

REAL ESTATE COMMISSION
Professional & Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF SPECIAL MEETING

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

Date: Wednesday, January 4, 1989

Time: 9:00 a.m.

Place: Conference Room
Department of Business and
Economic Development
250 South King Street, Penthouse
Honolulu, Hawaii

Present: Gloria Damron, Chairman
Yoshiko Kano, Kauai Member
Michele Matsuo, Public Member, Late arrival
Marcus Nishikawa, Member
Constance Smales, Public Member, Late
arrival
Douglas Sodetani, Maui Member
Yukio Takeya, Hawaii Member
Peter Yanagawa, Member, Late Arrival

Calvin Kimura, Executive Secretary
Cynthia Yee, Information Officer
Russell Wong, Assistant Information Officer
Irene Kotaka, Secretary
Glenn Grayson, Deputy Attorney General

Brian Thomas, Liaison, Hawaii Association
of Realtors
Eileen Luko, Education Director, Hawaii
Association of Realtors
Dr. Nicholas Ordway, Chairholder/Director
Hawaii Real Estate Research & Education
Center

Absent: Larry Ordonez, Public Member

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

Commissioner Matsuo arrived.

Executive Secretary's Report: The Executive Secretary reported that Commissioner Ordonez called that he would not be available for today's meeting.

Commissioner Smales arrived.

Additions to the Agenda: Upon a motion by Commissioner Takeya, seconded by Commissioner Kano, it was voted on and unanimously carried to add the following items to the agenda:

7. Special Issues
 - a. Renewal Report
 - b. Renewal Applications
 - c. REEA Membership

Special Issues: RENEWAL REPORT

The Executive Secretary reported on the status of the real estate licensing renewals.

Letters were sent out to the principal brokers in the beginning of November to inform them of how they can expedite the processing of their renewals by submitting the renewal applications early. It was anticipated that if the bulk of renewals were received prior to the crunch, it would not be necessary to request overtime to process the renewals in a timely manner. However, approximately 75% of the renewals were received from mid-December onwards. On December 30, 1988, there were long lines at the counter of people waiting to turn in their renewals.

Commissioner Yanagawa arrived.

It was suggested that Licensing Branch consider staggered renewals, with licenses expiring on licensee's birthdate or have to renew license by licensee's last name.

Commissioner Smales stated that the Commission may also want to consider prorating a portion of the continuing education requirement for those who are newly licensed or who may only have a short time in which to complete the continuing education requirement prior to renewal.

It was recommended that the Commission look into the possibility of earmarking a portion of the funds received from fees for hiring additional staff to handle the overload.

Commissioner Takeya recommended looking into the feasibility of assessing fees for the processing of changes.

The Executive Secretary reported that the Business Registration Division had a trial period in which funds received for express processing were set aside for hiring people to handle the overload. After this was proven effective, the Business Registration Division followed through by submitting appropriate legislation.

Chairman Damron assigned the task of researching staggered licensing and other alternative methods for the expeditious processing of license renewals to Commissioner Sodetani. Commissioner Nishikawa stated that he would be interested in assisting Commissioner Sodetani as he has received many calls related to this problem.

After Commissioners Sodetani and Nishikawa complete their research, Commissioner Smales recommended that the Commission, as a whole, meet with the Director and the Licensing Administrator to discuss what can be done to expedite the renewal process and new licensing process.

Commissioner Nishikawa stated that he has heard many comments that unlicensed individuals are representing themselves to be real estate brokers. He recommended

that the Commission request that the Hawaii Association of Realtors include on the DROA form a statement which says that the parties in the transaction have seen the real estate license. He also recommended that the Commission require that the pocket card and wall license be returned to the Commission immediately when a license is forfeited, suspended, terminated, or revoked. Commissioner Sodetani also requested that the Commission investigate the possibility of requiring the submission of a tax clearance before a license can be renewed.

