

EDUCATION REVIEW COMMITTEE
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 Lieutenant Governor's Office as required by Section 92-7(b), Hawaii Revised Statutes.

Date: March 8, 2006

Time: Upon adjournment of the Laws and Rules Review Committee meeting, which convened at 9:00 a.m.

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

Present: Vern Yamanaka, Chair/ Broker / Hawaii Commissioner
Carol Mae Ball, Vice Chair/ Broker / Maui Commissioner
Louis Abrams, Broker / Kauai Commissioner
Kathleen Kagawa, Broker / Honolulu Commissioner
Stanley Kuriyama, Broker / Honolulu Commissioner
Michele Sunahara Loudermilk, Public / Honolulu Commissioner
Trudy Nishihara, Broker / Honolulu Commissioner
Iris Okawa, Public / Honolulu Commissioner

Calvin Kimura, Supervising Executive Officer
Neil K. Fujitani, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Ryan Yamashiro, Real Estate Specialist
Cheryl Leong, Condominium Specialist
David Grupen, Condominium Specialist
Shari Wong, Deputy Attorney General
Karyn Takahashi, Recording Secretary

Others: Alicia Maluafiti, Hawaii Association of REALTORS®
Marsha Shimizu, Hawaii Association of REALTORS®
Carol Egan, Principal, All Islands Real Estate School
Tom Berg
John Morris, Esq.
Gordon Arakaki, Esq.
Rick Kiefer
Bernice Littman

Call to Order: Chair Yamanaka called the meeting to order at 9:29 a.m., at which time quorum was established.

Chair's Report: No report presented.

Sr. Real Estate
Specialist's Report:

Announcements, Introduction, Correspondence, and Additional Distribution

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

4. Continuing Education Administration, Curriculum, Courses, Providers, and Instructors
 - b. Applications
 - 4) Course – “Property Management in Hawaii;” Author/Owner: Philip Hale Wilia; Provider: Dower School of Real Estate; Course Category: Property Management; Clock Hours: 3
 - 5) Course – “21st Century Marketing;” Author/Owner: Dustin Gellman, CCIM; Provider: Hawaii CCIM Chapter; Course Category: Technology and the Licensee; Clock Hours: 3

The following was distributed as additional distribution:

4. Continuing Education Administration, Curriculum, Courses, Providers, and Instructors
 - e. Evaluation and Education Program
 - 2) Lorman Education Services: “New Condominium Law in Hawaii”
 - b) Raymond S. Iwamoto

Minutes

Upon a motion by Commissioner Abrams, seconded by Commissioner Ball, it was voted on and unanimously carried to accept the minutes of the February 8, 2006, Education Review Committee meeting as distributed.

Continuing Education: Administrative Issues

New Salesperson Licensees

A report on the number of new salesperson licensees for January 2006 was distributed to the Commissioners for their information. The total number of 336 new salesperson licensees reflects the number of licensees who are deemed as having completed the 10 hour continuing education requirement, pursuant to Section 16-99-89(c), Hawaii Administrative Rules.

Applications

Course – “Federal Fair Housing, Sales;” Author: National Association of REALTORS®; Provider: ERA School of Real Estate; Course Categories: Real Estate Law, Risk Management, Other – Fair Housing; Clock Hours: 3

Upon a motion by Commissioner Okawa, seconded by Commissioner Abrams, it was voted on and unanimously carried to recommend approval of “Federal Fair Housing, Sales” as a three clock hour continuing education elective course, under the course categories Real Estate Law, Risk Management, and Other – Fair Housing.

Course – “Discover, Disclosure, Damages, Defendants: Daily Decision 2006;” Author/Owner: Oliver E. Frasca, Esq., GRI; Provider: Kauai Board of REALTORS®; Course Category: Risk Management; Clock Hours: 3

Commissioner Loudermilk stated that the course does not cover Hawaii’s seller’s mandatory disclosure law and questioned if the author was going to tailor the course to include Hawaii’s seller’s mandatory disclosure law.

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Nishihara, it was voted on and unanimously carried to recommend deferral of this application.

