

LAWS AND RULES REVIEW COMMITTEE
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.state.hi.us/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, March 14, 2001

Time: 9:00 a.m.

Place: Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Present: Alfredo Evangelista, Chair
Charles Aki, Member
Michael Ching, Member
Patricia Choi, Member
Mitchell Imanaka, Member
John Ohama, Member
Peter Rice, Member

Calvin Kimura, Supervising Executive Officer
Alan Taniguchi, Executive Officer
Iris Ikeda Catalani, Senior Real Estate Specialist
Lorene Arata, Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
Gordon Arakaki, Condominium Recodification Attorney
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary

Betty Dower

Excused: Iris Okawa, Vice Chair
Casey Choi, Member

Call to Order: The Chair called the meeting to order at 9:08 a.m., at which time quorum was established.

Chair's Report: No Chair's report was presented.

SEO's Report: **Announcements, Introduction, Correspondence, Additional Distribution**

Additional Distribution

The following materials were distributed to the Commissioners prior to the start of the meeting:

4. Program of Work, FY01
 - d. Licensing, Registration, and Certification Administration
 - h. Neighbor Island Outreach – Kauai
5. Special Issues – Marcus & Associates Request for Informal Opinion

Minutes of Previous Meetings

Upon a motion by Commissioner Rice, seconded by Commissioner Aki, it was voted on and unanimously carried to accept the minutes of the February 14, 2001 Laws and Rules Review Committee meeting as circulated.

Introduction

The SEO introduced Iris Ikeda Catalani, the Senior Real Estate Specialist.

Program of Work, FY01:

Rulemaking, Chapter 99, Hawaii Administrative Rules and SWAT

The public hearing for the SWAT proposed amendments to Chapter 99, HAR, will be held on Thursday, March 29, 2001, at 9 a.m., in the Kapuaiwa Room. Decision making for the proposed rules will be at the March 30, 2001 Real Estate Commission meeting.

Licensing, Registration and Certification Administration

Information on the current licensee statistics by license type and island and the change in license type and island was distributed to the Commissioners for their information. The statistics will be put on the Commission's website (www.state.hi.us/hirec).

Notification will be sent out to all principal brokers and brokers-in-charge of the licensees associated with them at the end of March.

Neighbor Island Outreach – Kauai and Island of Hawaii

The next neighbor island outreach will be held on May 11, 2001, on the island of Kauai. The Committee meetings will be held in Conference Rooms A, B, and C of the State Office Building, located at 3060 Eiwa Street, Lihue, Kauai. The meetings will be held as follows:

Laws and Rules Review Committee – 9:30 a.m.

Education Review Committee – 10:00 a.m.

Condominium Review Committee – 11:00 a.m.

The afternoon has been reserved for interactive outreach programs with Kauai Board of Realtors, RICO, educators, government officials, and the condo community.

Legislative and Government Participation

Legislative Report #4 – A copy of the latest legislative report was distributed to the Commissioners for their information. The SEO reported on the status of the bills affecting the Commission.

Copies of House Bill No. 79, H.D.1 and Senate Bill No. 169, S.D.1, were distributed to the Commissioners for their information.

The SEO also reported that depending on the settlement of the collective bargaining contracts and its funding, the Commission is put on notice that it may affect its budget and funds.

The Commission representatives have been meeting with representatives from the Hawaii Association of REALTORS to discuss mandatory seller disclosure issues. Discussions on the impact on Chapter 467 and 508D, HRS, will continue after the legislative session has ended.

Commissioners Education Program

The February 2001 issue of The High Road was distributed to the Commissioners for their information.

Division and Department Programs

The Commissioners were advised that a copy of the 2000 Annual Compliance Resolution Fund Report prepared by RICO was available for viewing at the Commission Office.

Special Issues:

Marcus & Associates Request for Informal Opinion

A copy of Norman Noguchi's February 7, 2001 letter was distributed to the Commissioners for discussion. Mr. Noguchi was asking the Commission for an informal opinion on the payment of commissions based on the information provided.

During the period that an independent contractor ("IC") is associated with the firm, an agreement was entered into with the IC that should they be responsible for soliciting and obtaining a subdivision or condo project for sale by their firm, there would be a 10% referral commission from the company share of the sales commission as each closing occurs. Usually such projects extend out over a year or two. During this period, the IC may leave the company, go into "inactive license" retirement, or pass away. At the time the project is obtained, an agreement is drafted that states that in the event of a death or inactive license retirement, any referrals from closings which occur after their departure shall continue to be paid to the IC or their "estate" until all the units are sold off or the project or the sales listing agreement is terminated. Would the firm be allowed to continue paying commissions in accordance with the real estate laws?

Section 16-99-3(k), HAR, states: "The broker shall not compensate a licensee of another broker in connection with a real estate transaction without paying directly or causing the payment to be made directly to the other broker. This requirement shall not apply in cases where the licensee is receiving compensation from a former broker for commission earned while affiliated with that former broker."

The rule does not address the issue of a licensee's inactive status or if the licensee is deceased. If the procuring cause occurred when the licensee was active with the firm, there would be no problems in paying the commission to the licensee.

Upon a motion by Commissioner Ohama, seconded by Commissioner Imanaka, it was voted on and unanimously carried to recommend that the staff inform Marcus & Associates that the Committee's informal interpretation of §16-99-3(k), HAR, as applied to the circumstances outlined in their letter, dated February 7, 2001, would allow the payment of commissions to inactive or deceased licensees if the procuring cause occurred while the licensee was active with real estate broker.

ARELLO, Other Organizations and Jurisdictions:

ARELLO – Boundaries: US Electronic Signatures Act

Information on the U.S. Electronic Signatures Act was distributed to the Commissioners for their information.

British Columbia – Advertising and the Internet

A copy of an article on advertising and the internet, which appeared in the February 2001 issue of the Real Estate Council of British Columbia's newsletter, was distributed to the Commissioners for their information.

The article pointed out that a large company is downloading databases from the internet and is removing the names of the listing companies from the advertisement.

Commissioner P. Choi stated that it was unfortunate that the Commission's request to send a representative to the National Association of REALTORS' Conference was denied as this issue will be discussed at the NAR Conference. Also, Commissioner P. Choi stated that the NAR Conferences provides the Commission with an opportunity to keep abreast of current and future issues and trends which the Commission will need to face. Commissioner P. Choi is a member of NAR's National committee but is unable to attend the conference. Commissioner P. Choi stated that the Commission should send a representative to the national conferences, which would be held in Washington, D.C. or Chicago, Illinois.

Commissioner P. Choi also recommended that she and the Chair of the REC meet with the Director, Deputy Director, and the Acting Licensing Administrator to discuss the importance of sending a representative to NAR's Conferences.

Wyoming Real Estate Commission – Inactive Status

A copy of an article entitled, "Inactive Status", which appeared in the Wyoming Real Estate Commission's newsletter, was distributed to the Commissioners for their information.

Realtors Organize to Stop a Threat from Banks

A copy of an article entitled, "Realtors Organize to Stop a Threat From Banks," which appeared in the January 25, 2001 issue of The Wall Street Journal, was distributed to the Commissioners for their information.

Next Meeting:

Wednesday, April 11, 2001
9:00 a.m.
Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Adjournment:

With no further business to discuss, the Chair adjourned the meeting at 9:47 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura

April 11, 2001
Date

[X] Approved as is.

[] Approved with amendments. See minutes of _____ meeting.