

Proposed law changes cut red tape for everybody

The Real Estate Commission's proposed bill that has been submitted to the Legislature addresses government's initiative under the Lieutenant Governor's SWAT (Slice Waste and Tape) project.

SWAT is a project to repeal and reduce regulatory burdens on businesses, the general public and state government.

The proposed amendments will provide for reasonable experience requirements for real estate broker candidates, streamline regulatory requirements for condominium hotel operators, clarify the submission of fidelity bond information for condominium managing agents, and make housekeeping amendments for clarity. Section 1 of the proposed bill provides reasonable experience requirements for real estate broker candidates.

Currently, a real estate broker candidate, among other requirements, must have three years of full-time real estate salesperson experience immediately prior to the licensing examination. The full-time experience is construed to be working at least forty four hours per week for every week during the three-year period. The proposed amendment provides for a reasonable and realistic experience requirement to allow individuals eligible for the real estate broker examination have at least three (3) years of the five (5) year period immediately prior to the submission of the experience certification application. This amendment provides latitude for the experience requirement for broker candidates due to changing employment from one broker to another, illness, taking vacations, the cyclical economic nature of real estate, or working more than forty hours per week at times and working less than forty hours at other times or working part-time due to some personal situation.

Section 2 of the proposed bill provides that the registra-

tion and fidelity bond requirements shall not apply to condominium hotel operator brokers. This proposed amendment reduces paperwork and the burden of condominium hotel operator brokers from requesting exemption from the fidelity bond requirements. It also provides for more equitable treatment of those conducting condominium hotel operator activ-

ity. Specifically, current law provides that all condominium hotel operators, in addition

to other requirements, are required to register and maintain a fidelity bond. This requirement is duplicative and unnecessary for condominium hotel operators who maintain an active real estate broker license and are covered by the real estate recovery fund. Condominium hotel operators without a real estate broker license are not covered by the real estate recovery fund.

Condominium hotel operators without a real estate broker license are required to disclose the fact that they are not covered by the real estate recovery fund to all apartment owner clients and also maintain a fidelity bond as a form of client

protection. The fidelity bond protects the managing agent against the loss of any association of apartment owners' moneys, securities, or other properties caused by the fraudulent or dishonest acts of employees of the managing agent. Section 3 of the proposed bill provides that in addition to other requirements, condominium managing agents are required

to maintain a real estate broker license and fidelity bond. In addition, by request of the Commission, the fidelity bond documents must be provided to the Commission.

The Commission believes that the proposed measure will streamline requirements, eliminate duplicative regulatory requirements and reduce the number of registrations without impacting consumer protection.

(See related article on page 8)

Attention Real Estate licensees: You can verify if an individual or a company has a real estate license, if it is current, who the associating broker is and their address, associating salespersons, license numbers, complaint history of the licensee, etc., by accessing the Professional & Vocational Licensing Search at www.ehawaii.gov.org/serv/pvl. You can also verify other licensing areas at the website such as contractors, mortgage brokers, architects, engineers, etc.

Legal decisions of interest to licensees

Mainland Cases

BROKERS: Disclosure. Knowing that the buyer owned four dogs, a dual agent broker did not disclose to either party the existence of a restrictive covenant limiting dog ownership. The buyer later learned of the covenant through his lawyer, and the deal failed to close because of the broker's failure to obtain a waiver of the covenant. The house sold almost six months later to another buyer for \$10,000 less than the first sale. The court held that the broker's failure to disclose the covenant resulted in the home being taken off the market for two months in the prime selling season, when it could have been sold to someone without dogs. Furthermore, the broker's lack of disclosure and inaction prevented the seller from seeking a waiver in time to preserve the original sale. *Bazal v. Rhines*, 600 N.W.2d 327 (Iowa Ct. App. 1999).

BROKERS: Due process. The court dismissed a real estate broker's reprimand for failing to obtain dual agency consent because the real estate licensing commission failed to act within the statutory time guidelines. The court rejected the commission's argument that the broker had received a full hearing and held that the 196 day delay in scheduling a hearing deprived the broker of due process. *Royer v. Ohio Real Estate Comm'n*, 722 N.E.2d 172 (Ohio Ct. App. 1999).

BROKER LIABILITY: Waiver. After buyers found many latent defects in their newly purchased home, they sued their broker for failing to warn them about the defects. The broker obtained a summary judgment based on exculpatory language in the real estate sale agreement that released "all brokers . . . from any and all liability" for the condition of the property. The court reversed, because such language constitutes a waiver of negligence liability, which is unenforceable unless specifically negotiated and narrowly drawn. *Aranki v. RKP Invs.*, 979 P.2d 534 (Ariz. Ct. App. 1999).

CONDOMINIUMS: Assessment collection. The property manager for a condominium association was held not a "debt collector," and therefore not subject to the Fair Debt Collection Act, because the manager's debt collection activities comprised such a small portion of its management role and because its assessment collection activities began before assessments were in default. *Alexander v. Omega Management, Inc.*, 67 F. Supp. 2d 1052 (D. Minn 1999).

CONDOMINIUMS: Assessment liens. A condominium association's letter to a unit owner stating that if assessments were not paid the association could file a lien was insufficient notice to satisfy the state condominium law, because it only stated a lien was possible. Notice of the actual lien filing should have been sent to the unit owner. The court also held that the condominium assessments were within the scope of the Fair Debt Collection Practices Act (FDCPA). Thus, when the association failed to stop its debt collection efforts after the unit owner sought verification of the amount owed, it violated the FDCPA. *Loigman v. Kings Landing Condominium Ass'n*, 734 A.2d 367 (N.J. Ch. Div. 1999).

