursuant to section 92-5(a)(1), HRS, "To consider and evaluate personal information, relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;" and pursuant to section 92-5(a)(4), HRS, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities."

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Sherley, it was voted on and unanimously carried to move out of executive session.

Licensing
Applications:

Kalani Deacon

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

Licensing
Applications:

Sandy Xay

Ms. Xay was asked if she wished to have her application for real estate broker license considered in executive session. Ms. Xay declined the offer.

Ms. Xay was asked why she incorrectly answered a question on the application. Ms. Xay apologized and stated that she completed the form late at night and answered incorrectly and possibly misunderstood the question.

Ms. Xay was asked about her failure to renew her real estate salesperson license during the 2006 renewal period. Ms. Xay responded that she thought that her broker paid for the renewal. She added that she got licensed in 2003 and was still going to school. She stated that she thought her broker would take care of her renewal—she was new at the time.

Ms. Xay stated that she attended continuing education classes at the Honolulu Board of REALTORS®.

Ms. Xay was asked about not receiving a pocket card and having any suspicion that she may not have been licensed. She responded that she didn't know, she completed her continuing education requirements and believed she was compliant.

Ms. Xay was asked about her employment. She responded that at the time she was with Aloha Realty, moved to Island Realty, then worked for Price Realty/Brandon Price, who took all her money, and currently is employed with Island Realty once again.

Ms. Xay was told that if granted a real estate broker's license she would have the ability to become a principal broker. As a principal broker, she must be able to supervise others and understand the laws and rules of the state and this renewal issue is of concern.

Ms. Xay was asked at what point she realized she was not licensed. She responded when she got notice in 2006. Ms. Xay added that she believed she was licensed because she received a card from the Honolulu Board of REALTORS® and believed it was the card she needed to practice.

Ms. Xay was asked why she wanted to become a real estate broker. She replied she wants to study and learn more—just for the knowledge. She was asked what type of study she was referring to. Ms. Xay stated the prelicense course she took from Dower School of Real Estate.

Ms. Xay was asked if she renewed her license this year. She replied yes. Ms. Xay was then asked if she recalled renewing her license two years ago. She replied yes, but could not recall if she renewed in person or online.

Ms. Xay stated that she does not desire to become a principal broker or a broker in charge, but wants to learn more.

Ms. Xay was asked if she was a full time real estate salesperson. Ms. Xay responded yes and added that she is a stay-at-home mom.

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

Executive Session:

Upon a motion by Commissioner Sherley, seconded by Commissioner Apisa, it was voted on and unanimously carried to enter into executive session, pursuant to section 92-5(a)(1), HRS, "To consider and evaluate personal information, relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;" and pursuant to section 92-5(a)(4), HRS, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities."

Upon a motion by Commissioner Sherley, seconded by Commissioner Harvey, it was voted on and unanimously carried to move out of executive session.

Chapter 91, HRS,
Adjudicatory
Matters:

The Chair called for a recess from the meeting at 12:17 p.m., to discuss and deliberate on the following adjudicatory matters, pursuant to Chapter 91, HRS:

In the Matter of the Real Estate Salesperson's License of Tracy W. Motelewski; REC 2007-383-L

Following the Commission's review, deliberation, and decisions in these matters, pursuant to Chapter 91, HRS, the chair announced that the Commission was reconvening its scheduled meeting at 12:28 p.m.

Licensing
Applications:

Joshua P. Conklen

After review of the information presented by the applicant, Commissioner Loudermilk moved to approve the real estate salesperson license of Joshua P. Conklen. Commissioner Sherley seconded the motion. The motion was voted on and unanimously carried.

Shannon R. Donnelly

After review of the information presented by the applicant, Commissioner Loudermilk moved to approve the real estate salesperson license of Shannon R. Donnelly. Commissioner Sherley seconded the motion. The motion was voted on and unanimously carried.

Peter Chen

After review of the information presented by the applicant, Commissioner Loudermilk moved to approve the real estate salesperson license of Peter Chen. Commissioner Sherley seconded the motion. The motion was voted on and unanimously carried.

Sandy Xay

After review of the information presented by the applicant, Commissioner Loudermilk moved to deny the real estate broker license of Sandy Xay, based on sections 467-14(a)(3) and 436B-19(8), Hawaii Revised Statutes. Commissioner Harvey seconded the motion. The motion was voted on and unanimously carried.

Steven L. Walker

Commissioner Loudermilk recused herself from discussion and voting on this matter.

Commissioners Ball and Sherley noted that they are acquainted with the applicant, but are able to discuss and vote on this matter objectively.

Commissioner Harvey moved to deny the real estate broker license of Steven L. Walker, based on sections 467-14(a)(3) and 436B-19(8), Hawaii Revised Statutes. Commissioner Apisa seconded the motion. The motion was voted on and unanimously carried.

