



# School Files

Hawaii Real Estate Commission

<http://www.hawaii.gov/hirec>

July 1999



## 1999 LEGISLATIVE UPDATE!

The following are summaries of new laws passed for the 1999 Legislative Session:

### Act 47, Relating to Real Estate Brokers and Salespersons

Act 47 was approved by Governor Cayetano on April 26, 1999. As previously reported, this law codifies the responsibilities of the principal broker. The principal broker shall continue to have direct management and supervision of the brokerage firm and its real estate licensees and be responsible for the following:

- ⇒ The client trust account, disbursements from those accounts, and the brokerage firm's accounting practices;
- ⇒ The brokerage firm's records, contracts, and documents;
- ⇒ All real estate contracts of the brokerage firm and their handling by the associated real estate salespersons;
- ⇒ The proper handling of any commission application, real estate license application, or renewal application that the principal broker or the brokerage firm expressly agrees to handle on behalf of the applicant, including without limitation, verifying for completeness and appropriate fees, and mailing or delivering the appropriate documents to the commission by the required deadline;
- ⇒ Developing policies and procedures for the brokerage firm concerning the handling of real estate transactions and the conduct of the associated real estate licensees and other staff, including education and enforcement of the policies and procedures;

- ⇒ Setting a policy on continuing education requirements for all associated real estate licensees in compliance with the statutory requirement;
- ⇒ Ensuring that the licenses of all associated real estate licensees and the brokerage firm license are current and active;
- ⇒ Establishing and maintaining a training program for all associated real estate licensees; and
- ⇒ Ensuring that all associated licensees are provided information and training on the latest amendments to real estate licensing laws and rules as well as other related laws and rules.

This new law also provides that continuing education providers shall:

- ⇒ Certify that instructors have met the commission requirements (§16-99-104, Hawaii Administrative Rules);
- ⇒ Ensure that instructors are competent in the subject matter of the course and are current in their knowledge of the subject matter; and
- ⇒ Ensure that the course is based on current information, laws and rules. (See related article "Responsibilities of the Continuing Education Provider.")

This law also directs that the Hawaii Association of REALTORS convene a work study group including various interested parties (e.g., the Commission) to discuss and make recommendations on continuing education and administration issues.

### Act 240, Relating to Real Estate Brokers and Salespersons

Act 240 was the Commission's "omnibus" bill which covered the following:

- ⇒ Provides a candidate who may have a questionable background (i.e., failure to maintain a reputation for or record of honesty, truthfulness, financial integrity and fair dealing) to secure a nonbinding preliminary advisory decision from the Commission as to whether or not they may be granted a license prior to expending re-

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## 1999-2000 CONTINUING EDUCATION CORE COURSE

As you know, the Hawaii Real Estate Research and Education Center ("Center") was responsible for completing past core courses. The Commission's contract with the Center terminated at the end of June and the Commission no longer provides any funding to the Center. A Center-produced draft of the 1999-2000 core course is currently under review by the Commission. It is hoped that the course will be ready for distribution and an instructor briefing this Fall.

Meanwhile, the Commission has approved a continuing education core course developed by the Hawaii Association of REALTORS. The HAR course is given in two parts and contains: a legislative update on key legislation affecting the real estate industry; current issues, including red flags in title reports; and an update on revisions made to the Hawaii Association of REALTORS' standard forms.

Pursuant to Act 240 (1999 Session Laws Hawaii), the Commission has the authority to specify one or more mandatory core courses or equivalencies for a biennium and either to develop its own continuing education courses or approve courses developed by others. (§16-99-87, Hawaii Administrative Rules also defines "core course" as "one or more" mandatory CE courses.) Also, the Commission could determine that no core course would be mandatory during a particular biennium.



### ASI TEST DEVELOPMENT SCHEDULED FOR AUGUST 1999

ASI will be holding its test development sessions all day on August 16 & 17 and its industry day from 9:00 a.m. - 12 noon on August 18th, at the Hyatt Regency in Waikiki.

The industry day will include an ASI Test Development overview, discussion on any changes to the exam or content outline and will also include a question and answer session.

The Commission encourages those interested to attend since this is an opportu-

nity for most administrators and instructors to speak to ASI representatives face-to-face.

## ISSUANCE OF CONTINUING EDUCATION CERTIFICATES

Did you know that according to Hawaii Administrative Rules, §16-99-112(b) "[w]ithin ten days of the end of any continuing education course, the continuing education provider shall issue to each student, having completed the course, a certificate of completion of course on a form prescribed by the commission. . . ."?

