

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 7, 2011

Time: 9:30 a.m.

Place: West Hawaii Association of REALTORS®
74-5620 Palani Court, Suite 106
Kailua-Kona

Present: Frances Gendrano, Chair, Broker/Honolulu Commissioner
Walt Harvey, Vice Chair, Broker/Honolulu Commissioner
Michele Sunahara Loudermilk, Public/Honolulu Commissioner
Carol Ball, Broker/Maui Commissioner
Scott Sherley, Broker/Hawaii Commissioner
Nikki Senter, Public/Honolulu Commissioner
Rowena Cobb, Broker / Kauai Commissioner
Aileen Wada, Broker/Honolulu Commissioner

Neil Fujitani, Supervising Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Marsha Shimizu, Hawaii Association of REALTORS®
Trudy Nishihara, Hawaii Association of REALTORS®
Laura Harlak, West Hawaii Association of REALTORS®
Brian Thomas
Steven Robertson
Tsing F. Young

Absent: Stanley Kuriyama, Broker/Honolulu Commissioner

Call to Order: The Chair called the meeting to order at 9:30 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.

Commissioner Kuriyama was excused from today's meeting. Prior notice of his non-attendance was received.

SEO's
Report:

Minutes of Previous Meetings

Upon a motion by Commissioner Senter, seconded by Commissioner Harvey, it was voted on and unanimously carried to accept the minutes of the August 10, 2011, Laws and Rules Review Committee meeting as circulated.

Program of Work:

Licensing, Registration, and Certification Administration

Marsha Shimizu and Trudy Nishihara were present representing the Hawaii Association of REALTORS®. Ms. Shimizu informed the committee that HAR's Education Committee is in support of pursuing post licensing education requirements for both new brokers and new salespersons and is looking for the Commission's support and comments. The committee feels there is a need for practical aspects of the business to better protect and help the consumer. HAR's Education Committee has looked into 18 other states which are in favor of post licensing education. The number of hours range between 20 and 60 hours to be completed within 1 year, 18 months or 2 years, depending on the state and the type of license. HAR's Education Committee would like to work with the Real Estate Commission towards a minimum of 24 hours of post licensing education to be completed by new brokers in 1 year and by new salespersons in 2 years.

Commissioner Ball questioned what happens during the interim period of being initially licensed and completing the post licensing requirements.

Ms. Shimizu responded that the licensee can work with a contingent license until post licensing requirements are met. She further noted that if this is the direction that the Commission would like to move towards, HAR will propose a bill to the 2012 State Legislature. The Commission would have the overall control and deal administratively with the post licensing program. HAR is willing to work on a task force with the Commission to develop this program.

Ms. Nishihara noted that legislation takes time and that a bill may not pass the first time around. If the Commission supports HAR's proposal in concept, HAR will formulate a conceptual plan and propose a bill to the upcoming legislature. The bill will include a suggested implementation date of July 2013.

Commissioner Gendrano questioned how the proposed 24 hours will be different from the current continuing education hours.

Ms. Nishihara responded that the number of hours will need to be completed in a specific time frame from time of initial licensure. The types and categories of courses will be different and will be practical knowledge and hands on type of courses.

Commissioner Harvey stated that the additional educational hours should be counted towards continuing education.

Ms. Shimizu responded that the additional education is meant for new licensees as post licensing education and that it could possibly count towards continuing education credit for current licensees.

Deputy Attorney General Wong noted that any time educational hours are being imposed by a board or commission, there is a multiple step checklist to go through

before suggesting implementation. Deputy Attorney General Wong questioned if HAR has gone through DCCA's checklist.

Ms. Shimizu responded in the negative and requested a copy of the checklist.

Deputy Attorney General Wong responded that if the form is available to the public, it will be provided.

Commissioner Loudermilk noted that the law change would need to include a provisional license status.

SEO Fujitani questioned the number of CE hours required for those states that require post licensing.

Ms. Shimizu responded that they will research and provide the stats to the Commission.

