



## Newly enacted laws may affect real estate licensees

There are new laws and bills enacted by the Legislature that may affect real estate licensees. Other bills enacted by the Legislature may be of interest to licensees.

The Governor has until July 10, 2001 to sign the enacted bills into law. After July 10, 2001, the bills unsigned by the Governor become law without his signature.

The Governor has until June 25, 2001 to give notice that he will veto enacted bills. After the bills are vetoed, the Legislature may override the Governor's veto by a two-thirds vote in each house.

The following is a summary of laws enacted in the 2001 Legislative session. The summaries are not intended to be an exhaustive list or to cover all provisions of the new law. Copies of the acts can be found at the Senate Printshop, State Capitol Rm. 012A; House Clerk's Office, State Capitol Rm. 027; Lieutenant Governor's Office, State Capitol 5<sup>th</sup> floor; Supreme Court Library 417 S. King Street; and the William S. Richardson School of Law Library, 2525 Dole Street (all in Honolulu, Hawaii). On the Island of Hawaii, bills or acts may be obtained at all public libraries, the Hilo Law Library at 75 Aupuni St. (phone 961-7438), and in Kealahou at the Kona Law Library, Keakealani Building, 79-7595A Haukapila St. (phone 322-8729). On Kauai, bills or acts may be obtained at all public libraries, and in Lihue at the Kauai Law Library at the Fifth Circuit Court, 3059 Umi St., Room 206 (phone 246-3327). On Maui, bills or acts may be obtained at all public libraries, and in Wailuku at the Maui Law Library at 2145 Main St., Room 207 (phone 244-2959).

### REAL ESTATE LICENSEES

**Brokers, CHOs, CMAs** — Act 245 (SLH 2001) SB1061 SD1 HD1 CD1 — SWAT Bill by the Real Estate Commission. Provides for reasonable experience requirements for real estate broker candidates as a full time state-licensed real estate salesperson associated with a Hawaii-licensed real estate bro-

ker for at least three years of the five-year period immediately prior to the submission of the experience certification application and has practical real estate salesperson experience. Eliminates duplicative regulatory requirements for active real estate brokers who are condominium hotel operators by providing an exemption to registration and fidelity bond requirements. All other condominium hotel operators will continue to comply with all the law requirements. Clarifies and reduces the submission of fidelity bond documents for condominium managing agent registration and re-registration under Chapter 514A, HRS.

### CONDOMINIUM BILLS

**Proxy requirements** — Act 191 (SLH 2001) HB 204

HD 1 SD 1 CD 1 — amends H.R.S. Chapter 421J

regarding proxy requirements for planned community association boards that use association funds to distribute proxies that include election of directors.

**Mediation** — Act 232

(SLH 2001) HB 1231 HD 1 SD

1 — amends H.R.S. Chapter 514A

relating to condominium property regimes to require owners and boards of directors

to participate in mediation if dispute involves the declaration, bylaws, house rules, or specified sections of H.R.S. Chapter 514A. If an owner or the board refuses to participate in mediation, then a court may take refusal to participate into consideration when awarding expenses, costs and attorney's fees.

**Public Reports** — Act 237 (SLH 2001) SB 178 SD 2 HD 1 CD 1 — amends HRS Chapter 514A relating to condominium property regimes to exempt developer registration of public reports and disclosure abstracts for time share projects within condominium projects if time share plan is registered under HRS Chapter 514E and has an effective disclosure statement that is required to be delivered to purchaser or prospective purchaser.

*Access the Legislature's website, [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov), to read the full text of the bills or print copies of the Acts.*

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**Criminal History Checks** – Act 263 (SLH 2001) HB 161 HD2 SD2 CD 1 – pertains to HRS section 514A-82.1 regarding background check on condominium employees; establishes a temporary criminal history check working group within department of the attorney general to review existing laws governing access and use of criminal history record information.

## TIME SHARE

**Acquisition Agents** — Act 17 (SLH 2001) HB 22 HD 2 – amends HRS Chapter 514E relating to time sharing plans by redefining “acquisition agent” to exclude employees or contractors of real estate brokers.

**Rescission Notice** — Act 18 (SLH 2001) HB 23 HD 2 – amends HRS Chapter 514E relating to deceptive trade practices for time sharing plans by requiring time share contracts to contain a seven day right of rescission notice.

**Registration of Acquisition Agents** — Act 27 (SLH 2001) SB 175 SD 2 – amends HRS Chapter 514E relating to time sharing plans by repealing DCCA registration requirement for sales agents and requiring acquisition agents to register with DCCA unless currently licensed as a real estate broker.

**Planned Community Exclusion** — Act 68 (SLH 2001) HB 1552 HD1 – amends laws relating to time sharing to exclude time share plans from the definition of “planned community.”

**Sales Outside Hawaii** — Act 70 (SLH 2001) SB 174 – amends HRS Chapter 514E relating to time sharing plans by exempting disclosure statement and mutual right to cancel requirements for time shares offered for sale outside of Hawaii.

**Identification Badge** — Act 71 (SLH 2001) SB 176 – amends HRS Chapter 514E relating to time sharing plans by repealing requirement that time share agents wear identification badge.

