

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: Friday, August 25, 2006

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
Stanley Kuriyama, Vice Chair, Broker/Honolulu Commissioner
Louis Abrams, Broker/Kauai Commissioner
Annette Aiona, Broker/Hawaii Island Commissioner
William Chee, Broker/Honolulu Commissioner
Frances Gendrano, Salesperson/Honolulu Commissioner
Michele Sunahara Loudermilk, Public/Honolulu Commissioner
Mark Suiso, Public/Honolulu Commissioner

Calvin Kimura, Supervising Executive Officer
Neil Fujitani, Executive Officer
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
David Grupen, Condominium Specialist
Diane Choy Fujimura, Senior Real Estate Specialist
Lorene Kimura, Real Estate Specialist
Shari Wong, Deputy Attorney General
Lei Fukumura, Special Deputy Attorney General
Irene Kotaka, Secretary

Myoung Oh, Hawaii Association of REALTORS
Anne Deschene, Hawaii Association of REALTORS
Cherylanne Duque
Donald M. Shea
Eadean Buffington, Esq.
Nina Yang, Esq.

Absent: Carol Ball, Broker/Maui Commissioner

Call to Order: The Chair called the meeting to order at 9:02 a.m., at which time quorum was established.

Chair's Report: Chair Nishihara introduced Anne Deschene, Executive Vice President of the Hawaii Association of REALTORS to those present.

Commissioner Ball was excused from the meeting. Prior notification of her non-attendance was received.

Executive Officer's Report:

The Executive Officer informed the Commissioners that the original applications with any original associated documents to be considered at the meeting were available for review.

Announcements, Introductions, Correspondence and Additional Distributions

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

4. Committee Reports
 - c. Condominium Review Committee – New Condominium Law Seminar

Additions to the Agenda

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Suiso, it was voted on and unanimously carried to add the following item to the agenda:

6. Licensing – Applications
 - d. Cherylanne M. Duque

Minutes of Previous Meeting

Commissioner Kuriyama noted a concern to the minutes on page 6, paragraph 3 of the minutes, regarding the recusal of a Commissioner due to ex parte communication. Clarification was requested on whether or not the Sunshine Law prohibits someone from discussing an issue with outside parties at a board meeting.

After a discussion, the Commission decided that the minutes should remain as it is and that further discussion on ex parte communication be deferred to the Laws and Rules Review Committee meeting.

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Aiona, it was voted on and unanimously carried to accept the regular minutes and the amended executive session minutes of the July 28, 2006 meeting as circulated.

Committee Reports:

Laws and Rules Review Committee

Upon a motion by Commissioner Abrams, seconded by Commissioner Chee, it was voted on and unanimously carried to accept the report of the August 9, 2006 Laws and Rules Review Committee meeting as follows:

1. Minutes of the July 12, 2006 Meeting – **Accept**
2. Program of Work, FY07
 - a. Neighbor Island Outreach – The next neighbor island outreach is being planned for the island of Maui.
 - b. Ad Hoc Committee on Consumer Broker Relationships – **Recommend** that the Education Review Committee, through the

Education Evaluation Task Force ("EETF"), consider and develop a mandatory CE core course for the next licensing biennium that includes four hours of instruction on consumer broker relationship issues, laws and rules, with EETF providing comprehensive recommendations on the inclusion of laws and rules update and the number of classroom hours for each section and **further recommend** that the Ad Hoc Committee on Consumer-Broker Relationships develop and recommend a list of concerns and an outline of consumer-broker curriculum items to be considered that will be forwarded to the ERC and the EETF for their consideration.

3. Next Meeting: Wednesday, September 13, 2006
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Education Review Committee

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Chee, it was voted on and unanimously carried to accept the report of the August 9, 2006 Education Review Committee meeting as follows:

1. Minutes of July 12, 2006 – **Accept**
2. Continuing Education Administration, Curriculum, Courses, Providers and Instructors – Applications
 - a. 2005-2006 Continuing Education Providers and Courses Ratification List – **Recommend approval** of the attached list.
 - b. Course – “Real Estate and Taxes! What Every Agent Should Know;” Author/Owner: Dearborn Real Estate Education; Provider: Reef, Inc. dba Hawaii Institute of Real Estate; Course Category: Other – Real Estate Taxes; Clock Hours: 3 - **Recommend approval**
3. Prelicensing Education Administration, Curriculum, Schools, Instructors, and Equivalency
 - a. Administrative Issues
 - 1) Dower School of Real Estate Windward; Letter re combining live classroom and independent study delivery methods for prelicense courses – **Defer**
 - 2) All Islands Real Estate School, Carol M. Egan, Principal – Request to conduct joint salesperson and broker classes – **Defer** and subject to receipt of written explanation as to what specific broker curriculum topics will be taught separately in 20 hours.
 - b. Applications – Instructor – Carol M. Egan, Salesperson and Broker Curricula, All Islands Real Estate School – **Recommend approval**
4. Program of Work, FY07 – Division and Department Programs – RICO; ARELLO Advanced Investigator & Attorney Workshop, November 14 – 17, 2006, - **Recommend approval** of proposed budget

