

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendments and Compilation of Chapter 16-114
Hawaii Administrative Rules

December 5, 2008

SUMMARY

1. §16-114-2 is amended.
2. §16-114-14 is amended.
3. A new §16-114-20.5 is added.
4. §§16-114-21 to 16-114-23 are amended.
5. A new §16-114-23.5 is added.
6. §16-114-24 is amended.
7. §16-114-26 is amended.
8. A new §16-114-26.5 is added.
9. §16-114-27 is amended.
10. §16-114-35 is amended.
11. §16-114-38 is amended.
12. §16-114-40 is amended.
13. §§16-114-46 to 16-114-47 are amended.
14. §§16-114-55 to 16-114-57 are amended.
15. §16-114-64 is amended.
16. §16-114-69 is amended.
17. §16-114-71 is amended.

18. A new §16-114-71.5 is added.
19. §§16-114-79 to 16-114-80 are amended.
20. §§16-114-88 to 16-114-89 are amended.
21. §§16-114-106 to 16-114-107 are amended.
22. §16-114-137 is amended.
23. §16-114-140 is amended.
24. Chapter 114 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 114

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-114-1 Objective. This chapter is intended to clarify and implement chapter 466K, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§466K-1, 466K-3)

§16-114-2 Definitions. As used in chapter 466K, HRS, and in this chapter:

"Appraisal" or "appraisal report" means a written or oral statement independently and impartially prepared, setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

"Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

"Appraisal Standards Board" means the board appointed by the Appraisal Foundation to establish rules for developing and reporting of an appraisal.

"Appraiser Qualifications Board" means the board appointed by the Appraisal Foundation to establish criteria for appraiser licensing and certification.

"Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) consisting of representatives from the federal financial institutions regulatory agencies and from the Department of Housing and Urban Development.

"Appraiser" or "real estate appraiser" means a state licensed or state certified appraiser who for a fee or other valuable consideration prepares appraisal reports.

"Appraiser assistant" means a person who is not licensed or certified as an appraiser but who assists in the preparation of an appraisal under the direct supervision of a certified appraiser.

"Certificate" means that document issued by the director indicating that the person named thereon has satisfied the requirements for certification as a state certified appraiser.

"Certificate holder" means the person in whose name the director grants a certificate.

"Complex one-to-four family residential property appraisal" means one in which the property to be appraised, market conditions, or form of ownership is atypical and the atypical factor has a significant value contribution. For example, atypical factors may include but are not limited to:

- (1) Architectural style;
- (2) Age of improvements;
- (3) Size of improvements;
- (4) Size of lot;
- (5) Neighborhood land use;
- (6) Potential environmental hazard liability;
- (7) Property interests;
- (8) Limited readily available comparable sales data; or

(9) Other unusual factors.

"Direct supervision" means to actively and personally review the appraisal report of an appraiser assistant, and to approve and to sign the report as being independently and impartially prepared and in compliance with the uniform standards of professional appraisal practice (USPAP).

"Director" means the director of commerce and consumer affairs.

"Federal Financial Institutions Examination Council" means the council created under the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. §3301 et seq.) consisting of representatives from the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration Board or any respective successors.

"Federally related transaction" means any real estate-related financial transaction entered into on or after October 1, 1991, that:

- (1) Any federal financial institutions regulatory agency, Resolution Trust Corporation, or any regulated institution engages in or contracts for; and
- (2) Requires the services of an appraiser.

"Forfeit" or "forfeiture" means the immediate and automatic termination of a license or certificate without any prior consultation with the licensee or certificate holder caused by the licensee or certificate holder's failure to comply with the requirements for maintaining or renewing the license or certificate.

"Hawaii real estate appraiser advisory committee" or "committee" means the body established pursuant to section 466K-3, HRS.

"License" means the document issued by the director indicating that the person named thereon has satisfied all requirements for licensure as a state licensed appraiser.

"Licensee" means the person in whose name the director grants a license.

"Market value" means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- (1) Buyer and seller are typically motivated;
- (2) Both parties are well informed or well advised, and acting in what each considers in the party's own best interest;
- (3) A reasonable time is allowed for exposure in the open market;

- (4) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by any person associated with the sale.

In applying this definition of market value, adjustments to the comparable properties must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs that are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable properties by comparisons to financing terms offered by a third party financial institution that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar-for-dollar cost of the financing or concession, but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

"Real estate" or "real property" means an identified parcel or tract of land, with improvements, and includes easements, rights of way, undivided or future interests, or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights, or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

"Real estate-related financial transaction" means any transaction involving:

- (1) The sale, lease, purchase, investment in, or exchange of real property, including interests in property, or the financing thereof;
- (2) The refinancing of real property or interests in real property; or
- (3) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

"Regulated institution" or "federal financial institution" means any institution regulated by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the National Credit Union Administration or any respective successors.

"Reinstate" or "reinstatement" means the granting of permission to perform appraiser work by the director to a person whose license or certificate has been previously suspended.

"Residential property" means any parcel of real estate, improved or unimproved, that is utilized for one-to-four family purposes and where the

highest and best use is for one-to-four family purposes. A residential unit in a condominium, townhouse, or cooperative complex is considered to be residential real estate. Residential property does not include subdivisions wherein a development analysis or appraisal is necessary or utilized.

"Restore" or "restoration" means the granting of permission to perform appraiser work by the director to a person whose license or certificate has been previously forfeited.

"State certified appraiser" or "certified appraiser" means any individual who, having met the requirements of chapter 466K, HRS, and this chapter, has been certified as a state certified general appraiser or a state certified residential appraiser.

"State certified general appraiser" or "certified general appraiser" means any individual who, having met all requirements of chapter 466K, HRS, and this chapter, is certified to perform appraisal assignments for all real estate property types.

"State certified residential appraiser" or "certified residential appraiser" means any individual who, having met all requirements of chapter 466K, HRS, and this chapter, is certified to perform appraisals pursuant to section 16-114-71(b).

"State licensed appraiser" or "licensed appraiser" means any individual who, having met all requirements of chapter 466K, HRS, and this chapter, is licensed to perform appraisals pursuant to section 16-114-70.

"Transaction value" means:

- (1) For loans or other extensions of credit, the amount of the loan or extension of credit;
- (2) For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property involved; or
- (3) For the purchase or sale of loans or interests in real property pooled for sale, the amount of the loan or the market value of the real property calculated with respect to each loan or real property interest in the pool.

