

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, April 8, 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
Carol Ball, Broker/Maui Commissioner
Trudy Nishihara, Broker/Honolulu Commissioner
Annette Aiona, Broker/Hawaii Commissioner
William Chee, Broker/Honolulu Commissioner

Neil Fujitani, Supervising Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
David Grupen, Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
Benedyne Stone, Condominium Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Richard Kiefer, Kiefer & Garneau LLC
Natalie Kiehm, A & B Properties
Lisa Redell, Goodsill Anderson
Jon Uchiyama
Nancy Caires
Jo Ann Uchida, Esq., Regulated Industries Complaints Office
Daria Loy-Goto, Esq., Regulated Industries Complaints Office
Esther Ervin, Esq., Regulated Industries Complaints Office
Patrick Kelly, Esq., Regulated Industries Complaints Office
Jeff Watts, Brooks Tom Porter & Quitiquit LLP

Absent: Mark Suiso, Public/Honolulu Commissioner

Call to Order: The Chair called the meeting to order at 9:00 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 Suiso was excused from today's meeting. Prior notice of his non-attendance was received.

SEO's
Report:

Additional Distribution

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

5. ARELLO, Other Organizations and Jurisdictions
 - a. ARELLO
 - 2) Meetings, Workshops, and Reports

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 March 11, 2009, Laws and Rules Review Committee meeting as circulated.

Program of
Work, FY09:

Legislative and Government Participation Report

Legislative Report No. 3 was distributed to the Commissioners for their information.

HB 520 – House agreed to Senate amendments. Measure has been transmitted to the Governor's office.

SB 34 – House Judiciary passed with amendments to incorporate the agreed upon language. The committee had concerns with language on page 10, lines 10-14 which stated "(7) A person currently licensed as an active real estate broker or real estate salesperson in Hawaii pursuant to chapter 467, when acting in the capacity of a real estate broker or real estate salesperson **in accordance with customary industry standards.**" The committee noted that "in accordance with customary industry standards" is unfamiliar and too vague of a statement and that language should be changed to "...In accordance with applicable laws and rules."

SB 1107 – House Finance Committee recommended the measure be passed with amendments.

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

Present on behalf of the Regulated Industries Complaints Office were Jo Ann Uchida, Daria Loy-Goto, Esther Ervin and Patrick Kelly.

Commissioner Chee submitted a white paper report for discussion purposes on firms reporting misconduct of their agents. He reported that Principal Brokers and Brokers-in-Charge are responsible for the actions of their agents. The current laws and rules discourage PBs and BICs from reporting misconduct of their agents because of the self incriminating posture it poses when in actuality PBs and BICs are the best watchdogs of their agents conduct. Commissioner Chee suggested the committee explore methods where the PB and BIC could

provide consumer protection and prevent bad behavior in the industry by reporting its agents without being self incriminating.

Jo Ann Uchida, Esq., Complaints & Enforcement Officer of RICO, thanked the committee for their invitation to attend today's meeting and introduced her staff attorneys, Daria Loy-Goto, Esq., Patrick Kelly, Esq., and Esther Ervin Esq. Ms. Uchida reported that common sense normally prevails and that there are a significant number of brokers that do report their agent's misconduct. RICO adopts a common sense approach and takes all variables into consideration such as whether or not the PB acted in good faith, took corrective action, culpability of all parties, each persons role in the transaction, etc. It is a discretionary call dependent on the facts of each case.

Commissioner Kuriyama questioned if the PB had no direct knowledge would he be excluded from the complaint, and what about the brokerage.

Ms. Ervin, responded that it depends on the underlying issues and would be decided on a case by case basis based on the facts.

Ms. Uchida noted that this situation is not unique to real estate.

The Commissioners and RICO staff members dialogued over different theological scenarios of possible agent misconduct and the broker's responsibilities.

Mr. Kelly informed the committee that it is not stated in the statutes that the principal broker needs to report an agent's misconduct, although section 16-99-3 (b) states in part "...The licensee shall assist the commission in its efforts to regulate the practices of brokers and salespersons in this State."

Commissioner Nishihara provided information on the Hawaii Association of REALTORS® Code of Ethics and noted that most firms do have their own guidelines and policies and procedures.

Commissioner Chee in closing noted that he brought up this issue for discussion to look for some guidelines to encourage reporting by brokers.

Chair Abrams noted that the committee shall continue future discussion on this issue and thanked the RICO staff for their attendance and dialogue.

Commissioners' Education Program – The High Road, March 2009

The March 2009 issue of the Hawaii State Ethics Commission publication "The Highroad" was distributed for informational purposes.

ARELLO,
Other
Organizations
And
Jurisdictions:

Meetings, Workshops, and Reports

The committee acknowledged receipt of Commissioners Nishihara and Abrams' written report on their participation at the ARELLO Leadership Symposium, held January 15-17, 2009 in Charlotte, North Carolina.

Special Issues: None.

Open Forum: None.

Budget and Finance Report: No report presented.

Next Meeting: Wednesday, May 6, 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 10:00 a.m.

Reviewed and approved by:

Neil K. Fujitani

Neil K. Fujitani
Supervising Executive Officer

April 23, 2009

Date

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