Provider – Americas Best; Susan Davis, Administrator

Upon a motion by Commissioner Abrams, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to recommend approval of Americas Best as a continuing education provider.

Course – “Property Management in Hawaii;” Author/Owner: Philip Hale Wilia; Provider: Dower School of Real Estate; Course Category: Property Management; Clock Hours: 3

Upon a motion by Commissioner Abrams, seconded by Commissioner Okawa, it was voted on and unanimously carried to recommend approval of “Property Management in Hawaii” as a three clock hour continuing education course, under the course category Property Management.

Course – “21st Century Marketing;” Author/Owner: Dustin Gellman, CCIM; Provider: Hawaii CCIM Chapter; Course Category: Technology and the Licensee; Clock Hours: 3

Upon a motion by Commissioner Abrams, seconded by Commissioner Nishihara, it was voted on and unanimously carried to recommend approval of “21st Century Marketing” as a three clock hour continuing education course, under the course category Technology and the Licensee.

Evaluation and Education Program

Akahi Real Estate Network LLC; REC Core Course; Instructor: Jay J. Spadinger

A copy of an evaluation of the Real Estate Commission core course completed by the Commission authorized monitor was distributed to the Commissioners for their information.

A copy of a letter from Mr. Jay J. Spadinger, dated February 27, 2006, commenting on the monitor’s evaluation and the Commission’s monitoring program was distributed to the Commissioners.

In summary, Mr. Spadinger relayed that he is in support of the Commission's monitoring of both prelicense and continuing education courses; however, "if the Commission is using the reimbursement of class fees as an incentive to obtain volunteer monitors for CE classes – classes required to be taken by the monitors – the funds should come from the Commission and not out of the pocket of the Providers."

Senior Specialist Fujimura reported that in the monitoring process, staff will send a letter announcing the monitor's presence and the monitor receives a letter to present to the instructor on the day of the class. The instructor is told to treat the monitor as a regular student; however, they are not to issue a completion certificate to the monitor—the Real Estate Branch staff will issue the completion certificate and credit the monitor for the course. The monitor is not guaranteed a seat or materials. In this instance, Mr. Spadinger assumed that the monitor would be a staff member.

SEO Kimura stated that the evaluation/monitoring program started back when the Commission had a contract with the Hawaii Real Estate Research and Education Center (HREREC). He stated that the Commission has the right to monitor or have its agent monitor a course. The monitor has no right to a seat and/or materials. Monitors have always been a mixture of staff, Commissioners and experienced brokers. If necessary, the evaluations/comments are provided to the Providers verbatim and it is then up to the Provider to go over the evaluations/comments with the instructors. Some Providers take it very seriously and are concerned about the evaluations.

SEO Kimura noted that a monitor should not be pointed out. The monitor just sits, takes notes and listens. He added that there will be an article going over the evaluation/monitoring program in the next issue of *School Files*.

Commissioner Kagawa stated that Mr. Spadinger has a point, that if the monitor receives continuing education credit, it is a form of compensation. SEO Kimura responded that it has always been the agreement and a long standing practice to provide the continuing education credit to the monitor—we also provide continuing education credit to instructors who teach a course.

Chair Yamanaka inquired if we could pay for the fees. SEO Kimura replied that it is possible.

Commissioner Kuriyama added that if the monitor cannot get the course materials, they cannot fully evaluate the course.

Commissioner Nishihara moved to recommend as policy that the course registration fees and course materials (if any) be paid from the Real Estate Education Fund for the course monitors of continuing education courses. There will be no payment of travel costs or per diem fees, unless specifically approved by Commission and subject to approved travel request prior to travel. Course monitor to continue to receive continuing education credit. The decision as to whether there will be disclosure of the monitoring of the course to the instructor or provider will continue to be delegated to Staff. Commissioner Kuriyama seconded the motion. The motion was voted on and unanimously carried.

