

LAWS AND RULES REVIEW COMMITTEE
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.hawaii.gov/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, February 9, 2005

Time: 9:00 a.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Present: Iris Okawa, Chair, Public/Honolulu Commissioner
Louis Abrams, Vice Chair, Broker/Kauai Commissioner
Mitchell Imanaka, Broker/Honolulu Commissioner
Michele Sunahara Loudermilk, Public/Honolulu Commissioner
(Late Arrival)
Trudy Nishihara, Broker/Honolulu Commissioner
John Ohama, Broker/Honolulu Commissioner

Calvin Kimura, Supervising Executive Officer
Neil Fujitani, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Lorene Kimura, Real Estate Specialist
Ryan Yamashiro, Real Estate Specialist
David Grupen, Condominium Specialist
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary

Others: Nicki Ann Thompson, Hawaii Association of REALTORS®
Tom Gill, Hawaii Association of REALTORS®
Stephanie Ripple, Honolulu Board of REALTORS®
Marsha Shimizu, Hawaii Association of REALTORS®
Janice Lind, RE3LLC

Absent: Carol Ball, Broker/Maui Commissioner
Kathleen Kagawa, Broker/Honolulu Commissioner
Vern Yamanaka, Broker/Hawaii Island Commissioner

Call to Order: The Chair called the meeting to order at 9:13 a.m., at which time quorum was established.

Chair's Report: No Chair's report was presented.

SEO's Report:

Additional Distribution

The following material was distributed to the Commissioners prior to the start of the meeting:

4. Program of Work, FY05
 - f. Legislative and Government Participation Report – Geographic Report
 - h. Legislative Acts and Resolutions – Act 234 (SLH 2004)
 - v. Subcommittee on Agency
 - 1) Chair's Report – National Harris Poll

Minutes of Previous Meetings

Upon a motion by Commissioner Abrams, seconded by Commissioner Imanaka, it was voted on and unanimously carried to accept the minutes of the January 12, 2005 Laws and Rules Review Committee meeting.

Program of Work, FY05:

Licensing, Registration and Certification Administration

An excerpt from the latest Geographic Report, dated January 15, 2005, was distributed to the Commissioners for their information. According to the report, there are 18,297 real estate licensees.

Vice Chair Abrams asked if it were possible for staff to extract statistics on how many one, two or three person offices there are. Ms. Thompson said that the information could be obtained online through the Listbuilder program. Staff will look into obtaining the information requested by Vice Chair Abrams.

Legislative and Government Participation Report

Legislative Report No. 1 was distributed to the Commissioners for their information. The SEO reported on the bills affecting Chapters 467, 514A, and 436B, Hawaii Revised Statutes.

The SEO reported that House Bill No. 107, relating to brokerage relationships, was scheduled for decision making before the House CPC and Judiciary Committees on February 10, 2005. Senate Bill No. 109, relating to real estate brokers and salespersons is scheduled to be heard before the Senate CPH Committee on February 14, 2005 at 9 a.m. Vice Chair Abrams testified at the hearing on H.B. No. 107 and will also be testifying on S.B. No. 109.

Chair Okawa testified on House Bill No. 781, the Commission's recodification bill. House Draft No. 1 was issued with an effective date of 2099. The companion bill is Senate Bill No. 1132.

Senate Bill No. 1777 proposes that the Real Estate Education Fund be utilized to fund real estate related consumer education programs.

Legislative Acts and Resolutions

The SEO reported that Act 234, SLH 2004, relating to the nonattendance of a board member at meetings, became effective on July 13, 2004. This law provides that a board member's term expires when a member fails to attend three consecutive meetings where there was insufficient board members to constitute a quorum.

Chair Okawa commended the neighbor island Commissioners for their attendance at the meetings. She also thanked the Commissioners for the commitment of their time.

Division and Department Programs

Excerpts from the 2004 Annual Compliance Resolution Fund Report to the Legislature were distributed to the Commissioners for their information. The Department of Commerce and Consumer Affairs moved from 49th place in the nation to 3rd place in E Commerce and Business. The statistics show that real estate is doing well when you compare the number of transactions to the number of complaints.

Vice Chair Abrams commended Specialists Grupen and Yamashiro for putting all of the condominium public reports on the website. This move was not well publicized and should be made known to the licensees. Vice Chair Abrams suggested that the Commission consider making the condo maps available online. The Commission continues to support anything that would allow the information to be available to both the consumers and the licensees.

Program of Work, FY05:

Subcommittee on Agency

A copy of the National Harris poll listing the most prestigious occupation was distributed to the Commissioners for their information. The poll reported that real estate licensees had the lowest rating (6%) on the listing.

Excerpts from the 2005 ARELLO Digest of Real Estate License Laws and Current Issues were distributed to the Commissioners for their information. Subcommittee Chair Abrams noted that Hawaii answered "yes" to the question, "Are commercial transactions exempted from agency notification requirements?" Subcommittee Chair Abrams noted that he could not find anything in the rules that would address this, so it should be included in the proposed rules. With regards to the buyer agreement forms, Hawaii indicated that it requires the buyer brokerage/agency agreement policies, but again, this was addressed in the SWAT rule changes, however, it is not specifically stated in the rules and should be addressed in future rulemaking.

