2011 - 2012 Core Course Released and 20 Hours of Continuing Education for Renewals

The Commission’s mandatory core course for 2011-2012 was released towards the end of February, 2012. The core course for this biennium is a five-hour class which may be taken as one five-hour offering or in two 2.5 hour parts. Part I includes the 2011 Hawaii legislative update and the Introduction to Property Management. Part II completes the Property Management topic of the core course. Part I should be taken prior to taking Part II, however, Part I may be taken from a different continuing education provider, if necessary.

The online version of the 2011-2012 core course is also available from many of the Commission’s registered continuing education providers. The online version is only available in one five-hour offering, as online students may proceed through the course at their own speed.

Both the live classroom and the online version of the core course will be available through May 31, 2013. Thereafter, the 2011-2012 core course will NOT be available. Licensees who may be reactivating or restoring their license will have to complete either 20 hours of elective continuing education courses to reactivate their license, or currently, 15 hours of continuing education to restore their license.

The even-numbered year, 2012, is a renewal year for all real estate licensees. The renewal deadline is November 30th. All licenses expire on December 31, 2012. Be sure to plan ahead and renew your license by the November 30th deadline to ensure that your license is current and active come January 1, 2013.

Remember to FIRST check your CE History on the Online Real Estate Continuing Education website at www.hawaii.gov/hirec, before you register for a CE elective course. Current administrative rules do not allow licensees to take the SAME CE COURSE FOR CREDIT. If a course bears the SAME TITLE as a course you are considering taking, and you register for the course, you will not receive CE credit for taking the same course. Each licensee is responsible for checking his or her CE history in order to avoid taking duplicate CE courses.

ADVERTISING ... again

One of the most frequently queried topics by callers to the Real Estate Branch is advertising. Recently, the most frequently posed question is the rule on disclosing the licensee’s status in all advertisements. What does this mean?

First, advertising for real estate licensees applies to all forms of advertising, whether it is in publications such as newspapers, magazines, or business cards and stationery, signage, web pages, social media such as Facebook, Twitter, or advertising on Craig’s List, etc. In all advertising, individual real estate licensees who hold a current license, whether active or inactive, need to disclose their status as a real estate licensee. (Note: this particular rule, HAR, section 16-99-11(c) may be amended to delete “active”.) The reality of this rule is that active real estate licensees do not identify themselves as “active” in advertisements. License status does NOT apply to whether or not the licensee owns the real property being advertised. A licensee’s personal interest in a real proper must be disclosed to “. . . the purchaser, lessee, or tenant in writing prior to accepting any offer.” (See Hawaii Administrative Rules, section 16-99-3(g))

Trade names are allowed but only ONE trade name for an entity (Partnership, Corporation, Limited Liability Company, or Limited Liability Partnership) or sole proprietor. Salespersons may NOT have a trade name. A “license name” is allowed for all licensees. The licensee’s legal name is registered with the Commission. A licensee may also select a “license name” by including his or her nickname, initials, and the legal surname. The license name will appear on the “DBA” line on the pocket card.

continued on page 6
The Chair’s Message

HOW MUCH IS YOUR REAL ESTATE LICENSE WORTH?

Some of us can rarely recall the cost of our real estate license: the cost of the prelicensing course, the licensing exam, the application, renewal, continuing education. Beyond the cost in dollars, there are the emotional costs of having a license, well and dimly remembered.

But how much is our real estate license really worth? Can we even tally up the countless hours that it takes to assist people in making an informed decision on the purchase of a lifetime? Do we add up the number of transactions that we have completed, new cars, new homes, home care for an aging parent, ski trips to Vail, private schooling for our children, a vacation to Europe? Is it a plus or a minus to throw in hours spent with clients while we miss our children’s birthday parties, months assisting a family purchasing their first home only to have it fall out just before escrow closing, the horrifying discovery of hidden flaws in a property after the new buyers have moved in?