The transaction value for a series of related transactions will be calculated as if only one transaction is involved if it appears that an entity is attempting to evade the requirements to have the appraisal performed by a state licensed or state certified appraiser. Master appraisals performed in support of Housing and Urban Development, Federal Housing Administration, or Veterans Administration loan transactions will not be considered as one transaction.

"Uniform standards of professional appraisal practice" or "USPAP" means the uniform appraisal standards including ethics and competency provisions established by the Appraisal Standards Board as adopted and as it

may subsequently be amended by the Appraisal Foundation. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09]
 (Auth: HRS §466K-3) (Imp: HRS §§466K-1, 466K-3)

SUBCHAPTER 2

POWERS AND DUTIES OF THE DIRECTOR

§16-114-7 Powers and duties of the director. The director shall have the following powers and duties:

- (1) To grant, deny, renew, or refuse to renew permission to practice as a licensed or certified real estate appraiser in this State;
- (2) To adopt, amend, or repeal rules as the director finds necessary to effectuate fully this chapter and 12 U.S.C. §3301 et seq.;
- (3) To enforce this chapter and 12 U.S.C. §3301 et seq., and rules and regulations adopted pursuant thereto;
- (4) To discipline a real estate appraiser for any cause prescribed by this chapter or 12 U.S.C. §3301 et seq., or for any violation of the rules and regulations and refuse to grant a person permission to practice as a real estate appraiser for any cause that would be grounds for disciplining a real estate appraiser;
- (5) To act as the designated representative of this State to implement 12 U.S.C. §3301 et seq.;
- (6) To appoint a Hawaii real estate appraiser advisory committee to assist with the implementation of this chapter and 12 U.S.C. §3301 et seq., and the rules and regulations adopted pursuant thereto;
- (7) To revoke or suspend the permission to practice as an appraiser in this State or otherwise condition the scope of the license or certification of the appraiser for any violation of chapter 466K, HRS, or this chapter;
- (8) To delegate to the regulated industries complaints office (RICO), which shall be funded by the compliance resolution fund fee, the authority to facilitate the receipt, arbitration, investigation, and prosecution of complaints or any violation of chapter 466K, HRS, or this chapter;
- (9) To subpoena witnesses, administer oaths, and receive affidavits and oral testimony, and do any and all things necessary or incidental to the exercise of the director's powers and duties;

- (10) To contract with qualified persons, including attorneys, hearings officers, accountants, investigators, and other necessary personnel to assist the director in exercising the director's powers and duties; and
- (11) To contract with a professional testing agency to develop and administer examinations. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§26-9, 466K-3)

§16-114-8 Delegation of authority. The director may delegate any of the director's powers and duties as the director deems reasonable and proper, provided that the director shall not delegate the director's power and duty to:

- (1) Adopt, amend, or repeal rules;
- (2) Order disciplinary action against a licensee or certificate holder; including the revocation, suspension, or imposition of fine; and
- (3) Grant, deny, renew, refuse to renew, or otherwise condition a license or certificate unless the granting, denying, refusal to renew, or conditioning of a license or certificate does not require the exercise of the director's expertise and discretion. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§26-9, 466K-3)

SUBCHAPTER 3

HAWAII REAL ESTATE APPRAISER ADVISORY COMMITTEE

§16-114-13 Hawaii real estate appraiser advisory committee. (a) There shall be a Hawaii real estate appraiser advisory committee consisting of seven members appointed by the director to assist with the implementation of chapter 466K, HRS, and this chapter.

(b) Three members of the committee shall be appraisers who have been actively performing appraisal work for a period of not less than five years preceding the date of the member's appointment. Two members of the committee shall have been employed in a position requiring familiarity with loan transactions by a savings and loan, a commercial bank, credit union, thrift, or similar institution for at least five years; and two members shall be public members who shall represent the broad public interest.

(c) Except for appraiser members first appointed, appraiser members subsequently appointed shall be state licensed or state certified appraisers holding a current state license or state certificate.

(d) Each member of the committee shall serve without pay. However, actual and necessary expenses, including travel expenses incurred in connection with the performance of the member's official duties, shall be paid by the department upon a member's presentation of vouchers approved by the director.

(e) The committee shall meet not less than once a year at a time and place determined by the director.

(f) Immediately upon the appointment and qualification of the original members, and annually thereafter, the committee shall organize by election of one member as chair and one member as vice chair. In the absence of both the chair and vice chair to preside at a meeting, the members present shall select a chair pro tem.

(g) The committee shall keep a record of all its proceedings in accordance with the provisions of chapter 92, HRS. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-14 Terms of members. (a) The terms of the members shall be for four years; provided that the director may reduce the terms of members initially appointed so as to stagger terms so that the term of one member expires in the first year; the term of two members expires in the second year; the term of two members expires in the third year; and the term of two members expires in the fourth year.

(b) Except for terms of those members first appointed, each term shall commence on July 1 and expire on June 30.

(c) No person shall be appointed consecutively to more than two terms as a member of the committee provided that membership on the committee shall not exceed eight consecutive years.

(d) Any member whose term has expired may continue in office as a holdover member until a successor is appointed; provided that a holdover member shall not hold office beyond the end of the calendar year that the member's term expired.

(e) A vacancy occurring in the membership of the committee during a term shall be filled for the unexpired term thereof by the director.

(f) The director may remove or suspend for cause any member of the committee after due notice. [Eff 3/11/91; am and comp 9/23/91; comp 4/17/98;

am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

SUBCHAPTER 4

LICENSE AND CERTIFICATION REQUIREMENTS

§16-114-19 License or certification required. It shall be unlawful for an individual who is not licensed or certified under chapter 466K, HRS, and this chapter to prepare or hold oneself out as being able to prepare an appraisal in connection with a federally related transaction requiring licensure or certification under chapter 466K, HRS, and this chapter. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§466K-1, 466K-3)

§16-114-20 Requirements. All applicants for a license or certificate shall possess a reputation and record for honesty, trustworthiness, fairness, and financial integrity; meet educational and experiential requirements; and shall pass an examination approved by the Appraiser Qualifications Board of the Appraisal Foundation. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-20.5 College requirement. After December 31, 2007, an applicant for a state certified residential appraiser certificate or a state certified general appraiser certificate shall have and submit a copy of the applicant's college degree or evidence of its equivalent pursuant to the current Appraiser Qualifications Board college level course requirements as may be amended. [Eff and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-21 Education requirement. (a) Applicants shall submit proof of successful completion of courses taken from approved course providers in subjects related to real estate appraisal which shall include coverage of the national USPAP course or its equivalent.

