



BULLETIN

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September 2005

Recodifying of Condo Property Regimes Law Completed

The Governor signed Senate Bill 1132 S.D. 2 H.D. 1 C.D. 1, completing the recodification of the condominium property regimes law begun under Act 164, Session Laws of Hawaii 2004 (Act 164) and delayed the effective date of the Act to July 1, 2006.

Act 93 highlights what the 2005 Legislature did in completing the recodification of the condominium property regimes law.

Readers are advised to read the full text of the bill at http://www.capitol.hawaii.gov/sessioncurrent/bills/sb1132_cd1_.htm.

In completing the recodification, the Legislature did the following:

- Established provisions relating to the creation, alteration, and termination of condominiums; the registration and administration of condominiums; and the protection of condominium purchasers;
- Made effective July 1, 2006 parts I and II of Act 164 (SLH 2004); provisions relating to the governance and management of condominium associations;
- Amended section 149 relating to the handling and disbursement of association funds conditionally passed last

year, by basically changing the amendments to reflect the current law as set forth in section 514A-97(c), HRS. The current law appears to require that associations deposit their funds in FDIC-insured financial institutions located in this state, have the funds held by trust companies authorized to do business under Article 8 of Chapter 412, HRS, have the funds held by the United States Treasury; and have funds purchased in the name of the association by securities brokers who are registered with the SEC with offices in this state. The current law apparently does not prohibit the in-state financial institutions, trust companies, and securities brokers from investing in deposits, investment certificates, savings accounts, and certificates of deposits out-of-state;

- Clarified that:

- ✓ the requirement to file an annual update of a developer's public report extends to a developer's successor or assign;
- ✓ a developer and real estate broker shall keep records of all sales transactions and proceeds in accordance with the requirements of the real estate brokers and salespersons law, chapter 467, Hawaii Revised Statutes, HRS, and the related administrative rules;

- Repealed chapter 514A, HRS;
- Added a standard savings clause provision;
- Clarified the parameters of the savings clause provision relating to condominium developers and purchasers by providing that the legislation does not affect the parties' rights and obligations under a sales contract for a condominium unit in a project registered under chapter 514A, HRS, prior to the effective date of the new condominium law;
- Deleted the appropriation from the condominium education trust fund for the conduct of post bill passage educational activities; and
- Made technical amendments to the bill, correcting statutory and other internal references.

The Commission has included in its Program of Work for Fiscal Year 2006, the implementation of the new condominium law as it relates to the registration of condominium projects, management of condominiums, and an educational program

Trudy Nishihara Appointed New Commission Chair

Trudy Nishihara, appointed to the Real Estate Commission in July, 2003, is the new chair of the Commission.

Trudy was the former vice-chair of the Education Review Committee.

She is the owner of Realty Group, and the principal broker of Hawaii Home Bids. She is an active member of the Honolulu Board of REALTORS and the Hawaii Association of REALTORS, and holds professional designations of Certified Residential Specialist (CRS) and Certified Real Estate Broker (CRB).

She was the 2004 president of the local chapter of CRB.

Continued on page 6

Significant Changes Made

Revised Salesperson's Curriculum Approved

The revised and updated salesperson's curriculum was given a recommended stamp of approval at the Commission's Education Review Committee meeting on July 13, 2005, and approved by the Commission at its monthly meeting on July 29, 2005.

The salesperson's curriculum now boasts a minimum of 60 hours, an increase of 15 hours from the original, 20-year-old salesperson's curriculum of 45 instructional hours.

While much of the curriculum remains the same, there is an increase in depth in topics, and certain changes of emphasis.

These changes include:

1. Increased emphasis upon ethics as the base and underlying foundation of the agency relationship.
2. Consequent greater attention given to agency relationships and their various forms.
3. Greater focus and more time spent on practical applications including HAR standard forms.
4. Less time spent on the more specialized areas of the law (Hawaii Revised Statutes) including Chapters 436B, 514A, and 514E, and the subdivision laws.

As required, the curriculum is a guide, and it is the responsibility of each certified prelicense school and instructor to develop, modify, and update all course materials as necessary.

The curriculum outline consists of the following 23 sections, with great detail in sub-topics which are not listed here:

1. Introduction and Background
2. Real Estate Licensing Laws
3. Ethics and Real Estate Regulations
4. Nature and Description of Real Estate
5. The Law and Real Property
6. Encumbrances, Liens, and Easements
7. Tenancy and Ownership of Real Estate
8. Condominiums, Cooperatives, Planned Unit Developments and Timeshare
9. State Land Use Controls and Property Development
10. Agency
11. Real Estate Contracts
12. Hawaii Standard Forms
13. Real Estate Financing Principles
14. Real Estate Financing Practices
15. Real Estate Valuation and Appraisal
16. Real Estate and Other Taxes, Tax Liens
17. Interests in Real Estate
18. Closing the Real Estate Transaction
19. Commercial Real Estate Management, Leasing, and Sales

20. Landlord-Tenant Code
21. Fair Housing Laws and the Americans with Disabilities Act
22. Environmental Issues and the Real Estate Transaction
23. Mathematics

Also included with the salesperson's curriculum are six (6) handouts on the following topics:

1. Ethics – situations, anecdotal accounts, case studies
2. Settlement Statements – what to look for
3. Condominium project documents – anatomy of, and red flags to look for
4. DROA – item-by-item explanations
5. FIRPTA/HARPTA – filing process, responsibility of parties and impact on sales involving foreign clients
6. Opportunities – information on specialized courses, designations, organizations; within the context of promoting enhanced education

As with the transition from the old broker's curriculum to the new broker's curriculum in January 2005, the Commission is targeting the beginning of 2006 for implementation of the new salesperson's curriculum. This target date is subject to change.

Test development for new questions reflecting the revised salesperson's curriculum will be held sometime this fall. Specific dates have not been decided yet.