5. Next Meeting: Wednesday, September 13, 2006
Upon adjournment of the Laws and Rules Review
Committee Meeting, that convenes at 9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Condominium Review Committee

Upon a motion by Commissioner Chee, seconded by Commissioner Abrams, it was voted on and unanimously carried to accept the report of the August 9, 2006 Condominium Review Committee as follows:

1. Minutes of the July 12, 2006 Meeting – **Accept**
2. Condominium Governance and Management – AOA Registrations – **Recommend approval** to defer the fidelity bond issue to the September CRC meeting.
3. CPR Registration and Developer's Public Reports
 - a. §514B-3 "Project", 514B-21, 514B-31, 514B-82, 514B-54, 514B-32, 514B-33, 514B-108, 514B-86, 514B-92, 514B-93, HRS – Declaration of Condominium Property Regime Recordation and Execution Requirements for Commission's Issuance of an Effective Date for a Developer's Public Report
 - 1) Dennis M. Lombardi, Esq., CASE LOMBARDI & PETTIT – 514B-54, 514B-32, 514B-33, 514B-108, HRS, Requests
 - 2) Edward R. Brooks, Esq., BROOKS TOM PORTER & QUITIQUIT, LLP – for listed members of the former Blue Ribbon Condominium Law Recodification Committee – Recordation Requirements §514B-54(a)(4), HRS, Requests**Recommend approval** to defer the issues to the September CRC meeting.
 - b. Edward R. Brooks, Esq., BROOKS TOM PORTER & QUITIQUIT, LLP, for listed members of the former Blue Ribbon Condominium Law Recodification Committee – Recordation and Building Permit Requirements §514B-92(b)(3)(C)(ii), HRS, Requests – For those condominium project registrations relating to projects located in the City and County of Honolulu **recommend approval** to issue an informal non-binding interpretation that "building permit for the project" as required by §514B-92(b)(3)(C)(ii), HRS, be determined on a case by case basis along with the other requirements of §514B-92, HRS, and need not be a final building permit.
 - c. Section 16-201-92, HAR – Informal Interpretations – Act 93 (205) sections 8, 9; §514A-37, 62, HB 3225 HD1, SD1, CD1, section 2 Staff provided
 - 1) Deferred from July 29, 2006 Real Estate Commission Meeting –
Recommend approval to issue an informal non-binding interpretation that Act 93 (2005) sections 8, 9; §514A-37,

62, HB 3225 HD1, SD1, CD1, section 2 (now referenced as §514A-1.5(a)(2)(A) and (B), HRS) that the “and” between (A) and (B) means “or”; thus allowing a developer to elect to register as a 514A, HRS, project where the declarations and bylaws were recorded prior to July 1, 2006; and to allow the same registration election for those developers who filed “a notice of intention” with the Commission prior to July 1, 2006, pursuant to section 514A-31, HRS.

- d. Contingent Final Public Report, Preliminary Public Report and requirements of recordation by June 30, 2006 – Request of Vernon T. Tashima, dated July 14, 2006 – **Recommend approval** to issue a written response that the Commission disagrees with his letter in particular the statement that “...by accepting the Notice of Intention and issuing the Preliminary Public Report, the Commission acknowledged that Chapter 514A applied to the property of this Project, and impliedly agreed that a condominium property regime was established.” Further **recommend** to instruct Mr. Tashima to review his request and the recommended informal non-binding interpretation of 3 c) set forth above.
- e. Request for Non-Binding Opinion on Registration Requirements applicable to Project of Entirely Non-Residential Units Exempted from Registration Pursuant to HRS Section 514B-51(b)(2) – **Recommend approval** to issue an informal non-binding interpretation that HRS Sections 514B-81(b), 514B-82, HRS, should be read consistently with HRS 514B-51(b)(2), allowing for the sale or offer of sale without registering the project with the Commission, condominium projects in which all units are restricted to non-residential uses and the respective units are to be each sold for \$1,000,000 or more.
- f. Informal Non-Binding Interpretation Requests - §514A-40(b), HRS, §16-107-4, HAR – Due in part that the county is unable to provide a statement of county code, zoning and permitting compliance, that the proposed condominium project, Orion Park Condominiums and Orion Condominiums, involves the conversion of federal property to condominium status where the construction of improvements were exempt from State and City building regulations and requirements; **recommend approval** to issue an informal non-binding interpretation that the Commission accept in satisfaction of the county compliance letter required by §514A-40(b), HRS, the following: a recorded as built plans regarding county code compliance, and appropriate disclosures in the developer’s public report to include, but not limited to, county requirements and rebuilding requirements should the condominium project and or apartments be destroyed.

