

**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: February 13, 2008
- Time: Upon adjournment of the Laws and Rules Review Committee meeting, which convened at 9:00 a.m.
- Place: King Kalakaua Conference Room  
King Kalakaua Building  
335 Merchant Street, First Floor  
Honolulu, Hawaii
- Present: Carol Mae Ball, Chair / Broker / Maui Commissioner  
Annette Aiona, Vice Chair / Broker / Hawaii Island Commissioner  
Louis Abrams, Broker / Kauai Commissioner  
William S. Chee, Broker / Honolulu Commissioner  
Frances T. Gendrano, Broker / Honolulu Commissioner  
Stanley Kuriyama, Broker / Honolulu Commissioner  
Trudy Nishihara, Broker / Honolulu Commissioner  
Michele Sunahara Loudermilk, Public / Honolulu Commissioner  
Mark Suiso, Public / Honolulu Commissioner
- Neil Fujitani, Acting Supervising Executive Officer  
Diane Choy Fujimura, Senior Real Estate Specialist  
Amy Endo, Real Estate Specialist  
David Grupen, Real Estate Specialist  
Cynthia Yee, Senior Condominium Specialist  
Cheryl Leong, Condominium Specialist  
Benedyne Stone, Condominium Specialist  
Jay Paige, Deputy Attorney General  
Karyn Takahashi, Recording Secretary
- Myoung Oh, Hawaii Association of REALTORS®  
Ron Fleet, Fleet Realty Inc. dba Fleet Educational Services  
Laura Merrifield  
Patrick Shea  
Carol Egan, All Islands Real Estate School  
John Connelley, Coldwell Banker Real Estate School  
Russ Goode, Russ Goode Seminars
- Call to Order: Chair Ball called the meeting to order at 9:21 a.m., at which time quorum was established.
- Chair's Report: Chair Ball stated the Committee 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:

Additional Distribution

The following was distributed as additional distribution:

4. Continuing Education Administration, Curriculum, Courses, Providers, and Instructors
  - b. Applications
    - 5) Provider – Energy & Environmental Building Association (EEBA); Administrator: Nancy Bakeman
    - 7) Course – “Interval Ownership;” Author/Owner: Laura Merrifield; Provider: Dower School of Real Estate; Course Categories: Property Ownership and Development and Other – 2<sup>nd</sup> Home Ownership; Clock Hours: 3
8. Program of Work, FY08
  - e. Interactive Participation with Organizations
  - s. Education Evaluation Task Force – Report of January 11, 2008 Meeting

Minutes of December 12, 2007

Upon a motion by Commissioner Abrams, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to accept the minutes of the December 12, 2007, Education Review Committee meeting as distributed.

Continuing Education: Applications

**2007 – 2008 Continuing Education Provider and Courses Ratification List**

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

<b>Provider</b>	<b>Effective Date</b>
Ralph Foulger's School of Real Estate (Administrator: Ralph S. Foulger)	January 23, 2008
<b>Course</b>	<b>Effective Date</b>
“Anti-Discrimination Laws” (ARELLO Certified Course/Vitousek Real Estate School)	January 15, 2008
“Financing Residential Real Estate” (ARELLO Certified Course/Vitousek Real Estate School)	January 15, 2008
“Professional Property Management” (ARELLO Certified Course/Vitousek Real Estate School)	January 15, 2008
“Residential Property Management” (Ralph Foulger/Ralph Foulger's School of Real Estate)	January 23, 2008

**Course – “Buying Foreclosure Properties;” Author/Owner: Ralph Foulger; Provider: Ralph Foulger’s School of Real Estate; Course Categories: Investment and Property Ownership and Development; Clock Hours: 3**

Commissioner Nishihara questioned whether it is the licensee’s responsibility to determine value. Chair Ball agreed and commented that a licensee cannot assure future profits.

Commissioner Nishihara had concerns about approving this course for continuing education credit as this may not be what the Commission wants to foster; however, it does not preclude the provider from offering the course as a non-CE credit course.

