

## Real Estate Commission Bulletin



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## Heed The Following

**SMART Deadline:**

Complete the required 20 hours of continuing education ("CE") (15 hours of elective CE courses and 5 hours of the Commission's Core Course) before November 30th, 2012, and submit the license renewal application ONLINE. The Online Renewal went "LIVE" on October 15th. Go to [pvl.hawaii.gov/renewals](http://pvl.hawaii.gov/renewals)

If a CE course is completed on November 30th, the CE Provider has 10 days to report the course completions to the Commission. **COMPLETE THE REQUIRED CE BEFORE NOVEMBER 30th.**

It is highly recommended that the licenses/registrations of the brokerage firm, PB, BICs, and RBOs be simultaneously renewed during early November and prior to renewals of all associating licensees to ensure sufficient time to correct any problems and to ensure successful renewals of associating licensees. If an associating licensee's renewal application is submitted before the renewal applications of the PB, BICs, and brokerage firm, the associating licensee's renewal application may be held in **suspense** until the PB, BIC(s), and brokerage firm have successfully renewed all licenses.

**AT RISK to Miss Renewal:**

Procrastination in completing the 20 hours of required CE may impact the successful renewal of your real estate license. If you expect to have a current and active real estate license come January 1, 2013, you must submit your license renewal application before the November 30th deadline. This also assumes you have completed the required CE by the same deadline.

**GUARANTEED to Miss Renewal:**

Procrastination in completing the required hours of CE and submitting your renewal application after the November 30th deadline is a guarantee that your license will not be current and active on January 1, 2013. Do you have on-going real estate transactions? You will NOT be able to engage in real estate activity. Have transactions on-going? Too bad. Until your real estate license is current and active, all on-going real estate activity must come to a halt.

**REMEMBER:** by January 1, 2013, licenses which are not renewed are converted to a **forfeited status**. If this conversion takes place, disciplinary action may occur and the consumer may recover all commissions and/or compensations paid. If you engage in real estate activity with a forfeited license, you may face disciplinary action by the Regulated Industries Complaints Office ("RICO").

<http://pvl.hawaii.gov/rece> - Go to this website to verify your CE history, the specific CE courses you have completed, the number of CE hours you have earned, and if you have completed the 20 hours CE required. PBs may also use this site to check on the CE status of their associated licensees.

**RENEWAL FEES:**

Broker: Corporation, Partnerships, LLC, LLP	\$230.00
Broker: Sole Proprietor	210.00
Salesperson, Broker-salesperson, PB, BIC	180.00
Branch Office	180.00

(Note: Renewal fees include the \$90.00 Compliance Resolution Fund (CRF) fee and a \$40.00 Real Estate Education Fund (REEF) fee, plus the renewal fee.)

Only paper renewals are available for continuing education and pre-license education matters. All pre-license schools, pre-license instructors, CE providers, and CE courses, as well as nationally- or ARELLO-certified CE courses must be re-registered or re-certified, as the case may be, by November 30, 2012. Re-registration and re-certification fees are:

CE Provider	\$190.00
CE Elective Course	75.00
Nationally- or ARELLO-Certified Course	25.00/each 3 hours or portion thereof
Pre-license School	440.00
Pre-license Instructor	190.00
Pre-license Independent Study Course Instructor	50.00
Pre-license Independent Study Course – Salesperson And/Or Broker curriculum	150.00

(Note: There is a \$10.00 restoration fee that should be added on to the above renewal fees if re-registering or re-certifying after December 31, 2012.)

## The Chair's Message



Aloha Kakou!

It's been just over one hundred days since my appointment as Chair. In that short period, I've experienced the pressure of mastering Robert's Rules of Order, which I have not used since my high school student council days, to many insightful discussions with administrators, condominium practitioners and real estate sales-

persons and brokers to ensure the continual improvement and growth of the Commission. Also during my brief tenure, numerous real estate license applicants and education course providers have taken the time and effort to appear before the Commission to advocate passionately for their applications or courses. I've discovered that the discussion surrounding each presentation educates the Commission in the current practices and concerns of the industry, as well as contributes to shaping the Commission's policies and procedures.

Some of the most interesting agenda items that have come before the Commission are requests for informal nonbinding interpretations of laws within the Commission's jurisdiction, which include Chapters 467 (Real Estate Brokers and Salespersons) and Chapter 514A or 514B (Condominium Property Act), of the Hawaii Revised Statutes ("HRS"). In fact, my first appearance before the Commission in 2003 was to request an informal nonbinding interpretation of "material change," as used in the Condominium Property Act, and to clarify the impact on my client's condominium project. Guidance provided by the Commission was one of the main reasons why I developed an interest in serving on the Commission.

