

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

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: Friday, May 23, 1997

Time: 9:00 a.m.

Place: Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Present: Barbara Dew, Chair
Stanley Kuriyama, Vice Chair
Charles Aki, Hawaii Member
Michael Ching, Kauai Member
Alfredo Evangelista, Public Member
Carol Mon Lee, Public Member
Helen Lindemann, Oahu Member
Nora Nomura, Public Member

Christine Rutkowski, Executive Officer
Edmond Ikuma, Senior Real Estate Specialist
Russell Wong, Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Gina Watumull, Condominium Specialist
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary

Haunani Alm, Special Deputy Attorney General
Steve Gilbert, Hawaii Real Estate Research and Education Center
John D. Morgan
Daryl R. Gerloff

Excused: Alvin Imamura, Maui Member

Call to Order: The Chair called the meeting to order at 9:08 a.m., at which time quorum was established.

Chair's Report: The Chair reported that former Commission Chair, Marcus Nishikawa's funeral was held on Tuesday. She stated that she had an opportunity to speak on behalf of the Commission at the services. She also stated that all of us have lost a dear friend.

The Chair reported that she and Commissioner Lindemann attended meetings held by the National Association of REALTORS. The Chair is a member of the License Law Committee. She reported that ARELLO would like to see the States become involved in portability or reciprocity. In the case of portability, the Federal government would oversee the licensing laws. No decisions were made at the meetings. The Committee also discussed affinity groups. The Committee is not in favor of it because they anticipated numerous problems. They are also examining the RESPA laws.

The Chair also reported that the Board of Directors for the National Association of REALTORS has passed a resolution for Mr. Nishikawa. The resolution will be sent to Mr. Nishikawa's family.

There was a delegation who went to Congress to discuss the RESPA laws. The real estate, banking and title industries are looking at the laws to see how it can be simplified.

The Chair reported that she read that most States say that television advertising rules applies to the Internet.

Executive Officer's Report:

Announcements, Introductions, Correspondence and Additional Distributions

The following additional materials were distributed prior to the start of the meeting:

- 6. Licensing - Questionable Applications
 - c. Kekaulike Management Company, Ltd.

Upon a motion by Commissioner Lee, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to approve the issuance of a Certificate of Appreciation to June Kamioka, Executive Officer.

Licensing and Registration - Ratification:

Upon a motion by Commissioner Lindemann, seconded by Commissioner Aki, it was voted on and unanimously carried to approve the ratification of the following:

<u>Brokers - Corporations and Partnerships</u>	<u>Effective Date</u>
The Unreel Marine Corporation, Accord Realty	04/18/97
Ecumenical Association for Housing	04/01/97
JDI Realty, Inc.	04/23/97
Sports Realty Incorporated	05/02/97
Gold Coast Services Real Estate, Inc.	05/14/97
 <u>Brokers - Sole Proprietor</u>	 <u>Effective Date</u>
Roy I. Matsumoto	04/15/97
Douglas H. Weinstein	04/14/97
Robert G. Colley	04/15/97
Edmund L. Lee, Jr.	04/17/97
 <u>Tradenname</u>	 <u>Effective Date</u>
Jean Ganzer, Miracle Sales & Mgmt.	05/02/97
 <u>Site Office</u>	 <u>Expiration Date</u>
Schuler Realty Maui, Inc.	10/23/97
Iao Parkside, Phases I, III, IVA and IVB	
Haseko Realty, Inc.	11/29/97
The Courtyards at Punahou	
Day-Lum, Inc., Coldwell Banker Day-Lum Properties	12/08/97
Lyman Gardens Senior Community	
ERA Maui Real Estate, Inc.	10/17/97
Kua'u Bayview at Pa'ia	
 Marcus & Associates, Inc.	 10/23/97

Lapa'olu
 Westview Plaza
 Iwalani - Village 5 of the Villages of Kapolei
 Pacific Resource Realty 10/07/97
 Olaloa II and III Gentry Realty, Ltd., a Hawaii Corporation
 10/14/97
 Fiesta Del Verde by Gentry
 Concepts Unlimited, Inc., ERA Concepts Unlimited 10/20/97
 1450 Young Street

<u>Branch Office</u>	<u>Effective Date</u>
CBIP, Inc. Coldwell Banker Island Properties Albert V. Chiarella, bic Douglas R. Fitch, pb	05/09/97

<u>Education Waiver Certificate</u>	<u>Expiration Date</u>
Gail Yvonne Grendahl	04/29/98
Erica Lam Piccolo	04/30/98
Asipau Pamela Plouffe	05/06/98