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

Rule Making, Chapter 99, HAR, Real Estate Brokers and Salespersons

The Hawaii Association of REALTORS® submitted a letter requesting an amendment to HAR 16-99-11(e)(3) as follows:

All advertising and promotional materials that refer to the individual's licensee's name, including but not limited to business cards, shall:

1. Include the licensee's legal name, name as licensed by the commission, or sole proprietors' trade name as licensed by the commission;
2. Identify the licensee with the licensee's associating or employing brokerage firm; and
3. Specify that the licensee is a broker (B), or salesperson (S) ~~or if a current member of the HAWAII ASSOCIATION OF REALTORS®, REALTORS® (R) OR REALTOR ASSOCIATE® (RA).~~

The request was made in accordance with the National Association of REALTORS® Membership Marks Manual, Part Two, Section 1.B., "In some states, licensees must include on business cards their license status (e.g., broker, broker-associate, salesperson, etc.). Under no circumstances should an attempt be made to satisfy such a requirement by use of one of the terms REALTOR®, REALTORS® or REALTOR-ASSOCIATE®. To do so is to use the terms REALTOR® and REALTOR-ASSOCIATE® interchangeably with the terms broker or broker-associate or salesperson. Even if the applicable license law, regulations or regulatory body charged with enforcement permit such substitution, it is prohibited by these policies for use of the MARKS. THE REALTOR® MARKS are not, and may never be used as, a designation of a person's licensed status."

Ms. Laura Harlak of the West Hawaii Association of REALTORS® was present and informed the committee that in Hawaii, all the boards with the exception of Honolulu Board of REALTORS® are now all realtor boards. All realtor boards no longer have realtor-associates, all members are Realtors which designates them as a member of the National Association of REALTORS®. The term "Realtor" is a registered trademark with NAR.

SEO Fujitani questioned if there are a lot of licensees who are not members using the REALTOR® trademark.

Ms. Harlak responded in the affirmative.

Commissioner Loudermilk questioned whether making an additional change to the current draft rules will set the Commission back on its rulemaking process.

SEO Fujitani responded in the negative.

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

Executive Session:

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

Licensing, Registration, and Certification Administration – Post Licensing

Commissioner Loudermilk informed HAR that the Committee likes the intent and concept of post licensing education and also feels there is a need, but can foresee legislative problems and administrative hurdles that will need to be dealt with. The Commission has concerns regarding property interest issues for a provisional license and whether an exam following the post licensing is necessary which would add on a third party. The committee suggested that a less controversial way to implement post licensing may be to include it as part of the continuing education program and require new salespersons and brokers to complete a certain number and type of courses within a specified time requiring an exam. If the licensee does not meet the requirement, the licensee would be placed inactive. The statute would also need to include a provisional license status. She further noted that the more it fits into an existing structure, the more acceptable it will be.

Commissioner Harvey noted that California has a similar program which HAR may want to look into.

Rule Making, Chapter 99, HAR, Real Estate Brokers and Salespersons

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Sherley, it was voted on and unanimously carried to amend HAR 16-99-11(e)(3) as follows:

All advertising and promotional materials that refer to the individual's licensee's name, including but not limited to business cards, shall:

- (1) Include the licensee's legal name, name as licensed by the commission, or sole proprietor's trade name as licensed by the commission;
- (2) Identify the licensee with the licensee's associating or employing brokerage firm; and

- (3) Specify that the licensee is a broker or B, or salesperson or S ~~or if a current member of the HAWAII ASSOCIATION OF REALTORS®, REALTORS® (R) OR REALTOR ASSOCIATE® (RA).~~

It was further requested that HAR provide outreach on the proposed rule change to its membership. The Commission to provide information in its Bulletin and School Files publications when the amended rules go into effect.

ARELLO,
Other
Organizations
And
Jurisdictions:

No report presented.

Special
Issues:

None.

Budget and
Finance Report:

No report presented.

Next
Meeting:

Wednesday, October 12, 2011
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 11:01 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

Neil K. Fujitani
Supervising Executive Officer

September 9, 2011

Date

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