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

**Course – “The Escrow Process;” Author/Owner: Ralph Foulger; Provider: Ralph Foulger’s School of Real Estate; Course Categories: Contracts, Finance, and Broker Management; Clock Hours: 3**

Chair Ball commented that the information in this proposed course is covered in the prelicense curriculum.

Commissioner Nishihara stated that she believes escrow companies provide courtesy education on the escrow process. Commissioner Aiona agreed and stated that escrow companies do monthly training.

Chair Ball made reference to Hawaii Administrative Rules Section 16-99-100 the criteria for approving and certifying continuing education courses; specifically, Section 16-99-100(a)(3) states, “The commission may approve and certify a continuing education course when the course satisfies all of the following: . . . Is developed for a knowledge and abilities level beyond ‘professional entry’; . . .”

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Abrams, it was voted on and unanimously carried to deny certification of “The Escrow Process” as a continuing education elective course based on Hawaii Administrative Rules 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: . . .(7) Does not meet the definition of continuing education as determined by the commission.” Hawaii Administrative Rules Section 16-99-100 “Criteria for approving and certifying continuing education courses. (a) The commission may approve and certify a continuing education course when the course satisfies all of the following: . . .(3) Is developed for a knowledge and abilities level beyond ‘professional entry’.”

**Course – “Selling High Performance Homes;” Author/Owner: Energy & Environmental Building Association (EEBA); Provider: Energy & Environmental Building Association (EEBA) (pending application); Course Categories: Risk Management, Technology and the Licensee, and Other – Building Science – Houses That Work; Clock Hours: 3**

Senior Specialist Fujimura stated that the Energy & Environmental Building Association (EEBA) is linked with the EPA and the Department of Energy.

Chair Ball stated that this proposed course seems to be very informative; however, she has concerns about the sales/sales techniques aspect of the course. Chair Ball referenced Hawaii Administrative Rules Section 16-99-101 courses not acceptable for continuing education course certification; specifically, Section 16-99-101(3) "The commission may not certify a continuing education course, or any portion thereof, which: . . . Teaches office and business skills, such as typing, speed reading, memory improvement, report writing, personal motivation, salesmanship, sales psychology, and time management; . . ."

Commissioner Nishihara agreed and felt the course is geared towards sales of high performance homes rather than improving a licensee's competency and professionalism. She felt the proposed course did not fall within the criteria for a continuing education course.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to deny certification of "Selling High Performance Homes" as a continuing education elective course based on Hawaii Administrative Rules, 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: . . .(3) Teaches office and business skills, such as typing, speed reading, memory improvement, report writing, personal motivation, salesmanship, sales psychology, and time management; . . . (7) Does not meet the definition of continuing education as determined by the commission." Hawaii Administrative Rules Section 16-99-87 "Definitions. . . 'continuing education' means clock hours of core courses and elective courses that involve areas designed to improve a licensee's competency or professional standards and practice, and which courses are determined by the commission to exceed minimum entry level competency in the subject matter of the course, including consumer protection in real estate transactions."

**Provider – Energy & Environmental Building Association (EEBA);  
Administrator: Nancy Bakeman**

Upon a motion by Commissioner Aiona, seconded by Commissioner Gendrano, it was voted on and unanimously carried to approve Energy & Environmental Building Association (EEBA) as a continuing education provider.

**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 the Committee previously requested that she include legal cases dealing with this issue. Ms. Egan specifically referred to the 1984 Easton v. Strassberger case, and a 1996 University of Hawaii Law Review article entitled "Seller Beware".

Ms. Egan stated that this course is a basic entry level course for individuals who do not know much about construction.

Commissioner Nishihara stated that these issues seem to be more of a disclosure matter rather than a duty to discover matter—licensees currently follow Hawaii Revised Statutes, Chapters 508D and 467, and perform their due diligence to disclose material facts. She added that the cases Ms. Egan noted seem to be centered on disclosure.

Commissioner Nishihara stated that the course seems to advocate a discovery approach. Inspectors are the ones who make the discovery, and with a course like this, will the licensee feel it their duty to discover? Will the licensees be in conflict with an inspector's findings? There are many implications with a course of this nature.