- (1) An applicant for licensure or certification shall have met the Appraisal Qualification Board's current qualifying education

requirements as may be amended. The national USPAP course or its equivalent shall have been completed within the two years preceding the application date.

- (2) A classroom hour is defined as fifty minutes out of each sixty minute segment and may include time devoted to examinations.
- (3) Credit toward the classroom hour requirement will not be granted unless the length of the educational offering is at least fifteen hours and the applicant successfully completes an examination pertinent to that educational offering.
- (4) Credit may be granted for teaching a course, provided the course is an approved course.
- (5) No credit will be granted for distance education including correspondence courses, or internet courses, or video or remote television offerings unless the course has been approved by the Appraiser Qualifications Board through the Course Approval Program.
- (6) Applicants must demonstrate that the applicant's education included coverage of all the topics listed below:
 - (A) Influences on real estate value;
 - (B) Legal considerations in appraisal;
 - (C) Types of value;
 - (D) Economic principles;
 - (E) Real estate markets and analysis;
 - (F) Valuation process;
 - (G) Property description;
 - (H) Highest and best use analysis;
 - (I) Appraisal math and statistics;
 - (J) Sales comparison approach;
 - (K) Site value;
 - (L) Cost approach;
 - (M) Income approach;
 - (N) Valuation of partial interests; and
 - (O) Uniform standards of professional appraisal practice.
- (7) Applicants for certification shall, in addition to the topics listed above, demonstrate that the applicant's education included narrative report writing.
- (8) Courses taken to satisfy the qualifying education requirements should not be repetitive in nature. Each course credited toward the required number of qualifying education hours should

represent a progression in which the appraiser's knowledge is increased.

- (9) It shall be the applicant's responsibility to ensure that the course provider verifies the number of classroom hours and the length of the educational offering, and that the applicant successfully completed an examination for the course.
- (10) USPAP education credit shall only be awarded when the class is taught by an Appraiser Qualifications Board certified instructor who is also a state certified residential or general appraiser. Equivalency to the national USPAP course shall be determined by the Appraiser Qualifications Board.
 - (b) An applicant for state licensure may be granted educational credit by challenge examination provided:
 - (1) The course has been approved by the director; and
 - (2) Credit by challenge examination was obtained prior to July 1, 1990.
 - (c) An academic credit hour for a semester earned from a college, university, community college, or junior college accredited by a nationally recognized accreditation organization shall be equal to fifteen hours and an academic credit hour for a quarter shall be equal to ten hours. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-22 Approval of course providers or courses. (a) Colleges, universities, community colleges, and junior colleges accredited by nationally recognized accreditation organizations and state or federal agencies or commissions are approved course providers.

(b) Real estate appraiser associations or real estate related organizations, proprietary schools, and others shall be approved provided the course provider or the course offered by the course provider has been endorsed by the Appraisal Foundation or the Appraiser Qualifications Board Course Approval Program and proof of the endorsement is filed with the director.

(c) Real estate appraiser associations or real estate related organizations, proprietary schools, and other providers may be approved by the director provided the course provider submits the course description, course objectives, detailed course schedule which includes the number of minutes spent on each topic, course material, application fee, and instructor qualifications to teach the course, and agrees to:

- (1) Submit, upon request, the copy of the course examination for review;
 - (2) Provide within sixty days of completion of the course or the examination, completion certificates to attendees which shall include information regarding the number of classroom hours, whether there was successful passage of the course examination and the index number assigned to the course by the director;
 - (3) Permit, upon request, the director or the director's representative to audit the course at no cost to the director or the director's representative;
 - (4) Allow nonmembers of the association or organization to apply for the course without membership in the association or organization on the same terms and conditions as members of the association or organization;
 - (5) Keep attendance records for a minimum of three years; and
 - (6) Meet the requirements of section 16-114-23.5.
- (d) Completion certificates shall be issued only if the attendee physically attended one hundred per cent of the classroom hours.
- (e) Attendees may take no more than one make-up examination provided the examination is taken within ninety days of the ending date of the course.
- (f) Upon approval of the course, an index number shall be assigned to indicate approval. The approval shall be valid only until December 31 of the odd-numbered year; provided that the national USPAP course shall be valid until December 31 of each year.
- (g) Courses offered in another jurisdiction shall be approved, provided that the course has been approved by the other jurisdiction and meets the requirements of section 16-114-21. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-23 Disapproval of course providers or courses. (a) Course providers or courses may be disapproved when:

- (1) The instructor of the course or administrators of the course provider has had any disciplinary proceeding filed or disciplinary action taken by any jurisdiction;
- (2) The instructor of the course fails to demonstrate knowledge and competency in the subject matter being taught;

- (3) The course is not equivalent in content and complexity to a college or professional level course;
- (4) The course does not contribute to the professional competence of participants;
- (5) Five per cent or more of the course covers nonsubstantive material such as, but not limited to, personnel management, office management, or computer program courses not related to the appraisal practice; or
- (6) Course provider fails to meet the requirements of section 16-114-23.5.

(b) Course approval may be withdrawn for cause, including but not limited to failure to follow the course provider' policies and procedures, after notification to the course provider by the director or the director's authorized delegate. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-23.5 Proctor for course examination. (a) The course provider shall have policies and procedures in place for proctors of course examinations and shall include actions to be taken when the proctor of the course examination does not comply with the policies and procedures.

(b) The following duties of the proctor for the course examination shall be included in the course provider's policies and procedures:

- (1) Confirm the student's identity by using a photo identification;
- (2) Remain in the presence of the student from the time the student starts the examination until the time the student completes the examination or until the end of the maximum time allowed for the test, whichever comes first;
- (3) Be certain that the student does not receive any outside assistance while taking the examination, including but not limited to course material, help from other persons, or prepared notes.
- (4) Does not allow the student to launch the examination more than one time per session or fee; and
- (5) Confirm that the examination was completed within the time specified by the course provider by documenting the start and end time of the examination.

(c) The course provider shall submit the qualifications of the proctor which shall include but is not limited to, documentation that the proctor is at least eighteen years of age; and an affidavit from the proctor attesting that the

proctor is a disinterested third party that is not affiliated with the student. [Eff and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-24 Experience requirement. (a) Each applicant shall obtain prior to the date of application for licensure, appraisal experience as required in this section, and shall submit documentation by way of verification on forms provided by the director. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(b) Applicants for licensure as a state licensed appraiser shall provide evidence of at least two thousand hours of appraisal experience. A minimum of twenty-four months of experience is required.