<u>Real Estate Broker Experience Certificate</u>	<u>Expiration Date</u>
Richard A. Simon	04/16/98
Kim J. Boeringa	04/17/98
Davette A. Teves	04/17/98
Noelani Fowler	04/18/98
Carlton P. Yim	04/18/98
Alice C. Lombardo	04/29/98
Diane M. Anderson	04/30/98
Charles A. Whalen, Jr.	05/09/98

<u>Real Estate Broker (upgrade)</u>	<u>Effective Date</u>
Maurice J. Douek	04/15/97
Roger M. Madariaga	04/17/97
Elton M. Yugawa	04/18/97
Glenn S. Nishihara	04/02/97
Danette Mettler	05/05/97
Richard A. Simon	04/22/97
Kim J. Boeringa	05/02/97

<u>Continuing Education Waiver</u>	<u>Effective Date</u>
Edwina A. L. Wong	04/10/97

<u>Condominium Hotel Operator</u>	<u>Effective Date</u>
Kahana Falls Limited Partnership	04/25/97
Anne Marie Wachler Poipu Connection Realty	04/18/97

<u>Condominium Managing Agent</u>	<u>Effective Date</u>
Kahana Falls Limited Partnership	04/25/97
C I Management, Inc.	04/15/97

Questionable
Applications:

Daryl R. Gerloff was present to answer any questions the Commission might have regarding his application for a real estate broker's license. Mr. Gerloff declined the offer to have his application considered in executive session.

Mr. Gerloff stated that he is presently with Realty Executives Honolulu. He has been working full-time for the last five years. His wife is a real estate broker and they would like to have their own company. Mr. Gerloff stated that he had answered "Yes" to the question regarding any pending lawsuits. He stated that the letter he submitted to the Commission speaks for itself. He stated that he is involved in a pending mediation which resulted from a disgruntled buyer who he feels does not have grounds for the complaint.

Mr. Gerloff was informed that he should not disclose information about the pending case in the event that the case is referred to RICO and the matter comes up before the Commission.

Mr. Gerloff stated that he does not feel that the buyer will file for arbitration because of the facts of the matter. He feels that she will probably drop it. He stated that he will probably have to pursue the buyer in order to have his \$55,000 released. Mr. Gerloff stated that he did not think that he had done anything wrong.

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

John D. Morgan, Island Ventures

John D. Morgan was present to discuss his real estate sole proprietor application. Mr. Morgan declined the offer to discuss his application in executive session.

Mr. Morgan stated that the documents he submitted tells his story. He does not have anything else to add to it.

Mr. Morgan stated that he has paid the IRS almost \$70,000. His wife has had to move to the mainland to work. She took most of their paperwork with her in anticipation of the taxes. They have paid the IRS an enormous amount of money. The person who he was dealing with at the IRS in Hawaii retired. The whole thing was turned over to someone in Fresno, CA. He was told to pay what he could and they have been making payments. They have also made arrangements with Mrs. Toma at the State of Hawaii's Department of Taxation and have been making payments.

Mr. Morgan stated that the whole thing started when he changed his address from an apartment to a business office. Mr. Morgan stated that the Licensing Branch was unaware of his sole proprietorship. He stated that he was informed that he had fallen through the cracks. He would like to get back to work as a sole proprietor and continue to make payments on the money that he owes.

Mr. Morgan's license has been forfeited since January 1, 1997. Mr. Morgan did not restore his license until January 10, 1997. His license was restored to an inactive status.

Mr. Morgan was asked if he had documents from the IRS stating that they were willing to suspend collection and if he had a minimal payment schedule. Mr. Morgan stated that everything he has was submitted to the Commission.

Mr. Morgan stated that his mother had died and left him some properties on the mainland and his wife also had unexpected income. His wife was involved in Stark Properties. She had commission in escrow to pay for the taxes, but the whole thing fell apart. The money was returned to the buyers so the sales people lost the moneys owed to them. If this did not happen, they would have had enough money to pay their taxes.

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

Committee Reports:

Laws and Rules Review Committee

Special Issues - Dana G. Kenny, BIC, Savio Realty, Ltd. Better Homes and Gardens

Commissioner Kuriyama stated that although he was not present at the May 7, 1997 Committee meeting, he had concerns about the Committee's recommendation. He stated that in previous cases the basis for the ruling was that there was no licensed real estate activity conducted and that is why no registration is required. The recommendation does not state that. He stated that the wording is very different from the Prudential Locations decision. He is concerned that the recommendation raises a lot of problems.

If it is a sporadic type of activity and is not a regular place of business, they do not have to have a site office or a branch office.