CONDOMINIUMS: Attorneys' fees. A condominium association sued to recover a \$1,200 assessment. Although the assessment was paid, the resulting \$500 in attorneys' fees was not. After 10 years of legal wrangling, the fees had risen to over \$46,000. In finding for the association, the court held that the association did not have to use a "low priced" collections lawyer in lieu of its regular real estate lawyer, that the fees were fair and reasonable and that the legal services were necessary. *Mountain View Condominium Ass'n v. Bomersbach*, 734 A.2d 469 (Pa. Comm. Ct. 1999).

CONDOMINIUMS: Public policy. A statutory requirement that all condominium unit owners pay their pro rata share of the costs to maintain the common elements prevails on public policy grounds over a declaration containing a special declarant right to exempt certain units from payment of such costs. The purported exemption power was held unenforceable. *Alma Invs., Inc. v. Bahia Mar Co-owners Ass'n*, 999 S.W.2d 820 (Tex. Ct. App. 1999).

CONSTITUTIONAL LAW: Equal protection. A town ordinance provided for free garbage collection service to condominiums but not similarly sized rental apartments. Although the town claimed that the distinction made in the ordinance was rationally related to the legitimate state interest of promoting home ownership, the court found evidence of such relationship insufficient. *WHS Realty Co. v. Town of Morristown*, 733 A.2d 1206 (N.J. Super. App. Div. 1999).

CONSTITUTIONAL LAW: Substantive due process. After a developer revised its subdivision application at the city's behest, the city's lawyer told the developer that the revisions met the city's standards for approval. Nevertheless, after a six month delay, the city denied the application without findings. The city later reissued the denial with findings based largely

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The Chair's Message

First off, I would like to wish everyone a happy and prosperous new year. Last year was a renewal year for us and on

behalf of the staff and the Commission, we would like to congratulate you, the licensees for doing such a great job of renewing your licenses in a timely fashion. As you know, this year, we stepped up the renewal deadline to November 30, 2000, and the majority of you renewed on time and with no problems. Our thanks go out to you for your help and cooperation. As many of us are connected to the Internet, I'd like to invite

you to use the Commission's website. There are two ways to access the Commission's website. First through the DCCA's website found at www.state.hi.us/dcca. In it you will find the PVL D website, "Professional & Vocational Licensing Search" and the "Business & Licensee Complaints History Search" pages. Second, you may access the Commission's website directly at www.state.hi.us/hirec.

In this new year and new millennium, we have some new staff on board that I would like to recognize. Joining us are Alan Taniguchi, our new Executive Officer, Iris Ikeda Catalani, our new Senior Real Estate Specialist, and Gordon Arakaki, our new Recodification Project Attorney. The addition of these new faces holds a lot of promise for the New Year.

Having just come back from our Committee meetings on Maui, we were pleasantly pleased at the turnout by the Maui Realtors® and public. Our thanks go out to Commissioner Peter Rice and the Maui Board of Realtors® for hosting us. We invite all of you to come and participate in our Committee meetings, whether here in Honolulu or on one of the other Islands. Just check the Commission website for dates, times and location.

Look for the SWAT changes to take effect in the first quarter of this year. The rules were sent to the Governor for his approval to commence the public hearing segment of the rules enactment process. We will be publicizing the date of the public hearing when it is approved.

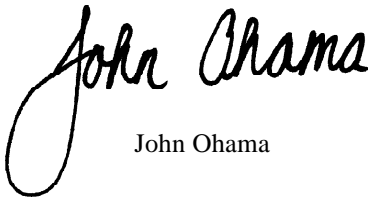
The Legislature started on January 17, 2001. We submitted a bill for consideration by the Legislature as part of the administration package. (More about the bill in another article.) There will be a couple of bills that affect licensees before the Legislature this session. Keep a watch on the bill concerning the Seller Disclosure law. You can log into the Legislature's website at www.capitol.hawaii.gov to retrieve copies of bills and hearing notices. I encourage you to par-

ticipate in the legislative process and help shape the laws that will affect you.

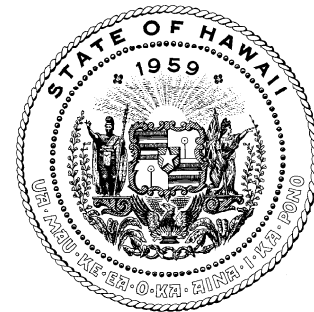
The recodification project has begun. Gordon has committed to taking on this project to redraft the condominium regime laws. We will be looking forward to an update at future meetings.

Look for this new year to bring about more changes as we move forward into a new era. We look forward to working on bringing about more needed changes in the months ahead. Thank you again for working to make our renewals last year such a success and hope to see you at one of our meetings soon.

Aloha,



John Ohama



State of Hawaii Real Estate Commission

Telephone 586-2643

Website: www.state.hi.us/hirec

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This material can be made available to individuals with special needs. Please call the Senior Real Estate Specialist at 586-2645 to submit your request.

Legal decisions of interest to licensees

Continued from page 2

on suggestions from the opponents' lawyer. In the meantime, the developer lost its financing. In overturning summary judgment for the city, the court held that there was evidence the city's decision was inconsistent with its own rules, based on the letter of the opponent's lawyer and not its own deliberations, and was willfully delayed so that the developer would lose financing. *Woodwind Estates, Ltd. v. Gretkowski*, 205 F.3d 118 (3d Cir. 2000).