The Commission's authority to issue informal nonbinding interpretations originates from HRS, Section 467-4 and Hawaii Administrative Rules ("HAR"), Title 16, Chapter 201, Subchapter 5. Informal nonbinding interpretations do not require evidentiary hearings or legal arguments and are utilized mainly where a prompt interpretation can be made based on the facts, without further investigation. The goal is to provide an "informal, just, speedy, and inexpensive resolution of inquiries", making it an excellent resource for real estate and legal professionals. (HAR §16-201-85(b))

The Commission has the discretion to accept a request for informal nonbinding interpretation by considering the following factors: 1)

whether the facts are clear and sufficiently detailed enough to understand the fact situation; 2) whether the question being asked is clear; and 3) whether there has been a consistent historical pattern of deciding similar inquiries as a basis for the Commission's response.

In the past, some very interesting issues have come before the Commission through requests for informal nonbinding interpretations, including the number of brokers named in owner-occupant announcements (January 1994); interpretation of "material change" in a condominium project (August 2003); the method of describing limited common element land areas (November 2000); and disclosure of the number of written counteroffers by the seller's agent (January 2002). To review full versions of these informal nonbinding interpretations and others, visit [http://hawaii.gov/dcca/real/condo\\_ed/condo\\_nbomem](http://hawaii.gov/dcca/real/condo_ed/condo_nbomem).

To request an informal nonbinding interpretation, you can write a letter request to the Commission, incorporating in your letter the factors outlined above. A staff member will contact you to notify you of the date on which your request will be placed on the Commission's meeting agenda and will send you a copy of the agenda.

As for that "material change" informal nonbinding interpretation I received in 2003, we still refer to that interpretation in our law practice for guidance; however, keep in mind, that informal nonbinding interpretations are only based on the specific facts provided and should not be used as a general interpretation of law. Also, the interpretation is provided for informational and explanatory purposes only, meaning that the interpretations might be considered in court for guidance only. What if you need to rely on something more formal? You have the right to obtain a formal binding ruling by filing a petition for a declaratory ruling in accordance with HAR, Title 16, Chapter 201, Subchapter 3, Declaratory Relief.

If something is unclear, informal nonbinding interpretations are helpful resources to get clarification on issues quickly and economically.

On a final note, I would also like to welcome Commissioner Arakaki and Commissioner Faulkner. They both undoubtedly will be great resources to the Commission!

(s) Nikki Senter, Chair

# Administrative Actions

## July 2012

**W. Augustuz Elliott aka William Elliott**

Broker – RB 16922

Case No: REC 2011-158-L

Dated 7/30/12

**Allegations:** Respondent self-reported to the Commission, on his 2010 renewal application, a criminal conviction he received in Japan in early 2010. The conviction was for conspiring to, and importing into the country contraband, while traveling there with a family member in December of 2009. Respondent provided the Commission with copies of the relevant court records from the Japanese proceedings. Respondent was sentenced to 44 days in jail by the Japanese authorities and fulfilled the terms of the sentence. The family member that traveled with the Respondent to Japan had been diagnosed previously with chronic pain syndrome. The family member possessed a certificate from the State of Hawaii Narcotics Enforcement Division that allowed the family member to have and use the contraband for medical purposes. The certificate was in effect when Respondent and the family member traveled to Japan in December of 2009. Respondent and the family member did not, therefore, foresee or contemplate that importing about 6/10 of an ounce of the material to Japan, for use by the family member after the family member's surgical procedure, would run afoul of Japan's contraband and customs laws.

**Sanctions:** Pay a \$500.00 administrative fine.

**Violations:** HRS §436B-19(12), (17) and HRS §467-14(8), (20)

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## August 2012

**Ed Baumgartner**

**Broker - RB 19899 and**

**Tropic Lightning Real Estate, LLC**

Broker – RB 19226

Case No: REC 2011-59-L

Dated 8/24/12

**Allegations:** Respondents represented the seller of a property located in Ewa Beach. The subject property had a cloud on title due to improperly signed foreclosure documents. On or about November 2, 2010, buyers entered into a contract to purchase the subject property. Respondents did not disclose to the buyers the cloud on the title of the subject property. The buyers agreed to extend escrow through February 15, 2011 to allow the seller to remove the cloud on the title. On February 14, 2011, in an action to clear the title, the Land Court requested additional information and evidence relating to a previous foreclosure and declined to amend the certificate of title for the subject property. The buyers cancelled the contract when it became clear that the cloud on title would not be cleared in the foreseeable future. The buyers incurred expenses related to the sales contract that they would have not incurred had the cloud on the title been disclosed.

