

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, September 8, 2010

Time: 9:00 a.m.

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

Present: Frances Gendrano, Chair, Broker/Honolulu Commissioner
Walt Harvey, Vice Chair, Broker/Honolulu Commissioner
Michele Sunahara Loudermilk, Public/Honolulu Commissioner
Stanley Kuriyama, Broker/Honolulu Commissioner
Carol Ball, Broker/Maui Commissioner
Trudy Nishihara, Broker/Honolulu Commissioner
Scott Sherley, Broker/Hawaii Commissioner
Mark Suiso, Public/Honolulu Commissioner
Donna Apisa, Broker / Kauai Commissioner

Neil Fujitani, Supervising Executive Officer
Jon Ellis Pangilinan, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Amy Endo, 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: Ron Boyer, DCCA Director
Rod Maile, DCCA Deputy Director
Beth Holiday, Hawaii Association of Realtors ® Education Committee
Aron Espinueva, Hawaii Association of Realtors ®
Marsha Shimizu, Hawaii Association of Realtors ®
M. Russell Goode, Hawaii Association of Real Estate Schools
Rowena Cobb, Hawaii Association of Realtors ® Government Affairs

Absent: None.

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 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.

SEO's
Report:

SEO Fujitani welcomed and introduced Commissioner Donna Apisa.

Minutes of Previous Meetings

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Harvey, it was voted on and unanimously carried to accept the minutes of the August 11, 2010, Laws and Rules Review Committee meeting.

Program of
Work, FY10:

Licensing, Registration, and Certification Administration

Director Boyer informed the committee that currently online applications are strictly for renewals and that there are no areas in the 47 professions and vocations which process initial applications online. Director Boyer stated that he is looking for the concurrence of the Real Estate Commission to move forward with initial online application processing of real estate licensees.

Director Boyer noted that he is in receipt of the memo to the Governor requesting a fee reduction to reduce the real estate education fund fee to be collected at the December 2010 license renewals.

Staff noted that the fee reduction is a statutory requirement of §467-11(e), Hawaii Revised Statutes, which states "If beginning on July 1, 1987, the education fund balance at the end of any fiscal biennium exceeds \$1,200,000, there shall be a moratorium on such renewal contributions and the commission shall review and consider a reduction in the same amount in license fees."

Director Boyer noted that this is an opportune time to use the real estate education funds to establish an initial online application system for real estate salespersons and brokers. DCCA has a robust IT section which could assist with the RFP and vendor selection. He further noted that HIC, the Hawaii Information Consortium, did a research and estimated that to go out with an RFP to create an initial online licensing system it would cost approximately \$200,000. Director Boyer noted that he has approached the Governor with this proposed program and the Governor has shown interest.

Director Boyer further stated that the real estate licensing area would be a good start because of the availability of funds and that real estate licensees have shown the highest usage of the online renewal system. He also noted that the department's IS Division has been in contact with the Commission's testing company and has been informed that they would be able to accommodate online licensing with the Commission.

A draft of the RFP would be put out through HEPS, and if the quotes received come back over the estimated amount of \$200,000, the department would not move forward, but if the quotes were received within the estimated amount, the department would like to move forward with this project. The Director suggested that one or two REB staff members meet with staff from the department's IS Division to draft the RFP.

Director Boyer further noted that in speaking with REC Chair Nishihara fingerprinting was also brought up, and that it would be possible to also include that request in the RFP. He noted that anything spent out of the real estate education fund would be strictly used for the benefit of the real estate licensees. The RFP could be expanded at a later time to include other professions that may want to move forward with initial online licensing. Those professions would pay for the program from their own fees.

Commissioner Nishihara questioned who would maintain the online initial licensing system and whether the department is also requesting \$200,000 every licensing biennium.

Director Boyer responded that the department would maintain the system and that they would not be requesting funds every biennial period.

Commissioner Harvey questioned who would benefit from this system, how would it save money in the long run, and would the savings, if any, equate to reduced licensing fees?