**Referral Fees** — Act 223 (SLH 2001) HB 16 HD 2 SD 2 CD 1 – amends HRS Chapter 514E to establish provisions relating to time share owner referral fees.

## OTHER ENACTED LAWS OF INTEREST

**Disclosure Law** – Act 224 (SLH 2001) HB79 HD1 SD1 — Amends Chapter 508D, HRS, Mandatory Seller Disclosures in Real Estate Transactions. Eliminates the exemption for absentee owners from certain disclosure requirements, changes the definition of “material fact” for purposes of dis-

closure, relieves the seller of having to examine public records when preparing a disclosure statement, repeals disclosure of approximations of information, and clarifies requirements for a buyer’s rescission contract. Comment: Since Chapter 508D, HRS, may be applied to disciplinary proceedings against real estate licensees under Chapter 467, HRS, it is recommended that principal brokers review this bill thoroughly and, if necessary, seek the advice of an attorney, especially in developing policies and procedures for the brokerage firm.

**Arbitration Agreements** – Act 265 (SLH 2001) HB462 HD1 SD2 CD1 — Establishes the uniform arbitration Act. Provides that a party to an agreement to arbitrate or to an arbitration proceeding may be waived, or the parties may vary the effect of, the requirements of this provision to the extent permitted by law. Requires the court to decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate. Provides that the arbitrator may award punitive damages or other exemplary relief in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standard otherwise applicable to the claim.

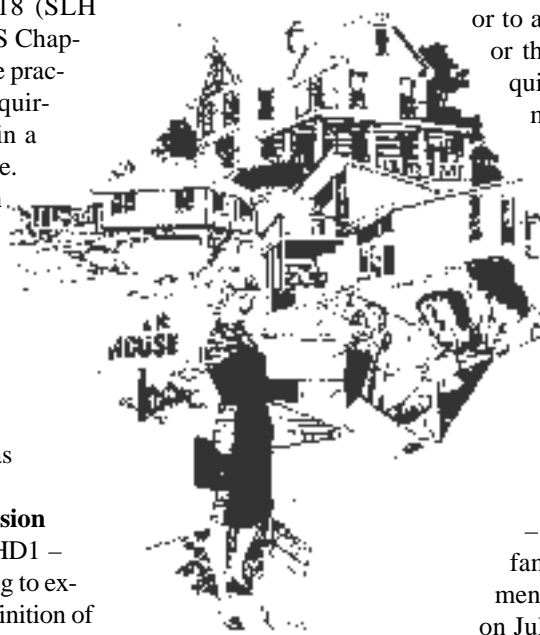
**Family Child Care Homes** – Act 225 (SLH 2001) HB 118 HD 3 SD 2 CD 1 – amends HRS Chapter 502C relating to family child care homes, including requirement that any family child care home existing on July 2, 2001 shall notify association within 60 days of intent to operate, prohibits liability insurance to exceed one million dollars in coverage per child care provider, and extends repeal date to June 30, 2005.

**Mortgage Brokers** — Act 4 (SLH 2001) HB 587 HD 1 – amends HRS Chapter 454 regarding mortgage brokers and solicitors licensing law.

**Lodging or Tenement houses, etc.** — Act 35 (SLH 2001) HB 1173 HD 1 – repeals licensing requirement for a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, and amends general excise tax exemption for hotels by redefining hotel.

**Business Registration** — Act 129 (SLH 2001) HB 600 HD 1 SD 1 CD 1 — amends various laws relating to business registration to reflect modern business practices.

**Conversion of Licenses** — Act 149 (SLH 2001) SB 1062 SD 1 HD 1 – amends HRS Chapter 436B to establish that professional and vocational licensees that have converted to a new form of business entity shall file an application for conversion of license.



## *The Chair's Message*

Hi! As you all know by now, the SWAT bill and the Seller's Disclosure bill have been signed into law.

I hope that you will all take the time to learn about the changes that have been effected by these bills.

The SWAT changes have been mentioned in previous newsletters and publications.

The changes affect every licensee.

Please take the time to learn what they are.

In August, at the Paniolo Paradise III Roundup in Kamuela, sponsored by the Hawaii Island Board of REALTORS® and the Hawaii Association of REALTORS®, the new Mandatory Continuing Education Core Course will be debuted.

This biennium, we will be trying something different. The Mandatory Continuing Education Core Course will be offered in modules.

One hour of the course will be a legislative update, another hour will be on ethics, another hour will be on SWAT update, and the last hour will be very different from anything that has been offered in continuing education before.

The instructor will be able to structure it for the students by selecting from any one of six different modules for the last hour of the Mandatory Continuing Education Core Course.

Each subject will be offered as a separate module along with the other three hours of course content mentioned above.

The subjects offered will be: residential property management, commercial real estate law and ethics, residential law and ethics, condominium management, residential brokerage, and time share.

Not all of these will be offered at the same time. Each one will be a course unto itself.

Core course offerings will be subject to the providers and instructors availability to teach the course

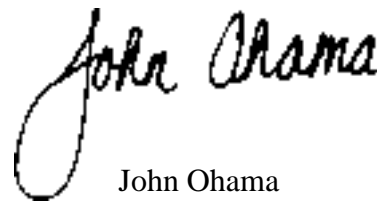
and the demand for the course.

