

**LAWS AND RULES REVIEW COMMITTEE**  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii  
[www.state.hi.us/hirec](http://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, April 7, 2003

Time: 9:00 a.m.

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

Present: Iris Okawa, Chair (Late Arrival)  
Louis Abrams, Vice Chair  
Patricia Choi, Member  
Kathleen Kagawa, Ph.D., Member  
John Ohama, Member  
Vern Yamanaka, Member

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

Others: Karen Iwamoto, Hawaii Association of REALTORS®  
Donna Asino, Honolulu Board of REALTORS®

Excused: Marshall Chinen, Member  
Mitchell Imanaka, Member  
Peter Rice, Member

Call to Order: The Vice Chair called the meeting to order at 9:02 a.m., at which time quorum was established.

Chair's Report: No report was presented.

SEO's Report: **Announcements, Introduction, Correspondence, and Additional Distributions**

**Minutes of Previous Meetings**

Upon a motion by Commissioner Ohama, seconded by Commissioner Yamanaka, it was voted on and unanimously carried to accept the minutes of the March 12, 2003 Laws and Rules Review Committee meeting as circulated.

Program of Work, FY03:

**Commissioners' Education Program**

A copy of the January-March 2003 issue of OpenLine was distributed to the Commissioners for their information.

Also, a copy of the March 2003 issue of The High Road was emailed to the Commissioners for their information.

**Legislative and Government Participation**

A copy of the latest Legislative Report was emailed to the Commissioners. The SEO reported that one of the biggest concerns is related to funding. House Bill No. 1152, H.D. 1, S.D. 1 (Proposed) will transfer \$150,000 from the Real Estate Education Fund into the general fund on July 1, 2003. The Commission testified against this bill. If the proposed bill passes, it will impact the Department.

Commissioner Okawa arrived.

**FY 04**

The SEO asked the Commissioners to review the current program of work and propose revisions to the program of work for fiscal year 2004. Depending on fiscal constraints, the Commission may not be able to take on big projects. Some of the Commission's current program of work items is still incomplete. REB staff is hoping to finalize the program of work and budget by the June meetings.

ARELLO, Other  
Organizations and  
Jurisdictions:

**ARELLO**

The SEO reported that Teresa Hoffman, President of ARELLO, underwent surgery for colon cancer and is currently undergoing therapy. The Commission wishes her a speedy recovery.

The SEO also reported that Wayne Thornburn of the Texas Real Estate Commission will be running for the office of President-Elect of ARELLO.

Special Issues:

**NAR Proposed Policy on VOWs**

The Vice Chair announced that ARELLO will be meeting to discuss the National Association of REALTORS® ("NAR") policy on VOWs. NAR will also be discussing this at their May 2003 meeting.

Once ARELLO and NAR accept the policy, the Commission will have to address the issue of VOWs. Any listing displayed on a VOW shall identify the listing firm.

It was recommended that the Commission wait until after the ARELLO Midyear Meetings to determine its position on VOWs.

### **Salvation Army Request**

The Committee received a request from the Salvation Army for clarification on whether or not they needed to possess a real estate broker's license in order to manage their housing projects. The projects provide low-income senior housing. The Salvation Army is requesting a determination of whether or not they would fall under one of the exemptions listed.

The property is owned by the Weinberg Foundation. The Salvation Army manages the property for them.

Commissioner Yamanaka questioned whether or not the Salvation Army would be able to manage the property without being licensed if they were acting as the Master Lessor.

There are currently no exceptions for non-profit corporations. The exception covers individuals, but not corporations. Any provider agency owning, leasing, operating, or managing a home facility or any other program for the homeless is not required to be licensed.

The Commission questioned if the services that the Salvation Army is providing would qualify as an exception. Unfortunately, since only a limited amount of information was provided, the Commission could not make a determination.

The Deputy Attorney General stated that based on the information provided, it did not appear that they would qualify for any of the exceptions.

The Salvation Army has not shown that they fall within the statutory provisions to be granted an exception from licensure.

Upon a motion by Commissioner Okawa, seconded by Commissioner Choi, it was voted on and unanimously carried to recommend that this issue be deferred pending receipt of further information from the Salvation Army.

### Open Forum:

Ms. Iwamoto stated that the Hawaii Association of REALTORS® testified in support of Senate Concurrent Resolution No. 95 which requests that the Legislative Auditor conduct a study comparing Hawaii's licensing requirements to that of the other states. Ms. Iwamoto also stated that the Hawaii Association of REALTORS® testified in opposition to the taking of \$150,000 from the Real Estate Education Fund.

