

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, January 11, 2006

Time: 9:30 a.m.

Place: REALTORS Association of Maui
441 Ala Makani Place
Kahului, Maui

Present: Louis Abrams, Chair, Broker/Kauai Commissioner
Kathleen Kagawa, Vice Chair, Broker/Honolulu Commissioner
Carol Ball, Broker/Maui Commissioner
Michele Sunahara Loudermilk, Public/Honolulu Commissioner
Trudy Nishihara, Broker/Honolulu Commissioner
Iris Okawa, Public/Honolulu Commissioner
Vern Yamanaka, Broker/Hawaii Commissioner

Calvin Kimura, Supervising Executive Officer
Cynthia Yee, Senior Condominium Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Secretary

Others: Charles Villalon, Maui County Zoning Admin. and Enforcement Division
Jay Arakawa, Maui County Zoning Admin. and Enforcement Division
Tammy Osurman, Maui County Zoning Admin. and Enforcement Division
Scott A. Sherley, ERA Maui Real Estate
Terry Tolman, Realtors Association of Maui
Tracy Stice, Hawaii Association of Realtors
Louis Zimmermann, Menehune Shores
Horst Ihle
Bessie Bourbean, Menehune Shores
Gloria Adlawan, Menehune Shores
Kay Ghean
Sherley Blodgett, Honokawai Condo
Bert Blodgett, Honokawai Condo
Keone Ball, Carol Ball, Inc.

Absent: Stanley Kuriyama, Broker/Honolulu Commissioner

Order: The Chair called the meeting to order at 9:30 a.m., at which time quorum was established.

Chair's Report: Chair Abrams thanked Terry Tolman and the Realtors Association of Maui for allowing the Commission to hold its meetings at the RAM offices.

SEO's Report: SEO Kimura noted that Commissioner Kuriyama was unable to attend today's meetings due to a conflict in schedules.

Additions to the Agenda

Upon a motion by Commissioner Yamanaka, seconded by Commissioner Nishihara, it was voted on and unanimously carried to approve the addition to the agenda as follows:

4. Program of Work, FY06
 - b. Licensing, Registration, and Certification Administration
– Termination of Principal Broker

Minutes of Previous Meetings

Upon a motion by Commissioner Ball, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to accept the minutes of the December 7, 2005 Laws and Rules Review Committee meeting.

Program of Work FY06:

Licensing, Registration, and Certification Administration – Termination of Principal Broker

SEO Kimura reported that staff is looking for a reconfirmation of its policy regarding the termination of a Principal Broker (PB). He reported that from the 1980's it has been the Commission's policy to accept a corporate or partnership resolution to appoint/employ a PB, which is signed by an officer or partner of the brokerage firm. This officer or partner may or may not be a real estate licensee. This was in addition to any required change form of the new PB. In addition, to release or terminate a PB, a resolution was also required, along with any required change form.

When LLC was authorized as another form of a business entity, they were also included in this policy and a manager or member would be the signator.

An involuntary termination of a PB is a very rare situation. Upon an involuntary termination of a PB in which the affected PB refused to submit a signed change form, the Commission would accept the resolution subject to a notification condition. The notification condition basically was that the brokerage entity had to provide at least a 10 day written notification of termination, requesting to sign off on a change form, and sent via certified mail. At the end of the 10 days, the Commission would accept the termination through the submission of the resolution, copies of the letter and certified mail receipts or the refusal of mail receipt (unless there is a signed off change form), and the documents on the appointment of the new PB. This notification requirement was patterned after 16-99-5.1(c), HAR, in which a PB would terminate a salesperson.

Chapter 467, HRS, and Chapter 99, HAR, do not specifically address the mechanics on the termination or release of a PB. Although in the case of death or prolonged illness of a PB, the Commission accepts the resolution or letter from the officer, partner, or member/manager of the brokerage entity.

Commissioner Yamanaka questioned whether there is any vehicle regarding the termination of a Branch Office by the Main office, is this resolution process required?

SEO Kimura responded that no resolution is required for the appointment or termination of a branch office or BIC. Further, not all branch offices are required to be registered with the Commission, just the principal place of business and one branch office per island other than the main office location. All BICs are listed under the principal place of business. This change occurred with the SWAT rules to allow more flexibility with less paperwork.

Deputy Attorney General Wong encouraged that the policy be reconfirmed and incorporated with the next rulemaking.

