

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: Monday, August 6, 2001

Time: 1:00 p.m.

Place: Outrigger Waikoloa Beach Hotel
Lehua Room
69-275 Waikoloa Beach Drive
Waikoloa, Hawaii

Present: Alfredo Evangelista, Chair
Iris Okawa, Vice 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
Cynthia Yee, Senior Condominium Specialist
Gordon Arakaki, Condominium Recodification Attorney
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Marsha Shimizu, Hawaii Association of Realtors
Nicki Ann Thompson, Hawaii Association of Realtors
Andrea Peace, Salesperson applicant
Grace Dunn
Karl & Marguerite Krieg, Condo Owners
Peter & Pam Dillingham
HJ Weis
Emily T. Gail
Norman Noguchi, Marcus & Associates

Excused: Casey Choi, Member

Call to Order: The Chair called the meeting to order at 1:00 p.m., at which time quorum was established.

Chair's Report: Commissioners and staff members were introduced to those present.

SEO's Report:

Announcements, Introduction, Correspondence, Additional Distribution

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

4. Program of Work, FY02
 - b. Advice, Education, and Referral Rule Making, Chapter 99, HAR, Real Estate Brokers and Salespersons, and SWAT

Minutes of Previous Meetings

Upon a motion by Commissioner Aki, seconded by Commissioner Rice, it was voted on and unanimously carried to accept the minutes of the July 11, 2001 Laws and Rules Review Committee meeting as circulated.

Program of Work, FY01:

Real Estate Recovery Fund

Per the Chair's request, SEO Kimura reported that the Commission currently has contracts with two different firms for the Real Estate Recovery Fund. The law firm of Matsubara Lee & Kotake was contracted to handle any conflict of interest cases or "for some other reason" cases that Ayabe, Chong, Nishimoto, Sia and Nakamura may not be able to handle. Currently Matsubara, Lee & Kotake handles from 1 to 3 recovery fund cases a year. The Chair questioned if Matsubara, Lee & Kotake has sufficient exposure to the real estate recovery fund cases and whether they need more assignments to ensure familiarity of the issues.

Commissioner Ohama requested that the Commission investigate further if the contracts will allow for the assignment of more recovery fund cases to Matsubara, Lee and Kotake.

Chair Evangelista questioned who would be responsible for the assignment of cases.

SEO Kimura replied that staff would assign the cases between the two law firms.

Upon a motion by Commissioner Ohama, seconded by Commissioner P. Choi, it was voted on and unanimously carried to recommend approval of assignment of additional number of cases to contracted attorney Matsubara, Lee & Kotake, subject to terms of the contract and the cooperation of both contracted attorneys.

Licensing, Registration and Certification Administration

It was reported that a salesperson candidate passed the real estate exam, but unfortunately the candidate's briefcase was stolen along with all of the exam documents. The candidate's 90-day deadline is approaching. Staff is looking for guidance on handling this and similar situations.

Upon a motion by Commissioner Ching, seconded by Commissioner Aki, it was voted on and unanimously carried to recommend approval to

accept and process a real estate license application received after 90 days of exam passage, under the following conditions:

- 1) The applicant reported immediately to REB and before the 90th due date, the theft of the education equivalency certificate, uniform equivalency certificate, ASI exam passage documents, and license application which was also reported to the police;
- 2) A copy of the police report verifying the theft is submitted with the real estate license application;
- 3) That the applicant took immediate steps to secure duplicate copies of the stolen certificates, ASI documents, and application;
- 4) That immediately upon receiving the duplicate documents, submitted a complete real estate license application;
- 5) That the complete real estate license application will be subject to the normal processing, review, and examination; and
- 6) Be subject to the same conditions as an application received under 90 days with no assurances that the real estate license application will be approved by the Commission.

Rule Making, Chapter 99, HAR, Real Estate Brokers and Salesperson, and SWAT

Committee members discussed the SEOs August 1, 2001 memo regarding clarification on SWAT developed rules.

The issue was deferred to later in the meeting to accommodate those present.

Division and Department Programs – PVL Web Statistics

Quarterly report distributed for informational purposes. Real Estate statistics include condominium hits. The numbers show that the Real Estate website provides the bulk of the hits for PVL.

Special Issues:

Request for Interpretation – Goodwin Procter, LLP, dated June 11, 2001

Goodwin Procter, LLP, via letter dated June 11, 2001, requested a written determination of whether a company that operates a web site that allows sellers to advertise a range of items for sale would need a Hawaii real estate broker license under either of two scenarios presented. This issue has been deferred from a previous Laws and Rules meeting.

Commissioner Imanaka questioned whether the Deputy Attorney General was prepared with any case law on the issue.

The Deputy Attorney General replied that she did not have the opportunity to research case law on the issue. The committee members discussed both scenarios.

Upon a motion by Commissioner P. Choi, seconded by Commissioner Rice, it was voted on and unanimously carried to recommend the following:

Scenario 1 – Recommend approval of the informal interpretation that based on the information provided, the service provided does not appear to require a real estate broker license as the company has no involvement with either the seller or prospective buyers after the advertisement is posted, although the site should have a prominent disclaimer on the expression of interests on the prices and its non-binding effect.

