

LAWS AND RULES REVIEW COMMITTEE
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.hawaii.gov/hirec

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes.

Date: Wednesday, July 11, 2007

Time: 9:00 a.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii

Present: Louis Abrams, Chair, Broker/Kauai Commissioner
Michele Sunahara Loudermilk, Vice Chair, Public/Honolulu Commissioner
Annette Aiona, Broker/Hawaii Commissioner
William Chee, Broker/Honolulu Commissioner
Frances Gendrano, Salesperson/Honolulu Commissioner
Stanley Kuriyama, Broker/Honolulu Commissioner

Calvin Kimura, Supervising Executive Officer
Neil Fujitani, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Ryan Yamashiro, Real Estate Specialist
Amy Endo, Real Estate Specialist
Cheryl Leong, Condominium Specialist
David Grupen, Condominium Specialist
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary

Others: Myoung Oh, Hawaii Association of REALTORS
Liz Palmer, CCIM

Absent: Trudy Nishihara, Broker/Honolulu Commissioner
Mark Suiso, Public/Honolulu Commissioner
Carol Ball, Broker/Maui Commissioner

Call to Order: The Chair called the meeting to order at 9:00 a.m., at which time quorum was established.

Chair's Report: No report was presented.

The Chair announced that the Committee may move into executive session to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.

SEO's Report: The Deputy Attorney General may have to leave the meetings early.

The SEO announced that Ron Boyer was appointed as the Deputy Director for the Department of Commerce and Consumer Affairs. His first day of work will be July 16, 2007. He was formerly with the Governor's Policy Office.

Commissioners Ball, Nishihara and Suiso were excused from the meeting. Prior notification of their non-attendance was received. Commissioners Ball and Nishihara are currently participating in Promissor's Job Task Analysis in Las Vegas, Nevada.

The SEO announced that the REC Chair will be discussing the Commission's travel policy and the organization policy at the July 27, 2007 Real Estate Commission meeting.

Minutes of Previous Meetings

Upon a motion by Commissioner Chee, seconded by Commissioner Aiona, it was voted on and unanimously carried to accept the minutes of the June 15, 2007 Laws and Rules Review Committee meeting.

Program of Work, FY08:

Neighbor Island Outreach

The next neighbor island outreach will be held on the island of Hawaii, possibly during the month of September.

Commissioners' Education Program

A copy of the June 2007 issue of The High Road, was distributed to the Commissioners for their information.

Ad Hoc Committee on Consumer-Broker Relationships

The Chair announced that the next meeting will be held on July 27, 2007, at 1 p.m.

The Chair reported that the detail that he had hoped for may not be practical for licensees, so they will be looking at the duties and standards to see how they can be improved, along with amending the laws and rules. He has received comments from the Hawaii Bar Association, who is not in favor of touching the dual agency section. He hopes to be able to discuss this matter further with them to come to a resolution.

The following articles were distributed to the Commissioners for their information:

1. "Recommendations fall short for affiliated business troubles," Inman Real Estate News, June 11, 2007;
2. "Rentals Web site files lawsuit over licensing requirement," Inman Real Estate News, June 13, 2007;
3. "Realtors Release Latest Legal Liability Survey," National Association of REALTORS, June 21, 2007; and
4. "Montana Supreme Court Bans Simultaneous Buyer Agency."

ARELLO, Other Organizations and Jurisdictions:

Federal Trade Commission (FTC)

A copy of the following articles were distributed to the Commissioners for their information:

1. "FTC Releases Staff Report on Improving Consumer Mortgage Disclosures," June 13, 2007; and
2. "U.S. Department of Justice and Federal Trade Commission Issue Report on Competition in the Real Estate Brokerage Industry," May 8, 2007.

Pennsylvania Case Test Broker Supervision Duties

The June 2007 issue of ARELLOgram, containing the article entitled, "Pennsylvania Case Tests Broker Supervision Duties," was distributed to the Commissioners for their information.

This case highlighted the distinction between statutory provisions that impose real estate broker supervision duties and statutes that absolve brokers from liability for the misconduct of others, in the absence of actual knowledge. The Pennsylvania Appellate Court upheld the Pennsylvania Commonwealth Court's decision that the Commission need not establish that a broker have actual knowledge of a salesman's misconduct in order to discipline the broker for failure to supervise. The Appellate Court reasoned that it was the principal broker's ignorance of the misconduct, not the misconduct itself, that served as the basis for the sanctions. Proof of actual knowledge was not required.

In Hawaii, it is the principal broker's responsibility to report something that an agent under them does. The principal broker is held accountable for the actions of a licensee under their supervision.

It was suggested that principal brokers may want to include in their contracts with their licensees what is expected of them. For example, if they are served with a complaint, they should immediately notify their principal broker.

Program of Work, FY08:

A copy of the final Program of Work and Budget for Fiscal Year 2008 was distributed to the Commissioners for their reference. The Program of Work and Budget were accepted by the Director and the Licensing Administrator.

The SEO provided the historical background for the program of work. He also informed the Commissioners that the Program of Work could be amended throughout the year if necessary.

Special Issues: **Fractional Ownership / Tenancies-in-Common (TIC)**

The LRRC Chair and the SEO will be meeting with Tung Chan, BREG's Securities Commissioner, this morning at 11:30 a.m. to discuss fractional ownership and tenancies-in-common.

Open Forum: None.

Budget & Finance Report: None.

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Next Meeting: Wednesday, August 8, 2007
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 9:26.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

August 8, 2007
Date

[] Approved as is.
[] Approved with amendments. See minutes of _____ meeting.

CK:isk 070711