(c) Applicants for certification as a state certified residential appraiser shall provide evidence of at least two thousand five hundred hours of appraisal experience. The two thousand five hundred hours shall have been earned over a period of at least twenty four months.

(d) Applicants for certification as a state certified general appraiser shall provide evidence of at least three thousand hours of appraisal experience, of which at least one thousand five hundred hours were obtained in nonresidential appraisal work. The three thousand hours of appraisal experience shall have been earned over a period of at least thirty months.

(e) Acceptable appraisal experience includes but is not limited to:

- (1) Fee and staff appraisal;
- (2) Ad valorem tax appraisal;
- (3) Technical review appraisal;
- (4) Appraisal analysis;
- (5) Real estate consulting;
- (6) Highest and best use analysis;
- (7) Feasibility analysis/study; or
- (8) Condemnation appraisal.

(f) Applicants shall produce, upon request, experience documentation in the form of reports or file memoranda.

(g) Experience obtained on or after January 31, 1989 must be performed in compliance with USPAP, and in conformance with the appraisal qualification criteria as established and interpreted by the Appraiser Qualifications Board. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-25 Repealed. [R 3/4/98]

§16-114-26 Examination requirement; passing score. (a) Each applicant for a license or a certificate shall successfully pass the appropriate examination which has been approved by the Appraiser Qualifications Board of the Appraisal Foundation. Applicants must successfully complete the education requirement prior to applying for the examination.

(b) The passing score shall be a scaled score of seventy-five.

(c) Successful completion of the examination is valid for a period not to exceed twenty-four months.

(d) Passage of an examination taken in another jurisdiction may be approved as meeting the examination requirement provided the examination has been approved by the Appraiser Qualifications Board of the Appraisal Foundation and further provided that the passing score is a scaled score of seventy-five. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-26.5 Endorsement. (a) An applicant licensed or certified in another state may qualify for licensure or certification by endorsement provided the applicant:

- (1) Is currently licensed in another jurisdiction;
- (2) Is applying for the same level license or certificate;
- (3) Has completed qualifying education that met the minimum Appraiser Qualifications Board education criteria at the time the applicant obtained their license or certificate;
- (4) Has passed an Appraiser Qualifications Board state licensed or state certified level examination;
- (5) Is listed on the Federal Registry as conforming to Appraiser Qualifications Board criteria for licensure or certification; and
- (6) Is in good standing as a real estate appraiser in every jurisdiction the applicant is licensed or certified and verified through the Appraisal Subcommittee's National Registry of Real Estate Appraisers.

(b) An applicant may apply for licensure by endorsement by submitting the following:

- (1) A complete application on forms provided by the director; and
- (2) Any applicable fees. [Eff and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-27 Issuance of license or certificate. The state appraiser license or state appraiser certificate shall be issued upon the applicant meeting all appropriate requirements. Licenses or certificates shall be valid until December 31 of the odd-numbered year immediately following the issuance of the license or certificate. [Eff 3/11/91; am and comp 9/23/91; comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-28 Non-transferability of license or certificate. A state license or state certificate shall only be issued to individuals and the license or certificate shall not be transferable. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-29 Filing of current address. Every licensee or certificate holder shall provide written notice to the director of any changes of the licensee's or certificate holder's mailing, business, or residence address within ten days of the change. Any requirements that the director provide notice to licensed or certified appraisers shall be deemed met if notice is sent to the address on file with the director. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

SUBCHAPTER 5

§16-114-32 Repealed. [R 3/4/98]

§16-114-33 Repealed. [R 3/4/98]

SUBCHAPTER 6

PROCESSING APPLICATIONS

§16-114-34 Application for licensure or certification. Application for licensure or certification shall be made on a form to be provided by the director. The form may require the applicant to provide:

- (1) The applicant's full name;

- (2) A statement that the applicant has attained the age of majority;
- (3) The applicant's current business or mailing address for publication, and the applicant's current residence address;
- (4) The applicant's social security number;
- (5) The applicant's employment history during the five years preceding the date of the filing of the application, with names and addresses of each employer;
- (6) The date and place of any conviction of a crime directly related to appraisal practice unless the conviction has been expunged or annulled or is otherwise precluded from consideration by section 831-3.1, HRS;
- (7) Information regarding any disciplinary proceedings or disciplinary actions taken by any jurisdiction;
- (8) A designation in writing appointing the director to act as the applicant's agent upon whom all judicial and other process or legal notices directed to the applicant may be served. The applicant shall agree that service upon the director shall have the same legal force and validity as if personally served upon the applicant and the authority of the director shall remain in force as long as any liability remains outstanding;
- (9) A statement that the applicant is a United States citizen or an alien authorized to work in the United States; and
- (10) Any other information the director may require to investigate the applicant's qualifications for licensure or certification. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§466K-3, 831-3.1)

§16-114-35 Supporting documents required. Every applicant shall furnish the following with the application:

- (1) The appropriate fees;
- (2) Proof that the applicant has met the educational and experience requirements;
- (3) Employer verification of experience statement;
- (4) Three references from individuals who have had dealings relating to the applicant's appraisal assignments on forms provided by the director attesting to the applicant's experience and reputation for honesty, truthfulness, fairness, and financial integrity;

- (5) If requested, proof that the applicant is a United States citizen or alien authorized to work in the United States; and
- (6) If requested, appraisal reports or file memoranda. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-36 Responsibility of applicant to furnish information and documentation. It shall be each applicant's responsibility to furnish the information and documentation requested. In the event of any change of information provided, the applicant shall notify the director in writing within thirty days of any change. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-37 Signing and verification of application. Every application and all references shall be signed by the applicant or the person attesting to the experience and reputation of the applicant. All persons attesting to the experience and reputation of the applicant shall swear to the truth of the statements contained therein before a notary public. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-38 Application for upgrade. (a) For completed applications received on or after January 1, 2008, a state licensed or certified appraiser holding a current and active license or certificate may apply for upgrade as follows:

- (1) For state certified residential appraiser certification, submittal of:
 - (A) Appropriate fees;
 - (B) Proof that the applicant has met the requirements of section 16-114-20.5;
 - (C) Proof that the applicant has performed at least two thousand five hundred hours of appraisal work;
 - (D) Proof that the applicant has met the requirements of the Appraisal Qualification Board's current qualifying education requirements as may be amended provided that only those hours not obtained by challenge examination may be applied to meet this requirement, and that