The full text of the revised salesperson's curriculum will be available on the Commission's website, www.hawaii.gov/hirec.

Unlicensed Real Estate Activity Can Turn Out to Be Expensive

The following judgment was included in the April – June 2005 list of judgments that is prepared by the Regulated Industries Complaints Office (RICO) and distributed to many contracting companies and other organizations.

It is not often that unlicensed real estate activity is taken to this level.

Hawaii Bound, Inc.
4-19-05
(Maui)

\$500.00 fine

consent judgment
and permanent
injunction

The Chair's Message

Aloha everyone! I am honored and privileged to be the new chair of the Real Estate Commission. In the past two years as vice chair of the Education Review Committee and



chair of the Commission's Education Evaluation Task Force (EETF), my focus was the revision and update of the pre-licensing curricula, which resulted in the new 80-hour broker's curriculum and the recently approved 60-hour salesperson's curriculum. This brings Hawaii's requirements current and closer to the national average for each classification, but more importantly, the updated curricula provide more focus

and in-depth instruction on topics that reflect relevant pre-license education. With the help of the grass roots (EETF) committee, many volunteer hours were spent reviewing the several drafts to bring the curricula in line with today's real estate practices.

I thank the previous Commission chair, John Ohama, and vice chair Mitchell Imanaka, for their eight years of service and their efforts in updating and bringing current Hawaii's condominium law and bringing to fruition an updated prelicense salesperson's and broker's curricula.

As your new chair, I now view the workings of the Commission on a broader scale. First and foremost is to implement, by July 2006, the recodification of Chapter 514A, the condominium law as passed by the 2005 State Legislature. As the Commission manages this additional task while fulfilling its normal duties of enforcement as regulators, we must also proactively explore and understand the globalization that the real estate industry is currently undergoing. The rapid evolution of the real estate business dramatically impacts how we currently regulate our industry and how the industry may be regulated in the near future. This places the Commission in the forefront of addressing the concerns of the future within our real estate industry.

Each new chair brings their own vision in accomplishing the goals of the Commission. I would like to see the Commission strengthen its position as a regulator by anticipating the many challenges that may arise as we transition into the new millennium and the new ways of doing business. The Commission needs to be proactive in efforts that will positively benefit the industry, such as raising the education bar of our fellow real estate licensees through post-licensing education relevant to daily practice, be stricter on enforcement based on current laws and rules and the code of ethics, and be more vigilant on how we qualify new licensees by doing thorough background checks. We must carefully evaluate the

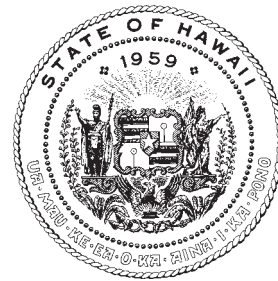
emerging new business practices and new definitions describing the roles of today's real estate licensee. And, do we want to see these new ways of doing business codified? A lot of work lies ahead before we can answer this question.

It is not always easy to maneuver through murky waters obscured by layers of fog, but the journey will be worthwhile if we can keep all members of our real estate community apprised of new developments, educated as to the choices available, and motivated to implement and support any new changes that emerge.

Let me introduce your Real Estate Commissions leadership team: vice chair—Iris Okawa (public member), Laws and Rules Review Committee chair—Louis Abrams (Broker, Kauai), vice chair—Kathleen Kagawa (Broker, Oahu), Education Review Committee chair—Vern Yamanaka (Broker, Big Island), vice chair—Carol Ball (Broker, Maui), Condominium Review Committee chair—Stanley Kuriyama (Broker, Oahu), vice chair—Michelle Loudermilk (public member).

We are still awaiting the gubernatorial appointment of the 9th and last member of the Commission.

We have a great team of Commissioners and a lot of work ahead that can only move our Hawaii real estate community forward, based on an ethical foundation of practice and guidance.



State of Hawaii Real Estate Commission

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This material can be made available to individuals with special needs. Please call the Senior Real Estate Specialist at 586-2643 to submit your request.

Administrative Actions

James A. Cole—REC 2003-298-L

In 2003, RICO investigated a complaint that Respondent may have violated Hawaii's licensing laws and rules related to advertising by real estate brokers and salespersons. The complaint arose from an advertisement that Respondent placed in the classified section of The Maui News, which read: "DEVELOPER wants to sell 40,000 sf of his R-3 zoned Makawao property w/2 water meters. Asking \$400,000. Call James A. Cole (R) 281-6465, Century 21 All Islands." RICO alleged that Respondent placed the ad on behalf of his then client, the so-called "Developer" in the ad. However, the property had not yet been transferred to Respondent's client when the ad appeared in the Maui News even though the ad says that it is "his." In fact, the property was in escrow at the time, Respondent's client was merely the purchaser under the DROA, and the property was still owned by the seller. In the end, the property was never transferred to Respondent's client. RICO said the allegations, if proven at an administrative hearing before the Commission, would constitute violations of at least the following statutes governing the conduct of real estate brokers in Hawaii: HAR §16-99-3(1) (licensees shall not place any advertisement indicating that property is for sale without the written authorization of the owner or seller and approval of the principal broker or broker in charge); HAR §16-99-3(w) (violating the chapter and/or rules and regulations relating to real estate licensees); HRS §436B-19(2) (untruthful statements and false or deceptive advertising); HRS §436B-19(9) (conduct which violates recognized standard of ethics for the profession); HRS §436B-19(17) (violating the chapter and/or rules and regulations relating to real estate licensees); HRS §467-14(2) (making false promises regarding a real estate transaction that are likely to mislead); HRS §467-14(3) (making false promises through advertising); HRS §467-14(8) (conduct constituting dishonest dealings); and HRS §467-14(13) (violating the chapter and applicable licensing laws or regulations). Respondent entered into a Settlement Agreement Prior to Filing of Petition for Disciplinary Action as a voluntary compromise of the matter and in order to conserve on the expenses of proceeding with an administrative hearing. Respondent agreed to pay a \$1,000 fine.

