

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: October 10, 2007

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: Carol Mae Ball, Chair / Broker / Maui Commissioner
Louis Abrams, Broker / Kauai Commissioner
William S. Chee, Broker / Honolulu Commissioner
Frances T. Gendrano, Broker / Honolulu Commissioner
Stanley Kuriyama, Broker / Honolulu Commissioner
Michele Sunahara Loudermilk, Public / Honolulu Commissioner
Trudy Nishihara, Broker / Honolulu Commissioner
Mark Suiso, Public / Honolulu Commissioner

Calvin Kimura, Supervising Executive Officer
Neil Fujitani, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Amy Endo, Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
David Grupen, Condominium Specialist
Shari Wong, Deputy Attorney General
Karyn Takahashi, Recording Secretary

Others: Marsha Shimizu, Hawaii Association of REALTORS®
Carol Egan, All Islands Real Estate School
Christopher Cavanaugh, Investment Property Exchange Services, Inc. (IPX1031)
Judy Sykes, Hawaii International Real Estate Council (HIREC)
John Sherman
Rick Keifer
Stephanie Thompson
Charlie Loomis

Absent: Annette Aiona, Vice Chair / Broker / Hawaii Island Commissioner

Call to Order: Chair Ball called the meeting to order at 9:37 a.m., at which time quorum was established.

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

Real Estate Specialist's Report: Announcements, Introduction, Correspondence, and Additional Distribution

The following was distributed as additional distribution:

8. Program of Work, FY08
 - c. Annual Report, Quarterly Bulletin, and School Files
 - 1) Bulletin Printing Request for Quotations

Minutes of September 10, 2007

Upon a motion by Commissioner Nishihara, seconded by Commissioner Abrams, it was voted on and unanimously carried to accept the minutes of the September 10, 2007, Education Review Committee meeting as distributed.

Continuing Education: Administrative Issues – Comments on Continuing Education

Tom and Donna Rice
Walt Harvey
Wallace Hirai

Email comments were received from Tom and Donna Rice, Walt Harvey, and Wallace Hirai in response to Chair Ball's article in the September 2007 *Hawaii REALTOR Journal* regarding increasing continuing education hours. The emails were distributed to the Commissioners for their information and consideration.

Applications

2007 – 2008 Continuing Education Provider and Courses Ratification List

Upon a motion by Commissioner Abrams, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to ratify the following registrations/certifications:

Course	Effective Date
"Diversity and Doing Business" (Dearborn Real Estate Education/Fahrni School of Real Estate)	August 20, 2007
"Fair Housing" (Dearborn Real Estate Education/Fahrni School of Real Estate)	August 20, 2007
"Introduction to Commercial Real Estate Sales" (Dearborn Real Estate Education/Fahrni School of Real Estate)	August 20, 2007
"Property Management and Managing Risk" (Dearborn Real Estate Education/Fahrni School of Real Estate)	August 20, 2007
"Risk Management" (Dearborn Real Estate Education/Fahrni School of Real Estate)	August 20, 2007
"Condominium Issues" (Kenneth D.H. Chong)	August 29, 2007
"Purchase Contract Issues (fka DROA Issues) (Kenneth D.H. Chong)	August 29, 2007

"Mortgage Fraud and Predatory Lending: What Every Agent Should Know" September 11, 2007
(ARELLO Certified Course/Dearborn Real Estate Education)

Course – "Environmental Hazards and Structural Deficiencies in a Home and Issues with Older Homes;" Author/Owner/Provider: All Islands Real Estate School; Course Categories: Property Ownership and Development and Risk Management; Clock Hours: 3

Ms. Carol Egan was present. Ms. Egan stated that she has not seen any courses dealing with this subject matter and felt that this is good basic background information for new agents to be aware of.

Chair Ball stated that the goals of the course seem to infer that agents will be able to advise their clients on possible problems and provide solutions to observed defects. Licensees should be striving to not give advice on areas beyond their expertise.

Ms. Egan stated that she is well aware of her concerns but believes this is educational and the agent will be able to point out certain conditions. Chair Ball stated that the licensee should be recommending that the client obtain a professional opinion. Ms. Egan responded that through this course she hopes the agent would realize the value of a home inspection.

Commissioner Suiso inquired if it would be possible to incorporate into the course the point of making sure you have a professional assessment as opposed to the licensee trying to be the professional and overstepping their expertise.

Chair Ball stated that she is concerned with the way the course is structured and the licensee should not be speaking beyond their expertise—current conventional wisdom is for the licensee to not be present at the home inspection, but this course seems to get the licensee more involved when they should be deferring to the expert.