- continuing education hours credited for renewal shall not be applied to meet this requirement; and
- (E) Proof of passage of the appropriate examination.
- (2) For state certified general appraiser certification, submittal of:
- (A) Appropriate fees;
 - (B) Proof that the applicant has met the requirements of section 16-114-20.5;
 - (C) Proof that the applicant has performed at least three thousand hours of appraisal work, of which at least one thousand five hundred hours were obtained in nonresidential appraisal work;
 - (D) Proof that the applicant has met the requirements of the Appraisal Qualification Board's current qualifying education requirements as amended provided that only those hours not obtained by challenge examination may be applied to meet this requirement, and that continuing education hours credited for renewal shall not be applied to meet this requirement; and
 - (E) Proof of passage of the appropriate examination. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-39 Criminal conviction. When an applicant has been convicted of a crime related to the appraisal profession and it is determined that the conviction may be considered under section 831-3.1, HRS, the director or the director's authorized delegate may request the following documents from the applicant:

- (1) Copies of any court records, orders, or other documents that state the facts and statutes upon which the applicant was convicted, the verdict of the court with regard to that conviction, the sentence imposed, and the actual terms of the sentence; and
- (2) Affidavits from any parole officer, employer, or other persons who can attest to a firm belief that the applicant has been sufficiently rehabilitated to warrant the public trust. [Eff 3/11/91; am and comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§466K-3, 831-3.1)

§16-114-40 Denial or rejection of application. (a) An application for issuance of a license or certificate shall be denied when an application is insufficient or incomplete or when an applicant has failed to provide satisfactory proof that the applicant meets the requirements under subchapter 4 and this subchapter. In addition, the director may deny issuance of a license or certificate:

- (1) When the applicant is known to have committed any of the acts under section 16-114-106; or
- (2) If the applicant has had disciplinary action taken by any jurisdiction, including any federal or state regulatory body.

(b) An application shall be automatically rejected and the applicant shall be denied licensure or certification when the applicant, after having been notified to do so:

- (1) Fails to pay the appropriate fees within sixty days from notification; or
- (2) Fails to submit any of the information or documentation requested to comply with any of the requirements for licensure or certification within sixty days from notification.

(c) Any application which has been denied or rejected shall remain in the possession of the director and shall not be returned.

(d) An applicant, whose application has been denied or rejected, may file for an administrative hearing pursuant to chapter 91, HRS. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§91-9, 91-9.5, 91-10, 91-11, 91-12, 466K-3)

SUBCHAPTER 7

RENEWAL

§16-114-45 Notice of renewal. All licenses and certificates shall expire on December 31 of each odd-numbered year. Before November 15 of each odd-numbered year the director or director's authorized delegate shall mail to every licensee or certificate holder, except those whose license or certificate has been forfeited, suspended, or revoked, a renewal application to the address of the licensee or certificate holder on record. [Eff 3/11/91; am and comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-46

§16-114-46 Date for filing. All licensees and certificate holders shall [complete and] submit a completed renewal application, required fees, and original documentation of successful completion of the required continuing education hours including successful completion of the seven hour National USPAP Update Course or its equivalent on or before December 31 of the odd-numbered year. A completed renewal application with the required documents sent by United States mail shall be considered timely filed if the envelope bears a postmark no later than December 31 of the odd-numbered year. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-47 Automatic forfeiture for failure to renew. Paying fees with a check which is dishonored upon first deposit, or failing to timely renew the license or certificate, pay the applicable fees, submit the required continuing education hours, or submit proof of completion of the USPAP course requirement shall cause the license or certificate to be automatically forfeited. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-48 Restoration of forfeited license or certificate. (a) A license or certificate which has been forfeited may be restored within two years after the date of forfeiture provided the applicant pays the appropriate fees including restoration fees, and submits all continuing education hours that would have been required had the licensee or certificate holder maintained licensure or certification.

(b) An individual whose license or certificate has been forfeited and who fails to restore the license or certificate as provided above, shall apply as a new applicant. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-49 Director may refuse to renew or restore. The director may refuse to renew or restore a license or certificate for failure or refusal of the licensee or certificate holder:

- (1) To properly complete or timely submit the renewal application form and submit all fees and required documentation;
- (2) To maintain a good reputation for honesty, truthfulness, fairness, and financial integrity;

- (3) To meet and maintain the conditions and requirements necessary to qualify for the issuance of the license or certificate; or
- (4) To comply with chapter 466K, HRS, and this chapter. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§91-9, 91-9.5, 91-10, 91-11, 91-12, 466K-3)

SUBCHAPTER 8

CONTINUING EDUCATION

§16-114-54 Purpose. (a) The purpose of continuing education is to ensure that the appraiser participates in programs to maintain and increase the appraiser's skill, knowledge, and competency in real estate appraising.

(b) As a prerequisite to renewal of a license or certificate, the appraiser shall present satisfactory evidence of having met the continuing education requirements of this subchapter. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-55 Classroom hour requirement. (a) For all licensees and certificate holders, the continuing education requirement shall be fourteen classroom hours of instruction in courses or seminars for each year during the biennium period preceding the renewal which shall include the successful completion of the seven-hour national USPAP course or its equivalent.

(b) Licensees and certificate holders shall submit evidence of twenty-eight classroom hours for the previous biennium, or fourteen classroom hours if the licensee or certificate holder was licensed or certified in the second year of the biennium which shall include the successful completion of the seven-hour National USPAP course or its equivalent. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-56 Acceptable classroom credit hours. (a) A classroom hour is defined as fifty minutes out of each sixty minute segment.

(b) Credit toward the classroom hour requirement may be granted only where the length of the educational offering is at least two hours.

§16-114-56

(c) No additional credit shall be granted for any comparable course within the biennium period, except for USPAP courses.

(d) USPAP education credit shall only be awarded when the class is taught by an Appraiser Qualifications Board certified instructor who is a state certified residential or general appraiser.

(e) Equivalency to the national USPAP course shall be determined by the Appraiser Qualifications Board. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-57 Course providers or courses. (a) Approved course providers shall be as stated in section 16-114-22.

(b) Credit may be granted for educational offerings which are consistent with the purposes of continuing education stated in section 16-114-54 and which cover real estate appraisal related topics such as those listed below:

- (1) Ad valorem taxation;
- (2) Arbitrations;
- (3) Business courses related to real estate appraisal;
- (4) Construction estimating;
- (5) Ethics and standards of professional practice;
- (6) Financial markets and cost of capital;
- (7) Land use planning, zoning, and taxation;
- (8) Litigation;
- (9) Management, leasing, brokerage, timesharing;
- (10) Property development;
- (11) Real estate appraisal (valuations/evaluations);
- (12) Real estate financing and investment;
- (13) Real estate law;
- (14) Real estate litigation;
- (15) Real estate appraisal related computer applications;
- (16) Real estate securities and syndication; or
- (17) Real property exchange.