The Commission will be busy this year working on other projects that will be mentioned as they come closer to fruition.

If any of you care to make a suggestion or want to volunteer to help the Commission and be a part of the changes that will come about, please call the Real Estate Commission staff at 586-2643.

Thank you all and have a great summer!

Aloha,



John Ohama



**State of Hawaii Real Estate Commission**

**Telephone 586-2643**

**Website: [www.state.hi.us/hirec](http://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.**

## ***State Tax Department's new electronic filing system lets the taxpayer file forms online around the clock***

Filing state tax forms has never been easier or more convenient! Through the State's Internet portal, you can now e-file (electronically file) 11 different tax forms on-line 24 hours a day, seven days a week!

The first phase of our electronic filing initiative (ELF) allows you to e-file your estimated income tax vouchers, extensions, periodic withholding tax returns, and tax clearance applications. Periodic general excise tax and transient accommodations tax returns also should be available for e-filing before year-end. A nominal fee of \$2.50 is charged for each transaction involving a payment, but no fee is charged if a payment is not made (e.g., when submitting an application for tax clearance).

To begin, go to [www.eHawaiiGov.org](http://www.eHawaiiGov.org), select "File Your Taxes Online with E-Filing," and read the requirements. Click "I Have Read the Requirements" to go to the "Welcome to E-Filing!" page, and follow these five easy steps.

Step 1 – If you are using this service for the first time, register by selecting "Individual/Sole Proprietor" or "Business Entity," as applicable, and enter the information requested, a password of your choice, and your e-mail address. If you have already registered, select "Sign In" and enter your user ID (your social security number or federal employer identification number) and password.

Step 2 – Select and complete the form you want to e-file. Some of the information is pre-filled with your registration information. To correct pre-filled information, click "Update Profile" and make the necessary changes.

Step 3 – Verify all information and click "Submit." A list of any errors detected (e.g., an alphabet in a field that should contain only numbers) may appear. If so, make the correc-

tions and click "Submit."

Step 4 – If a payment is indicated, the "Electronic Check Payment Information" page will appear for you to authorize payment of the amount due plus the \$2.50 transaction fee. Enter the bank, account, and other information needed to properly debit your checking account. Review the information and click "Authorize Payment."

Payments are made through an electronic check process called "VirtualPay." At the present time, the maximum amount payable per transaction is \$25,000 including the \$2.50 transaction fee.

For your security, the information is encrypted when sent to the VirtualPay server, and only the amount paid, not your checking account information, is saved as part of your user record.

Neither the Department of Taxation nor *eHawaiiGov* will have access to your checking account information.

Step 5 – View and print the receipt that appears after the payment has been authorized. Also save and/or print the confirmation that is e-mailed to you. The receipt and e-mailed confirmation contain information that you will need if a question or problem later arises.

ELF is not only an easy and convenient way to *file* your tax forms, but it also is an easy and convenient way to *access* your filing history. Simply sign in and click "History" on the form selection page to see a list of what you've e-filed. Click "View Filing" to view and/or print the completed e-filed form. For more information, click "F.A.Q." at the bottom of the registration/sign in page, e-mail our electronic filing unit at [efile@tax.state.hi.us](mailto:efile@tax.state.hi.us), or call us at 587-4242 (toll-free at 1-800-222-3229).

KEEPING UP WITH NEW TAX LAWS can be a chore, but we make things easier for you by issuing announcements summarizing new measures as they are enacted. You can obtain these announcements at any district tax office, by calling our 24-hour request line at 587-7572 (toll-free at 1-800-222-7572), or on our website at [www.state.hi.us/tax](http://www.state.hi.us/tax).

The following are three of the tax measures enacted thus far:

Act 36 allows licensed audiologists to certify the hearing impairment of an individual. Individuals who are certified as being blind, deaf, or totally disabled, or corporations all of whose shareholders are certified as being blind, deaf, or totally disabled, may qualify for certain income tax and general excise tax benefits. (See Announcement No. 2001-4.) Act 36 applies to taxable years beginning after December 31, 2001.

Act 44 repeals the 2% penalty imposed on taxpayers who voluntarily participate in the electronic funds transfer (EFT) program but fail to actually remit their taxes using an approved EFT method (e.g., pay by check instead of by EFT) by the payment due date. (See Announcement No. 2001-5.) Act 44 became effective April 26, 2001.

Act 45 extends the confidentiality privileges currently available under Hawaii's income tax law for communications between a taxpayer and any federally authorized tax practitioner (including attorneys, certified public accountants, enrolled agents, and enrolled actuaries) to all State taxes administered by the Department of Taxation under title 14, Hawaii Revised Statutes. (See Announcement No. 2001-6.) Act 45 is applicable to taxable years beginning after December 31, 2000.

# So you're wondering what the FTC says about advertising on the Internet

*Here's a thumbnail sketch of the agency's views*

The Real Estate Commission receives many questions regarding advertising on the Internet.

The real estate laws and rules do not address advertising on the Internet specifically; however, the rules cover all real estate advertising and promotional materials.