Timely issuance of completion certificates is very important to the licensee and the Commission. Also, the provider must promptly submit the roster disk so that the information maybe downloaded into the Commission's system and ultimately downloaded to the Licensing Branch system, so that a licensee may renew with correct continuing education credits.

Another important rule for providers to remember is Hawaii Administrative Rules, §16-99-115. It states that, "[p]rior to allowing any licensee into a continuing education course, a continuing education provider shall verify the identification of that licensee. At minimum, the continuing education provider shall require a picture identification and a current real estate pocket card or notification of licensed status from the commission. . . ." If a student is taking the continuing education course(s) to restore a license, the provider must make sure the proper code is used and the appropriate color of certificate is issued.



### NEW!! LAWS AND RULES ONLINE!

Hawaii Revised Statutes ("HRS") Chapter 467 and Hawaii Administrative Rules ("HAR") Chapter 99 "Real Estate Brokers and Salespersons" are available for viewing on the internet at:

HRS = <http://www.capitol.hawaii.gov>  
HAR = <http://www.state.hi.us/dcca>

(Note: As of this publication date, the internet websites have not been updated to include changes made during the 1999 legislative session.)

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- sources and funds to comply with prelicense education and examination requirements.
- ⇒ Changes the experience for broker candidates from two years full-time and ten real estate transactions to three years experience immediately prior to the licensing examination. Recognizes out-of-state experience as partial equivalency.
- ⇒ Allows the Commission to recognize an equivalency for out-of-state licensees who passed another state's uniform section of the prelicensing exam.
- ⇒ Changes the requirements for license restoration, so that licensees forfeited more than one year but less than four years must successfully complete the Commission approved course or courses or must pass the prelicense examination for the level of license forfeited while licensees forfeited more than four years must successfully pass the examination.
- ⇒ Eliminates site office registration requirement. Changes branch office from licensing to registration.
- ⇒ Simplifies and clarifies the registration for condominium hotel operators. Upon request by the Commission, an operator shall provide evidence of the fidelity bond or a certification statement from an insurance representative that the fidelity bond is in effect and meets the requirements of the Commission.

**Act 236, Relating to Condominiums**

- ⇒ Allows AOAO's to collect delinquent maintenance and common expenses directly from the tenant, if certain procedures are followed.
- ⇒ AOAO's may foreclose liens for unpaid common expenses by nonjudicial or power of sale foreclosure procedures as an alternative to legal action.
- ⇒ The purchaser of an apartment at foreclosure becomes liable for common assessments 36 days after the order confirming the sale has been filed with the court, 60 days after the court hearing confirming the sale, or upon recording of the deed, whichever occurs first.
- ⇒ As an alternative to foreclosure proceedings, AOAO's may terminate services and privileges to apartments delinquent in payment of common assessments, if certain procedures are followed.

- ⇒ Specifies where an association may deposit or hold its funds (includes federal or community credit unions, located in the State and whose deposits are insured by an agency of the United States Government) and how it may invest its funds (demand deposits; investment certificates; certificates of deposit; federal or State of Hawaii obligations with maturity dates no more than ten years after purchase unless a majority of apartment owners approves a longer maturity; or mutual funds comprised solely of obligations in such federal or State of Hawaii obligations).

**Act 242, Relating to Family Child Care**

- ⇒ Includes condominiums, apartments and townhouses to be eligible as family child care homes (FCCHs).
- ⇒ FCCHs are allowed to operate in townhouse projects if they meet certain conditions: ground floor unit with ground floor entry by the owner-occupant of the townhouse; notify the association in writing of intent to begin operating no later than 90 days prior to commencing operations and that any improvements or remodeling be in compliance with the ADA.
- ⇒ An association may authorize the use of an apartment or unit as a FCCH by obtaining the approval of a majority of the owners of the condominium project or planned community as a "majority" is defined in its bylaws.
- ⇒ Condominium associations will have conditional immunity from liability arising from the operation of a FCCH on the premises.
- ⇒ This law to be repealed on June 30, 2001.

A variety of sources have copies of these legislative acts, including public libraries, the Senate Printshop, the House Clerk's Office, the Lt. Governor's Office, and the Supreme Court Library.

**Submerged Lands**

The Planning Department of the County of Hawaii has recently apprised the Real Estate Commission about information relating to submerged lands in the County of Hawaii. Excerpts from that letter appear here.

If a lot owner wants to build on a piece of property and a shoreline certification is needed, it may be denied or dismissed on the grounds that the shoreline is located inland of

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the property and the lot is considered submerged. Shoreline certifications are valid for one (1) year.