Ms. Egan stated that she has included many caveats in the course that remind the licensee if any questionable defect or hazard is found the licensee should recommend the services of an inspector or expert in that field.

Chair Ball stated after reviewing the PowerPoint slides of the course, it seems the course is not intended for a real estate licensee. "How to detect" and "what to do to remedy situations" are not the concern of the licensee. The course goes into great detail in the slides. She noted that a little knowledge may be a dangerous thing. A licensee should not be involved in property inspection, which is an area clearly beyond their expertise.

Commissioner Suiso disagreed and stated that he felt there is a certain expectation of due diligence from the consumer when working with a licensee, and there should be a certain amount of discovery on the part of the licensee. The licensee should be able to provide guidance to his client.

Commissioner Nishihara noted that the Mandatory Seller Disclosures in Real Estate Transactions law, Chapter 508D, Hawaii Revised Statutes, defines the duties and responsibilities of the licensee. She noted that added consumer protection comes from the hiring of professional inspectors.

Ms. Egan stated the focus of this class is more of consciousness raising and making the licensee more aware of possible defects and hazards in an older home.

Commissioner Chee commented that Ms. Egan referenced a case from 1984, and in the present time, there are currently more inspections being performed. He stated he does not see the value of the course as presented.

Commissioner Abrams stated that in his opinion it is good to point out "red flags" and this course may need to be structured more as a "red flags" approach, but there is a very fine line between pointing out "red flags" and recommending possible solutions to red flag situations.

Commissioner Chee moved to deny certification of "Environmental Hazards and Structural Deficiencies in a Home and Issues with Older Homes" as a continuing education course based on Hawaii Administrative Rules 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: . . .(7) Does not meet the definition of continuing education as determined by the commission." Hawaii Administrative Rules Section 16-99-87 "Definitions. . . . 'continuing education' means clock hours of core courses and elective courses that involve areas designed to improve a licensee's competency or professional standards and practice, and which courses are determined by the commission to exceed minimum entry level competency in the subject matter of the course, including consumer protection in real estate transactions." Commissioner Nishihara seconded the motion. The motion was voted on and Commissioners Ball, Aiona, Chee, Gendrano, Kuriyama, Nishihara, and Loudermilk voted aye. Commissioners Abrams and Suiso voted nay. The motion was carried.

**Course – “Interval Ownership;” Author/Owner: Laura Merrifield; Provider: Dower School of Real Estate; Course Categories: Property Ownership and Development and Other – 2<sup>nd</sup> Home Ownership; Clock Hours: 3**

Ms. Laura Merrifield and Patrick Shea, Esq. were present at the meeting.

Ms. Merrifield stated that there is a growing trend towards interval ownerships and, in particular, fractional ownership. This course helps individuals understand what is in their client’s portfolio and how to go about obtaining a second home.

Commissioner Abrams was concerned that the course did not address the distinct laws for each county. Ms. Merrifield responded that she will be able to conduct research and incorporate the information into the course.

Commissioner Abrams was also concerned that some of the subject matter may require a securities license. Mr. Shea responded that he agreed that there may be some security law issues, and explained that this course would educate agents to stay away from providing advice on securities. The course is geared to ownership of a second home rather than investments.

Commissioner Nishihara stated that the course seems to focus on fractional sales. Ms. Merrifield replied that it focuses on interval ownerships, which includes fractional ownership.

Commissioner Nishihara noted that the concept of fractional ownership in Hawaii is fairly new and the Commission is continuing to review the current laws and rules to see if they adequately cover fractional ownership, if at all. She stated that the Commission approving a course of this nature may be premature. The public needs to be acclimated to the concept.

Chair Ball inquired as to who wrote the course. Ms. Merrifield responded that she wrote the bulk of the course. She conducted two years of research, including attending classes on the mainland.

Mr. Shea stated that he understands it is a new concept and for this reason it is important to provide a course of this nature to protect both the public and the licensee and there do not appear to be violations of the securities law.

Commissioner Nishihara stated that the Commission needs to protect the consumer; however, we don’t currently have all the facts. She suggested that they pursue other avenues of education such as providing consumer seminars. Mr. Shea responded that they can endeavor to educate via other avenues, but noted that consumers look to realtors for answers.

