

LAWS AND RULES 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 Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes.

Date: Wednesday, February 10, 2010

Time: 9:00 a.m.

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

Present: Louis Abrams, Chair, Broker/Kauai Commissioner
Frances Gendrano, Vice Chair, Broker/Honolulu Commissioner
Michele Sunahara Loudermilk, Public/Honolulu Commissioner
Trudy Nishihara, Broker/Honolulu Commissioner
Annette Aiona, Broker/Hawaii Commissioner
Mark Suiso, Public/Honolulu Commissioner – late arrival
Walt Harvey, Broker/Honolulu Commissioner

Neil Fujitani, Supervising Executive Officer
Jon Ellis Pangilinan, 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
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Judy Gervin, East Oahu Realty
Bill Woods, Keller Williams Realty
Tony Dias, VA Loans Hawaii
Russ Goode, Russ Goode Seminars
Philip H. Wilia, Dower School of Real Estate

Absent: Carol Ball, Broker/Maui Commissioner
Stanley Kuriyama, Broker/Honolulu Commissioner

Call to Order: The Chair called the meeting to order at 9:00 a.m., at which time quorum was established.

Chair's Report: The Chair announced that the Committee may move into executive session 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.

Commissioners Ball and Kuriyama were excused from today's meeting. Prior notice of their non-attendance was received.

SEO's
Report:

Minutes of Previous Meetings

Upon a motion by Commissioner Nishihara, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to accept the minutes of the January 13, 2010, Laws and Rules Review Committee meeting as circulated.

Program of
Work, FY10:

Legislative and Government Participation and Report

Legislative Report No. 1 was distributed to the Commissioners for their information. The SEO reported on the bills that were affecting the Commission.

HB 1906 – relating to taxation; requiring a licensee to be issued a tax clearance as a condition to license issuance or renewal. PVL testified in opposition to this bill. CPC deferred.

HB 2039 – relating to registration of rental property managers with the REC; This measure has not been scheduled yet.

HB 2546 – relating to restoration of forfeited licenses; bill passed the House and moved to the Senate unamended.

HB 2633 – relating to real estate licensees; The House bill does not have a high school diploma requirement whereas the companion Senate bill, SB 2602, does. The Commission supports the increase in continuing education hours but agreement needs to be made in regards to the high school diploma requirement. The current language in the bill states high school diploma or equivalent.

It was discussed that it would be difficult to value an equivalent to high school diploma, especially with foreign education. Commissioners also noted that it was the intent of the law to make entry level fairly minimal for real estate licensees. Although it may appear to raise the industry standard, a high school education did not prepare one for the real estate industry. An individual is prepared for entry into the industry by passing the real estate examination. Commissioners noted there seems to be no connection or necessity for a high school diploma or equivalent.

SEO Fujitani noted that by requiring a high school diploma or equivalent, it would create an administrative burden on staff and the Commission. Currently we are unable to fill positions within the branch due to the economy and the Governor's hiring freeze.

Deputy Attorney General Wong questioned how the Commission currently verifies other education requirements for equivalencies.

Staff responded that currently we only accept specific degrees from accredited colleges and universities within the United States. The applicant provides original certified transcripts or a photo copy of the degree with the equivalency to the prelicense education application. If a high school diploma or its equivalent was required, all real estate salesperson applications would potentially come to the real estate branch for review.

Commissioner Suiso arrives at 9:15 a.m.

Chair Abrams noted that both bills have made it out of their respective committees and will cross over.

Commissioner Loudermilk suggested that the requirement of a high school diploma or its equivalent be removed.

Upon a motion by Commissioner Harvey, seconded by Commissioner Aiona, it was voted on and unanimously carried to not support the requirement of a high school diploma or its equivalent for real estate licensees.

SB 2005 – prohibits real estate brokers and salespersons who are notaries public from notarizing documents related to real estate transactions in which they are involved as a real estate broker or salesperson. The Notary law already addresses this issue. Not required in chapter 467.

SB 2036 – establishes a toxic mold remediation task force to examine the potential hazards of toxic indoor mold and fungal contamination. Task force to consist of thirteen members, one of which to be a representative of the real estate commission.

SB 2447 – changes the real estate salesperson experience requirement for a real estate broker license to include full-time and part-time real estate experience. Hearing scheduled for February 17, 2010. The Commission has drafted testimony in opposition of the bill. Commissioner Gendrano to testify on the Commission's behalf.

Commissioners' Education Program – OpenLine, January 2010

The January 2010 issue of the Office of Information Practices publication "OpenLine" was distributed for informational purposes.