Perhaps the value of a license becomes apparent when a licensee, afraid of losing his or her license, must prove worthiness of retaining or obtaining it. Hawaii Revised Statutes (HRS) Chapter 467, Real Estate Brokers and Salespersons, and HRS Chapter 436B, Professional and Vocational Licensing Act, provide grounds for sanctions for license revocation, suspension, and fines and as well, rules for conduct defined in Hawaii Administrative Rules (HAR) Title 16 Chapter 99, Real Estate Brokers and Salespersons. As a member of the Real Estate Commission, I have heard testimony from people imploring the commission to grant them a license and others beseeching the commission to allow them to keep theirs after allegations of violations of these laws and rules of expected conduct. These stories have given me additional insight into what licensees really think a real estate license is worth.

A licensing candidate with a blemished past appears before the commission appealing to the board to grant him a license. He expresses sincere remorse for his previous acts and tells the commissioners that a real estate license will resurrect his reputation and allow him to start a new life with a meaningful job. What is a real estate license worth to this candidate? Is it a future of financial security, an opportunity to enter a profession, to give his family what he never had? Is it $50,000, $500,000 or unlimited financial reward? How much does he value this license to abandon past practices which may betray his retention of a license once he has earned it?

A real estate licensee with a lifetime of experience appears with her attorney to ask the commission not to revoke her real estate license. The attorney claims that the evidence against her is not incontrovertible, moreover the licensee has had an unblemished professional past and most importantly the licensee depends on her license to maintain her livelihood. What is a real estate license worth to her? Is it $5,000,000, $100,000,000 or an accumulated value not only of her net worth but of her future earnings to maintain the lifestyle to which she has become accustomed?

In my prelicensing classes I tell the students these stories of grown men and women with licenses in peril weeping before the commission, each claiming to be remorseful, and how the loss of a simple piece of paper, a real estate license, can and will change their lives forever. This is the same piece of paper that my students are preparing to earn. We remember feeling the importance of our license when we first received it and indeed it did change our lives as it will theirs if they lose it. What is your license worth?

As I reflect on the value of my own real estate license I can say that nearly everything I have today I owe to my license: my adventures, my experiences, my challenges, my comfort and the well being of my family. Most of all, my license has given me an opportunity to do what I love, every minute of every single day. What is my license worth?

Every day our real estate practice presents challenges to us as we focus on the goals of our clients. How many opportunities for errors or omissions do we face in our busy quest to assist those who rely on the professionalism bestowed upon us by our real estate license? We eagerly review the Real Estate Commission Bulletin’s Administrative Actions to see if any licensee named is someone we know, and silently ask ourselves, “There but for the grace of God go I?” A recitation of the statutory and rule violations accompanies the administrative actions in each issue. Beyond mere words, these laws and rules take on new meaning for us when applied to particular transgressions by a licensee, helping us to remember the strict statutory guidelines under which we practice our profession. They also help us to remember the value of our license, today, tomorrow and every day as long as we have the right to practice real estate.

We also remember the Realtor’s Code of Ethics, applicable pursuant to HRS 436B, as the ethical standard for all licensees emphasizing duties to clients, customers, the public and other licensees and the value that we bring to our communities through our practice. Is it the sum total of these obligations that your real estate license is worth?

As I was finishing up this article I asked a prominent real estate broker, “How much is your real estate license worth?” He looked off into the distance as if deep in thought. Finally, he looked back at me, and quietly responded, “It’s priceless.”

How much is your real estate license worth?