The Commission accepted the Settlement Agreement on May 24, 2005.

Solid Foundation, a real estate corporation; David Mayeda, an individual and principal broker thereof—REC 2003-275-L

In 2003, RICO received a complaint that Respondents may have violated Hawaii's licensing laws or rules related to providing the licensing authority with timely written notice of an adverse judgment. RICO investigated the complaint and alleged that on or about February 7, 2003, RICO issued

Respondents a warning letter in Case No. REC 2003-2-L regarding compliance with HRS §436B-16(a) requiring licensees to report to the licensing authority adverse judgments, awards, disciplinary sanctions, orders, etc., arising out of their duties as a licensee. In that case, Respondents failed to report an adverse 2002 District Court judgment arising from a security deposit dispute in Goran Gracin v. Solid Foundation. Six months after RICO issued this warning letter, a member of the public informed RICO of an adverse April 11, 2002 District Court judgment and a March 24, 2003 garnishee order issued against Respondents and which arose from a security deposit dispute. There were no records with the Commission indicating that Respondents ever reported the April 22, 2002 judgment or the March 24, 2003 garnishee order. On or about February 18, 2004, Respondents sent the Commission a copy of two adverse District Court judgments. The first was dated December 8, 2003 relating to a security deposit dispute in Guardado v. Solid Foundation. The second was dated January 29, 2004 relating to a security deposit dispute in Murakami v. Mayeda. The Mayeda judgment was reported to the Commission within the 30-day time period, but the Guardado judgment was reported late.

RICO asserted that the allegations cited above, if proven at an administrative hearing before the Commission, would constitute violations of at least the following statutes governing the conduct of real estate brokers in Hawaii: HRS §436B-16(a) (licensees shall provide written notice within 30 days to the licensing authority of any judgment, award, disciplinary sanction, order, or other determination which finds the licensees liable for damages or loss caused by the licensees' conduct in the practice of their profession), and HRS §436B-29(17) (violating the chapter and/or rules and regulations relating to licensing laws). Respondents entered into a Settlement Agreement Prior to Filing of Petition for Disciplinary Action as a voluntary compromise of this matter and in order to conserve on the expenses of proceeding with an administrative hearing. Respondents agreed to pay a \$500 fine.

The Commission accepted the Settlement Agreement on May 24, 2005.

Russell L. Todd—REC 2002-298-L

Respondent was the principal broker of Maui Resort Rentals, Inc. (MRR) at various times between May 1996 and February 2002. He registered the trade name Maui Todd Realty (MTR) in February 2000, and the status of his license was changed to that of broker for MTR effective May 5, 2000. On June 27, 2000, Respondent wrote a letter to a Commission representative saying that his wife, Jan Todd, had sought the change in his license status without his knowledge or permission. He said the documentation seeking the change

Continued on page 5

Administrative Actions

Continued from page 4

was fraudulent and asked that it be voided. He also said his wife had not been connected with MRR since July 1, 1999. RICO contended that the Respondent himself and not his wife signed and forwarded the change forms and other documents to the Commission. RICO further contended that Jan Todd's real estate salesperson's license was affiliated with MRR after July 1, 1999, and that Respondent's statement to the contrary was also false. RICO asserted that Respondent's false statements to the Commission were material and were made intentionally with the expectation that the Commission would reasonably rely upon the statements. RICO was prepared to file a Petition for Disciplinary Action against Respondent's broker's license for violation of HRS §467-20 (filing a document with the Commission that is false or untrue or contains any material misstatement of fact), §467-14(3) (pursuing a continued and flagrant course of misrepresentation), and §467-14(20) (failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity and fair dealing). Under terms of a Settlement Agreement Prior to Filing of Petition for Disciplinary Action, Respondent admitted he made a false statement to the Commission and that his conduct violated the sections of HRS 467 cited above. He agreed to a voluntary revocation of his real estate broker's license.

The Commission accepted the Settlement Agreement on June 24, 2005.

Asset Property Management, Inc., Deanna K. Hough and James Stephen Morgan—REC 2003-320-L

On January 24, 2005, RICO filed a Petition for Disciplinary Action against Respondents alleging that they violated HRS §§436B-19(7) (professional misconduct), 467-1.6(b)(2) (the principal broker shall be responsible for the brokerage firm's records, contracts, and documents), and HAR §§16-99-3(b) (licensee shall protect the public against fraud, misrepresentation, or unethical practices) and 16-99-4(b) (every brokerage shall retain for at least three years records of all trust funds which the brokerage firm has received). Respondents did not admit they violated any law or rule but entered into a Settlement Agreement after Filing of Petition for Disciplinary Action as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing. Respondents agreed to pay a \$1,000 fine. Respondent Morgan agreed to complete a real estate course in professional responsibility and ethics. Respondents Asset Property Management and Morgan agreed to pay \$1,300 restitution.

The Commission accepted the Settlement Agreement on July 29, 2005.

Planning for New Tax Laws

Submitted by the State Department of Taxation

Two of Hawaii's new tax laws are a planning opportunity for real estate licensees. These acts impact many real estate transactions, both before and after closing.

First, Act 156 (H.B. 1308, H.D. 1, S.D. 2, C. D. 1), effective July 1, 2005, increases the conveyance tax rates based on a sliding scale for

(1) All categories of property sold for \$600,000 or more, and,

(2) The sale of a condominium or single family residence for which the purchaser is ineligible for a county homeowner's exemption on property tax.