Upon a motion by Commissioner Okawa, seconded by Commissioner Loudermilk it was voted on and unanimously carried to approve and reconfirm the procedure on voluntary or involuntary termination of a principal broker of a partnership, corporation, or limited liability company brokerage firm. In a voluntary termination, the brokerage firm and terminating principal broker shall submit a resolution on the termination (signed by a partner, officer or member of record) with any required change form and fees, including the appointment of a new principal broker. In an involuntary termination (terminating principal broker refuses to sign off on Change Form or any other act required to complete changes with the Commission), the Commission will accept the entity resolution, subject to notification requirements. The brokerage firm shall mail a written notification of termination along with a copy of the entity resolution, with at least a 10 calendar day deadline from date of receipt or if refused, the date of refusal is deadline date, requesting sign off on the Change Form, and mailed via certified mail with return receipts. After the deadline, the brokerage entity shall submit the original resolution, copies of termination notification, copy of mailing receipts, if applicable - copy of envelope reflecting refused mail delivery, and any required change forms and fees, including the appointment of a new principal broker. The aforementioned shall be included in the next rule making.

Legislative and Government Participation Report

An informational packet on the legislative process, along with contact lists, was distributed to the Commissioners for their information.

The SEO also reported that the informational briefing for the Department was held before the House Finance Committee on January 9, 2006. The informational briefing before the Senate Ways and Means Committee is scheduled for January 20, 2006.

SEO informed the Commissioners of the need for Commission members to testify at the hearings and requested that they submit their availability dates as soon as possible.

Legislative Acts and Resolutions

A copy of the 2005 Annual Report of the Real Estate Commission was distributed to the Commissioners. The report is also available for viewing on the Commission's website.

Deputy Attorney General Wong informed the Commissioners that pages 14 and 15 of the Annual Report provide a breakdown of complaints by subject matter.

Chair Abrams noted that the complaints statistics provided by RICO has doubled.

SEO Kimura replied that analysis of the RICO complaints reflect a high number of allegations of technical violations of the law and rules in which there is no direct consumer harm. The numbers may not be reflective of consumer complaints in which there is consumer harm.

Mr. Tolman questioned whether technical complaints would include failure to complete continuing education requirements and renewal of licenses.

SEO Kimura replied in the negative and responded that if a licensee did not complete their CE requirement but renewed on time, their license would be renewed on inactive. If the licensee failed to renew their license, the license would be forfeited.

Mr. Tolman reported that many licensees find out months later that they have been operating illegally because their license was renewed inactive due to the failure to complete the required CE courses. Mr. Tolman further reported that RAM would like to work with the Commission to be able to access information or a listing of licensees who have renewed and their status.

SEO Kimura responded that the law states that the Principal Broker is responsibility to ensure that all licenses of associating licensees are current and active, which would include successful timely renewal to active. Every licensee that renews their license active or inactive will be issued a pocket card. Should the licensee not meet the CE requirement but successfully renew their license, they will be issued an "inactive" pocket card. Any information on a licensee conducting real estate brokerage activity under an inactive license should be reported to RICO along with the principal broker. Under the rules, it is the duty of a licensee to report allegations of violations of law or rules by another licensee.

As to access to information or a listing of inactive Maui licensees, anyone can go to the PVL website and request a list builder of inactive Maui licensees. It is the same licensing information that Real Estate Branch has access to.

Neighbor Island Outreach

The next neighbor island outreach is scheduled to be held in Hilo, Hawaii in May or June 2006.

Commissioners' Education Program

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

1. OpenLine, October-December 2005
2. The High Road, December 2005

Division and Department Programs

Excerpts from the 2005 Annual Compliance Resolution Fund Report to the Legislature were distributed to the Commissioners for their information.

Chair Abrams informed the committee that RICO lists in its accomplishments for 2005 that RICO conducted a sweep for unlicensed activity in Kauai during fiscal year 2005 which concentrated on unlicensed contractors.

SEO Kimura reported that he has had discussions with Joanne Uchida, RICO CEO regarding the Commissions desire to make available more consumer awareness and education. RICO is open to a consumer education partnership with the Commission.

SEO Kimura also reported that the Legislative Auditor's Office has issued a report "Auditor's Comparative Study of the DCCA Requirements for Professions and Vocations Part I (the 25 Boards). Real Estate will be included in the comparative study part 2 expected to be completed this summer. The branch will direct the legislative auditor's office to HAR also for their thoughts on the issues.

Subcommittee on Agency and Other Related Issues

The information on the following was distributed to the Commissioners for their information and will be provided to the ad hoc committee for their information:

1. Nevada Real Estate Division
 - a. Duties Owed Position Statement
 - b. Duties Owed Form
2. Agency in New South Wales
3. Minimum Services
 - a. Michigan Legislation
 - b. Oklahoma Not to Implement
 - c. Ohio's Tentative Approval from the Department of Justice
 - d. Arizona Association of REALTORS form

Subcommittee on Applicants with Criminal/Financial/Legal Background Issues; Criminal History Record Checks

The following information was distributed to the Commissioners for their information:

1. Application Background Questions – Nevada Real Estate Division
2. Criminal Background Report – Nevada Real Estate Division

SEO Kimura reported that more and more states are doing electronic fingerprinting.

Chair Abrams stated that there is a need to discuss this issue with the industry and get their thoughts on furthering background checks in Hawaii.

