

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 9, 2002

Time: 9:00 a.m.

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

Present: Iris Okawa, Chair
Louis Abrams, Vice Chair
Marshall Chinen, Member
Patricia Choi, Member
Mitchell Imanaka, Member
Kathleen Kagawa, Ph.D., Member
Peter Rice, Member
Vern Yamanaka, Member

Alan Taniguchi, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Lorene Arata, Real Estate Specialist
Cheryl Leong, Condominium Specialist
David Grupen, Condominium Specialist
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary

Others: Marsha Shimizu, Hawaii Association of REALTORS
Clarice Johnson, Johnson Property Management, Inc.
Mary Begier, Hawaii Association of REALTORS

Excused: John Ohama, Member

Call to Order: The Chair called the meeting to order at 9:00 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**

The October Real Estate Commission meeting was rescheduled to Wednesday, October 30, 2002, at 9 a.m., in the Kapuaiwa Room. Commissioners Rice and Imanaka are unable to attend the meeting on October 30, 2002 due to prior commitments.

Minutes of Previous Meetings

Upon a motion by Commissioner Abrams, seconded by Commissioner Choi, it was voted on and unanimously carried to accept the minutes of the September 4, 2002 Laws and Rules Review Committee meeting as circulated.

Program of Work, FY03:

Neighbor Island Outreach

The next neighbor island outreach is scheduled for January 10, 2003, on the island of Maui.

Licensing Renewal

Information on the license renewal workshops were distributed to the Commissioners for their information. The schedule is as follows:

Oahu

November 6 and 15, 2002, 9 a.m. to 12 Noon, Kapuaiwa Room, Kamamalu Building, 1010 Richards Street, Second Floor, Honolulu, Hawaii

Kauai

November 8, 2002, 9 a.m. to 12 Noon, Kauai Board of REALTORS, 4359 Kukui Grove, Suite 103, Lihue, Kauai

Maui

November 14, 2002, 9 a.m. to 12 Noon, REALTORS Association of Maui, Inc., 441 Ala Makani Place, Kahului, Maui

Kona

November 18, 2002, 9 a.m. to 12 Noon, Kona Board of REALTORS, Pines Plaza, 75-240 Nani Kailua Drive, Suite 157, Kailua-Kona, Hawaii

Hilo

November 19, 2002, 9 a.m. to 12 Noon, Hawaii Island Board of REALTORS, 14 Waianuenue Avenue, Hilo, Hawaii

The EO informed the Commissioners that real estate licensees will be able to renew their licenses online, beginning on October 11, 2002. Licensees are encouraged to renew their licenses online.

Review of Services and Organization

A copy of the latest Commission website statistics for FY2002 was distributed to the Commissioners for their information. There was an increase in the number of hits received for the meeting agendas, the Commission's program of work and the minutes of the committee meetings.

A copy of PVL's website statistics for FY2002 was distributed to the Commissioners for their information. Chapter 467, HRS, received approximately 83% of the total hits.

Commissioners' Education Program

Copies of the August and September 2002 issue of OpenLine were distributed to the Commissioners for their information.

ARELLO, Other Organizations and

Tennessee Real Estate Commission

All licensees who reapply for licensure must meet all statutory requirements to maintain the new license. Reapplying licensees will forfeit any grandfather statuses which were connected to the previous license. (Tennessee Real Estate News Journal, Summer 2002, Volume II, Number 4)

Special Issues:

Clarice Johnson Recommendation

The Chair informed the Commissioners that Mary Begier of the Hawaii Association of REALTORS wanted to be present during the discussion of this issue and had asked if the Committee could defer discussing this issue until her arrival. Chair Okawa asked Ms. Johnson if she wished to wait for Ms. Begier's arrival or if she would like to proceed. Ms. Johnson requested that she be allowed to proceed.

Ms. Johnson stated that she was present to discuss her concerns regarding residential management. Ms. Johnson stated that she has 23 years experience in Hawaii. She informed the Commissioners that there are sales agents who have no experience or knowledge of what they are doing, and they are causing problems for residential property managers. Ms. Johnson stated that she has heard horror stories from tenants who have told her that no one shows up to show them the units, no repairs are done, and no one keeps up the properties. Ms. Johnson stated that she, as the property manager, has a fiduciary responsibility to the owner.

Ms. Johnson stated that she received comments back from the local chapter of the Institute for Real Estate Management ("IREM"). She reported that IREM agrees with her suggestions, particularly her first and second suggestion. She stated that her third suggestion is a can of worms. Based on her discussion with some IREM members, she anticipates problems with the Hawaii Association of REALTORS, the Honolulu Board of REALTORS, and the National Association of REALTORS.

Ms. Johnson asked if there could be a separate certification for property managers, similar to contractor's licenses. She stated that people who are conducting property management must be trained. There are people who specialize in condominium management, commercial management, or shopping center management.

Ms. Johnson also stated that professional property managers have a hard time getting a fair hearing from the judge in a civil matter because the judges have heard so many horror stories. The property manager is guilty until proven innocent.

Ms. Begier arrived and was invited to join in the discussion.

Ms. Johnson stated that she advertises her rentals in Rentals Illustrated. The ads contain a full description of the property. She does not see any problem with allowing someone who is not licensed to quote a price of a lease from the ad. It is not like the person is entering an agreement for a 30-year mortgage. The person giving out the information would be providing a service to the public. Ms. Johnson stated that she has received irate comments from people who are complaining about why staff could not give them information. She has experienced the same problem when it comes to showing property. It is only a six-month or a one year commitment. If the maintenance person is on the property, why couldn't he let the prospective tenants look at the property? She does not think that the person has to be licensed just to show a rental. All negotiations have to be done by the licensee. In her office, she is the only one who signs the agreements.

