

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, October 10, 2001

Time: 9:00 a.m.

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

Present: Iris Okawa, Vice Chair
Charles Aki, Member
Michael Ching, Member
Mitchell Imanaka, Member
John Ohama, Member
Peter Rice, Member

Calvin Kimura, Supervising Executive Officer
Alan Taniguchi, Executive Officer
Lorene Arata, Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
Gina Watumull, Condominium Specialist
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary

Merrily Leong, Hawaii Association of REALTORS
Rodney S. Nishida, Ayabe Chong Nishimoto Sia & Nakamura
Sidney K. Ayabe, Ayabe Chong Nishimoto Sia & Nakamura

Excused: Alfredo Evangelista, Chair
Patricia Choi, Member
Casey Choi, Member

Call to Order: The Vice Chair called the meeting to order at 9:03 a.m., at which time quorum was established.

Chair's Report: No report was presented.

SEO's Report:

Announcements, Introduction, Correspondence, and Additional Distribution

Commissioners Evangelista and Patricia Choi had informed the Commission at the last meeting of their non-attendance. Commissioner Casey Choi called in the morning to report his non-attendance.

Minutes of Previous Meetings

Upon a motion by Commissioner Imanaka, seconded by Commissioner Rice, it was voted on and unanimously carried to accept the minutes of the August 6, 2001 and the September 12, 2001 Laws and Rules Review Committee meeting as circulated.

Proposed 2002 Real Estate Commission Meeting Schedule

Upon a motion by Commissioner Imanaka, seconded by Commissioner Ching, it was voted on and unanimously carried to accept the proposed dates submitted for the 2002 Real Estate Commission meetings, subject to confirmation of room availability.

Program of Work, FY02:

Real Estate Recovery Fund – Ayabe Chong Nishimoto Sia & Nakamura

Rodney Nishida, Esq. and Sidney K. Ayabe, Esq., legal counsel for the Real Estate Recovery Fund, were present at the meeting to report on the Real Estate Recovery Fund ("RERF").

Mr. Nishida stated that the RERF has been in existence since 1967. The maximum payout is \$25,000 per transaction and \$50,000 per licensee. The Commission must be provided written notice of the commencement of any action, which may involve a payment from the RERF. There is a two-year statute of limitation. In order for a payment to be made out of the RERF, the plaintiff must obtain a judgment based on fraud, misrepresentation or deceit. The plaintiff must have also exhausted all other remedies prior to a payout being ordered. The law also requires that the Commission shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all the creditor's right, title, and interest in the judgment or settlement to the Commission.

In 1998, the Commission, through its legal counsel, was able to collect \$48,745 against Frederick John Puerner, a former licensee.

The RERF counsel does not intervene when the lawsuits are filed. They only intervene when the licensee is pro se or the licensee is disputing the claim. They would only intervene on behalf of the Commission.

Currently, there are 80 to 100 cases that are being monitored by the RERF legal counsel. Intervention occurs in only approximately one percent of the cases per year.

The current attorney's fees for the RERF are \$100/hour. The average fee that Hawaii attorneys charge their clients is \$200/hour. The Commission engaged legal counsel to represent the RERF because it conflicted with the Department's mission to protect the public.

Mr. Ayabe stated that the RERF was originally defended by the Attorney General's Office ("AGO"). Mr. Ayabe stated that he left the AGO in 1972 and another Deputy Attorney General took over the handling of the RERF. The AGO recommended, at that time, that another attorney be assigned or hired to defend the RERF because it conflicted with the direction to protect the public.

The SEO reported that the Commission had entered into agreements with two legal firms to represent the RERF, Ayabe Chong Nishimoto Sia & Nakamura ("ACNS&N") and Matsubara Lee and Kotake ("ML&K"). ACNS&N would be the primary legal counsel for the RERF and ML&K would handle the cases in which there were conflicts of interest for ACNS&N.

Previously, the Commission had questioned if handling only one or two cases per year would provide sufficient experience for ML&K to defend the RERF. The Commission discussed if more cases should be assigned to ML&K.

Mr. Nishida stated that the RERF statute is similar to the Contractor's License Board ("CLB") statute. Gary Lee, of ML&K, is the legal counsel for the CLB's Recovery Fund. Mr. Lee has represented the CLB's Recovery Fund for the past 15 to 20 years. Mr. Nishida stated that he and Mr. Lee have met in the past to discuss amendments to the RERF. Also when cases are assigned to ML&K, Mr. Nishida provides information to Mr. Lee on the defenses that can be raised. Information and ideas are provided to Mr. Lee as to how the matter can be handled and it is similar to the CLB laws and rules.

Mr. Nishida stated that approximately one to two cases out of the 50 cases might be strongly disputed.

Commissioner Imanaka complimented Mr. Ayabe and Mr. Nishida on how the cases are handled. Commissioner Imanaka also asked them if the current fee was economically viable in terms of the number of cases that they handle. Mr. Ayabe stated that the handling of the RERF is not a moneymaking process for their office. He stated that he has been working with the Commission over the years since his days at the AGO. The paralegals at other firms are making \$100/hour. Mr. Ayabe stated that he enjoys representing the Commission.