The effect of Act 156 is to create six conveyance tax rates, ranging from 10 cent per \$100, to 35 cents per \$100, where formerly there was one single rate for all properties. Planning opportunities arise in listing and offering prices because the rate changes occur at the \$600,000 and \$1 million dollar amounts, rather than on a sliding scale. Additionally, since the eligibility for a homeowner's exemption is determined at the county level, licensees will need to be familiar with county ordinances where the property is situated.

Second, Act 23 (S.B. 842, S.D. 1) amends HARPTA, the Hawaii Real Property Tax Act, relating to withholding tax on

the disposition of real property by nonresident persons. Act 23 applies to taxable years beginning after December 31, 2004.

Act 23 clarifies that where a limited liability company (LLC) formed or registered to do business in Hawaii consists of a single member and the LLC has not elected to be taxed as a corporation, the LLC shall be disregarded and the property is considered sold by the LLC's member. The residency of the single member is then considered to determine whether HARPTA applies to the transaction.

The Department reminds licensees that HARPTA withholding is a requirement on the buyer, and that an ounce of prevention, in this case, may prevent a significant financial burden.

NEED FORMS, INFORMATION, OR ASSISTANCE WITH A NOTICE OR PROBLEM? Visit any district tax office or contact the Taxpayer Services Branch by phone at 587-4242 (toll-free at 1-800-222-3229) during business hours; e-mail them at Taxpayer.Services@hawaii.gov. Forms and publications (and much more) are available on the Department's website at www.state.hi.us/tax, but also may be requested by calling the Department's 24-hour request line at 587-7572 (toll-free at 1-800-222-7572).

2005 Relevant Real Estate Legislation continued

Continued from page 1

targeted to inform the condominium community, developers, real estate licensees, prospective condominium purchasers, and the general public about the new condominium law. The educational program is subject to budget, expenditure restrictions, and procurement law.

2005 Legislation Relevant to Real Estate Industry

In addition to the giant condominium bill that was passed by the 2005 Hawaii State Legislature, the following condominium-related bills and other bills of interest to the real estate community were enacted. Go to www.capitol.hawaii.gov for complete language of the act enacted.

SB1336 SD1 HD1 (HSCR 1542) Relating to condominiums and cooperative housing corporations (Act 91)

Amends provisions relating to exceptions. Provides that if the land under the condominium is owned jointly by lessors, all of whom qualify as tax exempt charitable organizations, the sale by one co-lessor to another co-lessor of its interest in the land under the condominium shall not be subject to the lease to fee conversions for condominiums and cooperative housing corporations law. — SB1336 HD1. Current Status: May-03-05 Passed Legislature/Section Affected: 514C-8

SB1345 SD1 (SSCR 83) Relating to condominiums (Act 92)

Amends provisions relating to condominium property regimes. Provides that if a dispute is not resolved by mediation, in addition to any other legal remedies that may be available, any party that participated in the mediation may file a request for a hearing with the Office of Administrative Hearings, Department of Commerce and Consumer Affairs. Provides that the subject matter of the hearing before the hearing officer may include any matter that was the subject of the mediation. — SB1345 SD1. Current Status: May-03 05 Passed Legislature/Section Affected: 514A-121.5

SB1348 SD1 HD1 CD1 (CCR 30) Relating to condominium property regimes (Act 90)

Amends provisions relating to documents of the association of apartment owners. Requires the association's meeting minutes of the board of directors' meetings to be available to any owner at no cost or on a 24-hour loan, at a convenient location designated by the board of directors; or be transmitted to any apartment owner making a request for the minutes within 15 days of the request, provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile. Amends Act 164, session laws of 2004. — SB1348 CD1. Current Status: May-03-05 Passed Legislature/Section Affected: 514A-83.5, ACT 164 2004

SB1349 SD1 HD1 CD1 (CCR 20) Relating to condominium property regimes (Act 89)

Amends provisions relating to documents of the association of apartment owners. Requires condominium board of directors to maintain records for the duration those

records are kept by the association and to be available for examination by apartment owners at a place designated by the board. Amends Act 164, session laws of 2004, relating to association records. Requires condominium board of directors to maintain records for the duration those records are kept by the association and to be available for examination by apartment owners at a place designated by the board. — SB1349 CD1. Current Status: May-03-05 Passed Legislature/Section Affected: 514A-83.5, ACT 164 2004

SB1798 HD1 CD1 (CCR 28) Relating to nonprofit corporations (Act 155)

Amends provisions relating to content of bylaws under condominium management provisions. Provides that the removal and replacement of members of the board of directors of apartment owners shall be by a vote of a majority of the apartment owners. Adds that if bylaws provide for cumulative voting by the owners, the owners may so vote if an owner gives notice of the owner's intent to cumulatively vote before voting commences. Amends Act 164, session laws of 2004. — SB1798 CD1. Current Status: May-03-05 Passed Legislature/Section Affected: 514A-82, ACT 164 2004

HB1017 HD3 SD2 CD1 (CCR 173) Relating to solar energy (Act 157)

Amends provisions relating to placement of solar energy devices. Prohibits a person to be prevented by any covenant, declaration, by laws, restriction, deed, lease, term, provisions, condition, codicil, contract or similar binding agreements from installing a solar energy device on any single family residential dwelling or townhouse that the person owns, provided that the device is in compliance with the rules and specifications, registered with the private entity of record within 30 days of installation, and the homeowner has obtained written consent of the private entity if the device is placed on a common element or limited common element. — Amends provisions relating to work prohibited under condominium property regimes law. Allows the installation of solar energy devices. — Amends Act 164, session laws of 2004. — HB1017 CD1. Current Status: May-03-05 Passed Legislature/Section Affected: 196-7, 514A-89, ACT 164 2004

HB 1309 HD2 SD2 CD1 Public transit; county surcharge on state general excise tax (Act 247)

This law change is designed to support the design and implementation of **rail rapid transit system projects**. It requires counties that choose to establish a county surcharge to do so by ordinance adopted after a public hearing. To initiate the surcharge, a county must adopt an ordinance by December 31, 2005.