Kalani Deacon

After review of the information presented, Commissioner Loudermilk moved to defer decision making on Kalani Deacon's request to remove conditions until Staff is able to verify he complied with all conditions for removal. Commissioner Sherley seconded the motion. The motion was voted on and unanimously carried.

Americorp International, LLC

Commissioners Ball and Sherley noted that they are acquainted with the applicant, but are able to discuss and vote on this matter objectively.

After review of the information presented, Commissioner Harvey, moved to deny the real estate limited liability company license of Americorp International, LLC, based on sections 467-8(a)(3); 436B-19(8), (12), and (14) Hawaii Revised Statutes. Commissioner Ball seconded the motion. The motion was voted on and unanimously carried.

Committees and
Program of Work:

Laws and Rules Review Committee

Online Licensing Applications

In light of the speed that this project was processed, new administration and concerns raised by the Supervising Executive Officer, Commissioner Loudermilk moved to defer action until the new Director is able to review and confirm the process and manner in which this project was put forward. Commissioner Harvey seconded the motion. The motion was voted on and unanimously carried.

Next Meeting: Thursday, January 27, 2011
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 12:35 p.m.

Reviewed and approved by:

/s/ Jon Ellis M. Pangilinan
Jon Ellis M. Pangilinan
Executive Officer

January 14, 2011
Date

[] Approved as circulated.
[X] Approved with corrections; see minutes of April 28, 2011 meeting.

APPROVED APPLICATIONS FOR REAL ESTATE
REAL ESTATE COMMISSION MEETING ON DECEMBER 16, 2010

<u>Brokers – Limited Liability Companies and Partnerships</u>	<u>Effective Date</u>
Wells Realty, LLC Ryan Well, PB	11/5/10
Hawaii Resort Consulting, LLC Paul Chicoine, PB	11/9/10
RICE Realty, LLC Keiki-Dawn Izumi, PB	11/24/10
The Ritz-Carlton Management Company, L.L.C. Becky S. Wehner, PB	11/24/10

<u>Brokers – Corporations and Partnerships</u>	<u>Effective Date</u>
Valcore Realty Group Corp. Ryan Tongg, PB	11/29/10

<u>Brokers – Sole Proprietor</u>	<u>Effective Date</u>
Miho M. Yoneyama	10/20/10
Jody L. Nako	10/27/10

<u>Limited Liability Companies and Partnerships Name</u>	<u>Effective Date</u>
Montage Hawaii Realty LLC (fka Urban Island Realty LLC)	11/18/10

<u>Equivalency to Uniform Section of Examination Certificate</u>	<u>Expiration Date</u>
Keli Deann Silva-Jackson	11/15/12
Joeseff Herman Silva-Jackson	11/15/12
Pete S. Chumwong	11/15/12
Maureen Christie Harth	11/16/12
Leroy James Morgan, II	11/23/12
Donn Gutierrez	11/23/12
Doreen Green	11/24/12
Larissa Elizabeth Ranz	12/02/12
Marshall Corland Felts	12/03/12
Brandon Scott Miles	12/06/12
Victoria Frances Miles	12/06/12

<u>Educational Equivalency Certificate</u>	<u>Expiration Date</u>
Keli Deann Silva-Jackson	11/15/12
Joeseff Herman Silva-Jackson	11/15/12
Pete S. Chumwong	11/15/12
Roger Anthony Masca	11/15/12
Maureen Christie Harth	11/16/12
Sheryl Mae Tabayan Robinol	11/17/12
Nicholas Joseph Fidelibus, III	11/23/12
Leroy James Morgan, II	11/23/12
David Eric Austin	11/23/12
Donn Gutierrez	11/23/12
Dean Earl Adolpho	11/24/12
Larissa Elizabeth Ranz	12/02/12
Brandon Scott Miles	12/06/12
Victoria Frances Miles	12/06/12

Real Estate Broker Experience Certificate

	<u>Expiration Date</u>
Keli Deann Silva-Jackson	11/15/12
Pete S. Chumwong	11/15/12
Mathew Huy Ngo	11/17/12
Debbie Arakaki	11/18/12
Ronald Anthony Hamic	11/23/12
Fabienne Marie Denise Gandall	11/23/12
Melody Hughes Pevateaux	11/23/12
Kevin Akio Makizuru	11/23/12
Kathleen K. Morgado	12/02/12
Kathleen Theresa Tezak	12/02/12

Real Estate Broker (upgrade)

	<u>Effective Date</u>
Harry W. Champ	11/03/10
Russell R. Schoon	11/10/10
Andy T. Chen	11/06/10
Vanessa T. Kop	11/10/10
Deborah Oakley-Melvin	11/22/10

Continuing Education Equivalency

	<u>Effective Date</u>
Bikram Sahdev	11/17/10
William Cittadino	11/23/10