Carol Ball, Chair
Factual Findings: REC 2008-257-L On 9/12/07 Complainant loaned Respondent $20,000.00 to invest in houses Respondent was purchasing for resale. Respondent promised 10% per month until the total amount was repaid. Respondent executed a promissory note dated 9/12/07 promising to pay Complainant $22,000.00 on 10/12/07. Respondent repaid Complainant $4,000.00. However, despite repeated requests, Respondent has not paid Complainant the balance of the loan or the interest promised. REC 2008-283-L Summer of 2007, Complainant went to House of Finance to refinance his mortgage. While there, he was referred to Respondent who spoke to him about investing in real estate. Respondent told him that she owned thirteen homes that she was planning to fix up and sell for a quick profit. Complainant agreed to participate by loaning Respondent money. On 7/27/07, Complainant loaned Respondent $50,000.00 and Respondent agreed to repay Complainant $55,000.00. They executed a promissory note where Respondent promised to pay Complainant $55,000.00 by 8/20/07. On 8/24/07, Complainant and his wife loaned Respondent another $50,000.00 and executed another promissory note that was due in full 4 weeks later. Respondent made a $5,000.00 payment to Complainant on 8/23/07. Because the check cleared when he cashed it, he had no hesitation to loan Respondent the second $50,000.00. Respondent gave Complainant nine checks that were returned for insufficient funds. To date, Respondent has not paid Complainant the balance of the loan or the interest promised. REC 2009-167-L On 9/4/09, a Judgment of $130,006.87 was entered against Respondent in Civil No. 08-1-2558-12 in the Circuit Court of the First Circuit, State of Hawaii. On 3/19/09, a Notice of Lien was filed at the Bureau of Conveyances against real property owned by Respondent in the amount of $123,500.00. The lien was based on Respondent’s default of a Note for a loan made to Respondent. On 6/10/08, Findings of Fact, Conclusion of Law and Order Granting Plaintiff’s Motion for Summary Judgment and Decree of Foreclosure Against All Defendants on Complaint Filed on 8/14/07 was filed in the Circuit Court of the First Circuit, Civil No. 07-1-1494-08. On 6/9/08, a Certificate of State Tax Lien was recorded at the Bureau of Conveyances against Respondent in the amount of $8,496.05 for unpaid general excise taxes. On 6/9/08, a Certificate of State Tax Lien was recorded at the Bureau of Conveyances against Respondent in the amount of $86,590.32 for unpaid individual taxes. On 3/19/08 a Certificate of County Civil Fine Lien was recorded at the Bureau of Conveyances against Respondent by the City and County of Honolulu, Department of Planning and Permitting in the amount of $6,300.00 for unpaid assessed civil fines.

During the course of investigating these matters, Petitioner’s investigator sent letters to Respondent seeking a response but received none from Respondent.

Order: License revocation and pay a $20,000.00 fine and restitution totaling $111,000.00.

Violations: HRS §§467-14(2), (8), (13), (20) and HAR §16-99-3(b)
Administrative Actions (cont. from page 4)

January 2012

Donald Leighton Garwood  
a.k.a Donald L. Garwood  
Broker – RB 17407  
Case No: REC 2011-57-L  
Dated 1/27/12

Allegations: On or about 4/14/10, a no contest plea judgment was entered against the Respondent, in the District Court of the First Circuit, State of Hawaii, for the crime of driving under the influence. Respondent disclosed the conviction in writing to the Commission via Respondent’s 12/28/10 license renewal application and documents attached thereto. Upon information and belief, the Respondent fulfilled all Court-imposed terms and conditions of the conviction.

Sanction: Pay an administrative fine of $500.00

Violations: HRS §§436B-19(14), (17)