In all counties, regardless of size, it restricts the use of the surcharge proceeds for:

1. Operating or capital costs of public transportation

Continued on page 7

2005 Relevant Real Estate Legislation continued

Continued from page 6

systems within each county, including public buses, trains, ferries, pedestrian paths or sidewalks, or bicycle paths; and

2. Expenses in complying with the Americans with Disabilities Act of 1990 associated with public transportation projects.

There is an additional restriction in counties with a population greater than five hundred thousand. In these cases, the county surcharge can not be used to build or repair public roads or highways. This third restriction related to using the surcharge tax funds to build or repair public roads or highways does not apply in counties with a population equal to or less than five hundred thousand.

HB 1308 HD1 SD2 CD1 Acquisition of land for conservation and environmental protection; conveyance tax increase (Act 156)

The purpose of this Act is to establish permanent funding for land conservation by increasing the conveyance tax on a sliding scale and dedicating ten per cent of the annual proceeds from the conveyance tax to the existing land acquisition fund. The Legislature's intent is to provide adequate funding to conserve land for watershed protection, coastal preservation, flood prevention, parks, habitat protection, cultural preservation, agricultural production, and open space and scenic resources to ensure protection of these lands and resources for future generations. The Legislature previously determined that the conveyance tax is an appropriate means to fund the conservation of natural resources by dedicating a portion of the current assessment to the natural area partnership program and forest stewardship program that assist private landowners in managing natural resources.

The Legislature has also determined that there is a clear connection between the source of the conveyance tax and providing funding for watershed protection and other natural resource preservation programs. The development, sale, and improvement of real estate in Hawaii adds additional pressure on natural areas, coastal access, agricultural production, and Hawaii's water resources and watershed recharge areas.

Details of conveyance tax increase follow:

Increases the conveyance tax for properties \$600,000 or more:

- 10 cents per \$100 for properties less than \$600,000;
- 20 cents per \$100 for properties at least \$600,000, but less than \$1,000,000; and
- 30 cents per \$100 for properties of \$1,000,000 or greater.

For sale of a single-family residence or an individual unit in a multifamily dwelling for which the purchaser is ineligible for a county homeowner's exemption on property tax:

- 15 cents per \$100 for properties less than \$600,000;

25 cents per \$100 for properties at least \$600,000, but less than \$1,000,000; and

35 cents per \$100 for properties of \$1,000,000 or greater.

- Increases allocation of the conveyance tax to the Rental Housing Trust Fund from 25% to 30%.
- Maintains allocation of the conveyance tax to the Natural Area Reserves Fund at 25%.
- Adds a fund for the allocation of the conveyance tax to the Land Conservation Fund of 10%.

HB 785 HD1 SD1 CD1 Time share foreclosure under power of sale (Act 82)

Provides for non-judicial foreclosure of time share interests under the power of sale. This Act allows a mortgagee to foreclose under the existing power of sale law by giving notice of the intention to foreclose the mortgage.

- The notice must be filed with the State Director of Taxation and posted on the time share interest premises not less than 21 days before the day of sale.
- The day of sale may be any time after four weeks from the date of publication of the first notice.
- The mortgagee must file a copy of the notice of sale and the mortgagee's affidavit in the Bureau of Conveyances within 30 days after selling the time share interest. Effective date: January 1, 2006.

HB 1715 HD1 SD1 Gender identity discrimination in real estate transactions (Act 214)

Prohibits discrimination based upon sexual orientation as well as gender expression and identity in all real estate transactions.

Definition: Gender identity or expression includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

HB 1301 HD1 SD2 CD1 Coqui frog (invasive species) eradication (Act 151)

Appropriates fund to the counties, in addition to the amounts requested by the Hawaii Invasive Species Council for the biennial period. Intent is to specifically accelerate the response, control, and eradication efforts for programs and initiatives that are found to be most effective in the control or eradication of the coqui frog.

The law specifies that the additional funds are to be used toward the **control and eradication of only the coqui frog**, not all priority invasive species.

Changes the total appropriation amount to \$300,000 with

Continued on page 8

2005 Relevant Real Estate Legislation continued

Continued from page 7

the City and County of Honolulu and the County of Kauai to receive \$50,000 each, and the County of Maui and the County of Hawaii to receive \$100,000 each.

HB 1017 HD3 SD2 CD1 Solar energy devices in condominiums and townhouses (Act 157)

Hawaii Revised Statute 196-7 historically has allowed the installation of a solar energy device on any single-family residential dwelling or townhouse by its owner, regardless of any covenant, term, provision, condition, codicil, or contract to the contrary. Issues related to installation of the solar energy devices prompted the following amendments to be made by the 2005 Legislature:

Homeowner associations are required to adopt rules by December 31, 2006 that provide for the placement of registered solar energy devices and establish requirements for the installation of solar energy devices in single-family homes and townhouses. As a result of this, homeowners may install a solar energy device provided that (a) the device is in compliance with the rules and specification, (b) registered within 30 days of installation, and (c) the homeowner has obtained written consent if the device is placed on a common element or limited common element.

In addition, homeowners installing a solar energy device on a roof that is a common element or limited common element and subject to a labor or material roof warranty must obtain confirmation from the company that issued the warranty, that installation of solar energy device will not void the warranty.

Finally, the owner and any successive owner is responsible for removing any solar energy installed on a common element or limited common element, if removal is reasonably necessary or convenient for the repair, maintenance, or replacement of the common elements or limited common elements. Effective September 1, 2005.