Advertising includes business cards, stationery, and other written documentation and memoranda, as well as advertising in any publication, including the Internet.

Licenses are subject to laws and rules relating to advertising (generally §467-14, Hawaii Revised Statutes and §16-99-11, Hawaii Administrative Rules).

Licenses must also comply with other laws that regulate advertising.

The Federal Trade Commission Act prohibits "unfair or deceptive acts or practices" and applies to improper advertising in any medium, including the Internet.

The Federal Trade Commission (FTC) published information relating to advertising and disclosures specifically on Internet technology. You may find those publications at the FTC's website [www.ftc.gov](http://www.ftc.gov). The following are excerpts from the FTC publications for your information.

✓ **Is advertising on the Internet subject to the same laws as other advertising?**

Yes. Ad claims on the Internet must be truthful and substantiated. Ask the FTC for a copy of Advertising and Marketing on the Internet: The Rules of the Road for more information. Dot Com Disclosures offers special guidance for online

advertisers regarding how to make sure that any disclaimers and disclosures in online ads are clear and conspicuous. It addresses Net specific issues such as banner ads, pop-up windows, scrolling, hyperlinks, etc. Internet marketers also should be aware that the FTC's Mail or Telephone Order Merchandise Rule ("Mail Order Rule") applies to online transactions. For specific guidance on complying with the Mail Order Rule

online, ask the FTC for a copy of Selling on the Internet: Prompt Delivery Rules, as well as A Business Guide to the Federal Trade Commission's Mail or Telephone Order Merchandise Rule.

✓ **My website is attracting visitors from outside the United States. What do I need to know?**

Because the World Wide Web is, as its name implies, worldwide, even small online businesses can reach customers all around the globe. Electronic Commerce: Selling Internationally—A Guide for Business discusses

some online commerce guidelines endorsed by the United States government and 28 other countries.

✓ **What do I need to know about consumer privacy online?**

Advertisers should be aware of the privacy issues raised by Internet marketing. For more information about recent FTC Reports to Congress on consumer privacy on the Internet, visit



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# How the FTC views advertising on the Internet

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the FTC's website ([www.ftc.gov](http://www.ftc.gov)). Basically, the FTC strongly encourages companies to implement four fair information practices: giving consumers notice of a website's information practices; offering consumers choice as to how their personally identifying information is used; providing consumers with access to the information collected about them; and ensuring the security of the information collected. In addition, companies need to know about the Children's Online Privacy Protection Act and the rule that implements it. The law requires websites to obtain verifiable parental consent before collecting, using, or disclosing personal information from children, including their names, home addresses, email addresses, or hobbies. For more information, ask the FTC for How to Comply with the Children's Online Privacy Protection Rule.

## ✓ How does the FTC determine if an ad is deceptive?

A typical inquiry follows these steps:

- The FTC looks at the ad from the point of view of the "reasonable consumer"—the typical person looking at the ad. Rather than focusing on certain words, the FTC looks at the ad in context—words, phrases, and pictures—to determine what it conveys to consumers.
- The FTC looks at both "express" and "implied" claims. An express claim is literally made in the ad. For example, "ABC Mouthwash prevents colds" is an express claim that the product will prevent colds. An implied claim is one made indirectly or by inference. "ABC Mouthwash kills the germs that cause colds" contains an implied claim that the product will prevent colds. Although the ad doesn't literally say that the product prevents colds, it would be reasonable for a consumer to conclude from the statement "kills the germs that cause colds" that the product will prevent colds. Under the

law, advertisers must have proof to back up express and implied claims that consumers take from an ad.

- The FTC looks at what the ad does not say—that is, if the failure to include information leaves consumers with a misimpression about the product. For example, if a company advertised a collection of books, the ad would be deceptive if it did not disclose that consumers actually would receive abridged versions of the books.
- The FTC looks at whether the claim would be "material"—that is, important to a consumer's decision to buy or use the product. Examples of material claims are representations about a product's performance, features, safety, price, or effectiveness.
- The FTC looks at whether the advertiser has sufficient evidence to support the claims in the ad. The law requires that advertisers have proof before the ad runs.

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint, or to get free information on any of 150 consumer topics, call toll-free, **1-877-FTC-HELP** (1-877-382-4357), or use the online complaint form. The FTC enters Internet, telemarketing, identity theft and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies U.S. and abroad.

Although the number of companies advertising online—and the number of consumers shopping online—are soaring, fraud and deception may dampen consumer confidence in the e-marketplace. But cyberspace is not without boundaries, and fraud and deception are unlawful no matter what the medium. The FTC has enforced and will continue enforcing its consumer protection laws online to ensure that products and services are described truthfully in online ads and that consumers get what they pay for. These activities benefit consumers as well as sellers, who expect and deserve a fair marketplace.

The Real Estate Commission Bulletin is published by the Hawaii Real Estate Commission, 250 South King Street, Room 702, Honolulu, Hawaii 96813. The telephone number is (808) 586-2645.

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## Administrative Actions

### **Josephine D. Gomez and G & M Investments, Inc.—REC 1999-111-L**

RICO filed a petition for disciplinary action against Respondents on August 28, 2000, and an administrative hearing was conducted. Respondents failed to appear in person or through a representative.