EASEMENTS: Liability insurance. An insured who fraudulently obtained an easement tendered defense to his liability insurance company when the grantor of the easement sued. The court held that the insurance policy, which covered "wrongful entry or eviction or other invasion of the right of private occupancy" did not apply, because a mere right to enter was at issue rather than an actual physical invasion. *Sterling Builders, Inc. v. United Nat'l Ins. Co.*, 93 Cal. Rptr. 2d 697 (Cal. Ct. App. 2000).

EASEMENTS: Priority. Cox sold property to Jones, taking a purchase money mortgage. Jones then divided the land into two lots, one of which was landlocked. The landlocked parcel, after Cox released it, was later transferred to Trustmark, which sued to establish an easement by necessity over the Jones parcel. Before the suit went to hearing, Cox foreclosed on Jones' remaining parcel and argued that any rights that Trustmark had in that parcel had been foreclosed. The court held Cox's release of the landlocked parcel included an easement by necessity, which survived the foreclosure. *Cox v. Trustmark Nat'l Bank*, 733 So. 2d 353 (Miss. Ct. App. 1999).

FAIR HOUSING: Punitive damages. A jury entered a verdict against a landlord for housing discrimination, but awarded no economic damages. The court held that the lack of economic damages would not prevent an award of punitive damages, because a finding of discrimination alone was sufficient. The court declined, however, to impose punitive damages on an absentee owner who made good faith (albeit unsuccessful) attempts to prevent discrimination by the on-site property manager. *Alexander v. Riga*, 208 F.3d 419 (3d Cir. 2000).

LANDLORD AND TENANT: Assignments. The assignor of a lease had no liability from the default of the assignee following the assignee's bankruptcy, where the assignee and the landlord executed a settlement agreement that released assignee's predecessors in interest from liability. *American Nat'l Trust Co. v. Kentucky Fried Chicken*, 719 N.E.2d 201 (Ill. App. Ct. 1999).

LANDLORD AND TENANT: Covenants. A lease required reimbursement to the landlord for taxes, insurance and maintenance and repair costs. After seven years, the tenant abandoned the premises because the landlord was overcharging for taxes and insurance. The landlord sued, claiming damages for lost rent. The court held for the tenant based on the New Jersey rule that lease covenants are mutually dependent. If a landlord breaches its obligations under a lease, a tenant can be excused from performing its obligations even if quiet enjoyment of the premises is unaffected. *Mansol Assocs., L.L.C., v. Mansol Indus., Inc.*, No. 972016 (D.N.J. 1999).

LANDLORD AND TENANT: Excusable neglect. A commercial lessee who inadvertently mailed a past due rent payment to the wrong address, causing it to arrive after the payment deadline, could not plead the affirmative defense of excusable neglect. The mistake was not the result of anything done by the lessor or any other third party and therefore was held inexcusable. *2606 Building v. Mica*, 994 P.2d 1226 (Or. Ct. App. 2000).

Hawaii Cases

ADVERSE POSSESSION: Permissive use. Summary judgment upholding an adverse possession claim was improper, when the evidence raised a material factual issue whether the plaintiff's predecessor originally obtained possession of the property by permission. If the original use was permissive, the plaintiff would have the burden of proving that it or any of its predecessors in the chain of possession converted to hostile use. *Pioneer Mill Company, Ltd. v. Dow*, 978 P.2d 727 (Haw. 1999).

PASH DECISION: Native Hawaiian Rights. In this successor to PASH, the Supreme Court held that it is seeking to "maintain a careful balance between native Hawaiian rights and private interests." The Court noted that it has made clear that the State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible. The Court stated that it intends to "provide an analytical framework to help ensure the enforcement of traditional and customary native Hawaiian rights." The past failure to require native Hawaiian cultural impact assessments has resulted in the loss and destruction of many important cultural resources and has interfered with the exercise of native Hawaiian culture. *Ka Pa'akai O Ka'aina v. Land Use Commission*, Hawaii Supreme Court, Decided September 11, 2000.

Message from the State Department of Taxation

As a real estate professional, you provide clients with information about what to expect when they buy or sell a property. They'll appreciate it if you include information on the withholding of Hawaii income tax required by the Hawaii Real Property Tax Act (HARPTA).

Hawaii residents and nonresidents alike must pay Hawaii income tax on capital gains recognized on the sale of real property located in Hawaii unless the gain can be excluded under Hawaii income tax law.

Many nonresidents never realized that they were subject to Hawaii taxation and did not file a Hawaii income tax return or pay the tax due when they sold a Hawaii property.

HARPTA legislation requires a purchaser to withhold a percentage of the sales price when acquiring Hawaii real property from a nonresident seller and remit the amount withheld directly to the State.

Currently, a purchaser must withhold 5% of the gross sales price. The tax withheld is remitted to the State with Form N-288, Hawaii Withholding Tax Return for Dispositions by Nonresident Persons of Hawaii Real Property Interest, on or before the 20th day following the date the property transfers from the seller to the buyer. Forms N-288A, N-288B, and/or N-289 are attached to and filed with Form N-288, as applicable.

Form N-288A, Statement of Withholding on Dispositions by Nonresident Persons of Hawaii Real Property Interests, provides information to the Department so that the tax withheld can be properly credited to the seller.

A Form N-288A must be completed for each nonresident seller, although only one needs to be completed for a nonresident couple that files joint Hawaii income tax returns. Copy A of Form N-288A is attached to Form N-288.

Form N-288B, Application for Withholding Certificate for Dispositions by Nonresident Persons of Hawaii Real Property Interest, is used by a nonresident seller to apply for a waiver or adjustment of the amount to be withheld.