**Lorman Education Services: “New Condominium Law in Hawaii”
Gordon M. Arakaki
Raymond S. Iwamoto**

Senior Specialist Fujimura reported that she sent a letter to Kari Campbell, Continuing Education Coordinator for Lorman Education Services, regarding evaluations of the course and instructors for the six hour course “New Condominium Law in Hawaii” presented on January 31, 2006. A copy of the letter was provided to the Commissioners.

Copies of responses from Kari Campbell, Gordon Arakaki and Raymond Iwamoto were provided to the Commissioners for their information.

SEO Kimura stated that Staff provides evaluation comments verbatim to the Provider. It is the responsibility of the Provider to ensure that the instructor is complying with rules and standards and is following the curriculum. This is a new Provider and they may not understand the evaluation process. They have no local office. An evaluation has never come back to us to be challenged or rebutted. SEO Kimura reported that he has had conversations with both these instructors and believes they now understand the process. SEO Kimura added that this issue was brought before the Committee upon the request of the instructors.

Prelicense Education: Applications

Guest Lecturer – Sandra Sakuma, All Islands Real Estate School – Carol Egan, Principal

Upon a motion by Commissioner Okawa, seconded by Commissioner Kagawa, it was voted on and unanimously carried to recommend approval of Sandra Sakuma as a prelicense guest lecturer for All Islands Real Estate School.

Guest Lecturer – Harry S.K. Lee, All Islands Real Estate School – Carol Egan, Principal

Upon a motion by Commissioner Nishihara, seconded by Commissioner Ball, it was voted on and unanimously carried to recommend approval of Harry S.K. Lee as a prelicense guest lecturer for All Islands Real Estate School.

Guest Lecturer – Diane L.Y. Fujikami, All Islands Real Estate School – Carol Egan, Principal

Upon a motion by Commissioner Kagawa, seconded by Commissioner Nishihara, it was voted on and unanimously carried to recommend approval of Diane L.Y. Fujikami as prelicense guest lecturer for All Islands Real Estate School.

Guest Lecturer – Bridget C. Arrastia, All Island Real Estate School – Carol Egan, Principal

Upon a motion by Commissioner Okawa, seconded by Commissioner Kagawa, it was voted on and unanimously carried to recommend approval of Bridget C. Arrastia as a prelicense guest lecturer for All Islands Real Estate School.

Evaluation and Education Program

Abe Lee Seminars; Salesperson Independent Study On-Line (2)

Copies of evaluations of independent study courses from the following prelicense school was distributed to the Commissioners for their information:

1. Abe Lee Seminars

Administration of
Examinations:

Promissor

Licensing Examination Statistics

Examination statistics for January 2006 were distributed to the Commissioners for their information.

Broker exam statistics – 46 hour and 80 hour curriculum

Information on the broker passing statistics from Promissor for the real estate broker candidates testing between October 1, 2005 and December 31, 2005, comparing those who have taken the 46 hour broker curriculum and the 80 hour curriculum were distributed to the Commissioners for their information.

Before 12/31/06 – Pass 19.1% Fail 80.9%
After 12/31/06 – Pass 40.7% Fail 59.3%

The “Before 12/31/06” and “After 12/31/06” represents the expiration date on the candidate’s School Completion Certificate.

Educator’s Forum:

Hawaii Association of REALTORS® – No discussion presented.

Hawaii Association of Real Estate Schools (HARES) – No discussion presented.

Public and Private Institutions of Higher Education – No discussion presented.

Program of Work:

Neighbor Island Outreach and Real Estate Specialists’ Office for the Day

The next neighbor island outreach will be held on May 10, 2006, in the Campus Center Conference Rooms 306/307, University of Hawaii – Hilo, 200 West Kawili Street, Hilo. The Laws and Rules Review Committee meeting will convene at 9:30 a.m., to be followed by the Education Review Committee meeting and the Condominium Review Committee meeting. The Real Estate Specialist’s Office for the Day will be held in conjunction with this event.

Executive Session:

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

Program of Work: Real Estate Seminars

HAR Proposal – “Duties In Conflict: Managing the In-House Transaction” – Lynn Madison

Chair Yamanaka and Commissioner Nishihara recused themselves.