In September 1998, Respondents entered into a Rental Management Agreement to manage a unit in Waipahu for the owner. Respondents were to collect the rental payments from tenants, retain 10 percent as their fee, and forward the remainder to the owner.

In addition, the owner provided Respondents with a \$200 fund to cover potential expenses for keeping up the property. A tenant began occupying the unit January 1, 1999, at a rental of \$800 per month and provided a security deposit of one month's rent.

Although Respondents represented to the owner that they had been paying her general excise tax over the next several months, she learned by mid-1999 that they had not been making such payments. In addition, Respondents were late in submitting the monthly rental statements for June and July.

By August 1999, the owner lost contact with Respondents, who had moved to another location and did not return her phone calls. Accordingly, the owner retained a realty firm to help her locate and replace Respondents as her real estate agent. In September 1999, the owner regained contact with Respondents, terminated her original agreement with them, and requested the return of the \$800 security deposit and the \$200 fund for potential expenses.

When Respondents failed to return any part of these moneys, the owner resorted to a small claims action and obtained a default judgment totaling \$1,250.02. However, she was unable to collect any portion of the judgment from Respondents.

The Hearings Officer found that Respondents violated provisions of §HRS 467-14(7) (failing, within a reasonable time, to account for any moneys belonging to others), (13) (violating this chapter; chapter 484, 514A, 514E or 515, section 516-71; or the rules adopted pursuant thereto), and (16) (converting other people's moneys to the licensee's own use), and HRS §436B-19(7) (professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession), and (9) (conduct or practice contrary to recognized standards of ethics for the licensed profession), as well as HAR §16-99-3(b) (the licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field), and (v) (the licensee shall not convert other people's moneys to the licensee's own use). The Hearings Officer recommended that Respondents' licenses as real estate brokers be revoked for five years, that Respondents be fined \$2,500 and make restitution of \$1,250.02 as a precondition of obtaining any future real estate licenses in Hawaii.

The Commission approved the Hearings Officer's Recommended Order on March 30, 2001.

### **Nathan Y. Yoshioka—REC 2000-173-L**

RICO received a complaint that Respondent engaged in conduct in violation of HRS §§436B-19(12) (failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license) and 467-14 (20) (failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing). Respondent admitted he pleaded no contest to the criminal charges of promoting gambling and possessing gambling records and voluntarily waived his right to a hearing. Under terms of a Settlement Agreement Prior to filing of Petition for Disciplinary Action, Respondent voluntarily agreed to suspension of his real estate salesperson's license for six months.

The Commission approved the Settlement Agreement on March 30, 2001.

### **Bruce R. Travis and Americorp International, Ltd., Respondents—REC 2000-8-L**

At all times relevant, Respondents were licensed real estate brokers. Respondent Travis was principal broker of Americorp International, Ltd. RICO received a complaint alleging that Respondents violated statutes governing the conduct of real estate brokers by failure to report a judgment entered against them for damages related to their conduct as real estate brokers. Respondents desired to settle this matter without a hearing. Under terms of a Settlement Agreement Prior to Filing of Petition for Disciplinary Action, Respondents agreed to pay a \$250 administrative fine.

The Commission approved the Settlement Agreement on April 27, 2001.

### **Trading Places International and Agnes Clare Butchart, Respondents—REC 2000-18-L**

At all times relevant, Respondents were licensed to act as real estate brokers. RICO received a complaint alleging that Respondents violated statutes and/or regulations governing the conduct of real estate brokers. Respondents desired to settle this matter without a hearing. Under terms of a Settlement Agreement Prior to Filing of Petition for Disciplinary Action, Respondents agreed to pay an administrative fine of \$500.

The Commission approved the Settlement Agreement on April 27, 2001.

### **Capital Research Group, Inc. and Frederick H. Overstreet, Respondents—REC 2000-63-L**

At all times relevant, Respondents were licensed to act as real estate brokers. Respondent Overstreet was principal broker of Capital Research Group, Inc. RICO learned that Respondents failed to maintain a client trust account upon receipt of an earnest money deposit from a client. Respondents

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## Administrative Actions

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admitted to violating HRS §§467-14(7) (failing to account for moneys belonging to others) and (13) (violating this chapter, chapters 484, 514A, 514E, or 515; section 516-71; or the rules adopted pursuant thereto), and HAR §§16-99-3(e) (licensee shall recommend that title be examined, survey be conducted, or legal counsel be obtained when the interest of either party

requires it), and 4(d) (every broker shall deposit trust funds received into a neutral escrow depository or trust fund account). However, they entered into a Settlement Agreement Prior to Filing of Petition for Disciplinary Action to avoid the time loss and expense they would incur to have this matter resolved by an administrative hearing. Respondents agreed to pay an administrative fine of \$500. The Commission approved the Settlement Agreement on April 27, 2001.

## Decisions from Ninth Circuit Court of Appeals

✓ **BROKERS: Disclosure.** Buyer's broker failed to disclose to the seller information concerning buyer's financial problems. The court held that both a buyer and the buyer's agent have a common law duty to disclose adverse financial information concerning the buyer's ability to perform, even if such information is publicly available. The buyer's agent cannot hide behind a duty of loyalty to the buyer, because nondisclosure is tortious and agents cannot have a duty to facilitate a tort. *Lombardo v. Albu*, 14 P.3d 288 (Ariz. 2000).