The State Surveyor may conduct a Shoreline Certification Survey of these areas to determine the true shoreline and clarify the State Land Use designation. However, since these lands are considered "private," approval from the owners to allow representatives of the State, including the State Surveyor, the right to enter the property to conduct a site inspection and verification of the shoreline is needed.

The lot owner is then directed to apply for a Conservation District Use Permit to build, however, it may be denied on the grounds that that building cannot be approved because it is located on submerged lands.

Another problem arises due to the non-disclosure of the submerged lands to potential buyers of these properties as there are no indications according to the tax maps that the lots are submerged because they are listed as State Land Use "Urban" District — yet they are submerged.

### RESPONSIBILITIES OF THE CONTINUING EDUCATION PROVIDER



Act 47, provides that continuing education providers shall be responsible for certifying that instructors meet Commission's requirements, ensuring that instructors are competent in the subject matter, including current in their knowledge of the subject matter and that the course is based on current information, laws and rules.

So, although continuing education instructors are no longer required to be certified directly by the Commission, providers will be responsible for ensuring that their instructors meet the Commission's requirement under Hawaii Administrative Rules §16-99-104. As previously announced, the current Course Offering form (revised in May 1999) includes a certification statement that the instructor meets the Commission's requirements.

Providers should maintain in their files a Statement of Ethical Teaching Practices signed by each instructor. Hawaii Administrative Rules §16-99-112, "Record keeping information and retention period," states that each provider shall maintain for a period of at least 4 years . . . personal information and resumes of its instructors and administrators. The information and documentation should be available for review by the Commission and/or its representative.

### TENANCY AND "RECIPROCAL BENEFICIARY"

*The following article is being provided for informational purposes only and is not to be construed as a legal interpretation.*

Pursuant to Chapter 509-2, Hawaii Revised Statutes, **Creation of joint tenancy, tenancy by the entirety, and tenancy in common.** (a) Land, or any interest therein, or any other type of property or property rights or interests or interest therein, may be conveyed by a person to oneself and another or others as joint tenants, or by a person to oneself and one's spouse or **reciprocal beneficiary**, or by spouses to themselves, or by **reciprocal beneficiaries** to themselves, as tenants by the entirety, or by joint tenants to themselves and another or others as joint tenants, or tenants in common to themselves or to themselves and another or others as joint tenants, or by tenants by the entirety to themselves or tenants by the entirety to the tenant's spouse or **reciprocal beneficiary** of all of the tenant's interest or interests, without the necessity of conveying through a third party, and each such instrument shall be construed as validly creating a joint tenancy, tenancy by the entirety, tenancy in common, or single ownership, as the case may be, if the tenor of the instrument manifestly indicates such intention.

Chapter 572C of the Hawaii Revised Statutes defines "reciprocal beneficiaries" as two adults who are parties to a valid reciprocal beneficiary relationship and meet the requisites for a valid reciprocal beneficiary relationship. The purpose for the creation of "reciprocal beneficiaries" was to extend certain rights and benefits that are presently available only to married couples to couples composed of two individuals who are legally prohibited from marrying under state law.

Requisites of a valid "reciprocal beneficiary" relationship are as follows:

1. Each of the parties be at least eighteen years old;
2. Neither of the parties be married nor a party to another reciprocal beneficiary relationship;
3. The parties be legally prohibited from marrying one another under Chapter 572;
4. Consent of either party to the reciprocal beneficiary relationship has not been obtained by force, duress, or fraud; and
5. Each of the parties signs a declaration of reciprocal beneficiary relationship.

Two persons who meet the requisites may enter into a reciprocal beneficiary relationship and register their relationship as reciprocal beneficiaries by filing a signed notarized declaration of reciprocal beneficiary relationship with the Director of the De-

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partment of Health. The cost is \$8 and upon payment of the fee, the Director will register the declaration and provide a certificate of reciprocal beneficiary relationship to each party named on the declaration.

Upon issuance of the certificate of reciprocal beneficiary relationship, the parties named in the certificate shall be entitled to those rights and obligations provided by the law to reciprocal beneficiaries. Unless otherwise expressly provided by law, reciprocal beneficiaries shall not have the same rights and obligations under the law that are conferred through marriage under Chapter 572, HRS.