Program of Work, FY03:

**Committee Meetings**

Commissioner Ohama reintroduced the issue of the Committee meetings being held concurrently.

The Deputy Attorney General stated that it would be impossible to start all meetings at 9 a.m. If the Commission wanted to hold the meetings sequentially, they could schedule the meetings for 9:00 a.m., 9:05 a.m. and 9:10 a.m.

Commissioner Okawa asked how it differed from when the court sets 30 cases for the same time. The Deputy Attorney General stated that the courts are not constrained by the Sunshine Law requirements.

The Deputy Attorney General stated that the meetings could be scheduled consecutively as long as the order of the meetings does not change without proper notice. In the case of a neighbor island meeting where the order of the meetings may be changed, it would be okay to do so as long as the public is given proper notice of the change.

The Commission reaffirmed its decision to hold the Committee meetings, effective June 10, 2003, as follows:

Laws and Rules Review Committee Meeting – 9 a.m.

Education Review Committee Meeting – Upon adjournment of the Laws and Rules Review Committee Meeting

Condominium Review Committee Meeting – Upon adjournment of the Education Review Committee Meeting

**Legislative and Government Participation**

Commissioner Yamanaka voiced his concerns about out-of-state brokers representing buyers and sellers of real estate property in Hawaii. Some border on the position that they can get 50% of the commission as long as the agent designates it as a buyer/seller broker. There is no policy defining an acceptable referral fee and the acceptable commission split.

The Vice Chair stated that an out-of-state licensee may not conduct any of the negotiations in this state.

The SEO suggested putting an article in the Real Estate Bulletin informing licensees that out-of-state licensees should not be stepping foot in this state and should not have an office or advertise in Hawaii.

There are a lot of properties located in Hawaii that are listed on the internet. The Commission realizes that it is difficult to stop this practice. The Commission would like to enter into reciprocal agreements with the

other states to allow them to assist Hawaii in serving licensees who are residing out-of-state.

Commissioner Ohama stated that he had tried previously to have a reciprocity bill passed by the Legislature but was unsuccessful. The bill would have allowed the Commission to negotiate agreements with other states. If the bill had passed, an out-of-state licensee would only have to take the State portion of the examination.

Commissioner Ohama stated that the Commission could reintroduce the legislation if they desired. At one point, the Director had created a special task force between RICO, the Attorney General's Office and the Department but it was killed by the lack of industry support.

Commissioner Yamanaka stated that there are no guidelines on the splitting of commissions. If you are contacted by a person who wants to buy property, you need only think about the best interests of the client.

The SEO stated that the Commission's position on commissions and the splitting of referral fees is that it is negotiable between the brokers.

Commissioner Choi stated that the Commission should move forward in trying to secure reciprocity and after that is done, guidelines can be established.

Commissioner Kagawa noted that some properties are listed for sale with outside brokers, such as Goldman Sachs. The SEO stated that if they are offering to sell in Hawaii, they must be licensed in Hawaii. Such outside brokers need to have an agreement with a local broker. If they do not have a Hawaii real estate license, the transaction could be challenged in court. If the party involved is not licensed, it could be challenged in court and the transaction would be voided.

Commissioner Ohama stated that unless the Commission can figure out a way to get a toe hold into enforcement, we might as well wipe the law off the books. If the Commission allowed reciprocity, it could establish agreements with the other states whereby out-of-state licensees could be disciplined. Hawaii is way behind in this.

Commissioner Okawa suggested that the subcommittee on referral fees take on the reciprocity issues as well.

Industry was not in support of the bill. If the Commission would like the bill to pass, it needs to gain the support of industry members.

The SEO stated that the Commission needs to do a better job in educating the licensees. The purpose of the law is to protect the consumer. We must show that there is a record of harm against the consumer.

It was recommended that Commissioner Okawa consult with the REC Chair to determine proposed legislation and that the Hawaii Association of REALTORS® be included in the discussion.

Commissioner Abrams suggested that a question be added to the real estate license examination, asking the candidate to explain what they should do if they are contacted by an out-of-state licensee.

Next Meeting:

**Thursday, May 8, 2003**  
**10:30 a.m.**  
**Conference Room**  
**Kona Board of REALTORS®**  
**75-240 Nani Kailua Drive, Suite 157**  
**Kailua-Kona, Hawaii**

Adjournment:

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

Reviewed and approved by:

/s/ Calvin Kimura  
Calvin Kimura  
Supervising Executive Officer

May 8, 2003  
Date

- [  ]      Approved as is.
- [        ]      Approved with amendments. See minutes of \_\_\_\_\_ meeting.