The Executive Secretary shall ensure that the pocket license and wall certificate are surrendered immediately when a license is forfeited, suspended, terminated, or revoked.

RENEWAL APPLICATIONS

The Executive Secretary requested that the Commission establish a policy for handling license renewals of licensees who have had or have pending disciplinary actions against them.

Upon a motion by Commissioner Sodetani, seconded by Commissioner Takeya, it was voted on and unanimously carried to establish the following policy:

1. Process renewal applications for those who have had or have pending disciplinary actions against them unless there is an outstanding fine or the period of suspension is not complete.
2. If it is discovered that a licensee has made a false statement, the matter shall be brought back to the Commission for further action.

Program of Work:

ADMINISTRATION BILLS

Copies of the proposed administration bill relating to condominium association registration and bonding were distributed to the Commissioners for their review and approval.

The Condominium Specialist presented an overview of the changes that were made to the administration bill. The bill provides that if a condominium association is not registered, it cannot bring forth any legal action until they become registered.

Commissioner Sodetani asked staff to clarify the difference between the licensing process and registration.

In order to be licensed, an applicant normally meets minimum qualifications, i.e. education and examination process. An applicant also has the right to a hearing upon denial. There are no education or examination requirements that are required in order to be registered. The disciplinary action involved is termination of the registration. In the cases of condominium hotel operators and condominium managing agents, they are to be registered. They are required to have a real estate broker and bonding real estate broker license could be subject to disciplinary action.

The final draft should be amended to include penalty provisions and references to revocation should be changed to termination as a registration can be terminated and not revoked.

Upon a motion by Commissioner Takeya, seconded by Commissioner Sodetani, it was voted on and unanimously carried to approve the final draft, as amended.

Upon a motion by Commissioner Sodetani, seconded by Commissioner Smales, it was voted on and unanimously carried to approve the submission of an appropriation bill to accompany the bill relating to condominium association registration and bonding.

The Condominium Specialist reported that he has invited representatives from the insurance companies to be present at the

January 26, 1989 Condominium and Cooperative Review Committee meeting to discuss the bonding issue. He also stated that he will be promulgating the rules for Chapter 514A, HRS, for the sections affected by this legislation.

Copies of the proposed bill relating to condominium management recovery and education funds were distributed to the Commissioners for their review and comments.

The Condominium Specialist gave a summary of the changes made to the Commission's bill relating to the condominium management recovery and education funds. He stated that if the association of apartment owners does not have the required fidelity bond or the managing agent is not a licensed real estate broker and does not have the required fidelity bond, they would not be able to recover moneys from the fund. If an order is paid from the condominium managing agent's recovery fund, no moneys can be paid out from the real estate recovery fund.

The Condominium Specialist reported that there is a great need for consumer education with respect to condominiums, association of apartment owners, consumer rights and other issues and funds should be set aside for educational materials.

Upon a motion by Commissioner Takeya, seconded by Commissioner Sodeani, it was voted on and unanimously carried to approve the final draft of the bill relating to condominium management recovery and education funds to include the following amendments:

1. The maximum amount to be paid out against any licensee shall be amended to \$50,000 in keeping with the real estate recovery fund.

2. The fees shall be placed under the jurisdiction of the Director of the Department of Commerce and Consumer Affairs.
3. Commission staff to work on appropriate language for directing that a portion of the funds be set aside for deposit into the education fund.

Commissioner Nishikawa asked if the Commission has the authority to hire auditors to audit real estate records. He stated that this system is working in the States of California, Oregon, and Washington. He asked if it would be feasible to ask real estate brokers to submit a certified audit as part of their records.

The Executive Secretary reported that the audits work in the other states because the States of California, Oregon, and Washington all have a Department or Division of Real Estate. The Department or Divisions have auditors solely doing real estate broker audits. The Regulated Industries Complaints Office has some authority to conduct audits on real estate brokers. If RICO hired auditors, they would provide auditing for all areas and not only real estate. The education fund would only hire auditors for education or research purposes only, not enforcement.