Ms. Egan agreed it is a good idea to incorporate a caveat to seek a professional assessment and it can be easily added to the course. She added that the purpose is not to make someone feel so knowledgeable that they feel they can do a professional assessment on their own.

Commissioner Nishihara stated that she has concerns that if the course is approved it may give the impression that the Commission is sanctioning this type of assessment—the licensee's business is to sell the home not point out details and defects of the home. She added the course should be more of an overview and inquired if Ms. Egan could rewrite and restructure the course.

Ms. Egan stated that she is willing to include cautionary information into the course and reiterate what the responsibility of the agent is.

Upon a motion by Commissioner Abrams, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to defer decision making on this application with the following recommendations:

Revision of the course application and course materials so as not to give the impression that students will be able to provide advice and make their determination outside their area of expertise, which is being a licensee.

Students should be consistently instructed throughout the course to always recommend a professional inspection as opposed to recommending action regarding an observed defect.

It was also recommended to incorporate into the course materials an explanation of what could happen if the licensee oversteps his or her area of expertise. What can the licensee do to protect himself/herself? And, possibly include case law as examples.

Course – “Representing Real Estate Investors: What Real Estate Agents and Brokers Must Know About Real Estate Dealers and Ownership of Real Estate by an IRA or 401(k) Plan;” Author/Owner: Marianne Kingman; Provider: Kingman Winslow School of Real Estate; Course Categories: Investment, Property Management, Property Ownership and Development, and Risk Management; Clock Hours: 3 (Deferred from 9/10/07 mtg.)

Senior Specialist Fujimura stated that Ms. Kingman has experience teaching this course across the country. Ms. Kingman is an attorney and is well aware of not giving the attendees of the course the impression that they will become experts. She added that she seems to be very knowledgeable and competent.

Commissioner Nishihara stated that this is an advanced course on investment, but for licensees to take an advanced course on investments and advise clients goes beyond their scope of expertise and for the Commission to approve such a course may send the wrong message to licensees.

Commissioner Gendrano stated that this course seems to speak to a minute percentage of licensees. Commissioner Suiso agreed and felt that this would be a specialized practice that individuals would pursue on their own.

Chair Ball stated that as background information this course is helpful, but this course seems to be designed to give advice.

Deputy AG Wong stated that the applicant should be given the opportunity to rewrite the course.

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Gendrano, it was voted on and unanimously carried to defer decision making on this application with the following recommendations:

Include written language in the course material stating the course is intended to provide a general discussion of the subject matter, and is not meant to provide the student with legal, tax, accounting or other technical advice. Students are advised to consult an appropriate expert or licensed professional for information as to how the subject matter of the course and the course materials may apply to their particular factual circumstances or situation.

It was recommended to revise the summary description of the course so as to delete any statement that gives the impression the student will be able to provide advice and guidance to their client(s) when they should be referring their client(s) to consult experts.

Additionally, the Committee felt the course goes beyond the scope of expertise of a real estate agent. It was recommended to include an explanation of what may happen if a real estate agent overstepped the boundaries of his or her expertise, and to possibly include case law to illustrate this.

Course – “Section 1031 Exchanges: What the Exchange Facilitator Does Not Tell You;” Author/Owner: Marianne K. Kingman; Provider: Kingman Winslow School of Real Estate; Course Categories: Investment, Real Estate Law, and Risk Management; Clock Hours: 3 (Deferred from 9/10/07 mtg.)

Upon a motion by Commissioner Abrams, seconded by Commissioner Gendrano, it was voted on and unanimously carried to defer decision making on this application with the following recommendations:

Include written language in the course material stating the course is intended to provide a general discussion of the subject matter, and is not meant to provide the student with legal, tax, accounting or other technical advice. Students are advised to consult an appropriate expert or licensed professional for information as to how the subject matter of the course and the course materials may apply to their particular factual circumstances or situation.

It was recommended to revise the summary description of the course so as to delete any statement that gives the impression the student will be able to provide advice and guidance to their client(s) when they should be referring their client(s) to consult experts.

Additionally, the Committee felt the course goes beyond the scope of expertise of a real estate agent. It was recommended to include an explanation of what may happen if a real estate agent overstepped the boundaries of his or her expertise, and to possibly include case law to illustrate this.

Provider – Investment Property Exchange Services, Inc. (IPX1031); Administrator: Tiffany Davies

Mr. Christopher Cavanaugh was present. Mr. Cavanaugh stated their goal is a commitment to education and to be able to offer courses at a relatively reduced rate.

Upon a motion by Commissioner Abrams, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to approve Investment Property Exchange Services, inc. (IPX1031) as a continuing education provider.