Division and Department Programs – Broker Price Opinions

Commissioner Harvey reported when the June 2009 Real Estate Bulletin came out with the article entitled "Are Broker Price Opinions Legal?" it raised many concerns in the industry. Commissioner Harvey has heard of many real estate licensees doing BPOs and being compensated between \$45 to \$100. According to the article, this is in violation of the real estate appraiser statute. Lenders and banks require this information which if received through licensed appraisers could cost approximately \$500. Commissioner Harvey noted that when on the mainland he did approximately one thousand BPOs and received no listings.

Commissioner Aiona noted that real estate licensees can either do a BPO and receive no compensation or choose to decline doing a BPO. A substantial amount of work is put into doing a BPO and the compensation never justifies the amount of work.

Commissioner Harvey noted that it is a loss to the lender and the consumer if the real estate licensee is not willing to do the BPO for the lender.

Commissioner Loudermilk noted that this issue is part of the Real Estate Appraiser law and rules, and not addressed in the laws governing Real Estate Salespersons and Brokers.

Commissioner Nishihara noted that if it has to do with land values, then an appraisal should come from an appraiser licensee.

Ms. Judy Gervin of East Oahu Realty addressed the committee. She noted that she relocated to Hawaii from out of state where she did BPOs. She reported that she believes HAR §16-114-74 clearly states "or" in the following and allows the issuance of BPOs: "(2) No compensation, fee, or other consideration is charged for such opinion

other than the normal brokerage fee rendered in connections with the sale of the property; or (3) No representation is made that the real estate broker or salesperson is a certified or licensed real estate appraiser."

Ms. Gervin stated that if you are giving an estimate of value, it is not an appraisal. There are currently exceedingly high numbers of short sales with lenders taking anywhere from 90 days to 18 months for the short sale process. Licensees are looking to streamline the short sale process. Most times all that is needed is a BPO and not an appraisal. Many appraisers contact real estate licensees to get a real estate licensee's opinion. There are real estate licensees out there trying to assist the consumer with short sales and REOs by providing BPOs.

Ms. Gervin believes HAR §16-114-74(3) negates §16-114-74(2). She stated that the language clearly states "or" and not "and". She noted that the buyer brokerage agreement states that you can be paid for research, which is what a BPO is, so long as you do not state that it is an appraisal.

Commissioner Loudermilk reported that there is a law that states "or" means "and".

Mr. Bill Woods of Keller Williams Realty was present to address the committee.

Mr. Woods stated by not allowing BPOs it would be harmful to the consumer. There are agents working 4 to 5 months waiting for a lenders approval and if it extends too long, the consumer faces foreclosure. Usually there is no notice of foreclosure, it just occurs. He would like to encourage the Real Estate Commission to amend the appraiser law. Agents don't get rich doing BPOs. They could change the law and place a cap on it like the handy man law, not to exceed \$100 to \$125 which will enable the real estate licensee to work for clients. Short sales are normally done because the seller is in trouble. He requested that the Commission move forward on this issue so that licensees can legally do BPOs. Most agents do BPOs specifically for gathering business from lenders. Due to the educational article, a lot of firms are now not allowing agents to do BPOs.

SEO Fujitani informed Mr. Woods and Ms. Gervin that the Real Estate Commission does not have jurisdiction over and cannot effectuate a change to the real estate appraiser law. Interested parties wishing to change the appraiser law could either request a declaratory relief through the Department's hearing's office or go to the industry organization to see if they are willing to lobby for a law change. This issue is outside of the Real Estate Commission's jurisdiction.

Mr. Woods questioned how one would go about filing for a declaratory relief.

Deputy Attorney General Wong replied that the department has forms which fall under Chapter 201, available through its Hearings Office.

ARELLO,
Other
Organizations
And

Arellogram and Other Informational Reports

The February 2010 ARELLO Boundaries Newsletter was distributed for informational purposes.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Aiona, it was voted on and unanimously carried to approve sending up to three Commissioners and/or staff members to the ARELLO District 4 Meeting, to be held on April 7, 2010 and the ARELLO Midyear Meetings, to be held April 7 to 10, 2010, in Colorado Springs, Colorado, subject to budget, DCCA and Governor's required travel approval. REC Chair and SEO to determine attendees.

National Association of Realtors and Other Boards of Realtors – Montana

The April 1, 2009, Volume 1, Issue 1 of the Montana Department of Labor and Industry, Business Standards Division's newsletter entitled "Board of Realty Regulation Newsletter" was distributed for informational purposes.

Special Issues: No report presented.

Open Forum: None.

Budget and Finance Report: No report presented.

Next Meeting: Wednesday, March 10, 2010
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, the Chair adjourned the meeting at 10:10 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

Neil K. Fujitani
Supervising Executive Officer

February 18, 2010

Date

Approved as is.
 Approved with amendments. See minutes of _____ meeting.