A seller may apply for an adjustment if the seller will not recognize any gain on the sale or if there will be insufficient proceeds to pay the required withholding after paying costs such as selling costs and the amount of any mortgage or lien secured by the property.

The Department must approve Form N-288B. Mail or hand-carry (not fax) Form N-288B, with supporting documents, to the district tax office in the county where the closing of the sale is taking place or the property being sold is located.

Supporting documents establishing the seller's original basis in the property may include the closing statement, computer printout from the county real property tax office showing the purchase price, conveyance tax return, title insurance policy, and/or executed sales or purchase agreement from the seller's purchase of the property. If the property was inherited, the estate tax return and any supporting documents may also be required.

Other supporting documents may include invoices and

contracts for improvements affecting basis (lists and photos are not acceptable), depreciation schedules if the property was used as a rental, and the tentative closing statement for the current sale.

Please note that the annual real property tax assessment notice does not substantiate a seller's basis in the property.

Submit Form N-288B to the Department *no later than 10 days prior to the date of transfer*. To avoid processing delays, make sure all required information is completed, the proper documents are attached, and the form has the original (not faxed or photocopied) signature of either the seller or an individual to whom the seller has granted power of attorney (POA). Hawaii Form N-848, Power of Attorney, may be used for this purpose.

A general authorization granted an escrow company to sign documents is NOT acceptable; the POA must name a specific individual and specify that the individual named may sign Form N-288B for the seller. A copy of the POA must be submitted with Form N-288B.

After the Department's review, Copy B of Form N-288B is returned to the seller. If approved by the Department, Form N-288B is given to the purchaser and attached to Form N-288A (which is required even if a complete waiver is granted) and Form N-288.

Form N-289, Certification for Exemption from the Withholding of Tax on the Disposition of Hawaii Real Property, is used by either a resident or nonresident seller to certify to the purchaser that withholding is not required under one of three exceptions: 1) the seller is a Hawaii resident; 2) the gain on the sale of the property is not recognized (i.e., not taxable) under the federal Internal Revenue Code as adopted by Hawaii; or 3) the property was the principal residence of the seller in the year preceding the sale *and* the amount realized from the sale of that property is not more than \$300,000. Form N-289 does not require Department approval; it is given by the seller to the purchaser and attached to Form N-288.

After the tax is withheld and Form N-288 is filed, the Department notifies the seller that the amount withheld has been received.

The amount withheld is an estimated income tax payment and is claimed on the Hawaii income tax return that the seller must file for the year of sale. Any overpayment of tax is refunded after the return is processed.

If the amount withheld is greater than the tax due on the transaction or if the amount withheld exceeds the amount approved on Form N-288B, the seller may apply for a *tentative* refund.

Tentative refunds are requested on Form N-288C, Application for Tentative Refund of Withholding on Dispositions by Nonresident Persons of Hawaii Real Property Interests. Regardless of whether Form N-288C is filed or not, a seller must

Message from the State Department of Taxation

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file a Hawaii income tax return.

For more information on HARPTA, see Tax Information Release (TIR) No. 90-14, "Withholding of Tax on the Disposition of Real Property by Nonresident Persons," and TIR No. 91-7, "Withholding of Tax on the Disposition of Real Property by Nonresident Persons and Rollover of Gain on the Sale

of a Principal Residence by Persons in the Military," which supplements and supercedes in-part TIR No. 90-14.

These publications are available at any district tax office or by calling our request line at 587-7572 (toll-free at 1-800-222-7572). They also are available on our website at www.state.hi.us/tax. Should you have further questions, call us at 587-4242 (toll-free at 1-800-222-3229) or e-mail us at Taxpayer_Services@tax.state.hi.us.

License Renewal Report

Renewal Report as of January 10, 2001, all active and inactive:

Type of License	Number Renewed	Number pending
Real Estate Brokers (soles, corps, partnerships, LLC, LLP, broker salespersons)	4,636 renewed	182 pending
Real Estate Salespersons	7,350 renewed	357 pending
Total	1 1,986 renewed	539 pending

CMA 87 reregistered + 7 pending

CHO 109 re-registered + 4 pending

Renewal license comparison by year

Type of License	7/2000 (active/inactive)	3/99 (active/inactive)
Real Estate Brokers	5,250	5,025
Salespersons	9,250	7,381
total	14,500	12,406

Real Estate Commission Meeting Schedule 2001

Laws & Rules Review Committee—9 a.m.
Education Review Committee—10 a.m.
Condominium Review Committee—11 a.m.

Real Estate Commission—9 a.m.

Wednesday, February 14
Wednesday, March 14
Wednesday, April 11
Wednesday, May 9
Wednesday, June 13
Wednesday, July 11
Wednesday, August 8
Wednesday, September 12
Wednesday, October 10
Wednesday, November 14
Thursday, December 13

Friday, February 23
Friday, March 30
Friday, April 27
Wednesday, May 23
Friday, June 29
Friday, July 27
Friday, August 31
Friday, September 28
Tuesday, October 30
Friday, November 30
Friday, December 14

All meetings will be held in the Kapuuiwa Room, HRH Princess Victoria Kamamalu Building, 1010 Richards Street, Second Floor, Honolulu, Hawaii. Meeting dates, locations, and times are subject to change without notice. Please call the Real Estate Commission Office at 586-2643 to confirm dates, times, and locations of the meetings. This material can be made available to individuals with special needs. Please call the Executive Officer at 586-2643 to submit your request.

Administrative Actions

Byron J. Yap—REC 99-101-L

RICO received a complaint that Respondent (1) failed to file General Excise Tax returns for 1997 and from January to September 1998, (2) failed to comply with the Installment Plan Agreement he entered into with the Department of Taxation prior to July 15, 1999, and (3) failed to file individual income tax returns for 1996 and 1997. At all times relevant, Respondent was a licensed salesperson.