Course – “Advanced 1031 Exchanges;” Author/Owner: Investment Property Exchange Services, Inc. (IPX1031); Provider: Investment Property Exchange Services, Inc. (IPX1031) (pending); Course Categories: Investment and Real Estate Law; Clock Hours: 3

Mr. Christopher Cavanaugh was present. Mr. Cavanaugh stated that their intent is to offer the 1031 Exchange courses in conjunction with the core course parts A and B. An individual can take the core course part A with the Essentials of 1031 Exchange (beginning course) for a total of five hours credit and later take the core course part B with the Advanced 1031 Exchanges course for a total of five hours credit.

Chair Ball inquired if they will be offering the course independently. Mr. Cavanaugh replied yes, but the attendee will have the opportunity to take both (five hours) at a reduced cost.

Commissioner Nishihara stated that a reminder should be added for the licensee to seek the advice of a professional. Mr. Cavanaugh stated that he will add an addendum to the course to that effect and forward it to the Senior Real Estate Specialist.

Upon a motion by Commissioner Abrams, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to approve "Advanced 1031 Exchanges" as a three clock hour continuing education elective course under the course categories Investment and Real Estate Law, subject to modifications.

Course – "Essentials of 1031 Exchanges;" Author/Owner: Investment Property Exchange Services, Inc. (IPX1031); Provider: Investment Property Exchange Services, Inc. (IPX1031) (pending); Course Categories: Investment and Real Estate Law; Clock Hours: 3

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Gendrano, it was voted on and unanimously carried to approve "Essentials of 1031 Exchanges" as a three clock hour continuing education elective course under the course categories Investment and Real Estate Law, subject to modifications.

Course – "Disclosure and Agency;" Author/Owner: Philip Hale Wilia; Provider: Dower School of Real Estate; Course Category: Real Estate Law; Clock Hours: 3

Upon a motion by Commissioner Abrams, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to approve "Disclosure and Agency" as a three clock hour continuing education elective course under the course category Real Estate Law.

Provider – Kendall Todd, Inc.; Administrator: Todd Ballenger

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Chee, it was voted on and unanimously carried to approve Kendall Todd, Inc. as a continuing education provider.

Course – "Borrow Smart"; Author/Owner: Todd Ballenger; Provider: Kendall Todd, Inc. (pending); Course Categories: Investment and Finance; Clock Hours: 3

Chair Ball stated that this is a very flamboyant course, but it is very interesting. It is also very specific in stating that the licensee should not give advice.

Upon a motion by Commissioner Suiso, seconded by Commissioner Abrams, it was voted on and unanimously carried to approve "Borrow Smart" as a three clock hour continuing education elective course under the course categories Investment and Finance.

Course – "Change Your Behavior; Lower Your Risk"; Author/Owner: Beth Holiday; Provider: REALTORS Association of Maui, Inc.; Course Categories: Risk Management and Other – Dispute Resolution/Avoidance; Clock Hours: 3

Upon discussion, the Commissioners concluded that the course was not related to real estate practice or real estate law, but appeared to be more focused on personality and sales psychology.

Upon a motion by Commissioner Chee, seconded by Commissioner Suiso, it was voted on and unanimously carried to deny certification of "Change your Behavior; Lower Your Risk" based on the following:

"Section 16-99-101 Courses not acceptable for continuing education course certification. The Commission may not certify a continuing education course, or any portion thereof, which:

- (1) Does not directly relate to real estate law or real estate practice;. . .
- (3) Teaches . . . personal motivation, salesmanship, sales psychology . . . ;
and
- (7) Does not meet the definition of continuing education as determined by the commission."

Continuing Education Core Course

Train-the-Trainer, September 17, 2007 and September 19, 2007 – Reports

The report on the two core course Train-The-Trainer sessions was distributed to the Commissioners for their information. It was reported that there were 19 participants in the Oahu session and 4 participants in the Maui session.

Prelicensure Education: Applications

2007 – 2008 Prelicensing Education Schools and Instructors Ratification List

Upon a motion by Commissioner Nishihara, seconded by Commissioner Suiso, it was voted on and unanimously carried to ratify the following re-registrations/re-certifications:

Instructor(s)	Effective Date
William Vanmanen (Salesperson/Broker)	June 22, 2007

Instructor – John R. Sherman, Salesperson and Broker curricula; Vitousek Real Estate School; Paige Vitousek, Principal

Upon a motion by Commissioner Chee, seconded by Commissioner Nishihara, it was voted on and unanimously carried to approve John R. Sherman as a prelicense instructor for the salesperson and broker curricula.