Casey Paet  
Salesperson – RS 61480  
Case No: REC 2011-285-L  
Dated 1/27/12

Allegations: RICO received information that Respondent, as an employee of Cadmus Properties Corporation, is assigned to be the property manager of Pearl Kai Terrace. Respondent is also a member of Kekai Construction Group, LLC. Kekai Construction was hired by the Pearl Kai Terrace Board of Directors to undertake a door replacement project; however, Kekai Construction was not properly licensed as a contractor to do this project. Respondent submits that in or about July 2011 the Pearl Kai Terrace was in the process of being painted and during the painting project termite damage was discovered in 90% of the entry doors and doorframes. In light of the ongoing painting project and time restraints, the Pearl Kai Board solicited a proposal from Kekai Construction to replace the doors and doorframes. The Pearl Kai Board requested that the project start immediately. Disclosure of Respondent’s ownership interest in Kekai Construction was made prior to the Pearl Kai Board awarding the contract for the door replacements. Respondent further submits that he believed that Kekai Construction member, William Elaban, was properly licensed as a contractor and based on the representations made by Mr. Elaban, believed that Kekai Construction was a properly licensed entity. In forming this business, at no time was Respondent informed that Mr. Elaban’s license was inactive. Further, Respondent did not know that Kekai Construction needed its own separate contractor’s license. When Respondent was informed by RICO that Kekai Construction was not properly licensed, Respondent immediately stopped all work being performed. Respondent then made sure that all the required paperwork was submitted for Kekai Construction to obtain licensure and settled the citation that had been issued to Kekai Construction by paying a $2,500.00 fine.

Sanction: Pay a $500.00 fine.

Violation: HRS §436B-19(16)

February 2012

Naomi Capistran  
Salesperson – RS 69778  
Case No: REC 2011-53-L  
Dated 2/24/12

Allegations: On or about 4/5/10, a no contest plea judgment was entered against the Respondent, in the District of the First Circuit, State of Hawaii, for the crime of driving under the influence. The Respondent disclosed the April 2010 conviction in writing to the Commission via Respondent’s 11/14/10 license renewal application. As a result of the April 2010 conviction, Respondent’s driver’s license was suspended, and, Respondent was required to pay fees, take courses, and, undergo a substance abuse assessment. On or about 5/15/10, the Respondent was arrested for the crime of driving in violation of restrictions placed on a license and/or while a license or privilege to operate a vehicle remains suspended or revoked. Respondent pled guilty to the crime in the District Court of the First Circuit, State of Hawaii, on or about 4/18/11. As a result of the April 2011 conviction, Respondent’s driver’s license was revoked, Respondent was required to serve jail time, and, Respondent was required to pay miscellaneous fees and costs. On or about 7/15/10, the Respondent was arrested for the crime of driving without a valid driver’s license. Respondent pled guilty to the crime in the District Court of the First Circuit, State of Hawaii, on or about 2/16/11. As a result of the February 2011 conviction, Respondent’s driver’s license was revoked, and, Respondent was assessed miscellaneous fees and costs. The Respondent received traffic infractions, between 9/1/09 and 5/15/10 that were also reduced to judgments.

Sanctions: Pay a $500.00 fine

Violations: HRS §§436B-19(12), (14), (17)
Allegations: On or about 5/16/11, a no contest plea judgment was entered against the Respondent, in the District Court of the Third Circuit, State of Hawaii, for the crime of driving under the influence. Respondent disclosed the conviction in writing to the Commission via a letter and documents received by the Commission on or about 6/29/11. On the Respondent’s original application for real estate salesperson license dated 11/17/03, the Respondent answered “no” to the question “during the past 20 years have you ever been convicted of a crime where there has not been an order annulling or expunging the conviction.” The Respondent however was convicted of DUI in 2002. Respondent failed to report the 2002 DUI on the 2003 license application because Respondent did not think, at that time, that a DUI was criminal conviction.

Sanctions: Pay a $1,000.00 fine.

Violations: HRS §§436B-19(12), (14), (1), (2), (5), HRS §467-8(a)(3), HRS §467-14(13), HRS §467-20