Ad Hoc Committee on Consumer-Broker Relationships

Chair Abrams reported that the Commission has started to receive responses from individuals representing the local boards, HAR, real estate companies, and other organizations of their willingness to participate in the ad hoc committee.

ARELLO, Other Organizations and Jurisdictions:

ARELLO Midyear, District Meeting, Annual Meeting and Reports

Chair Abrams announced that he would be attending the ARELLO Board of Directors meetings in St. Petersburg, Florida, on January 13 and 14, 2006.

Special Issues:

Hawaii Association of REALTORS Proposed Bill

Mr. Tracy Stice, representing HAR, informed the committee that HAR's board of directors met last week on Kauai and came to a decision to table House Bill 107 and Senate Bill 109 and instead to embark on an educational forum for its membership. Mr. Stice informed the committee that the NAR Agency course is currently approved as a continuing education elective course which consists of a national overview of broker relationships. This course was monitored by Commissioner Nishihara. HAR wants to broadly educate its membership and non-membership by bringing the NAR Agency course forward as a four hour CE core course. HAR will need to add in a portion on laws and ethics into its course. This course will reach out also to the non-Realtor community.

Mr. Stice stated that HAR wants to work with the Commission's ad hoc committee and have more of a consensus on what the Commission would want to add to the elective course to make it a core course.

Commissioner Nishihara thanked HAR for its efforts and wanted to remind HAR that the Commission has published a core course which covers agency, definitions of different types of agencies, and a comparison of agency among other states.

Mr. Stice responded that this would be a different core course with emphasis specifically on agency.

Chair Abrams questioned whether there can be more than one core course.

SEO Kimura replied in the affirmative and responded that the Commission sets the requirements on the curriculum of a core course.

Commissioner Nishihara informed Mr. Stice that HAR has a representative that sits on the EETF that helped develop the Commission's core course.

Mr. Stice replied that HAR's board of director's has agreed to totally table the agency bill efforts and to work with the Commission on the approval of its agency core course. He noted that the Commission's core course was written last year and there have since been changes. Most people practicing today did not go through the sub agency bill that went through in the late 1980s. The NAR agency course covers national laws, not specifically Hawaii laws as in the Commission's core course.

Commissioner Nishihara again thanked Mr. Stice for voicing the concerns of HAR and thanked HAR for bringing the issue forward which in turn got the Commission studying the issue. The Ad Hoc committee is being put together with industry members who include two representatives of the Hawaii Association of Realtors and will research the issue to see if our law is current or archaic. If found to be archaic, the committee will look into what changes need to be made. The committee and the Commission will further study the issue on agency and make a prudent decision. The Commission is trying to work with HAR to study the issue in-depth.

SEO Kimura informed the committee members that their discussions, deliberations, and decision making on two distinct matters which may contain the same subject from the same organization should be partitioned. The organization's legislative bill and future application for a CE core course should be handled independent of each other. The organization is the largest real estate brokerage trade organization in the State, a Commission approved registered CE provider, and has a contract with the Commission to provide education seminars. It is our duty to insure that all applications are to be handled equally, fairly, and according to laws, rules, policies, and procedures.

Open Forum:

Mr. Charles Villalon, Maui County Zoning Inspector, informed the committee that his office handles approximately 2,500 complaints a year due in part to problems with property disclosure. Many of the complaints received are from victims, many times neighbors of the property in question. He suggested a quick remedy is to have the County Zoning office sign off on a property disclosure form. Mr. Villalon stated that it is conducive for the Commission and the Maui County Zoning Enforcement office to work together to educate consumers.

Chair Abrams noted that disclosure is a major issue and noted that not all brokers may be going over the disclosure statement with the

purchaser. The Commission may want to look into providing more education in this area possibly by providing more education in its prelicense and continuing education courses.

Commissioner Ball noted that listing agents representing sellers may be misrepresenting the property.

SEO Kimura suggested that the County Zoning Enforcement office consult with the Realtors Association of Maui who may also be able to provide assistance to the County.

It was recommended that staff work with Mr. Villalon on the request to educate Maui County licensees on zoning issues and any special disclosure concerns. The assistance may include an article in the Real Estate Bulletin to be drafted by Mr. Villalon or the Department of Planning, or special mail outs to Maui County principal brokers, or providing mailing labels of principal brokers.

Budget and
Finance Report:

Office of the Auditor

Excerpts from the Office of the Auditor's Report on the Review of Revolving Funds, Trust Funds, and Trust Accounts of the Judiciary and the Departments of Commerce and Consumer Affairs, Hawaiian Home Lands, Health and Human Services, relating to the real estate recovery fund, was distributed to the Commissioners for their information. In summary, the report states that the trust fund continues to serve the purpose for which it was created and its intended beneficiaries – claimants who have been injured by the acts of real estate licensees. The fund receives no general fund appropriations.

Next Meeting:

Wednesday, February 8, 2006
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 10:53 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

February 8, 2006
Date

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