Respondent admitted he defaulted on the Plan and said he wanted to settle this matter without a hearing. Under a Settlement Agreement Prior to Filing of Petition for Disciplinary Action, Respondent agreed to pay a \$500 fine in two installments.

On or about June 20, 2000, Respondent entered into a new plan with the DOT, promising to make monthly payments of \$1,375 each. He also agreed that full compliance with the new plan shall be a condition of remaining licensed. If Respondent fails to abide by any of the terms of the Agreement, his license shall be subject to revocation without further hearing.

The Commission approved the Settlement Agreement on September 29, 2000.

Suzanne Jackson dba Main Street, Realtors—REC 98-23-L, 99-26-L, 99-37-L

On July 6, 2000, RICO filed a Petition for Disciplinary Action alleging that Respondent violated various statutes and rules, including HRS §§436B-19(7) (professional misconduct), 467-14(7) (failing to account for money belonging to others), (8) (conduct constituting fraudulent or dishonest dealings), (15) (commingling money/property of licensee's principal with the licensee's own), HAR §§16-99-3(e) and 4(a) (maintenance of special bank account/client trust account), (f) (all rental management agreements to be in writing), and (h) (shall not receive profit without owner's consent). At all times relevant, Respondent was licensed as a real estate broker.

According to the Petition, Respondent agreed to collect rental monies of \$1,300 per month in return for a fee of 10 percent of the gross rentals and entered into a property management agreement with one set of property owners. However, Respondent failed to forward rental monies to the owners for a two-month period and failed to provide an accounting upon demand.

After the property owners retained another property manager, Respondent refused to turn over outstanding rental monies unless the owners executed a release of all claims and liability.

It is also alleged that Respondent failed to provide a written property management agreement to the owners of a second property and took 10 months to return the security deposit and extra key fee to the tenants after they moved out of the unit. Furthermore, bank records revealed that (1) one of the tenants' checks was deposited into Respondent's daughter's account, (2) Respondent maintained only one business account

into which only some of the rental proceeds were deposited, and (3) Respondent had no designated client trust account.

Finally, it is alleged that Respondent's \$900 check to one set of property owners for rental proceeds was returned for insufficient funds, and Respondent failed to provide the property owners with the total rental proceeds for 1997 and 1998.

Although Respondent neither admits nor denies the alleged violations, she agrees that RICO had probable cause to file the petition.

Pursuant to the terms of the Settlement Agreement, Respondent agrees to pay full restitution to the two sets of property owners in the amounts of \$3,250 and \$5,062.50, respectively, within 30 days of the Commission's approval of the Settlement Agreement.

Respondent also agrees to pay a \$1,000 fine within 60 days of such approval and hereafter to abide by any and all laws governing real estate brokers.

If Respondent fails to abide by any of the terms of the Settlement Agreement, her license shall be subject to revocation without further hearing.

The Commission approved the Settlement Agreement on November 30, 2000.

Julie A. Fedele (fka Julie A. Lisle), dba Maui Paradise Properties—REC 99-43-L

RICO received a complaint alleging that Respondent violated the statutes and rules governing real estate brokers, including but not limited to: HRS §§436B-19(7) (professional misconduct), 467-14(1) (misrepresentation concerning any real estate transaction), (8) fraudulent or dishonest dealings), (2) (failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing), and HAR §16-99-3(u) (addition to or modification of terms of an instrument without written consent of parties). At all times relevant, Respondent was licensed as a real estate broker.

Respondent wishes to settle this matter without a hearing. Pursuant to the terms of a Settlement Agreement Prior to Filing of Petition for Disciplinary Action, Respondent agrees to pay an administrative fine of \$500. If Respondent fails to abide by any terms of the agreement, her license shall be subject to revocation without further hearing.

The Commission approved the Settlement Agreement on November 30, 2000.

CBIP, Inc., dba Coldwell Banker Island Properties and Douglas R. Fitch—REC 98-1-L

RICO learned that Respondents represented both buyer and seller in executing a DROA without obtaining written permission for dual representation and failed to obtain a signed listing agreement. At all times relevant, Respondents were licensed brokers.

Respondents wish to settle this matter without a hearing. Pursuant to terms of a Settlement Agreement Prior to Filing

Administrative Actions

of Petition for Disciplinary Action, Respondents agree to pay a \$500 fine. If Respondents fail to abide by any of the terms of the agreement, their licenses shall be subject to revocation without further hearing.

The Commission approved the Settlement Agreement on November 30, 2000.

Frank Joseph Supon and Pacific Ocean Properties, Inc.—REC 99-119-L

RICO learned that one of Respondents' employees and Respondent Supon placed two newspaper advertisements that failed to conform to the pertinent rules and statutes. At all times relevant, Respondents were licensed principal brokers.

Respondents deny the allegations but wished to settle this matter without a hearing. Pursuant to the terms of a Settlement Agreement Prior to Filing of Petition for Disciplinary Action, Respondents agree to pay, jointly and severally, a \$500 administrative fine.

If Respondents fail to abide by any of the terms of the agreement, their licenses shall be subject to revocation without further hearing.

The Commission approved the Settlement Agreement on November 30, 2000.