Factual Findings: On 7/11/05, a Final Judgment was filed in Civil No. 04-01-118K. The Judgment stated that Respondents “shall perform and complete all of their obligations under the DROA which shall include construction forthwith of the house as agreed and sale of the house/lot package to Plaintiffs at the price agreed upon in the DROA.” Plaintiffs were also awarded $17,295.00 in attorney’s fees and $1,155.22 in costs. On 8/8/05, Respondents appealed the Final Judgment. On 1/29/07, a Partial Satisfaction of Final Judgment was filed. Payment of attorney’s fees and costs in the amount of $18,450.22 was paid, and that portion of the Final Judgment was deemed satisfied. On 2/20/07, an Order Granting Petitioner’s Petition for an Order to Show Cause why Defendants Should Not Be Held in Contempt of Court was filed. As sanctions, the Court ordered Respondents to pay the Plaintiffs $150.00 per day beginning as of the date of the hearing (11/3/06) and continuing until the terms of the subject DROA are completed, including construction of the subject home and closing of the sale. On 10/29/08, the Intermediate Court of Appeals of the State of Hawaii issued a Judgment on Appeal, affirming the judgment of the Third Circuit Court entered on 7/11/05. On 9/8/09, Respondents Leopold and Clutter signed a Release and Settlement Agreement and a Warranty Deed. The Settlement Agreement stated that Respondents were to transfer the subject property by Warranty Deed to the Plaintiffs. The property was to be free and clear of any and all liens and County of Hawaii property taxes, which were delinquent as of 7/2009. However, the settlement was not completed and the property has not been transferred to the Plaintiffs. By a letter dated 7/21/11 to Petitioner, Kenneth A. Ross, Esq., attorney for the Plaintiffs, informed Petitioner that to date, Respondents had not satisfied the Judgments/Orders. The letter further stated that the amount of the Circuit Court Order as of 6/27/11 was $254,550.00 with $150 being accrued daily from 6/28/11 until satisfied and the Intermediate Court of Appeals judgment was currently $24,730.06. Respondents did not report the Final Judgment to the Real Estate Commission within thirty (30) days.

Order: Suspension of Respondents’ license until the Final Judgment and Order are satisfied. Respondents’ licenses shall be automatically revoked if the Final Judgment and Order remain unsatisfied at the end of the suspension period (five years).

Violations: HRS §467-14(20); HRS §§436B-19(1), (7), (9), (11), (12); HRS §436B-16
Statutory/Rule Violations

Settlement Agreement (Allegations/Sanction): The respondent does not admit to the allegations set forth by the Regulated Industries Complaints Office (RICO) and denies having violated any licensing law or rule. The respondent enters into a Settlement Agreement as a compromise of the claims and to conserve on the expense of proceeding with a hearing on the matter.

Disciplinary Action (Factual Findings/Order): The respondent is found to have violated the specific laws and rules cited, and the Commission approves the recommended order of the Hearings Officer.

HRS §467-8(a)(3) No license, registration, or certificate under this chapter shall be issued to any person who does not possess a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.

HRS §467-14 (2) Making any false promises concerning any real estate transaction of a character likely to mislead another.

HRS §467-14(8) Conduct constituting fraudulent or dishonest dealings.

HRS §467-14(13) Violating this chapter, chapters 484, 514A, 514B, 514E, or 515, or section 5§16-71, or the rules adopted pursuant thereto.

HRS §467-14 (20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.

HRS §467-20 False statement.

HRS §436B-16 Notice of judgments, penalties.

HRS §436B-19(1) Failure to meet or maintain the conditions and requirements necessary to qualify for the granting of a license.

HRS §436B-19(2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements.

HRS §436B-19(5) Procuring a license through fraud, misrepresentation, or deceit.

HRS §436B-19(7) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation.

HRS §436B-19(9) Conduct or practice contrary to recognized standards of ethics for the licensed profession or vocation.

HRS §436B-19(11) Engaging in business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public.

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.

HRS §436B-19(14) Criminal conviction.

HRS §436B-19(16) Employing, utilizing, or attempting to employ or utilize at any time any person not licensed under the licensing laws where licensure is required.

HRS §436B-19(17) Violations of Chapter §467, HRS, or any other rule or order of the licensing authority.

HAR §16-99-3(b) Licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field.

ADVERTISING ... again (cont. from page 1)

Advertising may be in the legal name or license name of the licensee. For entities or sole proprietors, advertising may be in either the name of the brokerage or the trade name.