✓ **JOINT VENTURES: Statute of Frauds.** An oral joint venture agreement required one party to contribute land the other would maintain. After three years of operation, the maintaining party sought a partition of what he claimed was a tenancy in common, even though the land was titled in the name of the other party. The court, in finding for the maintaining party, held the parties did not intend to transfer title to the property through their oral agreement so as to implicate the Statute of Frauds. The interests in the joint venture were, therefore, not voided by the fact that the joint venture agreement did not comply with the Statute of Frauds. *Lightsey v. Marshall*, 992 P.2d 904 (N.M. Ct. App. 1999), cert. denied, 128 N.M. 148 (1999).

✓ **LANDLORD AND TENANT: Notice.** A landlord sent notice of default via certified mail to an address listed in the lease but not specified as a notice address. The lease did not contain a notice provision. The letter was never claimed at the post office. The court held that an unclaimed letter sent to an address not designated as a notice address was not a refused letter and the landlord's notice, therefore, was ineffective. *Grenfell v. Anderson*, 989 P.2d 818 (Mont. 1999).

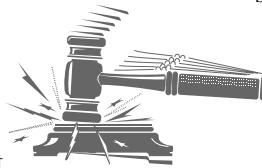
✓ **REGULATORY TAKINGS: Exactions.** A city, as a development approval condition, required a subdivision developer to pay for improvements to a road adjoining the development. The court held that the monetary exaction must meet Dolan's "rough proportionality" test, finding no significant difference between the exaction of money and required dedication of land. *Benchmark Land Co. v. City of Battle Ground*, 14 P. 3d 172 (Wash. Ct. App. 2000).

✓ **RIGHT OF FIRST REFUSAL: Fixed price.** A lease granted the tenant a first "right of refusal" on the premises for a two year period at a specified price. The court, in excluding extrinsic evidence of the parties' intent, held the provision unambiguously granted only a right of first refusal rather than an option to purchase at any time during the two years. The mere existence of a fixed price does not turn a right of refusal into an option. *Stuart v. D'Ascenz*, 2000 Colo. App. LEXIS 1694 (Colo. Ct. App. 2000).

✓ **SELLER AND BUYER: Arbitration.** A home buyer sued the seller for fraud. The seller claimed that the buyer should have sought arbitration as required by the sale agreement and that buyer's improper resort to a judicial remedy precluded arbitration. The court, in requiring arbitration, held that fraud in the inducement to enter the purchase contract was not sufficient to avoid the arbitration clause, because arbitrators are competent to handle such matters. Furthermore, the summary judgment against the buyer that was granted based on the improper resort to court proceedings was not res judicata, which would preclude arbitration. *Johnson v. Siegel*, 84 Cal. App. 4th 1087 (Cal. Ct. App. 2000).

✓ **SELLER AND BUYER: Fraud.** A sale agreement contained a disclaimer which stated that "purchaser is not relying upon any representations of the seller as to any condition which the purchaser deems to be material to purchaser's decision to purchase the property." The court held that such a clause was insufficient to protect a seller from a claim of fraudulent misrepresentation, although it would be sufficient to preclude a breach of contract claim. *Snyder v. Lovercheck*, 992 P.2d 1079 (Wyo. 1999).

✓ **SELLER AND BUYER. Legal description.** The prospective buyer of a cooperative apartment sued after the seller demanded an additional \$50,000. The court held that the sale agreement, which omitted a legal description of the apartment, was unenforceable even though it was for stock in the cooperative rather than for real property, because the shares did not have the attributes of true securities and were necessarily accompanied by a proprietary lease. *Firth v. Hefu Lu*, 12 P.3d 618 (Wash. Ct. App. 2000).







## TRY LOOKING HERE FOR THE SOLUTION TO YOUR PROBLEM

**Question:** I know I shouldn't discriminate against anyone that wants to rent or buy or sell a property. Are there laws that tell me who I shouldn't discriminate against?

**Answer:** Yes. The purpose of the fair housing laws is to protect a person's right to own, sell, purchase, or rent housing of his or her choice without fear of unlawful discrimination. The fair housing laws are intended to allow everyone equal access to housing. To discriminate against a person on the basis of his or her membership in one of these protected categories is against the law.

The Federal Fair Housing Act provides that you cannot discriminate against certain classes of people. The Federal Fair Housing Act has 7 protected classes and it is unlawful to discriminate against any person because of race, religion, color, national origin, sex, handicap, and familial status.

In addition, Hawaii has four additional protected classes that are age, sexual orientation, marital status, and ancestry. Therefore, you must not discriminate against the people included in the Federal and State laws.

**Question:** I am showing a house that I believe had two murders in it. Do I have to tell the potential buyers of the murders?