4. Next Meeting: Wednesday, August 9, 2006
Upon adjournment of the Education Review Committee meeting, which follows the Laws and Rules Review Committee meeting scheduled to convene at 9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Condominium Law Seminar – Information on the Condominium Law Seminar, to be held on Thursday, September 7, 2006, in the State Capitol Auditorium, was distributed to the Commissioners for their information.

Licensing –
Ratification:

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

Licensing –
Applications:

The EO informed the Commissioners that the information provided to the 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.

Cherylanne M. Duque

Cherylanne M. Duque was present to answer any questions the Commissioners may have regarding her application for a real estate salesperson's license. Ms. Duque was asked if she wished to have her application considered in executive session. She declined the offer.

Ms. Duque reported that the remaining balance was paid off two days ago. The amount paid was \$1,507. She does not have any outstanding obligations.

Donald M. Shea

This matter was deferred to later in the meeting until the arrival of the attorney representing his ex-wife.

Chapter 91, HRS,
Adjudicatory
Matters:

The Chair called for a recess from the meeting at 9:21 a.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
Donna I. Gutierrez, REC-2003-345-L**

Upon a motion by Commissioner Chee, seconded by Commissioner Suiso, it was voted on and unanimously carried to approve the Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Order.

**In the Matter of the Real Estate Salesperson's License of David J. Hibbitt;
REC 2006-72-L**

This matter was removed from the agenda pursuant to advisement by the Deputy Attorney General.

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 9:26 a.m.

Executive
Session:

Upon a motion by Commissioner Abrams, seconded by Commissioner Aiona, it was voted on and unanimously carried to enter into executive session, pursuant to §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 §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 Abrams, seconded by Commissioner Suiso, it was voted on and unanimously carried to move out of executive session.

Licensing –
Applications:

Donald M. Shea

Donald M. Shea was present to answer any questions the Commissioners may have regarding his application for a real estate salesperson's license. Mr. Shea was asked if he wished to have his application considered in executive session. He declined the offer.

Mr. Shea acknowledged that he owed a lot of money and added that his problems started from his divorce. He stated that the IRS had said that he was uncollectible because of his income. If he did have money, it would go first to his child support payments.

Mr. Shea said that his average income in Las Vegas was \$24,000 net. The IRS had told him that it was not enough money to take from him because of his child support payments. The balance now is approximately \$115,000.

Mr. Shea said that he came back to Hawaii to spend more time with his children and to pay off the money owed to his ex-wife. He is handicapped because he has no cartilage in his knee and cannot stand for long periods of time. Everything is dependent upon his obtaining a real estate license.

Mr. Shea stated that his ex-wife's attorney wanted to make a statement.

Mr. Shea was informed that although the Commission may grant a license, the Child Support Enforcement Agency could suspend a license if a licensee failed to maintain their child support payments.

Mr. Shea said that he has paid over \$80,000 but he got stuck when he came back from Mexico. The IRS determined that he had insufficient income since his moneys went to pay for child support.

When asked what led to the original tax debt, Mr. Shea said that the problem started when he came back to Hawaii to pay for his child support. There was no tax liability when he was working in Mexico. The problem stemmed from his divorce and his low income. When he was working in Nevada, the tax was collected through the Department of Justice in Nevada. His goal is to clear his ex-wife before he dies. He thinks that he has another ten years working. He made a major error in getting a divorce. His first child was lost to suicide that was caused by the divorce. His obligations are still outstanding and he thought that if he obtained his real estate license he would be able to pay his obligations. If he is licensed, he will be associated with Consolidated Resorts.

Mr. Shea said that he was not in arrears in Mexico. He got in trouble when he was in Nevada. There are two separate obligations; one is for child support and the other is to the IRS. He has not made a payment plan with the IRS because he does not have sufficient income where it would be necessary.

He came back to Hawaii in January. While he was in Mexico, he was involved in time share. He left Mexico in 1990. He was in Las Vegas for 16 years, involved in time share. He returned to Hawaii in January 2006 and has not been employed since returning to Hawaii.