Program of Work: Evaluation and Education Program

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

1. Abe Lee Seminars; Salesperson Independent Study On-Line (5)
2. Seiler School of Real Estate; Salesperson Independent Study On-Line (11)
3. Vitousek Real Estate School, Salesperson Independent Study (2)

Administration of
Examinations:

Promissor

Licensing Examination Statistics – August 2007

Examination statistics for August 2007 were distributed to the Commissioners for their information.

School Summary Reports – August 2007

A copy of the August 2007 performance summary report, by school, was distributed to the Commissioners for their information. The report is derived from statistics for first time test takers.

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:

Annual Report, Quarterly Bulletin, and School Files

Bulletin Printing Request for Quotations

Written comments from “Concerned Realtor voicing the opinion of many”

Request for quotations were sent to prospective vendors via the HePS on September 24, 2007, with a closing date of October 8, 2007, 4:30 p.m., for the printing of the next four issues of the Real Estate Bulletin. Three quotations were received. The quotations were from Pioneer Ventures Inc. dba Fisher Printing, Valenti Print Group, and Hagadone Printing Company.

Commissioner Chee moved to accept the quotation from Pioneer Ventures Inc. dba Fisher Printing, the lowest quotation received. Commissioner Abrams seconded the motion.

At this time, the Committee discussed the written comments received from “Concerned Realtor voicing the opinion of many”. This individual suggested the “use of the internet for people to receive such communication” and stated that the “Commission probably would save \$400,000 annually by not printing these and mailing out as they are already posted on the internet.”

Senior Specialist Fujimura reported that the approximate costs for four issues (one year) are as follows: \$25,000 printing, \$20,000 postage, and \$5,000 consultant, for a total of \$50,000 annually.

SEO Kimura stated that he has spoken with officials from other States and was informed that it is an administrative nightmare to deliver the Bulletin electronically—there must be a high participation rate. Email addresses are constantly changing, and notification of address changes is not a guarantee, plus email addresses become public record for the public's use. Also, Principal Brokers are being informed to use the Bulletin as a tool to educate their staff and associating licensees.

The Committee voted on the motion on the floor to accept the quotation from Pioneer Ventures Inc. dba Fisher Printing. Commissioners Ball, Abrams, Chee, Gendrano, Kuriyama, Loudermilk and Nishihara voted aye. Commissioner Suiso voted nay. The motion was passed.

Neighbor Island Outreach

The next neighbor island outreach will be held in Maui. Date and location to be determined.

Interactive Participation with Organizations

Honolulu Board of REALTORS[®], 10/15/07, Hilton Hawaiian Village

Staff will be participating and providing speakership at the Honolulu Board of REALTORS[®], Honolulu 2007 Real Estate Summit on Monday, October 15, 2007, a full day function.

Instructor's Development Workshop

October 2007, Hawaii Association of REALTORS[®] and Hawaii Real Estate Commission, TBA

Ms. Marsha Shimizu reported that the three instructors they were hoping to enlist to teach the IDW are unavailable. She is currently working on contacting and hiring Sandy Japely of ProSchools, Inc. The projected date for the IDW is now moved to November 2007.

Real Estate Specialists' Office for the Day

Waikoloa Beach Marriott Resort, September 10, 2007 – Report

The report on the Real Estate Specialists' Office for the Day held in Kona on September 10, 2007, was distributed to the Commissioners for their information.

Real Estate Speakership Program

Hawaii Island Board of REALTORS[®], 11/1/07

SEO Kimura will be a speaker at the Hawaii Island Board of REALTORS[®] PB-BIC Meeting on November 1, 2007.

Education Evaluation Task Force

Next meeting Thursday, October 11, 2007

The next EETF meeting is scheduled for Thursday, October 11, 2007.

Open Forum:

Ms. Judy Sykes, 2007 President of the Hawaii International Real Estate Council, addressed the Committee regarding participation in the publishing of a magazine for the upcoming MIPIM Asia Conference and Exhibition scheduled for November 28 to 30, 2007, at the Hong Kong Convention and Exhibition Center.

Chair Ball informed Ms. Sykes that protocol requires her request to be on the agenda for discussion. Commissioner Loudermilk stated that it is a Sunshine Law requirement.

Chair Ball informed Ms. Sykes to submit her request with complete details to Staff by October 16, 2007, for placement of the agenda of the Real Estate Commission meeting scheduled for Friday, October 26, 2007.

Next Meeting: Wednesday, November 14, 2007
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

Adjournment: With no further business to discuss, Chair Ball adjourned the meeting at 10:56 a.m.

Reviewed and approved by:

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

October 18, 2007
Date

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