(c) Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs upon approval by the director. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined by the director to be consistent with the purposes of continuing education as stated in section 16-114-54. Non-student

continuing education credit is limited to fifty per cent of the required twenty-eight hours, or fourteen continuing education hours.

(d) Courses offered in another jurisdiction shall be approved, provided that the course has been approved by the other jurisdiction and meets the requirements of section 16-114-56.

(e) Course providers and courses may be disapproved as provided for in section 16-114-23. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-58 No carryover of continuing education credit hours. Continuing education credit hours in excess of the required number of continuing education hours for each biennium shall not be credited to satisfy continuing education hours for the next biennial renewal period. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

SUBCHAPTER 9

INACTIVE STATUS

§16-114-63 Inactive status. (a) A license or certificate may be placed on an inactive status upon written notification to the director by the licensee or certificate holder of the effective date of inactivation and payment of an inactive fee.

(b) A licensee or certificate holder on inactive status shall be considered as unlicensed or uncertified.

(c) An inactive license or certificate may be renewed on an inactive status upon payment of the inactive fee. Paying fees with a check which is dishonored upon first deposit, or failing to timely renew an inactive license or certificate, or pay applicable fees, shall cause the inactive license or certificate to be automatically forfeited. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-64 Requirements to reactivate. (a) An inactive licensee or certificate holder may apply for reactivation upon payment of the reactivation

fee and applicable renewal fees, and proof of completion of all continuing education hours that would have been required had the licensee or certificate holder maintained licensure or certification, including the successful completion of the seven-hour national USPAP course or its equivalent.

(b) Failure to meet the requirements for reactivation shall require a person desiring licensure or certification to apply as a new applicant. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

SUBCHAPTER 10

SCOPE OF LICENSED AND CERTIFIED APPRAISERS

§16-114-69 Supervision of appraiser assistants. (a) Certified appraisers may directly supervise appraiser assistants provided:

- (1) The certified appraiser is in good standing and not subject to any disciplinary action within the last two years that affects the certified appraiser's legal ability to practice appraisal, and
- (2) The certified appraiser approves and signs the report as being independently and impartially prepared and in compliance with the USPAP.

(b) The certified appraiser shall not supervise more than three appraiser assistants at one time.

(c) Licensed appraisers shall not supervise appraiser assistants. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-70 State licensed appraiser. A state licensed appraiser is licensed to perform:

- (1) Noncomplex one-to-four family residential property appraisals in connection with any federally related transaction having a transaction value up to, but not including, \$1,000,000;
- (2) Other appraisals rendered in connection with any federally-related transaction having a transaction value up to, but not including, \$250,000; and
- (3) Appraisals of rural properties where the rural property is a one-to-four family residential property where production of agricultural income is not significant or is primarily used for

recreation or other non-income producing purposes. [Eff 3/11/91; am and comp 9/23/91; comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§466K-1, 466K-3)

§16-114-71 State certified residential appraiser. A state certified residential appraiser is certified to perform appraisals of all 1-4 residential properties without regard to value or complexity, and all other properties with transaction values up to \$250,000. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-71.5 State certified general appraiser. A state certified general appraiser is certified to perform appraisals for all real estate property types. [Eff and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-72 Use of terms. (a) The terms "state licensed appraiser," "certified general appraiser," "certified residential appraiser," or "state certified appraiser" may only be used to refer to an individual who is licensed or certified, as the case may be, under chapter 466K, HRS, and this chapter and may not be used following, or immediately in connection with, the name or signature of a corporation, partnership, association, or any other group practice, or in any manner that might be interpreted as referring to anyone other than the individual who is licensed or certified under chapter 466K, HRS, and this chapter.

(b) This requirement shall not be construed to prevent a licensee or certificate holder from signing an appraisal report on behalf of a corporation, partnership, association, or any other group practice if it is clear that only the individual is licensed or certified and the corporation, partnership, association, or group practice is not.

(c) No person may assume or use the title "state licensed appraiser," "certified general appraiser," "certified residential appraiser," or "state certified appraiser," as the case may be, or any title designation or abbreviation likely to create the impression of licensure or certification unless that person holds a current license or certificate under chapter 466K, HRS, and this chapter. [Eff

3/11/91; am and comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-73 Real estate-related financial transactions not requiring appraisal by a licensed or certified appraiser. An appraisal performed by a state licensed or certified appraiser is not required for any real estate-related financial transaction in which:

- (1) The transaction value is at or below the de minimus level established by a federal financial institutions regulatory agency;
or
 - (2) The services of a state licensed or certified appraiser are not required by a federal financial institutions regulatory agency.
- [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-74 Nonapplicability to real estate brokers or real estate salespersons. This chapter shall not apply to a real estate broker or salesperson licensed by this State pursuant to chapter 467, HRS, who, in the ordinary course of the real estate broker's or salesperson's business, gives an opinion as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate, provided:

- (1) The opinion as to the listing price or the purchase price shall not be referred to as an appraisal;
- (2) No compensation, fee, or other consideration is charged for such opinion other than the normal brokerage fee rendered in connection with the sale of the property; or
- (3) No representation is made that the real estate broker or salesperson is a certified or licensed real estate appraiser. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§466K-1, 466K-3)

SUBCHAPTER 11

TEMPORARY RECOGNITION OF LICENSURE OR
CERTIFICATION OF OUT-OF-STATE APPRAISERS

§16-114-79 Recognition of license or certificate. (a) The director may recognize the license or certification of an appraiser who is currently licensed or certified in another jurisdiction provided:

- (1) The licensure and certification requirements in that other jurisdiction have not been disapproved by the Appraisal Subcommittee; and provided further that:
 - (A) The property to be appraised is part of a federally related transaction;
 - (B) The appraiser's business is of a temporary nature; and
 - (C) The appraiser applies for the temporary recognition of the license or certificate.

(b) The out-of-state appraiser may elect to obtain licensure or certification by this State by filing an application. [Eff 3/11/91; am and comp 9/23/91; comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-80 Requirements for recognition. (a) Application for temporary recognition of appraiser licensure or certification shall be made under oath on forms to be provided by the director. The form may require the applicant to provide items under subchapter 6.