**Sanction:** Pay a \$500.00 fine.

**Violations:** HRS §467-14(18), (20), HRS §436B-19(7), (9), (11)

## 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 in 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.

<b>HRS §467-14(8)</b>	Conduct constituting fraudulent or dishonest dealings.
<b>HRS §467-14 (18)</b>	Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS or AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact.
<b>HRS §467-14 (20)</b>	Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.
<b>HRS §436B-19(7)</b>	Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation.
<b>HRS §436B-19(9)</b>	Conduct or practice contrary to recognized standards of ethics for the licensed profession or vocation.
<b>HRS §436B-19(11)</b>	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.
<b>HRS §436B-19(12)</b>	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.
<b>HRS §436B-19(17)</b>	Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.



## Charisa Flores Joins Real Estate Branch

Charisa Flores is the new Education Clerk with the Real Estate Branch ("REB"). She was formerly with the Regulated Industries Complaints Office ("RICO") where she worked for the past 17 years with the Consumer Resource Center and most recently, with the RICO's Field Investigation section.

Charisa joins REB just in time for the 2012 renewals. All prelicense school principals, instructors and CE providers and instructors will enjoy working with this friendly, happy, and hard-working addition to the REB staff.



## Commission Clarification - Splitting Fees

At its October 10, 2012 monthly meeting, the Real Estate Commission's Laws and Rules Review Committee (LRRC) clarified its informal, non-binding interpretation issued at its June 13, 2012 LRRC meeting regarding Hawaii Revised Statutes (HRS) section 467-14(14)(A), which reads, "Revocation, suspension, and fine. In addition to any other actions authorized by law, the commission may revoke any license issued under this chapter, suspend the right of the licensee to use the license, fine any person holding a license, registration, or certificate issued under this chapter, or terminate any registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following: (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a real estate broker may pay a commission to: (A) A licensed real estate broker of another state, territory, or possession of the United States, if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid; . . .".

The LRRC determined that its informal, non-binding interpretation also applies to HRS section 467-14(14)(B), which follows section 467-14(14)(A) above and reads, "(B) A real estate broker lawfully engaged in real estate brokerage activity under the laws of a foreign country if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid; . . .".

The LRRC's informal, non-binding interpretation states that Hawaii-licensed brokers may pay a referral fee to out-of-state brokers and real estate brokers in a foreign country, but the out-of-state broker or foreign real estate broker may not conduct in Hawaii any real estate negotiations by any means of communication, as they are not licensed in Hawaii, and are prohibited from engaging in any activity for which a Hawaii real estate license is required.

To further amplify the above, the LRRC determined that any form of communication, for example, telephone calls, emails, faxes, etc. may not be used by the out-of-state broker to enter into any real estate negotiations. The out-of-state broker may only receive a referral fee from the Hawaii real estate broker. The amount of the referral fee is negotiable between the concerned parties.

Should a complaint arise in the above scenario, review, investigation and any possible disciplinary action would be against the Hawaii licensee, not the out-of-state or foreign licensee.

It is important to remember that the licensing laws and rules do not differentiate between licensees who engage in residential or commercial real estate. All laws and rules apply across the board.



## Welcome New Public Member Scott C. Arakaki

The most recent addition to the Real Estate Commission is Scott C. Arakaki. He was appointed as an interim member effective August 2012. Mr. Arakaki is an attorney specializing in the areas of real estate and commercial transactions and law, and personal injury litigation. Mr. Arakaki received his Juris Doctor degree from the University of Notre Dame, and his Bachelor of Arts degree from the University of Hawaii – Manoa.

Mr. Arakaki is an instructor of real estate continuing education, has co-authored real estate continuing education courses, as well as articles which have appeared in several publications.

# Department of Taxation Announcement No. 2012-12

RE: Act 326, Session Laws of Hawaii 2012, Relating to Taxation House Bill 2078, H.D. 2, S.D. 2, C.D. 1 became law without Governor Neil Abercrombie's signature as Act 326 (the "Act"), effective July 1, 2012.

The Act requires operators of transient accommodations to do the following:

- Designate a local contact residing on the same island as the transient accommodation.
- Provide the local contact's contact information to any entity with covenants, bylaws or administrative provisions operational with respect to the property on which the transient accommodation exists (e.g., an association of unit owners). Such information must be updated within 60 days of any change.
- Include the local contact's name and phone number in any contract or written rental agreement.
- Provide on a website or by online link and display in all advertisements and solicitations on websites the registration identification number issued under HRS § 237D-4. This registration identification number is also sometimes referred to as the TAT tax license number. Please also note that for some taxpayers the Transient Accommodations Tax ("TAT") license number may contain a different suffix from the taxpayer's GET tax license number.