Ms. Johnson suggested that property managers be licensed separately from real estate licensees. If it could not be a separate license category, Ms. Johnson suggested that it be a certification. Ms. Johnson stated that she has given this issue a lot of thought. She had asked Representative Marumoto to introduce legislation, but it did not get introduced. She stated that this time she has the support of IREM.

Ms. Begier stated that she does not do property management. She works hard not to do it and chose not to be a part of that service. She stated that she is not speaking from personal experience. She is speaking from HAR's perspective. She stated that one license issue is challenging. Many states are moving away from multiple licenses. She stated that there is an IREM Executive Committee meeting tomorrow and the items are on the agenda for discussion. She is requesting that this issue be deferred until IREM has an opportunity to discuss Ms. Johnson's concerns.

Ms. Begier stated that the Legislative Action Commission has not met to discuss job tasks as yet. It is a challenge to determine who can do what tasks. There may be someone who is very capable but is not licensed. If a clerical person is allowed to give out information in a rental situation, where do you draw the line in a sales situation? The concern is the ability to police it from a consumer protection standpoint. The HAR acknowledges that there is an issue out there and would like to work towards something that makes more sense than what is currently being done.

The Chair thanked Ms. Johnson and Ms. Begier for being present at the meeting this morning to discuss their concerns.

Commissioner Yamanaka asked Ms. Johnson if the owner, who is employing her or her agent as his representative, is also employing the maintenance man to show the unit. Ms. Johnson stated that the owner employs her to get the unit occupied as quickly as possible. The owner does not care who shows the unit. Ms. Johnson stated that when she shows the unit, she normally just opens the door and stands in the kitchen as the prospective tenant walks through the unit. She stays in one place and tells them that she is available to answer questions. If she cannot meet them, she will tell them that someone else can meet with them and give them an application. She has had licensees do that. If the person does not like the carpet, the questions or comments will go back to the owner.

Ms. Johnson stated that residential property management is totally different from real estate sales. The owners don't care how the unit is rented.

Commissioner Rice stated that he supported the position of separate licensing for property managers. Selling real estate requires knowledge of the DROA. He is in property management. He stated that having a curriculum of education is important. Just because a person is licensed as a real estate salesperson does not mean that they are capable of doing property management.

Ms. Johnson stated that her son's property is for sale. She is not selling it because she does not want to mess it up.

Commissioner Rice stated that the Commission should move towards separate licensing. He does not think that everything falling under one umbrella will work. It is his personal feeling that the Commission should study the issue to determine whether or not to propose other legislation.

Commissioner Abrams asked Ms. Johnson to clarify what other areas need separate licensing. Ms. Johnson stated that she has very little experience in commercial property management. She has three to four years of experience as a condominium managing agent. There are many more people who are more qualified on that subject than she is.

Ms. Johnson stated that she knows that anyone who is doing condominium management should be thoroughly instructed in the law. She also stated that Chapter 514A, HRS, has changed in the last few years, even more than the Landlord-Tenant Code. Ms. Johnson stated that there are some good CMA companies. Condominium management is under the umbrella of IREM. Ms. Johnson stated that residential property management is like a bastard child.

Commissioner Abrams asked Ms. Johnson if allowing office staff to quote prices and descriptions would harm the consumers. Ms. Johnson said that she felt it would help the consumers. People have lost the information on the rental listing and have called her office for information.

When they are informed that the office staff cannot provide the information that they are asking for, they often become upset.

Commissioner Abrams asked how the Commission would have jurisdiction over the office staff to make sure that they are disclosing the proper information.

Ms. Johnson stated that she would like the Commission to grant permission for them to give out only information that is already published.

Ms. Begier stated that in the past few years, the Commission has placed more responsibility on the principal broker. Many of the issues discussed fall under the existing law, and as such, the principal broker is responsible. If the Commission proposes more law or rule changes, it may be micromanaging more than is necessary.

Ms. Johnson stated that she was looking at the possibility of removing the restrictions.

Ms. Begier stated that the laws provide that the principal broker would be held responsible. She also stated that this might be one of those areas where the Commission could say that the law does exist.

The Chair pointed out that this was a part of a larger issue.

Commissioner Imanaka moved to establish a subcommittee to review the issues raised by Ms. Johnson, to appoint Commissioner Rice as Chair of the subcommittee, to be assisted by Commissioner Yamanaka. Commissioner Abrams seconded the motion.

Commissioner Imanaka suggested that the Commission define the subcommittee's scope.

It was suggested that the subcommittee use Ms. Johnson's letter to determine what types of services can be done by unlicensed individuals, examine the feasibility of separate licensing and formulate recommendations to be discussed by this committee.

The Chair also suggested looking at the SWAT project to see what can be done to streamline the issues. The target date for discussion of the subcommittee's findings will be the January Laws and Rules Review Committee meeting.

Commissioner Imanaka amended his motion to recommend that Commissioner Rice be appointed as Chair of the subcommittee to review the issues raised by Ms. Johnson regarding separate licensing for property managers and the types of services that can be performed by non-licensees. He further recommended that Commissioner Abrams and Yamanaka be appointed as members of the subcommittee. This matter will be placed on the January 10, 2003 Laws and Rules Review Committee meeting agenda to allow the subcommittee to report on their

findings. Commissioner Abrams seconded the motion. The motion was voted on and unanimously carried.

Open Forum: There were no participants.

Budget and Finance Report – RERF: No report was presented.

Next Meeting: Wednesday, November 13, 2002
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 9:36 a.m.

Reviewed and approved by:



Alan Taniguchi
Executive Officer

November 13, 2002
Date

[X] Approved as is.

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