The Deputy Attorney General stated that the proposed rules might have to address the miscellaneous situations which arise.

Commissioner Nomura stated that in the discussion at the May 7 meeting, it was not considered a place of business so transactions did not have to be handled at the particular site.

If the location does not fall within the definition of a site office or a branch office, and if there is real estate activity occurring there, it must be conducted by a real estate licensee.

The definition of site office in the new rules has been changed. The registration period for the site office is for one year instead of six months.

Commissioner Lindemann stated that the site office regulations are consistent.

Commissioner Aki stated that the Commission should view it as a kiosk in a shopping center. The difference is that it is in a farmer's market and not a shopping mall. The farmer's market in Hilo is a permanent one. There are regular days, Wednesdays and Saturdays.

Commissioner Lindemann stated that the consumer could be harmed if the licensee accepts the deposit and a contract is written there. However, she noted that could also happen any where.

Commissioner Ching stated that the principal broker would still be held accountable for the actions of the licensees under him.

Commissioner Kuriyama stated that the principal broker is still responsible. The Commission is considering the deregulation of branch offices and site offices. However, licensees would still be required to keep the Commission informed of their current addresses.

Commissioner Aki agreed that the principal broker is still responsible and that statutory changes would have to be made.

Commissioner Nomura moved to approve the amended report of the May 7, 1997 Laws and Rules Review Committee meeting as follows:

1. Program of Work - Program of Work and Budget FY98
Recommend that the Commissioners provide their written comments on the proposed Program of Work for FY98, Draft 1-A, to the SEO by the next Commission meeting, which is **May 23, 1997**, that the working draft be distributed to the Hawaii Association of REALTORS and its local boards for written comments, and that the Program of Work and Budget, FY98 needs to be completed by the Commission and approved by the Director before July 1, 1997.
2. Budget and Finance Report - Real Estate Recovery Fund, March 1997
Recommend acceptance of the Real Estate Recovery Fund reports for the period ending March 31, 1997.
3. Special Issues - Dana G. Kenny, BIC, Savio Realty, Ltd. Better Homes and Gardens
Recommend that REB staff respond to Mr. Kenny and draft proposed specific language to address the issues raised in Mr. Kenny's letter for the May 23, 1997 Real Estate Commission meeting based on previous decisions.
Staff recommends: "It is not considered a violation of the real estate licensing law and rules if the location of the real estate activity is temporary, staffed by real estate licensees, in compliance with county ordinances/regulations, and does not fall under the definition of "place of business", "branch office", or "site office"."
4. Next Meeting: Tuesday, June 17, 1997
9:00 a.m.
Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Commissioner Ching seconded the motion. The motion was voted on and unanimously carried.

Condominium Review Committee

Upon a motion by Commissioner Lee, seconded by Commissioner Ching, it was voted on and unanimously carried to approve the report of the May 7, 1997 Condominium Review Committee as follows:

1. HREREC Report
 - a. Hawaii Condominium Bulletin - HREREC will deliver the extra copies of the latest bulletin to REB staff.
 - b. Board of Director's Guide - The second draft of the Board of

- Director's Guide, "An Introduction to and Reference Guide for Hawaii Condominium Living", Draft 2 was distributed to the Commissioners and staff for review and comments. HREREC to make corrections to the revision date of the Guide and the family child care home information.
- c. Five-Year Education and Research Plan - **Recommend** that a revised Five-Year Education and Research Plan be drafted for the years 1998 through 2003.
2. Condominium Project Registration, Public Reports, Sales to Owner-Occupants, and Limited-Equity Housing Cooperatives
 - a. **Recommend approval** to ratify issuance of effective dates for public reports for the month of April, 1997.
 - b. Roger Meeker to submit a written request so that the Commission may determine if the collection of reserves is necessary if there are no maintenance costs for repair and replacement of common elements in a condominium project.
 3. Rulemaking, Chapter 107 - Proposed draft governance rules - **Recommend** that the Commissioners submit their written comments on the proposed draft before May 30, 1997 and that the subcommittee, comprised of Commissioners Lee, Kuriyama and Evangelista, work with staff on finalizing the recommendations for presentation at the June CRC meeting. **Recommend** that a copy of the proposed rules also be sent to incoming Commissioner Mitchell Imanaka and the volunteer members of the condominium focus group.
 4. Program of Work
 - a. Registrations - AOA Ratification Reports
 - 1) Registrations Issued Effective Dates through April 28, 1997 for 1996 Registration - **Approve.**
 - 2) Registrations Issued Effective Dates through April 28, 1997 for 1997 Interim Registration - **Approve.**
 - b. Program of Work and Budget FY98
Recommend that the Commissioners provide their written comments on the proposed Program of Work for FY98, Draft 1-A, to the SEO by the next Commission meeting, which is May 23, 1997 and that the Program of Work and Budget FY98 needs to be completed by the Commission and approved by the Director before July 1, 1997.
 5. CMEF Budget and Finance Report - **Recommend acceptance** of the Condominium Management Education Fund Budget and Finance Report for the period ending March 1997.
 6. Next Meeting: Tuesday, June 17, 1997
10:30 a.m.
Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