A copy of a report from the Consumer Federation of America that was dated October 18, 1994, was distributed to the Commissioners for their information. The report described the changes in real estate agency and

advises home sellers and buyers how they should respond to the agency issue.

Copies of the following Hawaii Association of REALTORS' ("HAR") forms were distributed to the Commissioners for their information:

- Exclusive Right-to-Sell Listing Agreement (Released 11/04)
- Buyer Representation Agreement (Released 11/04)
- Deposit Receipt Offer and Acceptances (DROA) (Released 11/04)

The Commission was not given the opportunity to review the forms prior to its release. It appears that the forms are not working and as a result the laws need to be changed. The forms are the vehicle which takes the law into practice.

The Commission will continue its dialog with HAR on this issue.

On the Exclusive Right-to-Sell Listing Agreement, the Agreement is signed by the listing broker and the seller. The Agreement lists "Customer" and says: "Seller's Agent can also assist Buyer, as a customer. As a customer, Buyer is not represented by Seller's Agent. Seller's Agent can assist Buyer in writing the DROA, can present the DROA to Seller, and can report back any acceptance or request for changes to the DROA." The industry has a standard dual agency form and is suggesting that a separate form be done and this be left up to the brokerage firms.

The Commission received copies from HAR of the dual agency forms that other real estate companies use.

The term "Customer" is not defined in the rules.

A copy of the testimonies of House Bill No. 107, submitted by HAR and by the Commission, was distributed to the Commissioners for their information. The Commission is still recommending that a study be conducted by the Legislative Reference Bureau ("LRB"). Even if the bill does not pass, it appears that the agency issue will need to be looked at. If the LRB does not conduct a study, the Commission may have to consider hiring a consultant to perform the study.

The Commissioners were also given a compact disk containing the various reports on agency. REB Staff hopes to be able to make the research information and reports on agency available by means of the website.

Chair Okawa thanked Subcommittee Abrams for monitoring this issue.

ARELLO, Other
Organizations and
Jurisdictions:

ARELLO Midyear Meeting and District IV Meeting

A copy of the information on ARELLO's Midyear Meeting and the District IV meeting was distributed to the Commissioners for their information.

Upon a motion by Commissioner Imanaka, seconded by Commissioner Nishihara, it was voted on and unanimously carried to recommend approval for up to three Commissioners/staff to the ARELLO Midyear and District IV Meetings, to be held in Monterey, California, on March 31 to April 2, 2005, subject to the Governor's fiscal policy and budgetary approval.

The SEO reported that this will be the first time that the Canadian Task Force on Agency ("CTFA") will be presenting their report on agency. The SEO has discussed this matter with Kirk Bacon of the Saskatchewan Real Estate Commission. The CTFA will be presenting additional information on the subject and will also be providing feedback that they have received from the real estate industry in and outside of Canada.

This will also mark the return of the representatives from the California Department of Real Estate who will be attending the conference. Jeff Davi, the new Commissioner with the California Department of Real Estate, will be at the meetings. The Commission is hoping to schedule meetings with representatives from the CTFA and the California Department of Real Estate to further their discussions on agency.

Upon a motion by Commissioner Imanaka, seconded by Commissioner Nishihara, it was voted on and unanimously carried to amend the motion to also include the recommendation to approve that a Commissioner/staff to meet with representatives from the California Department of Real Estate in their offices either prior to or following the Midyear and District IV meetings, subject to the Governor's fiscal policy and budgetary approval.

Chair Okawa reported that Hawaii is a part of ARELLO's District IV. She also reported that there is a tremendous amount of networking that occurs at the meetings. In the interest of economics, District IV has opted to hold its meetings back-to-back with the Board of Directors Meetings to ensure optimum participation.

Chair Okawa serves as the District IV Vice President.

ARELLO Boundaries

A copy of the January/February 2005 issue of Boundaries was distributed to the Commissioners for their information.

ARELLOgram

A copy of the January 5, 2005 issue of ARELLOgram was distributed to the Commissioners for their information.

The SEO pointed out that the State of Colorado is being sued because moneys were taken from their real estate recovery fund by the legislature to cover budget shortfalls.

National Association of REALTORS

An article entitled, "Community Choice in Real Estate Act Reintroduced in the U. S. Senate", found on the realtor.org website was distributed to the Commissioners for their information. The Act is part of an attempt to prohibit banks from conducting real estate activity without a real estate license.

National Flood Insurance Reform Act of 1994

A copy of an article on seller disclosure was distributed to the Commissioners for their information. Also included was a copy of an article entitled, "Who's Responsible for Stream Maintenance?"

Open Forum:

Mr. Gill commented that the amount of material that the Commission distributed on agency was very impressive and the amount of time that it will take to go through it is staggering. Speaking on his own behalf, he appreciates the attention that the Commission has paid and continues to pay to this issue. With regards to the forms, Mr. Gill stated that he felt that the forms were used industry wide; however, he found out that the forms have not been adopted industry wide. One of the biggest complaints is that the licensee wants to represent both sides in the transaction in a fiduciary capacity. Some also want to continue on as a full-time dual agent.

Mr. Gill also recognized Commissioner Loudermilk for her article on legislation.

Budget and Finance Report:

No report was presented.

Next Meeting:

Wednesday, March 9, 2005
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 10:01 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

March 9, 2005
Date

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

CK/isk/050216