Commissioner Kuriyama questioned if the course promotes a particular point of view—the value of fractional ownership. Ms. Merrifield disagreed. Commissioner Kuriyama stated that it seems to be promoting the point of view of owning a fractional interest versus other types of ownership. Commissioner Loudermilk agreed with Commissioner Kuriyama and stated that the course seems to be clearly weighted towards fractional ownership.

Commissioner Abrams stated that ARELLO is reviewing fractional ownership, tenants-in-common, etc. The National Association of REALTORS® is currently asking for an exemption from SEC rules and the issue is clearly not settled. This may affect consumers as they may be grossly misled. Commissioner Abrams also had issues with local county laws and how they will ensure the course content is up-to-date with the ever-changing laws and rules at the county level.

Upon a motion by Commissioner Abrams, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to deny certification of "Interval Ownership" as a continuing education elective course based on Hawaii Administrative Rules 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: . . .(7) Does not meet the definition of continuing education as determined by the commission." Also, Hawaii Revised Statutes Section 467-4.5(b) states "Continuing education providers shall: . . . (2) Ensure that instructors are competent in the subject matter of the course and are current in their knowledge of the subject matter; and (3) Ensure that the course is based on current information, laws, and rules."

#### Continuing Education Core Course

Senior Specialist Fujimura reported that Part B of the core course is in the works and is anticipated to cover the topic of "disclosure" and 2008 legislative updates.

Prelicense Education: Administrative Issues

#### **Written request from Ron Fleet regarding holding joint prelicense courses for salespersons and brokers**

Mr. Ron Fleet addressed the committee on the issue of holding joint prelicense courses. Mr. Fleet stated that he cannot fiscally justify holding the broker course by itself, and this becomes a disservice to individuals on the outer islands who want to take the broker course.

He stated that he has spoken with several providers and they agreed there are currently very few places on the outer islands where one can take a classroom broker class, and many do not like the online course option.

Mr. Fleet noted that 75% of the broker course is the sales course and having broker candidates in the salesperson course is a plus to salesperson candidates as there is more discussion. He views it as a benefit to the salesperson candidates. He added that 100% of the brokers he has spoken with have learned from going through the broker course with salesperson candidates. He does not see the negative in holding joint prelicense courses.

Commissioner Nishihara provided some background information on this issue. Commissioner Nishihara stated the hours of the two curricula were indirectly increased due to the SWAT changes, when the SWAT rule amendments increased the responsibility of the principal broker.

Commissioner Nishihara stated that the intent behind disallowing joint prelicense courses was that when broker candidates are together in the prelicense class, the discussion is on a different level--they take the basics to a higher level. You may be holding back the broker candidate rather than letting them grow. Commissioner Nishihara also noted that this course should prepare the broker candidate to run their own brokerage firm.

Mr. Fleet stated that he has found that broker candidates need to review the basics again. He opined that the function of the broker course is to elevate the licensee's level not to teach them to be self employed, but to be able to obtain a broker's license. A post-licensing course that focuses on teaching brokers to manage their own brokerage firm would be appropriate.

At this time, Mr. Russ Goode stated that he did not disagree with Mr. Fleet, but he does consider his broker class to be at a different and higher level and the broker candidates appreciate being with other broker candidates. However, he does see the financial feasibility of holding joint classes.

Mr. John Connelley stated that he agreed that it is hard to make separate broker prelicense courses work, but he is in favor of keeping the classes separate. He finds that there is a different level of discussion, greater interaction and a faster pace in his broker classes, and he feels the students are getting more value out of the course because of this.

Mr. Connelley stated that he has asked his salesperson candidates how they would feel if they also had broker candidates in the class and they have responded in the negative as the course is too overwhelming for the salesperson candidate to have broker candidates alongside them.

Chair Ball suggested that Mr. Fleet increase his tuition for the broker course.