SEO Kimura announced that Vice Chair Ball will chair this portion of the meeting and since there are only six Commissioners participating, five votes are needed for any motion to pass.

Senior Specialist Fujimura stated that HAR is requesting partial funding from the Commission to offer a joint education program to licensees. The course being proposed is “Duties in Conflict: Managing the In-House Transaction” by Lynn Madison. She stated that there is an existing contract with HAR that has a \$2,500 ceiling per event.

Senior Specialist Fujimura reported that Hawaii material needs to be included, but that has not been completed.

Commissioner Abrams stated that this appears to be a great course, but will this set precedence for other providers to request monies for real estate seminars and courses.

At this time, Ms. Marsha Shimizu was questioned as to the planned dates of this education program. She stated they are planning seven sessions—Kona on May 25th, Hilo on May 26th, Molokai on May 30th, Honolulu on May 31st (two sessions am/pm), Maui on June 1st and Kauai on June 2nd.

SEO Kimura questioned if they are planning to change the curriculum of the course versus the present CE course curriculum. Ms. Shimizu replied that Ms. Madison will be adding to the course. Ms. Madison will cover trends, cover different types of agency relationships, and then hone down to Hawaii specific law and into scenarios.

Vice Chair Ball stated that the guide being used is the NAR Code of Ethics and questioned if there is a problem with it being related to the NAR trade organization as opposed to the State. Ms. Shimizu replied that the NAR Code of Ethics is a standard in the industry.

Commissioner Okawa inquired if arrangements have already been made for Ms. Madison. Ms. Shimizu replied that HAR wanted to give the Commission an opportunity to participate in this program as they feel it is important to educate licensees on agency. Ms. Shimizu added that HAR will be using this program as a barometer to gauge if the licensees are having agency issues/problems. She stated that if the Commission subsidizes the program, HAR will be able to open the program to all licensees, not only HAR members.

SEO Kimura stated that this course appears to go beyond instructing real estate licensees on Hawaii agency law and rules. It appears to advocate HAR's legislative bill in an indirect manner through presentation of laws of other States that are similar to HAR's legislative bill. Eighteen months ago, HAR came to the Commission stating that a significant number of Hawaii licensees do not understand the agency law and rules, how to handle the law and rules—especially dual agency, or how to explain it to consumers, and at the worst, some

of the licensees were principal brokers. With that, HAR stated the solution was to change the law.

The Commission stated that based on RICO statistics of filed complaints, Hawaii agency law and rules, including dual agency, was not a problem. In spite of this, HAR presented a proposed bill with a revolutionary change to the law. At that point, we all were puzzled as to the logic of the proposed bill when HAR stated that licensees do not understand the current law and the solution is to dramatically change the law.

HAR's proposal for this seminar seems to place heavy emphasis on other States' laws and rules. How will the average Hawaii licensee understand what applies to what, what is in effect, what is proposed, what is going on in other States, and how will the confused Hawaii licensee, learning from other States' laws that are totally different from Hawaii's law, be better off in assisting Hawaii consumers? Common sense points to more confusion.

It is commendable that HAR wants to provide education to Hawaii licensees on consumer – broker relationships, but based on my 25 years handling the real estate licensees and the consumers the licensees deal with, and my 25 years as a licensed real estate broker, there is no convincing evidence that the Hawaii licensees, who do not know how to handle the existing laws and rules according to HAR, will be in a better position after being exposed to the curriculum of the proposed seminar, which is unclear and still evolving.

Again, based on the latest factual information through the Ad Hoc Committee on Consumer – Broker Relationships, there is no evidence on record with RICO or the Real Estate Recovery Fund to reflect that agency and broker representation is a problem issue.

Based on what is known of proposed curriculum, SEO Kimura stated that if the Commission sponsors this program with the REEF funding, it needs to be made clear, with some form of a caveat, that this no way represents the views of the Real Estate Commission.

