

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, November 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
Iris Okawa, Vice Chair
Charles Aki, Member
Michael Ching, Member
Casey Choi, Member
Mitchell Imanaka, Member
John Ohama, Member
Peter Rice, Member

Calvin Kimura, Supervising Executive Officer
Alan Taniguchi, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Lorene Arata, Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
Gina Watumull, Condominium Specialist
Gordon Arakaki, Condominium Recodification Attorney
Shari Wong, Deputy Attorney General
Karyn Takahashi, Recording Secretary

Merrily Leong, Hawaii Association of REALTORS
Ryan Yamauchi, Honolulu Board of REALTORS

Excused: Patricia Choi, Member

Late Arrival: John Ohama, Member

Call to Order: The Chair called the meeting to order at 9:04 a.m., at which time quorum was established.

Chair's Report: No report.

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

The following was distributed as additional distribution:

6. ARELLO, Other Organizations and Jurisdictions
 - a. ARELLO Meeting Report

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 October 10, 2001 Laws and Rules Review Committee meeting as circulated.

SEO Kimura reported that Commissioner Ohama notified Staff that he would be arriving late for this morning's meeting. He also reported that Commissioner P. Choi called Staff this morning with her regrets that she would not be able to attend today's meetings due to an emergency.

At this time, SEO Kimura introduced Diane Choy Fujimura, who has joined the staff as the Senior Real Estate Specialist. Ms. Fujimura was previously with the Regulated Industries Complaints Office.

Deputy Attorney General Wong arrives.

Program of Work, FY02

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

Broker-in-Charge – SEO Kimura reported that this request is based on a discussion with the Acting Licensing Administrator, Jan K. Yamane. As one of the participants in the SWAT Committee, the Acting Licensing Administrator recalls numerous discussions on broker-in-charge issues, especially on providing flexibility in the supervision of associating licensees and of real estate transactions. She recalls that one of the points was to allow a broker-in-charge to be assigned supervision over more than one branch office, including the principal place of business.

Commissioner Ching, a SWAT Committee member, agrees with the Acting Licensing Administrator's recollection. He also stated that the intent was to allow more flexibility and recalls that he thought it was agreed upon that a broker-in-charge could manage more than one branch office.

SEO Kimura stated that the definition of branch office and the registration process has changed. The residency issue has also been dramatically changed, as it stands now, a broker-in-charge can be responsible for a branch office on another island while not residing on that island. Also, the principal broker does not need to be at the principal place of business if the principal broker has at least one broker-in-charge assigned to the principal place of business.

Commissioner Aki stated that he has a different recollection of what was discussed at the SWAT Committee meeting. He stated that he agreed with more than one broker-in-charge to an office, but he was under the impression that a broker-in-charge cannot be assigned to more than one branch office.

Commissioner Ching stated that a case had come up where an individual had to travel to another island to run an office and that is why it was decided that although the principal broker or broker-in-charge still must oversee the office, the principal broker or broker-in-charge does not need to reside on the same island or physically be at the office.

Commissioner Imanaka stated that this indicates that you could essentially have multiple offices with one principal broker and one broker-in-charge. Commissioner Ching stated yes, it also means that you may have many offices on one island and the principal broker can manage all if he chooses. SEO Kimura replied no, there must be a broker-in-charge for each branch office with principal place of business optional and the principal broker is

responsible to set policies and keep records of broker-in-charge assignments. The principal broker provides Licensing Branch a list of all brokers-in-charge, with no information on what branch office each is assigned, and the licensing records will list all brokers-in-charge under the principal place of business.

Chair Aki inquired if they must reside on the same island. SEO Kimura replied no, they are allowed to have residency anywhere in the world; however, they must be policies and procedures set by the principal broker, compliance with the laws and rules of the state or country the licensee resides at, and any applicable international laws.

Commissioner Imanaka stated if you have multiple office locations, you can have one broker-in-charge manage the multiple offices. SEO Kimura replied that is basically what this interpretation request is about.

Commissioner Ching stated that the purpose was that since principal brokers have been given more responsibility, they should be given more flexibility on broker-in-charge issues.