#### Applications

#### **2007 – 2008 Prelicensing Education Schools and Instructors Ratification List**

<b>Instructor</b>	<b>Effective Date</b>
Martha Lee Ruggles (Salesperson/Broker)	January 23, 2008

#### Evaluation and Education Program

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

1. Abe Lee Seminars; Salesperson Independent Study On-Line (18)
2. Seiler School of Real Estate; Independent Study On-Line (1)
3. Vitousek Real Estate School (1)

Administration of  
Examinations:

#### Promissor

#### **Licensing Examination Statistics – November 2007 / December 2007**

Examination statistics for November and December 2007 were distributed to the Commissioners for their information.

#### **School Pass/Fail Rates – November 2007 / December 2007**

School pass/fail rate statistics for November and December 2007 were distributed to the Commissioners for their information.

#### **School Summary Reports – November 2007 / December 2007**

Copies of the November and December 2007 performance summary reports, by school, were 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

It was reported that the February 2008 issue of the Real Estate *Bulletin* will be distributed shortly. A copy will be made available on the Commission's website: [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec).

Neighbor Island Outreach

The next neighbor island outreach will be held in Maui on May 7, 2008, at the REALTORS® Association of Maui offices at 441 Ala Makani Place, Kahului, Maui.

Interactive Participation with Organizations

A revised schedule of authors for articles for the *Hawaii REALTOR Journal* was distributed to the Commissioners.

Education Evaluation Task Force – Report of January 11, 2008 Meeting

The report of the January 11, 2008, EETF meeting was distributed to the Commissioners.

Senior Specialist Fujimura reported that there was extensive discussion on updating the categories for qualification for a prelicensing education equivalency certificate. The EETF looked into more category consistency and made recommendations for rule-making changes.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Abrams, it was unanimously carried to accept the following EETF recommendations:

The Prelicense Education Equivalency for **salespersons** to include the following categories and requirements:

1. Active and current out-of-state real estate license. Attach completed "Verification of License" form.
2. Law degree from a law school accredited by the American Bar Association. Name of law school attended: \_\_\_\_\_. Date degree was conferred: \_\_\_\_\_. Attach photocopy of diploma or original certified transcripts.
3. Bachelor of Arts or Bachelor of Science degree with a major in real estate from an accredited college or university. Attach photocopy of degree or original certified transcripts and highlight the date degree was conferred.

The Preliminary Education Equivalency for **brokers** to include the following categories and requirements:

1. Active and current out-of-state real estate broker's license. Attach completed "Verification of License" form.
2. Law degree from a law school accredited by the American Bar Association. Name of law school attended: \_\_\_\_\_. Date degree was conferred: \_\_\_\_\_. Attach photocopy of diploma or original certified transcripts.

The categories and requirements recommended for deletion from the current Preliminary Education Equivalency are:

1. 6 semester credits in real estate, business, business law, real estate development, or finance courses from an accredited college or university. Attach original certified transcript and highlight the courses for reference.
2. GRI designation. Attach photocopy of certificate or original certification letter.
3. Certificate in advanced real estate from the University of Hawaii. Attach photocopy of certificate or original certification letter.
4. RE 300 and RE 310 – University of Hawaii. Attach original certified transcript or original certification letter.
5. CCIM designation. Attach photocopy of certificate or original certification letter.
6. BOMI – RPA designation. Attach photocopy of certificate or original certification letter.
7. Other professional designation or certificate. (The Real Estate Commission will review, evaluate, and decide on other professional designations or certificates on a case-by-case basis at its monthly meeting, etc.)

Budget and Finance: Real Estate Education Fund Report

Upon a motion by Commissioner Suiso, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to accept the Real Estate Education Fund report for period ending December 31, 2007.

Continuing Education: Applications

**Course – "Buying Foreclosure Properties;" Author/Owner: Ralph Foulger; Provider: Ralph Foulger's School of Real Estate; Course Categories: Investment and Property Ownership and Development; Clock Hours: 3**

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Gendrano, it was voted on and unanimously carried to deny certification of "Buying Foreclosure Properties" as a continuing education elective course based on Hawaii Administrative Rules 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: . . . (7) Does not meet the definition of continuing education as determined by the commission."

Next Meeting: Wednesday, March 12, 2008  
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 10:46 a.m.

Reviewed and approved by:

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

February 21, 2008  
Date

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