The Act requires any nongovernmental entity with covenants, bylaws and administrative provisions which is formed pursuant to chapter 514A, 514B or 421J to do the following:

- Provide to the Department of Taxation (the "Department") relevant information related to operators leasing transient accommodations on its property. The relevant information includes the operator's name, address, contact information, registration identification number issued under HRS § 237D-4 (i.e., the TAT tax license number) and website address if advertising or soliciting the transient accommodation on the internet.
- Provide the relevant information by December 31 of each year, or within 60 days of a change, whichever is later. Further guidance on how taxpayers will provide this relevant information will be forthcoming

The Department will provide a transition period to allow taxpayers to meet the requirements of this Act.\* No penalties will be imposed on taxpayers who fail to provide to the Department before January

1, 2013 relevant information related to operators leasing transient accommodations on their property; however a penalty will be imposed if the taxpayer fails to timely provide the relevant information after December 31, 2012. The Department will issue further guidance when it determines the manner and form in which taxpayers should submit this information. The Department notes that the Act's definition of "relevant information" is broader than the information operators are required to submit to the nongovernmental entities (e.g., website address). No penalties will be imposed on taxpayers who fail to provide relevant information where the law does not require an operator to provide that relevant information to the taxpayer.

Additionally, no penalties will be imposed for operators of transient accommodations who fail to designate a local contact before January 1, 2013, nor for operators who fail to provide the local contact's information before January 1, 2013, nor for operators who fail to include the local contact's name or phone number in any contract or written rental agreement executed before January 1, 2013. However, penalties will be imposed for operators who fail to designate a local contact after December 31, 2012, fail to provide the local contact's information after December 31, 2012 or fail to include the local contact's name or phone number in any contract or written rental agreement executed after December 31, 2012.

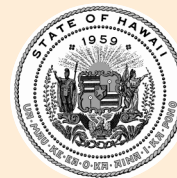
Further, taxpayers have until January 1, 2013 to comply with the requirement to display registration identification numbers on websites.

For more information related to this Announcement, please contact the Rules Office at 808-587-1577.

\*NOTE: The Department will be extending the transition period and ACT 326 will not be enforced until April 1, 2013. An updated announcement will be forthcoming in the near future.

## Prelicense Schools

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 Real Estate School	808-597-5550
Dower School of Real Estate	808-735-8838
Fahrni 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



## 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.

## Continuing Education Providers

360training.com	512-539-2869	Levin & Hu, LLP	808-270-1096
Abe Lee Seminars	942-4472	Lorman Education Services	715-833-3940
Akahi Real Estate Network LLC	808-331-2008	Lynn W. Carlson	
All Islands Real Estate School	564-5170	McKissock, LP	800-328-2008
Career Webschool	800-532-7649	Pacific Real Estate Institute	524-1505
Carol Ball School of Real Estate	808-871-8807	Performance School of Real Estate Finance	480-339-1571
Carol M. Egan, Attorney at Law	222-9725	ProSchools, Inc.	800-299-2207
Coldwell Banker Pacific Properties Real Estate School	597-5550	Ralph Foulger's School of Real Estate	239-8881
Continuing Ed Express LLC	866-415-8521	Real Class, Inc.	808-981-0711
Distressed Properties Institute, LLC	800-482-0335	Realtors Association of Maui Inc.	808-873-8585
Dower School of Real Estate	735-8838	REMI School of Real Estate	230-8200
Eddie Flores Real Estate Continuing Education	951-9888	Richard Daggett School of Real Estate	923-0122
ERA School of Real Estate a Division of SRH Inc.	808-981-0711	Russ Goode Seminars	597-1111
Great Lakes Institute of Real Estate	248-559-7555	Seiler School of Real Estate	808-874-3100
Green Building, LLC	808-283-2183	Servpro Industries, Inc.	615-451-0200
Hawaii Association of Realtors	733-7060	Shari S. Motooka-Higa	457-0156
Hawaii CCIM Chapter	528-2246	The CE Shop, Inc.	888-827-0777
Hawaii Institute of Real Estate (HIRE)	561-7653	The Seminar Group	206-463-4400
Hawaii Island Realtors	808-935-0827	UH Maui College – OCET	808-984-3231
Hogan School of Real Estate	800-794-1390	University of Hawaii at Manoa Outreach College	956-8244
Honolulu Board of Realtors	732-3000	Vitousek Real Estate Schools, Inc.	808-956-2037
Kauai Board of Realtors	808-245-4049	West Hawaii Association of Realtors	808-329-4874

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Real Estate Commission  
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## 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

**Wednesday, November 7, 2012**

**Wednesday, December 12, 2012**

Real Estate Commission – 9:00 a.m.

**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](http://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.*