There will be a meeting on May 28, 1997 at 9 a.m. to discuss the proposed rule amendments to Chapter 107, HAR. The Commissioners were invited to attend the meeting.

The latest issue of the Condominium Bulletin will be distributed to the Commissioners.

Education Review Committee

Upon a motion by Commissioner Lee, seconded by Commissioner Lindemann, it was voted on and unanimously carried to approve the amended report of the May 7, 1997 Education Review Committee meeting as follows:

1. April 9, 1997 meeting minutes - **Accept.**
2. Hawaii Real Estate Research and Education Center Report
 - a. Broker Curriculum and Resources - Dr. Nicholas Ordway was unable to attend the meeting. Although represented at the last meeting, that Dr. Ordway was going to produce the next draft, the draft of the broker curriculum was not distributed at the meeting, nor was it received by staff.
 - b. Continuing Education Core Course (1997-98) - Commissioners and staff have submitted their comments on the core course to Mr. Gilbert. Based on the comments received, the latest draft will require extensive work and final approval and distribution will be delayed.
 - c. Consumer Guide - Although requested at the previous meeting, a copy of the Consumer Guide was not distributed.
 - d. Examination (Item writing, laws and rules report, curriculum): The report will be given to REB staff.
 - e. IDW and New Course Briefing - REB staff to meet with Mr. Gilbert to discuss and plan the next IDW course.
 - f. Five-Year Education and Research Plan (Rollover Year) - **Recommend** that a revised Five-Year Education and Research Plan be drafted for the years 1998 through 2003.
 - g. Request for No-Cost Extension - **Recommend approval** of HREREC's request for a no-cost extension for the period of July 1, 1997 through December 31, 1997.
3. Prelicensing Education Administration, Curriculum, Schools and Instructors - **Recommend approval** of the ratification of Century 21 Real Estate School as a prelicensing school.
4. Continuing Education Administration, Curriculum, Courses, Providers, and Instructors - Law Seminars International - Request to Increase Credits for One Day Seminar

Acknowledge Law Seminars International's request and **recommend** that in order for the Committee to approve such a request, the following must be submitted:

- a. A complete Application for Continuing Education Provider Registration for Law Seminars International; and
 - b. Upon submission of two (2) continuing education course modules, including the course content and that courses are in compliance with § 16-99-100, HAR.
5. Program of Work and Budget, FY 98 - **Recommend** that the Commissioners provide their written comments on the proposed Program of Work for FY98, Draft 1-A, to the SEO by the next Commission meeting, which is **May 23, 1997**, that the working draft will be distributed to the Hawaii Association of REALTORS and its local boards for written comments, and the Program of Work and Budget FY 98 needs to be completed by the Commission and approved by the Director by July 1, 1997.
 6. ARELLO, REEA and Other Organizations Report - ARELLO Education Fund Report for February 1997 - **Accept.**
 7. Budget and Finance Report, March 1997 - **Accept.**

8. Next Meeting: Tuesday, June 17, 1997
1:30 p.m.
Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Real Estate Seminars - Mr. Gilbert reported that the May 17, 1997 television program on Land Titles received a lot of phone calls. The panel discussion went well. They will be making copies of the tape, which shall be sent to the libraries and the local boards. The program will be rebroadcast on the neighbor islands on July 1. After that program takes place, they will be making copies of that tape available to those individuals who are interested in purchasing it.

Mr. Gilbert stated that in order to have the program broadcast live simultaneously on all islands, planning needs to be done at least one year in advance. For future programs, they will try to coordinate the broadcast so that the program can be shown simultaneously on all islands. Mr. Gilbert stated that they received a lot of questions and the panel was excellent. The only costs incurred were only taping costs. Unfortunately, no figures were available on how many people watched the program. There will be a repeat broadcast on Oahu. Mr. Gilbert stated that they will present more information at the June Committee meetings.

Mr. Gilbert stated that tapes were given to the participants and the rest of the tapes will be made available in July. He will forward a copy of the tape to the Commission.

Commissioner Ching reported that Title Guaranty had offered a seminar on perfect title.