- (b) In addition, the applicant shall:
 - (1) Submit evidence of current licensure or certification by that other jurisdiction;
 - (2) Submit, upon request, a copy of the contract for appraisal services that requires the applicant to appraise real estate in this State and certify that such contract is in full force and effect;
 - (3) Agree, in writing, to conform with all the provisions of chapter 466K, HRS, and this chapter; and
 - (4) File a designation in writing which appoints the director to act as the appraiser's licensed agent upon whom all judicial and other process or legal notices directed to the appraiser may be served. The appraiser shall agree that service upon the director shall have the same legal force and validity as if personally served upon the appraiser and that the authority of the director shall continue in force as long as any liability of the appraiser remains outstanding in this State. [Eff 3/11/91; am and comp 9/23/91; comp 4/17/98;

am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-81 Director may refuse to recognize. The director may refuse to recognize licensure or certification for reasons under section 16-114-40. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-82 Term of recognition; renewal. (a) Recognition shall remain in force throughout the time period necessary to complete the appraisal assignment provided the license or certificate is current in the other jurisdiction.

(b) The appraiser shall file with the director evidence of renewal of licensure or certification in the other jurisdiction within two months of renewal, and pay the applicable compliance resolution fund fee. [Eff 3/11/91; am and comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-83 Withdrawal of recognition. Recognition of the licensure and certification may be withdrawn after hearing pursuant to chapter 91, HRS, if the recognized appraiser is found to have violated the provisions of chapter 466K, HRS, or this chapter or if the appraiser's license or certificate is disciplined, revoked, suspended, or forfeited in another jurisdiction. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

SUBCHAPTER 12

APPRAISAL STANDARDS

§16-114-88 Appraisal standards for federally related real estate transactions. (a) For federally related real estate transactions requiring the services of a state licensed or certified appraiser, all appraisals shall be performed by an appropriately licensed or certified appraiser and shall, at a minimum, conform to the current USPAP.

(b) If information required or deemed pertinent to the completion of an appraisal is unavailable, that fact shall be disclosed and explained in the appraisal report.

(c) An appraiser shall perform all appraisals, review, or consulting service with impartiality, objectivity, and independence, without any direct or indirect interest in the property. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-89 Signature on appraisal reports. (a) If an appraisal report is prepared and signed by a state licensed appraiser, the appraisal report shall state, immediately following the signature on the report, "state licensed appraiser" and the appraiser's license number and expiration date.

(b) If an appraisal report is prepared and signed by a state certified appraiser, the appraisal report shall state, immediately following the signature on the report, "state certified general appraiser" or "state certified residential appraiser," as the case may be, and the appraiser's certificate number and expiration date.

(c) If an appraisal report is prepared and signed by an appraiser licensed or certified in another jurisdiction whose license or certificate has been temporarily recognized by the director, the appraisal report shall state, immediately following the signature on the report, "licensed appraiser," "certified general appraiser," or "certified residential appraiser," as the case may be, the appraiser's license or certificate number, the expiration date of the license or certificate, and the jurisdiction in which the appraiser is licensed or certified.

(d) Appraisal reports prepared by appraiser assistants shall be approved and signed by a certified appraiser. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

SUBCHAPTER 13

RECORDS AND APPRAISAL REPORT RETENTION REQUIREMENT

§16-114-94 Records and appraisal report retention requirement.

(a) Every licensed or certified appraiser shall retain originals or true copies of appraisal contracts, appraisals, and all supporting data and documents for a period of five years.

(b) The five-year period shall commence upon date of delivery of the appraisal report to the client provided that if the appraiser is notified that the appraisal or appraisal report is involved in litigation, the five-year period shall commence upon the date of the final disposition of the litigation.

(c) The appraiser shall make all records available, upon request, to the director or the director's authorized delegate. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

SUBCHAPTER 14

ADVERTISING PRACTICES

§16-114-99 Advertising practices. Any person advertising through any media as a state licensed or state certified appraiser shall list the appraiser's license or certificate number. For purposes of this section, "media" includes, but is not limited to, newspapers, magazines, calling cards, and directories, including all listings in telephone directories. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

SUBCHAPTER 15

DISCIPLINARY SANCTIONS

§16-114-104 Disciplinary action. (a) The director, after a hearing in accordance with chapter 91, HRS, may order one or more of the following remedies as appropriate relief:

- (1) Refunding the money paid as fees for services;
- (2) Correcting the work done in providing services;
- (3) Revoking the license or certificate;
- (4) Suspending the license or certificate;
- (5) Imposing a fine; and
- (6) Any other reasonable means to secure relief as determined by the director.

(b) In addition, the violation of any condition or limitation on a license or certificate may be cause to impose additional sanctions against the appraiser. Any fine imposed by the director after a hearing in accordance with chapter 91, HRS, shall be no less than \$1,000 for each violation, and each day of violation may be deemed a separate violation. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-105 Hearings. Any proceeding before the director to take disciplinary action or other sanctions against a licensed or certified appraiser shall be conducted in accordance with chapter 91, HRS. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§91-9, 91-9.5, 91-10, 91-11, 91-12, 466K-3)

§16-114-106 Grounds for revocation, suspension, refusal to renew, restore, or reinstate, denial, or conditioning of licenses or certificates. In addition to any other acts or conditions provided by law, the director may revoke, suspend, refuse to renew, restore, or reinstate, deny, or condition in any manner, any license or certificate for any one or more of the following acts or conditions:

- (1) Procuring a license or certificate through fraud, misrepresentation, or deceit;
- (2) Failing to meet or maintain the requirements or conditions necessary to qualify for licensure or certification;
- (3) Engaging in the practice of a real estate appraiser or holding oneself out as a real estate appraiser without first having been issued a license or certificate;
- (4) Acting negligently or incompetently or failing without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;
- (5) Failing to comply with USPAP;
- (6) Conviction of, or pleading nolo contendere to, a crime that is directly related to the qualification, functions, or duties of an appraiser;
- (7) Entrance against the appraiser of a civil judgment on grounds of dishonesty, fraud, or misrepresentation;
- (8) Committing any act or omission in the practice of real estate appraising which constitutes dishonesty, fraud, or misrepresentation;
- (9) Accepting an appraisal assignment if the employment or fee is contingent upon:
 - (A) The appraiser reporting a predetermined estimate, valuation, analysis, or opinion; or
 - (B) The consequences resulting from the appraisal assignment;
- (10) Engaging in the business of real estate appraising under an assumed or fictitious name not properly registered;
- (11) Paying a finder's fee or a referral fee to a person who is not a licensed or certified appraiser in this State in connection with appraisal of real estate or real property in this State;