SB 615 SD1 Small claims court; landlord/tenant (Act 12)

Amends the exclusive jurisdiction of the small claims division of the district court over security deposit disputes between a landlord and tenant to provide concurrent jurisdiction to the regular claims division when adjudicating a summary possession (i.e. eviction) action involving the same parties. Clarifies that the district court having jurisdiction over a civil action involving summary possession has concurrent jurisdiction with the small claims court over security deposit disputes between a landlord and tenant. Effective January 1, 2006

HB 295 HD2 SD2 CD1 Professional and vocational licensing renewal; military (Act 170)

Facilitates the process for restoring the professional or vocational license of a member of the Hawaii National Guard, regular military or military reserves whose license has expired, been forfeited, or deemed delinquent while the member is on

active duty and deployed during a state or national crisis. Effective July 1, 2005.

HB 0155 HD1 SD1 Timesharing omnibus (Act 83)

Amends provisions relating to exemptions from mortgage brokers and solicitors law. Provides that a person licensed as a real estate broker or salesperson in the state selling timeshare interests on behalf of a timeshare plan developer that is licensed as a mortgage broker is exempt.

Amends provisions relating to timesharing plans.

- Defines **master development** as a real estate development that consists of more than 1 project, including but not limited to a planned community association with 1 or more sub-associations.
- Defines **person** as an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons or legal entity, or any combination thereof.
- Defines **blanket lien** to include master lease.
- Redefines **developer** to not include a person who has acquired 1 or more timeshare interests for the person's own use and occupancy and later offers the timeshare interest for resale; an association not otherwise a developer, that offers for sale, through its plan manager or a 3rd party, timeshare interests transferred to the association through foreclosure, conveyance in lieu of foreclosure, cancellation for nonpayment of assessments, or gratuitous transfer; and a licensed real estate broker who owns at any one time not more than 12 time share interests in a particular timeshare plan and later offers the timeshare interest for resale.
- Defines **project** as an individual condominium project; 2 or more contiguous condominium projects that have been merged for administrative purposes and that operate as a single condominium project; an individual cooperative housing project; an individual subdivision of a single family homes subject to 1 or more project instruments; or an individual subdivision of townhomes subject to 1 or more project instruments.
- Provides that a master development is not a project.

HB 0835 HD2 SD1 Timesharing plans/disclosure/signage (Act 81)

Amends provisions relating to prohibited practices of timeshare plans. Provides that it is a violation of law for any sales agent or acquisition agent of timeshare units or plans to use any unregistered timeshare booth, or fail to display at all times a conspicuous, clear and unobstructed sign of a permanent nature that contains the words timeshare or timesharing; and to receive from any prospective purchaser any money, property or other valuable consideration prior to signing a contract or

Continued on page 9

2005 Relevant Real Estate Legislation continued

Continued from page 8

reservation agreement for the purchase of a timeshare plan or unit; provided that this paragraph shall not apply to sums paid for a tourist activity or other product or service offered to a purchaser or prospective purchaser to induce attendance at a

timeshare sales presentation. Further provides that no developer, sales agent, or acquisition agent shall post anything on or adjacent to the sign that indicates that the booth is not being used for timeshare solicitation purposes. Repeals provisions relating to signs containing no artwork or text.

Specialists' Office for the Day Scheduled for Kauai

The Real Estate Commission's Real Estate and Condominium Specialists will set up offices for a day at Lihue, Kauai on Thursday, September 15, 2005, to discuss real estate licensing and condominium concerns with interested parties.

The Specialists' Office for the Day will be held from 12:30 p.m. to 2:30 p.m. in the Kauai Board of Realtors' office, 4359 Kukui Grove, #103.

The Specialists will be prepared to discuss questions about licensing laws and rules, licensing applications, broker experience certificate applications, examination administration, continuing education, new legislation, Commission procedures, educational programs, and related topics.

Other questions expected to come up at the sessions will concern boards, associations, meetings, managing agents,

condominium association registration, condominium hotel operators, fidelity bonding, the condominium property regime statute, public reports, project registration, the condominium dispute resolution program, new legislation, reserves, and other condominium-related topics.

If you have any questions, you may contact a Real Estate Specialist or a Condominium Specialist at (808) 586-2643 or dial toll-free from the island of Kauai, 274-3141, extension 6-2643.

You may also write to: Real Estate Commission, 335 Merchant Street, Room 333, Honolulu, Hawaii 96813.

The Specialists Office for the Day program is funded by the Condominium Education Fund and the Real Estate Education Fund.

Real Estate Commission 2005 Meeting Schedule

**Laws & Rules Review Committee
Education Review Committee
Condominium Review Committee
(These committees meet one after another,
beginning at 9 a.m.)**

Real Estate Commission, 9 a.m.

Wednesday, September 14, 2005*
Wednesday, October 12, 2005
Wednesday, November 9, 2005
Wednesday, December 7, 2005

Friday, September 23, 2005
Friday, October 28, 2005
Wednesday, November 23, 2005
Friday, December 16, 2005

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor, ***with the exception of the September 14, 2005 meetings**, which will be held in the Kauai Planning Commission's Meeting Room #2, in the Moikeha Building, located at 4444 Rice Street, Lihue, Kauai.

Meeting dates, locations, and times are subject to changed without notice. Please visit the Commission's website at www.hawaii.gov/hirec or call the Real Estate Commission Office at 586-2643 to confirm the dates, times, and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at 586-2643 to submit your request.

Scheduled Continuing Education

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

Courses with a (CORE) are approved 2005-2006 core courses and receive 4 hours credit. The core course will tentatively be available beginning September 2005. All other courses are electives and receive 3 hours credit. If you are taking courses to reactivate an inactive license this year, you must first satisfy the prescribed continuing education hours of one prior renewal period. If you are restoring a real estate license, telephone the Licensing Branch at (808) 586-3000 for specific instructions and information.