Mr. Shea said that he was not required to have a real estate license in Nevada. He was registered to do time share in Nevada. When he registered for his Nevada time share license, he disclosed his child support issues to the Nevada Division of Real Estate. Mr. Shea said he was involved with time share units at Hilltop Vacation Club and Sun Terra in Las Vegas.

When asked if the IRS had deemed him as uncollectible in writing, Mr. Shea answered that they had not. Mr. Shea said that he had a difficult time getting them to give him a receipt for the amount in arrears. The IRS is not pursuing collection against him at this time.

Mr. Shea was informed that financial integrity is an important part of being licensed.

Commissioner Kuriyama moved to take this matter under advisement. Commissioner Abrams seconded the motion.

Bernice Shea's attorney, Eadean Buffington, was present at the meeting.

Ms. Buffington informed the Commissioners that in most cases the child support payments were based on a percentage of the person's income. The Shea's divorce decree set it at a fixed amount. Mr. Shea should have gone back when his income dropped, but he didn't. He was in Las Vegas and did not go back to the courts at that time. They obtained a court order which said that the payments would continue. Mr. Shea's options would have been to go back to the court to ask that the percentage be reduced. The IRS debt due to Mr. Shea's inability to pay was after child support. He had a Federal order for payment because it was between two different states.

Mr. Shea was informed that the Commission determines if applicants possess a record of and a reputation for financial integrity, not because they need a job.

The motion was voted on and unanimously carried.

Donald M. Shea

After a review of the information presented by the applicant, Commissioner Chee moved to deny Donald M. Shea's application for a real estate salesperson's license, pursuant to §467-8(a)(3) and §436B-19(1)(8)(12), HRS. Commissioner Aiona seconded the motion. The motion was voted on and unanimously carried.

Alexis M. King

After a review of the information submitted by the applicant, Commissioner Suiso moved to approve the real estate salesperson's license application of Alexis M. King. Commissioner Kuriyama seconded the motion. The motion was voted on and unanimously carried.

CardOne Realty Corp.

After a review of the information submitted by the applicant, Commissioner Chee moved to approve the real estate corporation application of CardOne Realty Corp. Commissioner Kuriyama seconded the motion. The motion was voted on and unanimously carried.

Suk Young Kang

After a review of the information submitted by the applicant, Commissioner Loudermilk moved to defer decision making on the prelicensing education equivalency application of Suk Young Kang pending further information. Commissioner Aiona seconded the motion. The motion was voted on and unanimously carried.

Cherylanne M. Duque

After a review of the information presented by the applicant, Commissioner Loudermilk moved to approve the real estate salesperson's license application of Cherylanne M. Duque. Commissioner Suiso seconded the motion. The motion was voted on and unanimously carried.

Recovery Fund
Report:

No report was presented.

Next Meeting:

Friday, September 22, 2006
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

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Adjournment: With no further business to discuss, Chair Nishihara adjourned the meeting at 10:05 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
(for) Neil Fujitani, Executive Officer

September 22, 2006
Date

[X] Approved as circulated.
[] Approved with corrections; see minutes of _____ meeting.

APPROVED APPLICATIONS FOR REAL ESTATE
REAL ESTATE COMMISSION MEETING ON AUGUST 25, 2006

<u>Brokers – Limited Liability Companies and Partnerships</u>	<u>Effective Date</u>
Kona Coast Property Management, LLC	07/27/06
Kona Coast Vacations	
Lorrie Ann Zimmerman, PB	
<u>Brokers – Corporations and Partnerships</u>	<u>Effective Date</u>
Hawaiian Island Realtor’s, Inc.	08/01/06
Don S. Lui-Kwan, PB	
EOR Referral Inc.	07/31/06
Robert E. Paine, PB	
<u>Brokers – Sole Proprietor</u>	<u>Effective Date</u>
William A. Boitfeld	07/11/06
Matthew Y. J. Loy	07/17/06
Karen Blossom Bender, Blossom’s Realty by Video Int’l	07/19/06
Christopher A. Prendergast, Miracle Realty	07/19/06
Joshua Bird	07/21/06
<u>Trade Name</u>	<u>Effective Date</u>
Maui Flat Fee Realty LLC, Wailea Bay Realty	07/20/06
<u>Branch Office</u>	<u>Effective Date</u>
All Islands Inc. DBA Century 21 All Islands	07/31/06
Ken Kubiak, PB	
<u>Equivalency to Uniform Section of Examination Certificate</u>	<u>Expiration Date</u>
Mafulu Galuega Toailoa	07/18/08
Gerald Verratti	07/19/08
Michael James Brawner	07/20/08
John Baimba	07/21/08
Charles R. Jackson	07/21/08
Rod Ryan	07/21/08
Michael James Theune	07/21/08
Christian Lee Pollinger	07/24/08
Holly Smith	07/24/08
Robyn Renee Cureletti	07/26/08
Christopher Steven Ripp	07/26/08
Michael Edward Volk	07/26/08
Paul Kwok Pang	07/26/08