Mr. Gilbert also informed the Commissioners that the Hawaii Real Estate Commission has received REEA's Regulatory Agency of the Year Award. The Award will be presented at the REEA Annual Conference in June.

Executive Session:

Upon a motion by Commissioner Lee, seconded by Commissioner Ching, it was voted on and unanimously carried to enter into executive session, pursuant to Chapter 92-5(a)(1), HRS, "To evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;"

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

Chapter 91, HAR,
Adjudicatory Matters:

The Chair called for a recess from the meeting at 10:57 a.m., to discuss and deliberate on the following adjudicatory matters, pursuant to Chapter 91, HRS:

Linda N. Brice dba Brice Associates, fka Brice Realty, REC 96-23-L

Upon a motion by Commissioner Lee, seconded by Commissioner Nomura, it was voted on and unanimously carried to approve the Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Commission's Final Order.

Terry A. Gomes and Coin Realty Company, Inc., REC 95-147-L

Upon a motion by Commissioner Ching, seconded by Commissioner Lindemann, it was voted on and unanimously carried to approve the Settlement Agreement With Terry A. Gomes After the Filing of Petition for Disciplinary Action and Commission's Final Order, upon the approval of the Settlement Agreement, the check will be given to RICO.

Suzanne E. Henry and Philip C. Henry, dba Kihei Surf & Sun Rentals, REC 95-129-L

Upon a motion by Commissioner Lindemann, seconded by Commissioner Nomura, it was voted on and unanimously carried to defer decision making on this matter for clarification by RICO.

Michael G. Kenyon dba Waiohuli Beach Holidays, REC 95-180-L

Upon a motion by Commissioner Lee, seconded by Commissioner Nomura, it was voted on and unanimously carried to approve the Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order.

Woodrow S. Tom dba W. S. Tom, REC 96-123-L

Upon a motion by Commissioner Nomura, seconded by Commissioner Lindemann, it was voted on and carried to approve the Settlement Agreement with Respondent Woodrow S. Tom Before Filing of Petition for Disciplinary Action and Commission's Final Order. Commissioner Ching abstained from voting.

The Commission raised concerns over the lack of consistency in the Settlement Agreements.

Following the Commission's review, deliberation and decision in this matter, pursuant to Chapter 91, HRS, the Chair announced that the Commission was reconvening its scheduled meeting at 11:13 a.m., pursuant to Chapter 92, HRS.

Executive Session:

Upon a motion by Commissioner Lee, seconded by Commissioner Ching, it was voted on and unanimously carried to enter into executive session, pursuant to Chapter 92-5(a)(1), HRS, "To evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;"

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

Licensing - Restoration of Forfeited Licenses:

Donald G. Bruno	Salesperson
Shinzo Nozaki	Salesperson
Todd G. Sorrell	Salesperson
Karen Yukie Kido Mascatello	Salesperson
Michael A. Medeiros	Salesperson

After a review of the information presented by the applicants, Commissioner Lee moved that restoration of the forfeited real estate salespersons' licenses be approved upon submitting evidence of successfully passing the real estate

salesperson's licensing examination. Commissioner Lindemann seconded the motion. The motion was voted on and unanimously carried.

Licensing -
Questionable
Applications:

Daryl R. Gerloff

After a review of the information presented by the applicant, Commissioner Ching moved to approve the real estate broker application of Daryl R. Gerloff. Commissioner Aki seconded the motion. The motion was voted on and unanimously carried.

John D. Morgan dba Island Ventures

After a review of the information presented by the applicant, Commissioner Ching moved to approve the restoration of John D. Morgan's sole proprietorship. Commissioner Aki seconded the motion. The motion was voted on and unanimously carried.

Kekaulike Management Company, Ltd.

Chair Dew was excused from the meeting due to a conflict of interest. The Vice Chair presided over the meeting.

Upon a motion by Commissioner Ching, seconded by Commissioner Aki, it was voted on and unanimously carried to defer decision making on the real estate corporation application of Kekaulike Management Company, Ltd.

Real Estate Magic, Inc.

After a review of the information submitted by the applicant, Commissioner Ching moved to approve the condominium managing agent registration of Real Estate Magic, Inc. Commissioner Aki seconded the motion. The motion was voted on and carried.

The Chair returned to the meeting and resumed presiding over the meeting.

Next Meeting:

Friday, June 27, 1997
9:00 a.m.
Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Adjournment:

With no further business to discuss, the Chair adjourned the meeting at 11:19 a.m.

Reviewed and approved by:

/s/ Christine Rutkowski
Christine Rutkowski, Executive Officer

June 27, 1997
Date