CONDOMINIUM HOTEL OPERATOR FINAL REPORT
WITH PROPOSED LEGISLATION

Dr. Ordway presented a summary of the Final Condominium Hotel Operators Report to the Commissioners. No proposed legislation was attached.

Dr. Ordway stated that the impact to the recovery fund based on complaints paid out against condominium hotel operators is \$45,000 per year, since the inception of the condominium hotel operators registration in 1985. The average payout against a condominium hotel operator is

\$8,000. There are currently approximately \$100,000 in claims against condominium hotel operators that are being processed.

In his report, Dr. Ordway suggests that the recovery fund for the condominium hotel operators be segregated from the real estate recovery fund and be named the surety fund. This fund would be able to fill the gap that the surety bond would not be able to fill.

Dr. Ordway's report analyzed the requiring of condominium hotel operators registration and the continuation of the condominium hotel operator operating under a real estate broker's license. He stated that there are advantages to setting up separate licensing requirements for condominium hotel operators and that this area is an area with tremendous potential harm to the consumer. The report suggested taking the condominium hotel operator registration out from under the jurisdiction of the Real Estate Commission, similar to the Time Share Program. The report suggested developing a task force to see what kind of changes need to be set up in the rules to make it workable.

The report recommends:

1. Separate licensing for vacation management and that regulation be custom-designed to fit the industry.
2. Establish a surety fund for condominium hotel operators.
3. Develop a data base to study what is impacting the recovery fund.

Commissioner Sodetani had strong reservations as to requiring condominium hotel operators to be licensed. He felt that it would be over regulating the industry.

Upon a motion by Commissioner Takeya, seconded by Commissioner Sodetani, it was voted on to approve the recommendations of the Condominium Hotel Operators Final Report as submitted. Those in favor of the motion were: Commissioners Kano, Sodetani, Takeya, and Damron. Those opposed to the motion were: Commissioners Smales, Nishikawa, and Yanagawa. Commissioner Matsuo abstained from voting.

The Deputy Attorney General opined that the motion was passed as a quorum was obtained.

Upon a motion by Commissioner Sodetani, seconded by Commissioner Takeya, it was voted on and carried to submit the Condominium Hotel Operator's Final Report to the Legislature without any recommended legislation. Commissioners Kano, Takeya, Sodetani, Yanagawa, Nishikawa, Smales, and Damron voted aye. Commissioner Matsuo was opposed to the motion.

Continuing
Education:

UPDATE REPORT

Commissioner Smales presented an updated report on continuing education. She reported that the areas for certifying teachers were too restrictive and that provisions were drafted to deal with this. This matter will be discussed at the next Education Committee meeting on January 11, 1989. Commission staff is currently working on the development of the tracking system.

Chairman Damron commended Commissioner Smales for her hard work in developing the continuing education program.

It was reported that the Advisory Committee is in place for each of the modules in January. The modules should be ready at the end of January.

PROVIDERS AND INSTRUCTORS

After a review of the information submitted by Jo Jean Schieve, Commissioner Sodetani moved to approve Ms. Schieve's application for continuing education instructor for the three modules: Finance, Laws Update and Ethics, and Contracts. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

Relocation of
Commission Office:

The projected relocation of the Real Estate is February 1989.

Special Issues:

CONDOMINIUM HOTEL OPERATORS

The Executive Secretary asked for clarification on the following situations related to the licensing of condominium hotel operators:

Situation 1:

Question #1: A corporation enters into lease agreements with individual owners of condominium apartments. The individual apartment owner is the lessor and the corporation is the lessee. Under the agreement, the lessee is to pay a monthly rental payment of \$600 per month to the lessor. The lessor agrees to lease the condominium apartment to the lessee for hotel purposes. The condominium apartment is utilized for hotel purposes for less than 30 days usage, with front desk, maid services, etc. Would the corporation be considered a condominium hotel operator?