HILO

DATE	TIME	COURSE	PROVIDER	LOCATION	CITY	INSTRUCTOR
9/23/2005	09:00am	FINANCE	HAWAII ASSOCIATION OF REALTORS	HAWAII ISLAND BRD OF REALTOR	HILO	LOVENTHAL
10/14/2005	09:00am	CONTRACTS	HAWAII ASSOCIATION OF REALTORS	HI ISLAND BOARD OF REALTORS	HILO	KUWAHARA
11/7/2005	09:00am	ESSENTIALS OF LISTING	HAWAII ASSOCIATION OF REALTORS	HI ISLAND BOARD OF REALTORS	HILO	GOODALE
11/14/2005	09:00am	ESSENTIALS OF THE DROA	HAWAII ASSOCIATION OF REALTORS	HI ISLAND BOARD OF REALTORS	HILO	BEGIER
11/21/2005	09:00am	ESSENTIALS OF FINANCE	HAWAII ASSOCIATION OF REALTORS	HI ISLAND BOARD OF REALTORS	HILO	LEWIS

KONA

DATE	TIME	COURSE	PROVIDER	LOCATION	CITY	INSTRUCTOR
9/12/2005	09:00am	ESSENTIALS OF LISTING	KONA BOARD OF REALTORS INC	OUTRIGGER KEAUHOU BEACH HOTE	KAILUA-	FERRARI
9/19/2005	09:00am	ESSENTIALS OF THE DROA	KONA BOARD OF REALTORS INC	OUTRIGGER KEAUHOU BEACH HOTE	KAILUA-	LUCAS
9/26/2005	09:00am	ESSENTIALS OF FINANCE	KONA BOARD OF REALTORS INC	OUTRIGGER KEAUHOU BEACH HOTE	KAILUA-	KARLSON
10/5/2005	09:00am	LEGAL ISSUES	KONA BOARD OF REALTORS INC	ROYAL KONA RESORT	KONA	STONE
11/2/2005	09:00am	DISCLOSURE	KONA BOARD OF REALTORS INC	ROYAL KONA RESORT	KAILUA-	KUWAHARA
12/7/2005	09:00am	RESIDENTIAL TAX RULES, SECTION 1031 EXCHANGE, & FOREIGN INVESTORS	KONA BOARD OF REALTORS INC	ROYAL KONA RESORT	KAILUA-	KONISHI

MAUI

DATE	TIME	COURSE	PROVIDER	LOCATION	CITY	INSTRUCTOR
9/29/2005	09:00am	ESSENTIALS OF FINANCE	REALTORS ASSN OF MAUI INC	REALTORS ASSN OF MAUI, INC	KAHULUI	HOLIDAY
10/11/2005	09:00am	ESSENTIALS OF LISTING	REALTORS ASSN OF MAUI INC	REALTORS ASSN OF MAUI, INC.	KAHULUI	HAY
10/19/2005	08:30am	1031 EXCHANGES- AN INVESTORS DREAM	REALTORS ASSN OF MAUI INC	REALTORS ASSN OF MAUI, INC.	KAHULUI	YESK
10/19/2005	12:45pm	1031 EXCHANGES- AN INVESTORS DREAM	REALTORS ASSN OF MAUI INC	REALTORS ASSN OF MAUI, INC.	KAHULUI	YESK
10/20/2005	12:45pm	RS 206 "USING TODAY'S TECHNOLOGY TO CAPTURE YOUR MARKET"	REALTORS ASSN OF MAUI INC	REALTORS ASSN OF MAUI, INC.	KAHULUI	DOUMA
11/1/2005	08:30am	TITLE INSURANCE AND TITLE REPORT RED FLAGS	REALTORS ASSN OF MAUI INC	REALTORS ASSN OF MAUI, INC.	KAHULUI	NASSER
11/8/2005	09:00am	ESSENTIALS OF THE DROA	REALTORS ASSN OF MAUI INC	REALTORS ASSN OF MAUI, INC.	KAHULUI	HAY
11/16/2005	12:45pm	IRC 1031 TAX DEFERRED EXCHANGES IN TODAY'S MARKET	REALTORS ASSN OF MAUI INC	REALTORS ASSN OF MAUI, INC.	KAHULUI	TUMBAGA
11/18/2005	09:00am	FINANCE	REALTORS ASSN OF MAUI INC	REALTORS ASSN OF MAUI, INC.	KAHULUI	LOVENTHAL
12/13/2005	09:00am	ESSENTIALS OF FINANCE	REALTORS ASSN OF MAUI INC	REALTORS ASSN OF MAUI, INC.	KAHULUI	HOLIDAY