Commissioner Ching moved to recommend adoption of the following interpretation of broker-in-charge as to allow maximum flexibility to a brokerage firm and its principal broker on the issue of broker-in-charge and supervision of branch offices and the principal place of business:

- ✓ Allow a brokerage firm to have more than one broker-in-charge assigned to the principal place of business or each branch office; and
- ✓ Allow one broker-in-charge to be assigned to supervise more than one branch office, including the principal place of business.

Commissioner Rice seconded the motion.

At this time, Commissioner Ching inquired if there is currently a mechanism for registration of brokers-in-charge. EO Taniguchi replied yes, via a Change Form – Real Estate.

The motion was voted on and unanimously carried.

At this time, SEO Kimura reported receipt of a Hawaii Association of REALTORS letter of support for the Commission's proposed bill for the upcoming legislative session. Ms. Merrily Leong stated that the Hawaii Association of REALTORS will support the proposed bill and sees no problems with the proposed bill.

Legislative and Government Participation

Vice Chair Michael Ching and SEO Kimura reported that the Real Estate Commission is an institution that has been around since the 1933 and it holds a lot of history and tradition. As far as the various Commissions and Boards assigned to PVL, the Real Estate Commission has the most meetings, programs, trust funds, licensees, applications, etc. Real Estate Commissioners are faced with an exceeding commitment of time, required attendance of at least four specific meetings per month, numerous legal and technical issues for quasi-judicial decisions, authority over two laws (real estate licensing and condominium property regime) that are not technically related and have two separate constituency, numerous assignments as lead Commissioner in various undertakings under the three program of works, serving as Chair or Vice-Chair of one of the three standing Committees or Commission Chair or Commission Vice-Chair, etc.

SEO Kimura stated that the institution is faced with a very serious situation as three commissioners' terms will be expiring and these commissioners are very active participants and hold key Committee Chair positions as well as Commission Vice-Chair - Alfredo Evangelista, Charles Aki and Michael Ching. Additionally, commissioners are

finding it is more difficult to attend meetings due to their hectic and conflicting business schedules which then affects timely decision making for a number of issues as well as quorum problems, which also affects resources.

SEO Kimura stated that three new commissioners will be added to the six existing commissioners. This being the case, the normal traditional assent is that the six existing commissioners will serve in leadership positions along with at least one new commissioner.

He added that as tradition and policy, since the days of Chairs Douglas Sodetani and Red Morris, the Commission, in cooperation and consultation with the Hawaii Association of REALTORS and DCCA, have recommended candidates to the Governor. Some of the distinguishing factors about these candidates is that they understood and accepted the commitment of time, the required attendance at four meetings per month, have the ability to take on the legal and technical issues, have the desire to participate in the program of work, take on leadership positions, etc. via a briefing by SEO and/or Chair. Additionally, there was a general understanding among all parties involved that the candidate is just one of the candidates and the Governor makes the ultimate decision. Historically, the records reflect that a majority of the recommended candidates selected had good attendance records, provided immediate participation, and served two full terms.

SEO reported that this issue has been discussed in length with Chair Ohama and Vice-Chair Ching. In respect for the Chair who is not available, this issue should be continued to another time for discussion with the Chair.

At this time, Commissioner Ching stated that in discussions with the Kauai Board of REALTORS, they have come up with several candidates and Louis Abrams appears to be their candidate.

Commissioner Evangelista stated that before discussing names, shouldn't the first question addressed be: Does the Commission want to recommend individuals to the Governor? He stated that he is in agreement with Commission Chair Ohama and is not comfortable with the idea of recommending individuals to the Governor, he believes the Governor should decide on his own.

As Commission Chair Ohama was not present at the meeting to relay his opinions, Commissioner Ching moved to defer discussion to the Education Review Committee meeting. Commissioner Rice seconded the motion. The motion was voted on and unanimously carried.

Neighbor Island Outreach

The next neighbor island outreach will be held on January 4, 2002, in the Conference Rooms of the Maui Board of REALTORS, located at 441 Ala Makani Place, Kahului, Maui. The January 2002 Committee meetings will be held as follows:

9:30 a.m.	Laws and Rules Review Committee
10:00 a.m.	Education Review Committee
11:00 a.m.	Condominium Review Committee

SEO reported that Staff will be providing a Recodification Attorney report along with Condominium and Real Estate Specialist Informational Session, starting at 1:00 p.m.