Question #2: If the corporation is a licensed real estate broker, would the response be different?

Situation 2:

Question #3: The individual owners of condominium apartments enter into a property management agreement with a licensed real estate brokerage corporation. The real estate brokerage corporation enters into a long term rental

agreement, one year lease, with a tour package corporation. The tour package corporation will pay a monthly rental payment to the real estate brokerage corporation, who will take a management fee and remit the balance to the apartment owner. The tour package corporation operates the apartment units as a hotel and places tour package clients into the units for less than 30 days occupancy. Is the tour package corporation a condominium hotel operator?

Question #4: Is the real estate brokerage corporation a condominium hotel operator?

Upon a motion by Commissioner Takeya, seconded by Commissioner Sodetani, it was voted on and unanimously carried as follows:

Question 1 - Yes
Question 2 - No
Question 3 - Yes
Question 4 - Yes

Special Issues:

CONTINUING EDUCATION - UPDATE REPORT

The Executive Secretary reported that the Sunset Evaluation Report for Chapter 467, Hawaii Revised Statutes, states that it is the opinion of the Legislative Auditor that continuing education requirement need not be implemented until 1991.

Executive Session:

Upon a motion by Commissioner Takeya, seconded by Commissioner Kano, it was voted on and unanimously carried to enter into Executive Session, at 11:55 a.m., pursuant to Chapter 92-5(a)(4), "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 Takeya, seconded by Commissioner Smales, it was voted on and unanimously carried to move out of Executive Session at 11:59 a.m.

The Commission requested an informal oral opinion from the Deputy Attorney General, to be followed by a request for a formal opinion.

The Deputy Attorney General stated that based on his review of the Act and its legislative history, the Commission should proceed with the implementation of the continuing education requirement immediately during the next two years.

Upon a motion by Commissioner Takeya, seconded by Commissioner Smales, it was voted on and unanimously carried to proceed with the continuing education program and that a formal written opinion be requested.

Chairman Damron shall contact the Hawaii Association of Realtors immediately to inform them that the Commission is proceeding with their plans for the implementation of the continuing education program. Commission staff shall draft a letter for the Chairman's signature. The letter shall be sent to the Executive Vice-President and the Education Director of HAR.

Announcements:

DEFINITION OF REAL ESTATE SALESPERSONS AND BROKERS

Commissioner Matsuo reported that Stanley Kuriyama has offered his assistance to the Commission in clarifying the definition of real estate brokers and salespersons.

REAL ESTATE APPRAISAL TASK FORCE

Commissioner Kano reported that the next meeting of the Real Estate Appraisal Task Force is on January 4, 1989 at 3 p.m. in the Exam/Conference Room, Second Floor, Kamamalu Building, 1010 Richards Street, Honolulu, Hawaii. Commissioner Sodehara requested that the Commissioners try to be present at the meeting.

REAL ESTATE ADVISORY COUNCIL

Commissioner Nishikawa reported that Dean Bess has approved the candidates submitted for appointment to the Real Estate Advisory Council. Letters of commendation and appointment are being drafted and will be sent out to those involved.

REAL ESTATE EDUCATION COMMITTEE MEETING

Commissioner Nishikawa has invited Dr. Fujio Matsuda and Dean Bess to be present at the next Real Estate Education Committee Meeting on January 11, 1989. Dr. Matsuda will discuss the function of the Research Corporation of the University of Hawaii. Dean Bess will discuss the plans for real estate courses to be offered by the College of Business Administration at the University of Hawaii.

Next Meeting:

Friday, January 27, 1989
Kuhina Nui Room
Second Floor, Kamamalu Building
1010 Richards Street
Honolulu, Hawaii

Adjournment:

With no further business to discuss, Chairman Damron adjourned the meeting at 12:15 p.m.

Taken and recorded by:

Irene Kotaka

Irene S. Kotaka, Secretary

Reviewed and approved by:



Calvin Kimura
Executive Secretary

02/23/89

Date