Peter B. Savio, Savio Realty Ltd. Better Homes and Gardens,, and Derrick H.P. Fujisaki—REC 1999-93-L

Under terms of a Settlement Agreement Prior to Filing of Petition for Disciplinary Action, Respondents neither admit nor deny violation of HRS §436-19(9) (conduct or practice contrary to recognized standards of ethics). By way of compromise and to avoid the expenses and risks of proceeding with an administrative hearing, Respondents agree to jointly and severally pay a \$500 fine. Respondents further agree to revocation of their real estate broker's licenses if they fail to abide by the terms of the Settlement Agreement.

The Commission approved the Settlement Agreement on January 4, 2001.

Donald A. Fleming—REC 1999-40-L

RICO filed a petition on September 7, 2000 alleging Respondent violated statutes and/or regulations governing the conduct of real estate brokers. Under terms of a Settlement Agreement after Filing of Petition for Disciplinary Action, Respondent voluntarily agreed to revocation of his license for five years beginning on September 7, 2000.

The Commission approved the Settlement Agreement on January 4, 2001.

Public hearing pending on proposed SWAT rules

(See related article on page 1)

The Real Estate Commission has received Governor Cayetano's approval to proceed with public hearing on its proposal to eliminate unnecessary regulatory burdens on real estate licensees. The public hearing is tentatively set for a March date.

Commission members have worked for months with officials of the Department of Commerce and Consumer Affairs (DCCA) and real estate licensees to eliminate or modify outdated regulations that place a burden on the public and on the Professional and Vocational Licensing Division, which administers those regulations.

The project is known as the SWAT initiative, an acronym for Slice Waste and Tape. Lieutenant Governor Mazie Hirono is a leading proponent of the program.

The SWAT initiative proposes legislative action to modernize Chapter 16-99 of the Hawaii Administrative Rules (HAR)—the chapter that spells out the administrative rules for brokers and salespersons licensed by the DCCA.

Since early 1991, when the Chapter was last amended, many changes created by technological advances made many of the regulations obsolete.

What's more, many statutory amendments to Chapter 467 of the Hawaii Revised Statutes—the "bible" that governs the activities of real estate brokers and salespersons—

have replaced existing administrative rules, rendering them null and void.

The SWAT initiative is designed to lighten the burden on the Professional and Vocational Licensing Division by:

- Tracking the business address of all licenses through their principal place of business. This eliminates the need to submit a notice of change each time a licensee's workplace changes within the same company.

- Eliminating the registration requirement for places of business in excess of one per island.

- Reducing the number of situations that require appointment of a temporary principal broker.

- Extending deadlines for submitting information.

- Amending rules concerning continuing education to reduce the administrative processing time by eliminating unnecessary application requirements.

- Making the rules easier to understand so that there'll be fewer violations caused by a licensee's failure to understand the rules.

- By making everyone's burden lighter, the SWAT initiative will save money for the State government and for licensees.

- Service to licensees and the public will be faster and more accessible.

Education Calendar

Scheduled Continuing Education Courses

An updated schedule is available at <http://www.state.hi.us/hirec>. Courses are subject to change or cancellation; please check directly with the provider to confirm date, time, and location.

To renew a license, you must take 10 hours of continuing education courses. One of the courses must be an approved core course. Courses with a (c) are approved 1999-2000 core courses and receive 4 hours credit. Courses that say (3 hrs.) receive 3 hours credit. All other courses receive 3-1/3 hours credit. (If you are taking courses to reactivate an inactive license this year, take elective courses totaling at least 10 hours credit. If you are restoring a license this year, read the restoration application instructions. Do not take core courses to reactivate or restore a license this year.)