- (12) Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;
- (13) Aiding or abetting an unlicensed or uncertified person to directly or indirectly evade this chapter;
- (14) Violating any conditions or limitations upon which the license or certificate was issued;
- (15) Failing to report to the director, in writing, any disciplinary decision issued against the licensee or certificate holder in another jurisdiction; and
- (16) Violating the provisions of chapter 466K, HRS, this chapter, or any order of the director. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §§466K-1, 466K-3) (Imp: HRS §§466K-1, 466K-3)

§16-114-107 Reinstatement of suspended license or certificate. A person whose license or certificate has been suspended may apply for reinstatement of the license or certificate upon complete compliance with any term or condition imposed by the order of suspension. The application for reinstatement shall be accompanied by the appropriate fees, application, proof of completed continuing education hours that would have been required had the licensee or certificate holder maintained licensure or certification including proof of successful completion of the seven-hour national USPAP course or its equivalent, and any other documents required by this chapter. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-108 Revoked license or certificate. Upon the expiration of at least five years from the effective date of the revocation of the license or certificate, a person may apply for a new license or certificate by filing an application and complying with all current requirements for new applicants. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-109 Relinquishment no bar to jurisdiction. The forfeiture, nonrenewal, surrender, or voluntary relinquishment of a license or certificate by an appraiser shall not bar jurisdiction by the director to proceed with any investigation, action, or proceeding against the appraiser to revoke, suspend, condition, limit, or discipline the appraiser's license or certificate. [Eff

3/11/91; comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-110 Judicial review by circuit court. Any person aggrieved by a final decision and order of the director in a contested case is entitled to judicial review thereof by the circuit court. The review shall be as provided by chapter 91, HRS. It shall be conducted by the court without a jury and shall be confined to the record. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§91-14, 466K-3)

SUBCHAPTER 16

UNAUTHORIZED PRACTICE AS AN APPRAISER

§16-114-115 No compensation for unauthorized activity; civil action. The failure of any person to maintain a current and valid license or certificate prior to engaging in any activity requiring licensure or certification by the director shall prevent such person from recovering in a civil action for work or services performed on a contract or on any legal basis to recover the reasonable value thereof. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-116 Civil and criminal sanctions for unauthorized activity; fines; injunctive relief; damages. (a) Any licensee or certificate holder aiding or abetting an unlicensed or uncertified person to directly or indirectly evade chapter 466K, HRS, or this chapter, or knowingly combining or conspiring with an unlicensed or uncertified person, or acting as agent, partner, associate, or otherwise, of an unlicensed or uncertified person with the intent to evade this chapter may be fined \$1,000.

(b) Any person, who engages in an activity requiring an appraiser's license or certificate issued by the director and who fails to obtain the required license or certificate, or who uses any work, title, or representation to induce the false belief that the person is licensed or certified to engage in said activity, shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000 or imprisoned not more than one year, or both, and each day of violation shall be deemed a separate offense.

(c) The department or director may maintain a suit to enjoin the performance or the continuance of any act or acts by a person acting without a

license or certificate where a license or certificate is required by law, and if injured thereby, for the recovery of damages. The department or director may also seek the imposition of fines provided by subsection (a). It shall not be necessary that actual damages to the plaintiff or petitioner be alleged or proved. Reasonable attorney's fees and costs shall be allowed by the court to the plaintiff or petitioner as the prevailing party. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-117 Remedies or penalties cumulative. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

SUBCHAPTER 17

ADMINISTRATIVE PROCEDURES

§16-114-122 Administrative practice and procedure. The rules of practice and procedure for appraisers shall be as provided in chapter 16-201, the rules of practice and procedure of the department as adopted and as may subsequently be amended, which are incorporated by reference and made a part of this chapter. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§91-2, 466K-3)

SUBCHAPTER 18

PUBLICATION OF ROSTER

§16-114-127 Publication of roster. The director or the director's delegate shall prepare annually, a roster showing the name and place of business of each individual holding a license as a state licensed appraiser or a certificate as a state certified appraiser. The roster shall be sent to the Appraisal Subcommittee by June 15 of each year. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

SUBCHAPTER 19

FEES

§16-114-137 Fees established. (a) The fees shall be set forth in chapter 16-53.

(b) The annual registry fee may be increased if the Appraisal Subcommittee or the Federal Financial Institutions Examination Council so informs the director of the increase, and may be imposed on licensees or certificate holders without hearing. Failure to pay any increase of the annual registry fee within sixty days of notification to do so shall result in automatic forfeiture of the license or certificate. Requirements to restore a license or certificate shall be as stated in section 16-114-48. [Eff 3/11/91; am and comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §§26-9, 466K-3)

§16-114-138 Form of fee. The fees, if in the form of a money order or check, shall be made payable to the department of commerce and consumer affairs. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-139 Dishonored checks considered failure to meet requirements. The dishonoring of any check upon first deposit shall be considered a failure to meet requirements. [Eff 3/11/91; comp 9/23/91; comp 4/17/98; comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

§16-114-140 Fees deposited; transmittal to the Federal Financial Institutions Examination Council. (a) All fees, except for the annual registry fees, shall be deposited into the compliance resolution fund established pursuant to section 26-9(o), HRS.

(b) The annual registry fees shall be transmitted by the department to the Federal Financial Institutions Examination Council in accordance with submission requirements of the Appraisal Subcommittee. [Eff 3/11/91; comp 9/23/91; am and comp 4/17/98; am and comp 1/10/09] (Auth: HRS §466K-3) (Imp: HRS §466K-3)

Amendments to and compilation of chapter 16-114, Hawaii Administrative Rules, on the Summary Page dated December 5, 2008, were adopted on December 5, 2008, following a public hearing held on December 5, 2008, after public notice was given in the Honolulu Star-Bulletin, The Garden Island, Hawaii Tribune-Herald, West Hawaii Today, and the Maui News on November 5, 2008.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Ronald Boyer

for LAWRENCE M. REIFURTH
Director of Commerce and Consumer Affairs

APPROVED AS TO FORM: Date 12/24/08

/s/ James C. Paige

Deputy Attorney General

APPROVED: Date 12/31/08

Linda Lingle

LINDA LINGLE
Governor
State of Hawaii

December 31, 2008

Filed