The next section is probably the most asked-about portion of the advertising rules, HAR section 16-99-11(c)(1), (2), (3).

“ALL advertising and promotional materials that refer to the individual licensee’s name, including but not limited to business cards, SHALL: (emphasis added)

1. Include the licensee’s legal name, name as licensed by the Commission, or sole proprietor’s trade name
2. Identify the name of the licensee’s associating or employing brokerage firm, and
3. Specify that the licensee is a broker (B), or salesperson (S), or if a current member of the Hawaii Association of REALTORS®, Realtor (R) or Realtor-Associate (RA).” (Note: This rule is also pending rule-making amendments where the rule would simply require a real estate licensee to indicate if they have either a “B” (real estate broker) or “S” (real estate salesperson) license.)

Finally, and this is a direct quote from HAR section 16-99-(f), “If the address of any unregistered place of business is included in advertising materials, then the street address of the principal place of business or the branch office, as the case may be, shall be included and respectively identified as such.”

When would this rule apply? If a brokerage firm’s principal place of business is located on Oahu, and they open a branch office on Oahu, the brokerage has the option to either register or not register the branch office. Let’s say they choose to not register the Oahu branch office. In reading the above rule, if the address of this unregistered branch office is used in an ad, then the address of the principal place of business must also appear in the ad and must be identified as the address of the principal place of business.

Note that the advertising rules do not mention the use of website addresses or telephone numbers. Remember when a consumer goes onto your website, the website is considered advertising, so the required information should be included on each screen. Because individual screens may be printed, the consumer should be confident that when printing out information he or she has come across on the internet, that the information is compliant with all applicable laws and rules.
Abe Lee Seminars 808-942-4472
Akahi Real Estate Network LLC 808-331-2008
All Islands Real Estate School 808-564-5170
Carol Ball School of Real Estate 808-871-8807
Coldwell Banker Pacific Properties 808-597-5550
Dower School of Real Estate 808-735-8838
Fahymi School of Real Estate 808-486-4166
Hawaii Institute of Real Estate (HIRE) 808-536-1211
ProSchools, Inc. 800-452-4879
Ralph Foulger’s School of Real Estate 808-239-8881
REMI School of Real Estate 808-230-8200
Seiler School of Real Estate 808-874-3100
University of Hawaii at Manoa Outreach College 808-984-3231
University of Hawaii Maui College – OCET 808-956-2037
Vitousek Real Estate Schools, Inc. 808-946-0505

360training.com 512-539-2869
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Akahi Real Estate Network LLC 808-331-2008
All Islands Real Estate School 808-564-5170
Carol Ball School of Real Estate 808-871-8807
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Seiler School of Real Estate 808-874-3100
University of Hawaii at Manoa Outreach College 808-984-3231
University of Hawaii Maui College – OCET 808-956-2037
Vitousek Real Estate Schools, Inc. 808-946-0505

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.
2012 Real Estate Commission Meeting Schedule

Laws & Rules Review Committee – 9:00 a.m.
Condominium Review Committee – Upon adjournment of the Laws & Rules Review Committee Meeting

Education Review Committee –
Upon adjournment of the Condominium Review Committee Meeting

Real Estate Commission – 9:00 a.m.

Wednesday, May 9, 2012
Wednesday, June 13, 2012
Wednesday, July 11, 2012
Wednesday, August 8, 2012
Wednesday, September 12, 2012
Wednesday, October 10, 2012
Wednesday, November 7, 2012
Wednesday, December 12, 2012

Friday, May 25, 2012
Friday, June 29, 2012
Friday, July 27, 2012
Friday, August 24, 2012
Friday, September 28, 2012
Friday, October 26, 2012
Wednesday, November 21, 2012
Friday, December 21, 2012

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission’s website at www.hawaii.gov/hirec or call the Real Estate Commission Office at (808) 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 (808) 586-2643 to submit your request.