**Answer:** No. Under Hawaii law, an agent does not have to disclose the fact that an occupant of the residential property was afflicted with AIDS or HIV or that the residential property was the site of an act or occurrence that had no effect on the physical structure or the physical environment of the residential real property, or the improve-

ments located on the residential real property, as it is not deemed a material fact for purposes of the disclosure statement. Therefore, an agent is not required to advise of a death or suicide that occurred in the residential property.

**Question:** I've been asked to manage property for my friend. Do I need a real estate license?

**Answer:** It depends. Property management contains numerous requirements for the licensee. Property management is the overall management of real property for others for compensation and may include activities such as marketing property, leasing property, collecting rental payments, payment of notes, mortgages or other debts on the property, coordinating maintenance, and remitting funds and accounting statements to the owner.

Under Hawaii law, you may need a real estate salesperson license if you are getting paid to solicit prospective renters, to lease or offer to lease, to rent or offer to rent any residential property.

There are some exceptions to this law. If you are an owner or have power of attorney from an owner, acting as a receiver, trustee in bankruptcy, personal representative or are the custodian or caretaker of the property, you do not need a real estate salesperson's license to manage property.

"Owner" does not include someone who owns commercial property or a real estate development or brokerage firm or someone who is trying to evade the licensing requirements of the real estate law.

If you are a custodian or caretaker who is a non-licensed person and who has the responsibility to manage or care for the property, you do not need a license if you lease, offer to lease, rent or offer to rent the property for only one owner and that owner is not an association of owners for a condominium, cooperative, or planned unit development.

## ***Corporations, partnerships must use corporate names***

This notice serves to supercede the February 25, 2000 memo, issued by the Real Estate Commission (REC), regarding "Decisions on Legal and License Names and Advertising."

At the February 25, 2000 REC meeting, the REC decided to require licensees to provide their legal names on license applications and report changes to legal names, but licensees would be allowed to choose their license name subject to certain conditions. Further, licensees would be able to advertise their corporate entity by either omitting or abbreviating the terms "corporation," "incorporated," "partnership," "limited," "general partnership," "limited liability company," or "limited liability partnership" unless required by law.

The REC has been informed that part of the decision is in conflict with the state corporation laws, which require use of

the full corporate term and permits no abbreviations. Therefore, licensee brokers that are corporations or partnerships *must* use the corporate terms "corporation," "limited," "incorporated," "general partnership," "limited partnership," "limited liability company," "limited liability partnership" or its abbreviation in its corporate name as mandated by corporation laws of Hawaii.

This change clarifies the confusion in the REC action of February 25, 2000 and the corporate laws. Therefore, instead of looking up the different corporate laws for the different corporate entities, this action simplifies and clarifies the laws for licensees.

For your information, advertising includes business cards, stationery, and other written documentation and memoranda, as well as advertising in any publication.

### **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, July 11  
 Monday, August 6 (Big Island)  
 Wednesday, September 12  
 Wednesday, October 10  
 Wednesday, November 14  
 Thursday, December 13

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 Kapuaiwa 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.

# 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 approved continuing education courses. One of the courses must be an approved core course. Please note that the 2001-2002 core course is not yet available.

To restore a license forfeited less than one year, you must take at least 10 hours of continuing education courses in order to be on active status. One of the courses may be the approved core course. Courses with a (c) are approved 1999-2000 core courses and receive 4 hours credit. All other courses are electives and receive 3 hours credit. (If you are taking courses to reactivate an inactive license this year, you may take elective courses totaling at least 10 hours credit. If you are restoring a license forfeited over one year, read the restoration application instructions.)

In lieu of the core courses, licensees who wish to restore or reactive a license need at least 10 credit hours of continuing education or 4 continuing education elective courses.