Scenario 2 – Recommend approval of the informal interpretation that based on the information provided, the service provided does appear to require a real estate broker license whether a flat fee or percentage of the sales price.

It was requested that the Deputy Attorney General provide the Committee with any case law on this issue.

Request for Decision – Andrea L. Peace

Ms. Peace was present and informed the committee that she is requesting that the Commission honor her real estate salesperson passing score due to her confusion regarding the Equivalency to the Uniform Section of the Exam application and the Educational Equivalency application, and ASI's error by allowing her to sit for the exam prior to meeting the educational requirements. Ms. Peace stated that she did not find out that she did not qualify to sit for the examination until she submitted her licensing application. Ms. Peace stated that she has since applied for and has been granted the educational equivalency.

SEO Kimura informed the committee that staff is working with ASI on this and similar problem issues. It was suggested that staff visit the test sites and work directly with the proctors of the real estate examinations and familiarize them with the Commission's certificates and prerequisites for sitting for an examination.

EO Taniguchi reported that staff is looking into combining both the Equivalency to the Uniform Section of the Exam application and the Educational Equivalency application.

Upon a motion by Commissioner Rice, seconded by Commissioner Imanaka, it was voted on and unanimously carried to recommend approval to accept the salesperson examination passing score, approve application for educational equivalency certificate and continue processing the salesperson application.

License Reciprocity and Recognition – Georgia Real Estate Commission, Request for License Reciprocity

SEO Kimura reported that the Commission does not have the authority to approve a request for license reciprocity at this time. The Commission Chair is working with staff on further researching the issue to draft possible legislation to get the authority to go into contract with other states in regards to reciprocity.

Commissioner Imanaka questioned how the determination would be made to grant someone reciprocity.

SEO Kimura replied that it would be subject to the terms of the agreement made with the individual state. Disciplinary actions and service would have to be taken into account.

Commissioner Ohama reported that the individual would need to at least show some competency with the Hawaii laws and possibly take the Hawaii portion of the exam.

Commissioner Ching suggested that this issue be researched further prior to drafting possible legislation.

Upon a motion by Commissioner Ohama, seconded by Commissioner Rice, it was voted on and unanimously carried to recommend declining the Georgia Real Estate Commission's request for license reciprocity as the Commission does not have statutory authority and is presently working this issue.

ARELLO, Other
Organizations and
Jurisdictions:

License Database Website Agreement with NAR

Flyer distributed for informational purposes. The Department's administration has said that Hawaii is not ready to participate in this program. Once the system is online, NAR may try to market the agreement to the department.

Missouri Real Estate Commission – Audit Guidelines

Flyer distributed for informational purposes.

Open Forum:

Those present in the audience introduced themselves to the Commissioner's and staff.

Budget and Finance
Report – RERF:

No report presented at this time.

Executive Session:

Upon a motion by Commissioner Okawa, seconded by Commissioner Ching, 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 Rice, seconded by Commissioner P. Choi, it was voted on and unanimously carried to move out of executive session.

Program of Work, FY02:

Upon a motion by Commissioner Rice, seconded by Commissioner P. Choi, it was voted on and unanimously carried to recommend approval of the following based on Commission's intent and administrative clarifications:

- 1) Place of business and branch office. Where there are multiple places of business on an island, only one place of business has to register with the Commission, either the principal place of business, or if on another island, a branch office.

- 2) Home occupation offices. A real estate broker's principal place of business may be a home occupation office, and all branch offices (registered or unregistered) may also be home occupation offices of each assigned BIC, subject to compliance with the law and rules.
- 3) Principal broker and broker in charge. Where there are sufficient number of registered BICs to supervise the principal place of business and all branch offices (registered or unregistered), the PB may be temporarily assigned to any of the branch offices.
- 4) Statewide residence. §16-99-5.2, HAR, does not apply to an active salesperson or broker-salesperson who resides on an island different from that of the principal place of business and where there is a registered branch office.
- 5) Advertisement. The principal place of business address or the registered branch office address are not required to be in advertisements. If another address appears in the brokerage firm's advertisement that is not the address of the principal place of business or registered branch office, then the address of the principal place of business or registered branch office should appear in the advertisement.
- 6) Contracts. Although amendments to §16-99-3(f), HAR, deleted some language on the review of contracts, §467-1.6, HRS, and the definition of supervision (§16-99-2, HAR) continue to hold the PB responsible for the review of all real estate contracts and its handling by the associating salespersons. The PB may delegate the review to BICs subject to policies and procedures established by the PB.

Special Issues:

Request for Rule Clarification – Wesley Y. S. Chang, et al

Commissioner Ching recused himself due to a conflict of interest. Upon a motion by Commissioner Imanaka, seconded by Commissioner P. Choi, it was voted on carried to recommend approval of informal interpretation that a place of business from which real estate broker activities are engaged exclusively relative to a condominium project, real estate subdivision, larger community development developed by a single developer, time share project, new or existing shopping center, or other commercial building was not intended to include the management of multiple real estate type projects. The management of multiple real estate type projects from one office is considered a branch office operation and shall be subject to registration.

Next Meeting:

Wednesday, September 12, 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 2:32 p.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura

October 10, 2001
Date

[X] Approved as is.

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