<u>Equivalency to Uniform Section of Examination Certificate</u>	<u>Expiration Date</u>
Maria Tobon Falavinha	07/26/08
Thomas Emerson Rounds IV	07/26/08
Jorge Andres Mendiguren	07/27/08
Dean Lee Johnson	07/27/08
Mark Richard Sukel	07/27/08
Danilo Gonzales Daoang, Jr.	07/28/08
Wayne Leroy Voigt	08/01/08
Craig C. Robbins	08/01/08
Michelle Lynn Johannes	08/07/08
Corey Jarmaine Smith	08/07/08
Terrence P. Fitzpatrick	08/08/08
Caroline Simone Staub	08/11/08
Robert Paul Artino	08/14/08

<u>Educational Equivalency Certificate</u>	<u>Expiration Date</u>
Mafulu Galuega Toailoa	07/18/08
Warren P. Aldana	07/18/08
Gerald Verratti	07/19/08
Quimei Chen	07/19/08
Michael James Brawner	07/20/08
John Baimba	07/21/08
Charles R. Jackson	07/21/08
Rod Ryan	07/21/08
Michael James Theune	07/21/08
Christian Lee Pollinger	07/24/08
Holly Smith	07/24/08
Robyn Renee Cureletti	07/26/08
Christopher Steven Ripp	07/26/08
Paul Kwok Pang	07/26/08
Maria Tobon Falavinha	07/26/08
Thomas Emerson Rounds IV	07/26/08
Eric Charles Sifton	07/26/08
Jorge Andres Mendiguren	07/27/08
Dean Lee Johnson	07/27/08
Mark Richard Sukel	07/27/08
Danilo Gonzales Daoang, Jr.	07/28/08
Jeneveh Rosalia Randolph-Quiseng	08/01/08
Wayne Leroy Voigt	08/01/08
Craig C. Robbins	08/01/08
Robert Keli'i James	08/03/08
Armi Oliver Farinas	08/03/08
Corey Jarmaine Smith	08/07/08

Educational Equivalency Certificate

Terrence P. Fitzpatrick
Caroline Simone Staub
Robert Paul Artino

Expiration Date

08/08/08
08/11/08
08/14/08

Real Estate Broker Experience Certificate

Scott Seiyei Kamiya
Richard A. Piva
Gerald Verratti
Valerie Ann Abac
Michael James Brawner
John Baimba
Charles R. Jackson
Steve Kazuyuki Okada
Rod Ryan
Fernando C. Arevalo
Christian Lee Pollinger
Holly Smith
Rosemarie Delfin
Paul Kwok Pang
Michael Peter Gaertner
Jorge Andres Mendiguren
Dean Lee Johnson
Tyler Kazuhiro Azeka
Patrick David Kekoa Ihu
Wayne Leroy Voigt
Craig C. Robbins
Karen Yoko Uehara
Aaron D. Minks
Michael Stanton Moran
Michael Stephan Mackey
William Stephen Paynich
Marla J. Suguitan
Stacey Evelyn Bennett
Timothy Mark Liberto
Kengo Raymond Ueno
Brandon Christopher Lau
Lisa Gail Fujiwara
Nana Thain
Terrence P. Fitzpatrick
Shozo Noda
Caroline Simone Staub
Kevin Makana Hitzeman

Expiration Date

07/18/08
07/18/08
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08/14/08

Real Estate Broker Experience Certificate
Robert Paul Artino

Expiration Date
08/14/08

Real Estate Broker (upgrade)

Kim Toshie Maruyama
Karen Blossom Bender
Charles J. King
Joshua Bird
Robert Harper
Karyl W. Fujii
Jeff Uyemura-Reyes
James M. Barry
Dottie Jackson
Maui Matt Imhoff
Carylene P. Furtado
Michael J. Brawner

Effective Date
07/19/06
07/19/06
07/20/06
07/21/06
07/25/06
07/26/06
07/27/06
07/28/06
07/31/06
07/31/06
08/02/06
08/02/06

Restoration – Real Estate Salesperson

Chester N. K. Ho
Jody L. Tokioka

Effective Date
08/02/06
08/14/06

Condominium Hotel Operator

Sugar Beach Rentals & Activities, LLC
Principle Hotels and Resorts, LLC

Effective Date
7/13/06
8/04/06