Termination of reciprocal beneficiary relationship may occur under any one of the following:

1. Either party may terminate the relationship by filing a signed notarized declaration of termination of reciprocal beneficiary relationship and an \$8 filing fee with the director;
2. Any marriage license subsequently issued by the Department of Health to any individual registered as a reciprocal beneficiary shall automatically terminate the individual's existing reciprocal beneficiary relationship; or
3. If either party to a reciprocal beneficiary relationship enters into a legal marriage, the parties shall no longer have a reciprocal beneficiary relationship and shall no

### NEW PROCEDURES FOR RESTORATION APPLICATIONS

Effective July 2, 1999, Act 240 simplifies and clarifies the procedures for restoration of forfeited licenses including adding options and expanding the restoration periods. The procedures when applying for restoration of a forfeited license are as follows:

#### License Forfeited Over One Year But Under Four Years

1. Call Licensing Branch at 586-3000 for a restoration application packet. At this time, you may verify the date your license expired.
2. All restoration candidates must complete the continuing education requirements for the prior biennium. The application packet includes a schedule of continuing education courses.
3. Successfully complete either **a** OR **b** of the following:

- a. A Commission approved prelicensing real estate course for the level of license forfeited (e.g. if you were a salesperson when your license was forfeited, you must take the salesperson prelicense course). The packet also contains a schedule of prelicense courses available.

OR

Successfully complete the following *three* real estate courses: "Essentials of Listing," "Essentials of Finance" and "Essentials of the DROA." Contact the local Boards of REALTORS for information regarding the Essentials courses.

- b. Pass the licensing examination for the level of license you forfeited. The packet includes a candidate handbook as well as the special waiver form needed to sit for the examination.

4. Upon completion of the continuing education requirement and the course or examination requirement, the restoration application may be submitted **within 30 days of completion of the course or exam requirement** with the following:

- ⇒ Complete restoration application, signed and dated. If "YES" answer to any questions, additional information/documentation is required.
- ⇒ A statement, signed and dated, stating your activities since forfeiture, emphasizing real estate related activities and education.
- ⇒ Fees - 2 separate payments required: \$25 non-refundable fee and all delinquent fees and penalties indicated on the application form.
- ⇒ Original continuing education certificates and original proofs of completion of course or examination.
- ⇒ A Change Form - Real Estate, only if restoring on active status.

#### License Forfeited Over Four Years

Same steps as 1, 2, and 4. For step 3, individual must take and pass prelicense examination for the level of license forfeited.

A restoration candidate may also choose to start over as a new salesperson. The restoration procedures described above do not apply to persons whose licenses will be restored within one year of forfeiture, who should contact the Licensing Branch for instructions.

## INSTRUCTOR EVALUATION/MONITORING

Due to the expiration of the contract with the Hawaii Real Estate Research and Education Center ("Center"), instructor evaluation forms, envelopes, etc., no longer will be mailed to providers and schools. At the July 1999 Education Review Committee meeting, it was decided that instructor evaluations will be conducted for those courses being monitored by staff or representatives of the Commission.

The Commission still believes that the evaluation and monitoring of instructors is a vital learning tool for instructors and encourages each instructor, provider and school to conduct their own evaluation process.

### Y2K Announcement

Professional and Vocational Licensing Division reports that Licensing Branch's computer licensing system is fully Y2K compliant.

## APPROVED EDUCATION APPLICATIONS

### Continuing Education Instructors:

M. Lee Ruggles

Course categories: Contracts, Property Management and Real Estate Law Update & Ethics

### Continuing Education Courses:

Eddie Flores: "Avoid Litigation - How to Detect Red Flags," "Comprehensive 1031 Exchange", "Foreclosure & the Role of the Commissioner," "Hawaii Landlord-Tenant Code," "Homeowner's Tax Strategies," "How to List & Sell Business Opportunities," "Pitfalls in DROA & Addenda" and "Pitfalls in Managing Residential Properties."

Hawaii Association of REALTORS: "1999-2000 Legislative Update and Current Issues."

Gino L. Gabrio: "Commercial Real Estate Sales and Leasing."

State of Hawaii  
Real Estate Commission

### SCHOOL FILES

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## COMMISSIONERS AND STAFF

In June, the Commission bid a very fond farewell to Commissioner Helen Lindemann, Vice-Chair of the Education Review Committee. Ms. Lindemann was a great asset to the Commission, contributing her knowledge of the profession and fairness in dealing with various issues. She is currently serving as the President of the Hawaii Association of REALTORS. We wish her the very best!

Patricia Choi, of Oahu, has been appointed as a new Commissioner and we would like to welcome her aboard! Ms. Choi is president and principal broker of Patricia Choi Realty, Inc.

Also, I'd like to take this opportunity to thank everyone, since I also will be leaving the Commission staff at the end of July. I have taken another position in the department which I hope will be as gratifying as my position with the Commission. It has been a very rewarding 6 years and I'm very grateful for all the opportunities and for the people I've met during my time here. Thank you! Lee Ann.

## SCHOOL FILES

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