SEO Kimura stated that HAR is proposing the seminar under the existing contract with the Commission for sponsorship and funding from REEF of around \$18,000 plus, with the actual amended curriculum being submitted at the April 12, 2006 meeting. It appears that a contract is already in place with Ms. Madison and other contracts and commitments have been made to start the seminar sometime immediately after the meeting. This will place the Commission in a very awkward position for the decision making, in light of all the commitments already in place. This is the same position the Commission was placed in when the HAR bill was introduced. Nobody wants to start movement deep in the corner.

Ms. Shimizu responded that Ms. Madison was selected because she is neutral—she was identified as having a good education program and will not put a position out there and will not allude to the HAR bill.

Deputy AG Wong inquired how many licensees they are expecting to attend. Ms. Shimizu responded approximately 1,100.

Commissioner Kuriyama inquired about the \$25 registration fee. Ms. Shimizu stated the registration fee is a direct cost to cover the attendee's registration, coffee service, materials, etc.

Commissioner Loudermilk inquired when they expect to have the Hawaii portion of the curriculum completed. Ms. Shimizu responded that she will check with Ms. Madison, but they are looking at April, and by the beginning of May everything must be ready.

Commissioner Kuriyama stated that he can not say this is different from anything else—does this have the value to promote the goals that the Commission has?

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

Chair Yamanaka resumed chairing the meeting.

Cooperative Education, Research, and Administration Program

Commissioner Okawa stated that it is important for consumers to receive education and the Consumer Education Committee would like to reach out to high school students—they will be able to see how the skills they are learning will be useful in real life situations. The Consumer Education Committee will coordinate efforts with the Department of Education, the Department of Commerce and Consumer Affairs, Credit Unions, and the like to make students aware.

SEO Kimura stated that administratively, we have concerns about this proposed committee. He reported that the real estate section is currently short staffed with one less Real Estate Specialist since late December 2005, legislative session is on-going, we have the EETF, condominium recodification education, renewal year, etc. He stated that we do not want to start something that we cannot administer properly—it deserves our professional attention. Should the Real Estate Specialist return to the Real Estate Section in late May 2006, we may be in a better position to provide the administrative services.

Commissioner Nishihara replied that this project is on the Program of Work and the Committee adopted the Consumer Education Committee last July. She would like to get it off the ground, not necessarily start meetings—after the legislative session is complete the meetings may become more formal.

Open Forum: None.

Executive Session: Upon a motion by Commissioner Okawa, seconded by Commissioner Kagawa, it was voted on and unanimously carried to move into executive session, 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 Kuriyama, it was voted on and unanimously carried to move out of executive session.

Program of Work: Real Estate Seminars

**HAR Proposal – “Duties In Conflict: Managing the In-House Transaction” –
Lynn Madison**

Chair Yamanaka and Commissioner Nishihara recused themselves.

SEO Kimura announced that Vice Chair Ball will chair this portion of the meeting and with only six Commissioners participating, five votes are need for any motion to pass.

Commissioner Abrams stated that he has concerns relative to the contract with HAR and wants to make sure it is legal to exercise the contract for this program.

Subject to the request being a Commission sponsored seminar to be funded from the Real Estate Education Fund notwithstanding as an approved continuing education elective course (under specific laws and rules), Commissioner Abrams moved to recommend deferral pending receipt of additional information on existing contract with HAR, resolution of legal procurement concerns, and substantive content concerns regarding inclusion of Hawaii specific law and rules content material and whether the Hawaii law and rules will be the major focus. Commissioner Loudermilk seconded the motion. The motion was voted on and unanimously carried.

Chair Yamanaka resumed chairing the meeting.

Next Meeting: Wednesday, April 12, 2006
Upon adjournment of the Laws and Rules Review Committee Meeting, which convenes at 9:00 a.m.
King Kalakaua Building
Queen Liliuokalani Room
335 Merchant Street, First Floor
Honolulu, Hawaii

Adjournment: With no further business to discuss, Chair Yamanaka adjourned the meeting at 11:18 a.m.

Reviewed and approved by:

/s/ Diane Choy Fujimura
Diane Choy Fujimura
Senior Real Estate Specialist

April 12, 2006
Date

[X] Minutes approved as is.
[] Minutes approved with changes, see minutes of _____.