Date	Time	Course	Provider	City	Instructor	Fee (\$)
OAHU						
02/05/2001	12:00pm	GRI 101	HONOLULU BOARD OF REALTORS	HONOLULU	CHONG	295.00
02/07/2001	01:00pm	UNDERSTANDING THE LAND USE ORDINANC	ABE LEE SEMINARS	HONOLULU	LEE	45.00
02/07/2001	02:00pm	LISTING AND SELLING BUSINESS OPPORT	RICHARD W DAGGETT	HONOLULU	DAGGETT	50.00
02/07/2001	08:30am	WILLS, TRUSTS & REAL ESTATE	ABE LEE SEMINARS	HONOLULU	LEE	45.00
02/07/2001	09:00am	(c) LAW UPDATE/ETHICS 1999-2000	RICHARD W DAGGETT	HONOLULU	DAGGETT	50.00
02/08/2001	09:00am	CONTRACTS/BUSINESS OPPORTUNITIES	RICHARD W DAGGETT	HONOLULU	DAGGETT	50.00
02/16/2001	05:00pm	(c) LAW UPDATE/ETHICS 1999-2000	DOWER SCHOOL OF REAL ESTATE	HONOLULU	DOWER	50.00
02/17/2001	04:00pm	(c) LAW UPDATE/ETHICS 1999-2000	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	45.00
02/17/2001	09:00am	FORECLOSURE & THE ROLE OF THE COMM	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	45.00
02/17/2001	12:30pm	HAWAII LANDLORD-TENANT CODE	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	45.00
02/28/2001	01:00pm	UNDERSTANDING THE LAND USE ORDINANC	ABE LEE SEMINARS	HONOLULU	LEE	45.00
02/28/2001	08:30am	DEVELOPING SMALL PROPERTIES	ABE LEE SEMINARS	HONOLULU	LEE	45.00
03/05/2001	09:00am	ESSENTIALS OF LISTING	HONOLULU BOARD OF REALTORS	HONOLULU	CHONG	138.00
03/07/2001	01:00pm	COPING WITH AOAS AND ASSOCIATION	ABE LEE SEMINARS	HONOLULU	LEE	45.00
03/07/2001	08:30am	ZONING-ISSUES, PROBLEMS, QUESTIONS,	ABE LEE SEMINARS	HONOLULU	LEE	45.00
03/17/2001	04:00pm	(c) LAW UPDATE/ETHICS 1999-2000	EDDIE FLORES REAL ESTATE	HONOLULU	GOODE JR	45.00
03/17/2001	09:00am	AVOID LITIGATION - HOW TO DETECT RE	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	45.00
03/17/2001	12:30pm	HAWAII LANDLORD-TENANT CODE	EDDIE FLORES REAL ESTATE	HONOLULU	LI	45.00
03/21/2001	01:00pm	COMPUTERS, INTERNET & THE LICENSEE	ABE LEE SEMINARS	HONOLULU	LEE	45.00
03/21/2001	08:30am	CRATS, CRUTS & FLPS: AN ALTERNATIV	ABE LEE SEMINARS	HONOLULU	LEE	45.00
04/04/2001	01:00pm	ESCROW, TITLE & APPRAISALS	ABE LEE SEMINARS	HONOLULU	LEE	45.00
04/04/2001	09:00am	SURVEYS, TERMITE & HOME INSPECTIONS	ABE LEE SEMINARS	HONOLULU	LEE	45.00
04/18/2001	01:00pm	HUD, VA AND (NON) JUDICIAL FORECLOS	ABE LEE SEMINARS	HONOLULU	LEE	45.00
04/18/2001	09:00am	STICKS, BRICKS & STEEL UNDERSTANDIN	ABE LEE SEMINARS	HONOLULU	LEE	45.00
04/21/2001	04:00pm	(c) LAW UPDATE/ETHICS 1999-2000	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	45.00
04/21/2001	09:00am	HOMEOWNER'S TAX STRATEGIES	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	45.00
04/21/2001	12:30pm	HAWAII LANDLORD-TENANT CODE	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	45.00
05/07/2001	09:00am	ESSENTIALS OF LISTING	HONOLULU BOARD OF REALTORS	HONOLULU	CHONG	138.00
05/09/2001	01:00pm	COMPUTERS, INTERNET & THE LICENSEE	ABE LEE SEMINARS	HONOLULU	LEE	45.00
05/09/2001	09:00am	WILLS, TRUSTS & REAL ESTATE	ABE LEE SEMINARS	HONOLULU	LEE	45.00
05/19/2001	04:00pm	(c) LAW UPDATE/ETHICS 1999-2000	EDDIE FLORES REAL ESTATE	HONOLULU	GOODE JR	45.00
05/19/2001	09:00am	FORECLOSURE & THE ROLE OF THE COMM	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	45.00
05/19/2001	12:30pm	HAWAII LANDLORD-TENANT CODE	EDDIE FLORES REAL ESTATE	HONOLULU	LI	45.00

Scheduled Continuing Education Courses

Date	Time	Course	Provider	City	Instructor	Fee (\$)
05/23/2001	01:00pm	PERMITS, PERMITS AND MORE PERMITS:	ABE LEE SEMINARS	HONOLULU	LEE	45.00
05/23/2001	09:00am	MEDIATION, ARBITRATION, LITIGATION	ABE LEE SEMINARS	HONOLULU	LEE	45.00
06/06/2001	01:00pm	UNDERSTANDING THE LAND USE ORDINANC	ABE LEE SEMINARS	HONOLULU	LEE	45.00
06/06/2001	09:00am	COPING WITH AOAOS AND ASSOCIATION	ABE LEE SEMINARS	HONOLULU	LEE	45.00
06/16/2001	04:00pm	(c) LAW UPDATE/ETHICS 1999-2000	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	45.00
06/16/2001	09:00am	AVOID LITIGATION - HOW TO DETECT RE	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	45.00
06/16/2001	12:30pm	HAWAII LANDLORD-TENANT CODE	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	45.00
06/20/2001	01:00pm	DEVELOPING SMALL PROPERTIES	ABE LEE SEMINARS	HONOLULU	LEE	45.00
06/20/2001	09:00am	SURVEYS, TERMITE & HOME INSPECTIONS	ABE LEE SEMINARS	HONOLULU	LEE	45.00
06/23/2001	04:00pm	(c) LAW UPDATE/ETHICS 1999-2000	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	55.00
06/23/2001	09:00am	AVOID LITIGATION - HOW TO DETECT RE	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	45.00
06/23/2001	12:30pm	HAWAII LANDLORD-TENANT CODE	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	45.00
07/09/2001	09:00am	ESSENTIALS OF LISTING	HONOLULU BOARD OF REALTORS	HONOLULU	CHONG	138.00
07/11/2001	01:00pm	ESCROW, TITLE & APPRAISALS	ABE LEE SEMINARS	HONOLULU	LEE	45.00
07/11/2001	09:00am	UNDERSTANDING THE LAND USE ORDINANC	ABE LEE SEMINARS	HONOLULU	LEE	45.00
07/25/2001	01:00pm	CRATS, CRUTS & FLPS: AN ALTERNATIV	ABE LEE SEMINARS	HONOLULU	LEE	45.00
07/25/2001	09:00am	ZONING-ISSUES, PROBLEMS, QUESTIONS,	ABE LEE SEMINARS	HONOLULU	LEE	45.00
09/01/2001	01:00pm	DEVELOPING SMALL PROPERTIES	ABE LEE SEMINARS	HONOLULU	LEE	45.00
09/01/2001	09:00am	COMPUTERS, INTERNET & THE LICENSEE	ABE LEE SEMINARS	HONOLULU	LEE	45.00
09/10/2001	09:00am	ESSENTIALS OF THE DROA	HONOLULU BOARD OF REALTORS	HONOLULU	CHONG	138.00
09/19/2001	01:00pm	HUD, VA AND (NON) JUDICIAL FORECLOS	ABE LEE SEMINARS	HONOLULU	LEE	45.00
09/19/2001	09:00am	ESCROW, TITLE & APPRAISALS	ABE LEE SEMINARS	HONOLULU	LEE	45.00
11/05/2001	09:00am	ESSENTIALS OF LISTING	HONOLULU BOARD OF REALTORS	HONOLULU	CHONG	138.00
HILO						
02/26/2001	09:00am	ESSENTIALS OF THE DROA	HAWAII ASSOCIATION OF REALTORS	HILO	BEGIER	50.00
KONA						
02/19/2001	09:00am	ESSENTIALS OF FINANCE	HAWAII ASSOCIATION OF REALTORS	WAIMEA	LEWIS	50.00
MAUI						
02/15/2001	09:00am	GRI 101	MAUI BOARD OF REALTORS INC	KAHULUI	DUPLANTY	265.00
04/06/2001	09:00am	GRI 201	MAUI BOARD OF REALTORS INC	KAHULUI	GOODE JR	265.00
06/07/2001	09:00am	GRI 301	MAUI BOARD OF REALTORS INC	KAHULUI	GOODE JR	265.00