Director Boyer responded that it would be a convenience to the consumer, who would be the real estate licensee. The online system would be available 24/7. An online service would save approximately 20% to 40% of the department's time and staff can then concentrate on other areas including deficiencies. Online renewals have been receiving a discounted rate as may be the case with initial online applications.

Commissioner Gendrano questioned how the testing company would come into play with the online initial licensing system.

Deputy Director Maile responded that the scores would be maintained in a file electronically and uploaded to the department's licensing system. If all the requirements are met, the applicant would be eligible to be licensed. The \$200,000 includes training for staff on the program.

Director Boyer noted that he is aware that the Real Estate Branch staff is short staffed with two positions still vacant. He noted that the set up and implementation of the program would be done by DCCA's IS Division staff and not the Real Estate Branch staff.

Commissioner Nishihara noted that when a program such as this is instituted, there may be a need for more staff, will there be a flexibility to hire?

Director Boyer responded that the positions are set by the legislature. At this time, the current vacancies can be filled. If the process were to go online, there would actually be less of a need for additional staff.

Chair Gendrano noted that technology is the future, but in terms of money, what would be the red flags that the Commission may be faced with?

Deputy Director Maile responded that they have reviewed that Commission's plan for the real estate education funds and that this proposed program would not conflict with any of the Commission's plans. DCCA has always followed more of the business model rather than the government model. The Real Estate Branch is the only branch within PVL and the department.

Director Boyer noted that the Governor understands that this is an appropriate use of the real estate education funds which may cost licensees less and offer more incentives rather than red flags.

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

Rulemaking, Chapter 99, HAR, Real Estate Brokers and Salespersons

A preliminary rough draft of the proposed rules for inclusion to Title 16, Chapter 99, Hawaii Administrative Rules were distributed for review and comment.

Beth Holiday and Rowena Cobb of the Hawaii Association of REALTORS® were present to discuss HAR's recommended revisions to Chapter 99. Ms. Holiday distributed a copy of HAR's recommended revisions to Hawaii Administrative Rules, Chapter 99, Subchapter 9 – Continuing Education.

Ms. Holiday noted that the proposed changes highlight 3 areas: CE courses, CE instructors, and accountability of providers.

In summary, she noted the following:

CE courses – there should be two categories of CE courses, "elective" course category redefined as "consumer service" courses and "mandatory" courses that serve the purposes of "consumer protection." It was suggested that 60% of the CE course hours consist of mandatory courses to ensure emphasis on consumer protection and the remaining hours consist of elective courses or a combination of elective and mandatory courses. It is also recommended that the rule be changed to allow CE credit for the same courses taken as long as it is not taken in two consecutive biennium, and also pertain to instructors receiving credits for the courses they have taught.

CE Instructors – As instructors play the most important role in the quality of a CE course, the instructor should meet minimum standards. It is suggested that all instructors be required to participate in an instructor workshop before the start of a biennium which they plan to teach in. New instructors required to complete an instructor workshop before allowed to teach a CE course. Instructors should be evaluated annually by their provider utilizing a standard evaluation form approved by the Commission. Instructors should also be audited through an auditing system by individuals who understand teaching skills.

Provider accountability – Providers should be required to keep proof of the instructor's ratings along with student evaluations for up to four years. The commission to conduct random audits of provider's records and CE classes to ensure the quality of instructors and courses.

HAR also noted that the Commission has no list of CE instructors. HAR suggests that the providers submit a list of CE instructors to the Commission when renewing its providership.

Commissioner Nishihara questioned if their proposals only reference the CE section?

Ms. Holiday responded in the affirmative.

Commissioner Nishihara thanked HAR for their effort and noted that the committee would need to review its proposals.

Ms. Cobb noted that the success of a course depends on the individual who wants to learn. The first step is a good course with a good instructor, which leads to a good agent.

Chair Ball noted that the rules should be minimal. The suggested changes to the CE rules by HAR is an ambitious document which the committee will need to review and digest.