OAHU

DATE	TIME	COURSE	PROVIDER	LOCATION	CITY	INSTRUCTOR
9/16/2005	09:00am	ESTABLISHING AND OPERATING HOMEOWNERS' ASSOCIATIONS: UNDERSTANDING THE LEGAL ISSUES	LORMAN EDUCATION SERVICES	DOUBLE TREE ALANA WAIKIKI	HONOLULU	PANEL
9/16/2005	9:00am	ESTABLISHING AND OPERATING HOMEOWNERS' ASSOCIATIONS: UNDERSTANDING THE LEGAL ISSUES	LORMAN EDUCATION SERVICES	DOUBLE TREE ALANA WAIKIKI	HONOLULU	PANEL
9/21/2005	01:00pm	WILLS, TRUSTS & REAL ESTATE	ABE LEE SEMINARS	1585 KAPIOLANI BLVD #1530	HONOLULU	LEE
9/21/2005	09:00am	ZONING-ISSUES, PROBLEMS, QUESTIONS, ANSWERS	ABE LEE SEMINARS	1585 KAPIOLANI BLVD 1530	HONOLULU	LEE
9/22/2005	08:30am	CI 101: FINANCIAL ANALYSIS FOR COMMERCIAL INVESTMENT REAL ESTATE	HAWAII CCIM CHAPTER	UNIVERSITY OF PHOENIX	HONOLULU	HARVEY
9/22/2005	08:30am	CI 101: FINANCIAL ANALYSIS FOR COMMERCIAL INVESTMENT REAL ESTATE	HAWAII CCIM CHAPTER	UNIVERSITY OF PHOENIX	HONOLULU	HARVEY
9/22/2005	09:00am	PROPERTY MANAGEMENT AND MANAGING RISK	DOWER SCHOOL OF REAL ESTATE	DOWER SCHOOL OF REAL ESTATE	HONOLULU	WILIA
9/26/2005	09:00am	DISCLOSURE	HONOLULU BOARD OF REALTORS	HBR, HOLOMUA ROOM	HONOLULU	STONE
9/29/2005	01:45pm	WORKING WITH TICS (TENANT IN COMMON OWNERSHIP INTERESTS)	HAWAII CCIM CHAPTER	MAKAHA RESORT	WAIANAE	TROWBRIDGE
10/3/2005	09:00am	ESSENTIALS OF LISTING	HONOLULU BOARD OF REALTORS	HBR, HOLOMUA ROOM	HONOLULU	HOWE
10/5/2005	01:30pm	1031 EXCHANGES & OTHER TAX ISSUES	ABE LEE SEMINARS	1585 KAPIOLANI BLVD #1530	HONOLULU	LEE
10/14/2005	09:00am	LAND USE AND PERMIT REQUIREMENTS- RESIDENTIAL APPLICATIONS C & C OF HONOLULU	DOWER SCHOOL OF REAL ESTATE	1114 11TH AVENUE	HONOLULU	WILIA
10/17/2005	09:00am	CONTRACTS	HONOLULU BOARD OF REALTORS	JAPANESE CULTURAL CENTER	HONOLULU	CHONG

Scheduled Continuing Education

10/24/2005 09:00am	ESSENTIALS OF FINANCE	HONOLULU BOARD OF REALTORS	HBR, HOLOMUA ROOM	HONOLULU LOVENTHAL
11/2/2005 01:00pm	UNDERSTANDING CONTRACTS PART II	ABE LEE SEMINARS	1585 KAPIOLANI BLVD #1530	HONOLULU LEE
11/2/2005 09:00am	UNDERSTANDING CONTRACTS PART I	ABE LEE SEMINARS	1585 KAPIOLANI BLVD #1530	HONOLULU LEE
11/7/2005 09:00am	ESSENTIALS OF THE DROA	HONOLULU BOARD OF REALTORS	HBR, HOLOMUA ROOM	HONOLULU CHONG
11/14/2005 09:00am	AT HOME WITH DIVERSITY: ONE AMERICA	HONOLULU BOARD OF REALTORS	JAPANESE CULTURAL CENTER	HONOLULU SYKES
11/17/2005 09:00am	PROPERTY MANAGEMENT AND MANAGING RISK	DOWER SCHOOL OF REAL ESTATE	DOWER SCHOOL OF REAL ESTATE	HONOLULU WILIA
12/16/2005 09:00am	LAND USE AND PERMIT REQUIREMENTS- RESIDENTIAL APPLICATIONS C & C OF HONOLULU	DOWER SCHOOL OF REAL ESTATE	1114 11TH AVENUE	HONOLULU WILIA

Continuing Education Providers

PROVIDER	TELEPHONE	PROVIDER	TELEPHONE
Abe Lee Seminars	942-4472	Honolulu Board of Realtors	732-3000
Akahi Real Estate Network, LLC	331-2008	John Reilly	John@InternetCrusade.com
BOMA-Hawaii	847-0143	Kauai Board of Realtors	245-4049
Brian R. Thomas dba Edventures	885-2117	Kona Board of Realtors	329-4874
Coldwell Banker Pacific Properties	738-3926	Lorman Education Services	715-833-3940
Continuing-Ed-Online.Org	206-523-9801	Lynn W. Carlson	874-4064
Dower School of Real Estate Windward	263-9500	Pacific Real Estate Institute	524-1505
Dower School of Real Estate	735-8838	Premier Realty 2000, Inc.	955-7653
Duplanty School of Real Estate	737-5509	ProSchools, Inc.	503-297-1344
Eddie Flores Real Estate	951-9888	Realtors Association of Maui Inc.	873-8585
Fahrni School of Real Estate	486-4166	Russ Goode Seminars	597-1111
Hawaii Association of Realtors	733-7060	Seiler School of Real Estate	874-3100
Hawai'i CCIM Chapter	528-2246	Servpro Industries, Inc.	615-451-0600
Hayloft Climbers, LLC	753-2003	Terabiz	540-5400
Hogan School of Real Estate	1-800-794-1390	University of Hawaii at Manoa	956-8244
		Vitousek Real Estate Schools, Inc.	946-0505

Mandatory Core Course May Be Offered Starting Sept. 1

The Commission's mandatory core course, "Real Estate Law Review & Update 2005-2006," is ready to go and may be offered by certified continuing education providers in a live classroom or Internet format starting September 1, 2005.

The core course consists of a "2005 Hawaii State Law Update," "Agency and Agency Disclosure," Property Condition Disclosure," "Scope of Services – New Models for a New Millennium," "Managing Multiple Offers," and "1031 Exchanges."

The core course remains at 4 hours and all real estate licensees wishing to renew their license on active status in

2006 must complete the core course and 6 additional hours of continuing education elective courses.

Rulemaking Process Is Under Way

The Commission is going through the rulemaking process. Please submit any recommendations, with justification, to the Real Estate Branch via email at hirec@dcca.hawaii.gov, or mail at 335 Merchant Street, Room 333, Honolulu, HI 96813.

**State of Hawaii
Real Estate Commission Bulletin
King Kalakaua Building
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