Make use of this convenient resource

Commission's Website is a valuable information source

The Real Estate Commission's website is up and running in case you haven't seen our website recently. Licensees can find a lot of answers and information regarding questions they have of the Commission.

To access the Commission's website, go to DCCA's website found at www.state.hi.us/dcca. In it you will find the PVL D website, "Professional & Vocational Licensing Search," and the "Business & Licensee Complaints History Search" pages. You may also access the Commission's website directly at www.state.hi.us/hirec.

Please use the new PVL D website. In it you will find the verification of license/registration (CHO, CMA) status which will give licensee name, license number, active/inactive, current status, original license date, expiration date of license, associating broker name and address, principal broker, associating licensees of broker, etc.

In addition, you can find that a complaint history search will provide information on any complaints filed against the licensee.

On the REC website, you may find the following information:

News—2001 meeting schedules and program of work 2001

Commission— agendas/minutes of all REC & Committee meetings since 8/00 up to 11/30/00, then only agendas

99 annual report

Licensing Forms—change form, office location, corporation/partnership/LLC/LLP, sole prop, exp. certificate, BO reg., Ed Equivalency, Uniform Section Equiv., CHO, CHO w/ Broker exemption, CMA

Real Estate Education—CE requirements, CE course schedule, prelicensing course schedule, Education calendar, apps for schools/providers/instructors

Guide to Advertising

Publications (REC bulletin, annual reports, school files)

Condominiums—education calendar

Condo Bulletin

Selected condo brochures

List of CHO/CMAs, list of registrations, AOAOs w/contact persons, AOA app forms

Condominium project information/forms/public reports forms

Our goal is to make the PVL D and Commission's websites our major source of information for licensees and consumers. Please contact the Commission if you cannot find the information you seek on our website.

Update on recodification of Hawaii Condominium Law

Last session, the State Legislature required the Real Estate Commission to conduct a review of Hawaii's nearly 40-year-old condominium property regimes law (Chapter 514A, Hawaii Revised Statutes) to "update, clarify, organize, deregulate, and provide for consistency and ease of use" of the law. (Act 213, Session Laws of Hawaii 2000.)

The Commission is further required to make findings and recommendations for recodification of the law and to develop draft legislation consistent with its review and recommendations for submission to the 2003 Legislature.

In a nutshell, the Commission plans to proceed as follows:

1. Hire an attorney to assist it in recodifying Hawaii's condominium property regimes ("CPR") law.
2. Research the history of Hawaii's CPR law, the laws of other jurisdictions, uniform acts, and commentary to gain an understanding of relevant issues and approaches to CPR regulation and to help guide us in the

recodification process.

3. Solicit input from organizations and individuals whose duties and interests are affected by Hawaii's CPR law.

4. Draft CPR recodification legislation for inclusion in the Administration's package to the 2003 State Legislature.

Our plan and timetable for recodification of Hawaii's CPR law will be available soon on our website at: <http://www.state.hi.us/hirec/>. This will give you easy access to "point and click" hyperlinks to relevant laws and other resources.

The Commission will seek to balance the desire to modernize Hawaii's CPR law with the need to protect the public and to allow the condominium community to govern itself. Finally, the Commission is committed to engaging the participation of stakeholders throughout the recodification process.

Continuing Education Providers

<i>NAME</i>	<i>TELEPHONE</i>
ABE LEE SEMINARS	988-3751
AKAHI REAL ESTATE NETWORK LLC	331-5300
BRIAN R THOMAS DBA EDVENTURES	885-2117
DOWER SCHOOL OF REAL ESTATE	988-5445
DUPLANTY SCHOOL OF REAL ESTATE	737-5507
EDDIE FLORES REAL ESTATE	521-3044
HAWAII ASSOCIATION OF REALTORS	733-7060
HONOLULU BOARD OF REALTORS	732-3000
JOHN REILLY	523-5030
KONA BOARD OF REALTORS INC	329-4874
LYNN W CARLSON	874-4064
MAUI BOARD OF REALTORS INC	873-8585
RICHARD W DAGGETT	923-0122
SEILER SCHOOL OF REAL ESTATE	874-3100
UNIVERSITY OF HAWAII AT MANOA	956-8244
WAIKIKI REALTY REAL ESTATE SCHOOL	955-8282

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