Commissioners Education Program

A copy of the October 2001 issue of OpenLine was distributed to the Commissioners for their information.

Special Issues:

NAR White Paper

A copy of the National Association of REALTORS' White Paper entitled, Attack on America – Economic Consequences for the U.S. Real Estate Markets, was distributed to the Commissioners for their information.

Mr. Ryan Yamauchi was present to answer any questions and provide additional information.

Mr. Yamauchi reported on the quarterly report on market statistics. He reported that the numbers are very encouraging and the market as a whole is doing very well. He added that numbers on the national level don't look good, but are stable. The real estate market is solid.

Commissioner Rice inquired if there was a way to monitor the statistics. Mr. Yamauchi replied that he would be more than happy to attend the next meeting and report new statistics.

Chair Aki inquired if there was a way to get the number of escrows that have been cancelled. Mr. Yamauchi replied that he can get the figure of pendings and currently, the year-to-date number is under 2 ½ percent.

Commissioner Rice inquired on how the strength of the market is gauged. Mr. Yamauchi replied via the median sale prices and number of units sold.

SEO Kimura thanked Mr. Yamauchi for providing this information to the Commission and stated that the Commission would like to continue receiving this type of data, as it may have an influence on policy. The Commission needs to be aware of what is happening in the marketplace to gauge policy and programs.

Mr. Yamauchi stated invited everyone to visit their web site at www.hicentral.com, where individuals are able to obtain monthly statistics.

Hawaii Information Services – Posting of Other Broker Listings on a Broker's Website

SEO Kimura reported that this issue has been brought up before and the Committee is in no way singling out the specific real estate broker or their web site but is merely providing an example.

Commissioner Ohama arrived.

Commissioner Ching reported that this service is being offered by Hawaii Information Services and the question is if this is acceptable, whereby a company's listings are placed on web sites other than their own.

Commissioner Evangelista stated that there is a copyright; however, we need to know what the agreement with Hawaii Information Services says—it is broad or restrictive? Everything must still comply with the rules. Commissioner Imanaka added that the basic rules still apply—section 16-99-3(I), Hawaii Administrative Rules.

Commissioner Ching stated that there are a lot of agency issues and that this is not unique to Kauai.

Commissioner Ohama moved to recommend formation of a committee, to be headed by Commissioner Ching, to review, investigate and report on this type of internet practice. Members and specific tasks to be decided on at the next Real Estate Commission

meeting. The motion was seconded by Commissioner Okawa. The motion was voted and unanimously carried.

Oregon Real Estate Commission

A copy of an article entitled, "Internet: Stale Listings," which appeared in the September 2001 issue of the Oregon Real Estate News, was distributed to the Commissioners for their information.

Government Technology

A copy of an article entitled, "Licensed to Succeed," which appeared in the September 2001 issue of Government Technology magazine, was distributed to the Commissioners for their information.

REEA Journal

A copy of an article entitled, "Technology, Licensing and The Walls of Jericho," which appeared in the REEA Journal 2001-2002, was distributed to the Commissioners for their information.

ARELLO, Other Organizations and Jurisdictions:

ARELLO Meeting Report

A copy of the ARELLO Annual Conference Report was distributed to the Commissioners for their information and distribution materials were available for inspection.

Commissioner Okawa thanked Commissioner Imanaka for attending the conference at his own expense—the Commission was fortunate to have four participants from Hawaii.

Commissioner Okawa provided an oral report on the conference in behalf of the attendees and added that the conference focused on inter-jurisdictional issues and the ARELLO shared data bank on disciplinary actions.

Upon a motion by Commissioner Ching, seconded by Commissioner Ohama, it was voted on and carried to recommend acceptance of the ARELLO Annual Conference Report as submitted.

Open Forum:

Ms. Merrily Leong reported that the Hawaii Association of REALTORS has planned their annual legislative day for January 10, 2002.

Budget and Finance Report – RERF:

No report was presented.

Next Meeting:

Thursday, December 13, 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 10:16 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

December 13, 2001
Date

[X] Approved as is.

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