Date	Time	Course	Provider	City	Instructor	Fee (\$)
<b>OAHU</b>						
7/13/01	01:00pm	ESCROW, TITLE & APPRAISALS	ABE LEE SEMINARS	HONOLULU	LEE	45.00
7/13/01	05:00pm	(c) LAW UPDATE/ETHICS 1999-2000	ABE LEE SEMINARS	HONOLULU	LEE	45.00
7/13/01	09:00am	CONDOMINIUM DEVELOPMENT PROCESS	ABE LEE SEMINARS	HONOLULU	LEE	45.00
7/25/01	01:00pm	CRATS, CRUTS & FLPS: AN ALTERN	ABE LEE SEMINARS	HONOLULU	LEE	45.00
7/25/01	05:00pm	UNDERSTANDING VACATION OWNERSHI	ABE LEE SEMINARS	HONOLULU	LEE	45.00
7/25/01	09:00am	ZONING-ISSUES, PROBLEMS, QUESTI	ABE LEE SEMINARS	HONOLULU	LEE	45.00
7/28/01	04:00pm	(c) LAW UPDATE/ETHICS 1999-2000	EDDIE FLORES REAL ESTATE	HONOLULU	GOODE JR	55.00
7/28/01	09:00am	AVOID LITIGATION - HOW TO DETEC	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	45.00
7/28/01	12:30pm	HAWAII LANDLORD-TENANT CODE	EDDIE FLORES REAL ESTATE	HONOLULU	LI	45.00
8/1/01	08:30am	WHAT NUMBERS REALLY COUNT? REAL	HAWAII CCIM CHAPTER	HONOLULU	OSBORNE	40.00
8/25/01	04:00pm	(c) LAW UPDATE/ETHICS 1999-2000	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	55.00
8/25/01	09:00am	FORECLOSURE & THE ROLE OF THE C	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	45.00
8/25/01	12:30pm	PITFALLS IN DROA & ADDENDA	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	45.00
9/1/01	01:00pm	DEVELOPING SMALL PROPERTIES	ABE LEE SEMINARS	HONOLULU	LEE	45.00
9/1/01	09:00am	COMPUTERS, INTERNET & THE LICE	ABE LEE SEMINARS	HONOLULU	LEE	45.00
9/19/01	01:00pm	HUD, VA AND (NON) JUDICIAL FORE	ABE LEE SEMINARS	HONOLULU	LEE	45.00
9/19/01	05:00pm	(c) LAW UPDATE/ETHICS 1999-2000	ABE LEE SEMINARS	HONOLULU	LEE	45.00
9/19/01	09:00am	ESCROW, TITLE & APPRAISALS	ABE LEE SEMINARS	HONOLULU	LEE	45.00
9/29/01	04:00pm	(c) LAW UPDATE/ETHICS 1999-2000	EDDIE FLORES REAL ESTATE	HONOLULU	GOODE JR	55.00
9/29/01	09:00am	HOMEOWNER'S TAX STRATEGIES	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	45.00
9/29/01	12:30pm	PITFALLS IN MANAGING RESIDENTIA	EDDIE FLORES REAL ESTATE	HONOLULU	LI	45.00
10/3/01	01:00pm	UNDERSTANDING THE LAND USE ORDI	ABE LEE SEMINARS	HONOLULU	LEE	45.00
10/3/01	05:00pm	(c) LAW UPDATE/ETHICS 1999-2000	ABE LEE SEMINARS	HONOLULU	LEE	45.00
10/3/01	09:00am	STICKS, BRICKS & STEEL UNDERSTA	ABE LEE SEMINARS	HONOLULU	LEE	45.00
10/17/01	01:00pm	WILLS, TRUSTS & REAL ESTATE	ABE LEE SEMINARS	HONOLULU	LEE	45.00
10/17/01	05:00pm	UNDERSTANDING VACATION OWNERSHI	ABE LEE SEMINARS	HONOLULU	LEE	45.00
10/17/01	09:00am	MEDIATION, ARBITRATION, LITIGAT	ABE LEE SEMINARS	HONOLULU	LEE	45.00
10/27/01	04:00pm	(c) LAW UPDATE/ETHICS 1999-2000	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	55.00
10/27/01	09:00am	AVOID LITIGATION - HOW TO DETEC	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	45.00
10/27/01	12:30pm	PITFALLS IN DROA & ADDENDA	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	45.00
11/17/01	04:00pm	(c) LAW UPDATE/ETHICS 1999-2000	EDDIE FLORES REAL ESTATE	HONOLULU	GOODE JR	55.00
11/17/01	09:00am	FORECLOSURE & THE ROLE OF THE C	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	45.00
11/17/01	12:30pm	PITFALLS IN MANAGING RESIDENTIA	EDDIE FLORES REAL ESTATE	HONOLULU	LI	45.00
12/15/01	04:00pm	(c) LAW UPDATE/ETHICS 1999-2000	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	55.00
12/15/01	09:00am	HOMEOWNER'S TAX STRATEGIES	EDDIE FLORES REAL ESTATE	HONOLULU	FLORES JR	45.00
12/15/01	12:30pm	PITFALLS IN DROA & ADDENDA	EDDIE FLORES REAL ESTATE	HONOLULU	CHONG	45.00
<b>KONA</b>						
7/11/01	09:00am	ESSENTIALS OF LISTING	KONA BOARD OF REALTORS INC	KAILUA-KONA	SPADINGER	25.00
7/18/01	09:00am	ESSENTIALS OF THE DROA	KONA BOARD OF REALTORS INC	KAILUA-KONA	SPADINGER	25.00
7/25/01	09:00am	ESSENTIALS OF FINANCE	KONA BOARD OF REALTORS INC	KAILUA-KONA	SPADINGER	25.00
8/6/01	08:30am	WHAT NUMBERS REALLY COUNT? REAL	HAWAII ASSOCIATION OF REALTORS	KAILUA-KONA	OSBORNE	50.00
<b>MAUI</b>						
7/9/01	08:30am	RS 206 "USING TODAY'S TECHNOLOG	MAUI BOARD OF REALTORS INC	KAHULUI	ANDERSON	314.00
7/13/01	08:00am	COMMERCIAL REAL ESTATE CONTRACT	HAWAII CCIM CHAPTER	WAILUKU	MAESHIRO	40.00

## 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	737-5509
EDDIE FLORES REAL ESTATE	521-3044
HAWAI'I CCIM CHAPTER	528-2246
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
PROFESSIONAL EXCHANGE ACC. LLC	951-1031
RICHARD W DAGGETT	923-0122
SEILER SCHOOL OF REAL ESTATE	874-3100
UNIVERSITY OF HAWAII AT MANOA	956-8244
WAIKIKI REALTY REAL ESTATE SCH	955-8282

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