Mr. M. Russell Goode was present. Mr. Goode stated that he is a CE instructor and provider. He has participated in numerous IDWs. As a provider he notes the problem is that there are not enough appropriate courses available. Most courses are designed for the residential licensee. There is a need for more courses to address time share and commercial sales. He suggests that the Commission broaden the scope and variety of courses offered.

Commissioner Sherley noted that at the last Education Review Committee meeting, 17 new courses were approved, majority of which were online courses.

Upon a motion by Commissioner Ball, seconded by Commissioner Sherley, it was voted on and unanimously carried to take the matter under advisement.

License Renewal

The 2010 real estate renewal timeline was distributed for informational purposes.

Specialist Endo reported that those licensees that renew their licenses online will receive a discount ranging from \$52.50 to \$65.00, compared to the 2008 renewal cycle which offered a discount ranging from \$26.50 to \$39.00. If a licensee has a "Yes" answer to any of the 3 questions on the renewal, the online system will not allow the licensee to proceed with the online renewal. Licensees with "Yes" answers will need to contact the Licensing Branch to obtain a paper renewal and will not be offered the online CAC discount.

Commissioners' Education Program

A copy of the July 2010 issue of OpenLine was distributed for informational purposes.

Division and Department Programs

The article entitled "Banks Face Short-Sale Fraud as Home 'Flopping' Rises (Update 2)" from the Tuesday, August 10, 2010 online issue of Bloomberg Businessweek was distributed for informational purposes.

It is interesting to note that "flopping" has become another method of fraudulent activity within the real estate industry. In flopping, a broker is hired to provide a "market" value assessment that is less than what the house is actually worth. The bank is persuaded to accept the lower assessment but is not informed that

the seller has lined up a buyer to pay a higher amount. Hawaii should be careful of this type of situation.

Ad Hoc Committee on Consumer-Broker Relationships

The report on Agency Task Force by former Commissioner Louis Abrams was distributed for informational purposes. It was suggested that a letter be sent to the members of the Ad Hoc Committee on Consumer Broker Relationships thanking them for their participation.

ARELLO,
Other
Organizations
And
Jurisdictions:

US Department of Housing and Urban Development (HUD)

The following articles from the Summer 2010 issue of ALQ Real Estate Intelligence Report was distributed for informational purposes: "Fair Housing expansion: Gays, illegal aliens, pregnant women get shelter" and "HUD releases "new" guidance on gender-based housing discrimination."

California Department of Real Estate

The online "Message from Commissioner Davi" of the California Department of Real Estate, regarding "the Benefit of the Doubt" was distributed for informational purposes. It was noted that this is the same issue former Commissioner Chee brought up relating to policing your own agents.

The message noted that the recently formed Broker Supervision Task force was established to examine the laws, regulations and policies that shape a supervising broker's responsibilities in overseeing the activities of the brokerage and its employees.

Executive
Session:

Upon a motion by Commissioner Nishihara, seconded by Commissioner Suiso, it was voted on and unanimously carried to enter 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 Nishihara, seconded by Commissioner Sherley, it was voted on and unanimously carried to move out of executive session.

Program of
Work, FY10:

Licensing, Registration, and Certification Administration

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Ball, it was voted on and unanimously carried to approve the use of up to \$200,000 for implementation of the online initial licensing system for real estate salespersons and brokers, subject to the availability of real estate education funds, ability to hire and train current personnel and vacant positions within REB first, and budget restraints REB is required to abide by through DCCA and the Legislature. The program must be in accordance and receive the approval of the Professional and Vocational Licensing Division's Acting Licensing Administrator.

Neighbor Island Outreach

A request for travel approval has been submitted to the Director to hold the Commission's three committee meetings on November 10, 2010 on the island of

Maui. If approved, the Specialists' Office for the Day will be held in conjunction with the Neighbor Island Outreach Committee meetings.

Special Issues: None reported.

Budget and Finance Report: None presented

Next Meeting: Wednesday, October 13, 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 11:05 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

Neil K. Fujitani
Supervising Executive Officer

September 21, 2010

Date

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