

LAWS AND RULES REVIEW COMMITTEE
REAL ESTATE COMMISSION
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 11, 2009

Time: 9:00 a.m.

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

Present: Louis Abrams, Chair, Broker/Kauai Commissioner
Michele Sunahara Loudermilk, Vice Chair, Public/Honolulu Commissioner
Frances Gendrano, Broker/Honolulu Commissioner
Stanley Kuriyama, Broker/Honolulu Commissioner – late arrival
Carol Ball, Broker/Maui Commissioner
Trudy Nishihara, Broker/Honolulu Commissioner
William Chee, Broker/Honolulu Commissioner
Mark Suiso, Public/Honolulu Commissioner

Neil Fujitani, Supervising Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary
Sonia Ines, Office Assistant

Others: Aron Espinueva, Hawaii Association of REALTORS®

Absent: Annette Aiona, Broker/Hawaii Commissioner

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

Chair's Report: The Chair announced that the Committee may move into executive session to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.

Commissioner Aiona was excused from today's meeting. Prior notice of her non-attendance was received.

SEO's Report: **Minutes of Previous Meetings**

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Gendrano, it was voted on and unanimously carried to accept the minutes of the January 7, 2009, Laws and Rules Review Committee meeting with correction to typographical error.

Program of
Work, FY09:

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

The committee discussed the issue relating to brokerage firms and principal brokers reporting misconduct of their licensees. Commissioner Chee suggested working on a white paper with staff, meeting with RICO, and possible rule making to encourage firms to report the misconduct of their current and past licensees without the firm having to face charges themselves for misconduct unknown to the firm at the time. Noted that this change would be in the best interest of the consumer and reduce consumer harm.

Commissioner Gendrano requested that the committee look at how other states handle similar issues.

Chair Abrams replied that he will check with ARELLO.

Discussion ensued regarding whether this could open avenues of information and noted that the PB's role would have to be looked at carefully due to the possibility of vindictiveness. To what extent would the broker be held harmless?

Commissioner Kuriyama arrived at 9:10 a.m.

Commissioner Chee noted hypothetically that a licensee could be terminated for cause, licensee moves on to another firm and the consumer is still at harm because as it stands now, although PBs are required to report misconduct, if it will be cause for the PB and brokerage firm to be named in the complaint, the PB and firm may terminate and not report to the Commission, allowing the licensee to continue misconduct with the next firm.

Specialist Fujimura was asked if she was familiar with how complaints are handled at RICO.

Specialist Fujimura recollected that when a complaint is received it goes to RICO intake. Normally the licensee, PB/BIC, and the company are all named. The investigator will interview all relevant parties. In the instance where the PB or BIC is found to have not known of the misconduct, the PB or BIC could be removed and not named, although the company name will remain.

Discussion ensued regarding whether it may be more practical to discuss the issue with RICO and find out what their policy is and possibly handle this as a policy issue rather than a rule change or test pilot project for one year before deciding to do rule changes.

SEO reported that he will invite RICO to the next meeting for further discussion of the issue along with a review of Commissioner Chee's white paper.

Chair Abrams requested that staff check with RICO on whether they keep stats on how many PBs turn in their agents and if so, provide that information to the committee.

Legislative and Government Participation Report

2009 Legislative Report No. 1 included summaries of bills the Commission is following during this session. The SEO reported that there are a lot of historic preservation, mortgage fraud prevention, and unlicensed practice of law bills this session.

Commissioner Suiso questioned if there are any particular bills that the REC is pursuing.

The SEO replied that there is one Senate and one House bill relating to the merging of the two condominium funds. The sole purpose of these two bills is to improve the administration of condominium education programs by eliminating any unnecessary burden in trying to manage two separate funds. It was never the intent of the Commission to create two funds.

Chair Abrams reported that OCP is taking the lead on the Mortgage Rescue Fraud Prevention bills which the Commission is monitoring. In respect to the unauthorized practice of law bill, the Commission supports the bill in concept.

The Committee discussed House Bill No. 51 relating to real estate brokers which prohibits persons convicted of felonies involving fraud or misrepresentation from being licensed as a real estate broker. Commissioner Nishihara reported that the CPC committee members were surprised that background checks were not required. If background checks are required the burden should be placed on the applicant to retrieve the report and submit it with the application. The SEO further noted that REB is a part of the Professional and Vocational Licensing Division and that it would be hard for REB to move forward with criminal background checks without the Division moving in the same direction.

Subcommittee on Background Issues and Criminal History Records

Research completed by the Utah Division of Real Estate on post-licensure background check practices nationwide were distributed for informational purposes. It was reported that 27 of 50 states run background checks on broker applicants.

Commissioner Nishihara noted that this information is very timely to see if the Hawaii Real Estate Commission would like to pursue background checks and if so, what level to pursue.

Commissioners Ball and Gendrano agreed that Hawaii should pursue both state and federal background checks.

Commissioner Loudermilk questioned if State background checks only reflected Hawaii State background checks and was responded to in the affirmative.

Chair Abrams noted that most states require fingerprinting digitally at the test sites which allows for quicker processing of the identification of the individual during the federal search.

An issue was raised regarding the following question for the committee to take into consideration "Are there associated links between convicted applicants and disciplinary cases which would show cause for doing background checks?"

The SEO also noted that if background checks were to be done, would it be done during renewals, or only on new applicants?

Chair Abrams noted that Texas does its background checks only during renewals.

ARELLO,
Other
Organizations
And
Jurisdictions:

Meetings, Workshops, and Reports

Upon a motion by Commissioner Nishihara, seconded by Commissioner Ball, it was voted on and unanimously carried to approve sending two Commissioners and one staff member to the ARELLO District 4 Meeting, to be held on April 26, 2009 and the ARELLO Midyear Meetings, to be held April 27 to 29, 2009, in Asheville, North Carolina, subject to budget and required travel approval.

Special
Issues:

Supreme Court Rule Amendments

The Supreme Court of Hawai'i is seeking public comment regarding a revised version of the proposed rule about the Unauthorized Practice of Law. The proposed rule defines the practice of law and would assist with regulation, by clarifying what is and is not the practice of law. Comments regarding the proposed rule are due to the Judiciary Public Affairs Office no later than April 27, 2009.

Upon a motion by Commissioner Chee, seconded by Commissioner Nishihara, it was voted on and unanimously carried to submit comments to the Judiciary Public Affairs Office by April 27, 2009 in support of the proposed rule on unauthorized practice of law.

The SEO noted that this same issue is currently before the legislature this session. At the legislature, the Commission is supporting the bills in concept and the Department is not taking a position at this time.

Mortgage Rescue Fraud Prevention Act

The Mortgage Rescue Fraud Prevention bill is a HAR/OCP bill which the Commission will continue to monitor.

Open Forum:

None.

Budget and
Finance
Report:

Upon a motion by Commissioner Ball, seconded by Commissioner Chee, it was voted on and unanimously carried to accept the Real Estate Recovery Fund Financial Report for the period ending December 31, 2008.

Next
Meeting:

Wednesday, March 11, 2009
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 9:54 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

Neil K. Fujitani
Supervising Executive Officer

February 18, 2009

Date

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