Commissioner Ohama thanked Mr. Ayabe and Mr. Nishida for their appearance at the meeting today and expressed his appreciation for their assistance.

Vice Chair Okawa stated that the declining number of people impacted shows that the consumers are educated. Vice Chair Okawa also thanked Mr. Ayabe and Mr. Nishida for their presence at today's meeting.

Licensing, Registration, and Certification Administration

Information on the current number of real estate licensees as of August 2001 was distributed to the Commissioners for their information. There was a .7% decrease in the total number of licensees from July 2000.

Legislative and Government Participation

On September 4, 2001, copies of the amended Chapter 467, Hawaii Revised Statutes and Chapter 99, Hawaii Administrative Rules, were mailed to all principal brokers and brokers-in-charge. A note from the Chair and a Change Form were also included in the packet.

On October 22, 2001, the Legislature will be convening a special session. In consideration of recent events and the current economic situation, the administration is considering a moratorium on all renewal fees for all licensing areas until June 2002. As of right now, real estate renewals and condominium-related renewals will not be affected.

Neighbor Island Outreach

The next neighbor island outreach is scheduled for January 4, 2002, on the island of Maui. REB staff will contact the Maui Board of REALTORS to request their assistance in obtaining a room for the meetings.

Commissioners Education Program

A copy of the following were distributed to the Commissioners for their information:

1. OpenLine, July 2001
2. OpenLine, September 2001
3. The High Road, September 2001

Division and Department Programs

Upon a motion by Commissioner Imanaka, seconded by Commissioner Ching, it was voted on and unanimously carried to recommend approval of the Real Estate Advisory Committee list. The Commission will also submit recommendations for Kauai members at a later date.

ARELLO, Other
Organizations and
Jurisdictions:

ARELLO Meeting Report

A copy of the ARELLO Western District Meeting Report, was distributed to the Commissioners for their acceptance.

Upon a motion by Commissioner Ching, seconded by Commissioner Ohama, it was voted on and unanimously carried to accept the ARELLO Western District Meeting Report.

New Jersey Real Estate Commission

A copy of the State of New Jersey's adopted amendments to N.J.A.C. 11:5-6.1 (advertising rules) and 11:5-6.4 (obligation of licensees to public and to each other) were distributed to the Commissioners for their information.

National Land Council Seminar

Information on the National Land Council, Inc.'s seminar, which will be held on October 24 to 28, 2001, at the Rio Rico Resort and Country Club, in Rio Rico, Arizona, was distributed to the Commissioners for their information.

Maui Board of REALTORS

Information on transient vacation rentals, which was obtained from the Maui Board of REALTORS' website, was distributed to the Commissioners for their information.

Kentucky Real Estate Commission

An article entitled, "Criminal Background Requirements to Obtain a Kentucky Real Estate License", which appeared in the Summer 2001 issue of the Kentucky Real Estate Commission's newsletter, was distributed to the Commissioners for their information.

Pennsylvania Real Estate Commission

An article entitled, "Internet Advertising Policy," which appeared in the Summer 2001 issue of the Pennsylvania Real Estate Commission's newsletter, was distributed to the Commissioners for their information.

Alaska Real Estate Commission

An article entitled, "Inactive, Lapsed, Expired", which appeared in the July 2001 issue of the REC news (Alaska Real Estate Commission), was distributed to the Commissioners for their information.

NAR Commission Disputes Policy

A copy of an article entitled, "Fighting Over a Commission?", which appeared in the August 2001 issue of California Real Estate, was distributed to the Commissioners for their information. The article outlined NAR's policy on the methods used to solve disputes.

Open Forum:

None.

Budget and Finance
Report – RERF:

A copy of the Financial Summary, dated June 28, 2001, was distributed to the Commissioners for their review.

The EO reported that the Department of Accounting and General Services requires that the full amount of potential claims be a part of the budgeted operating expenses even though historically the fund has never paid out the full amount of the potential claims and actually only pays out a fraction of the potential claims. Commissioner Rice asked if staff could ask for the reasoning behind this.

The SEO reported that previously the Real Estate Specialist who was assigned finance and budgets would provide in-house reports, which would be more reflective of operating expenses. That Real Estate Specialist is on temporary assignment with PVL and the position remains vacant. The reports would be based on historical data and would not continue to reflect one-time budget items.

Commissioner Ching requested that the in-house report be presented at the next Committee meeting. SEO reported that every attempt will be made to provide such a report but we will have to keep in mind that REB has two vacant Real Estate Specialists positions.

Commissioner Rice informed the Commissioners that he had attempted to meet with Morgan Stanley to discuss the investment of the RERF, but has been unable to do so.

Upon a motion by Commissioner Imanaka, seconded by Commissioner Ching, it was voted on and unanimously carried to recommend acceptance of the financial summary of the Real Estate Recovery Fund, dated June 28, 2001.

Next Meeting:

Wednesday, November 14, 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 Vice Chair adjourned the meeting at 9:44 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura

November 14, 2001

Date

[X] Approved as is.
[] Approved with amendments. See minutes of _____ meeting.