

Real Estate Commission Bulletin



What's Happening with the Rule Amendments?

The rules were submitted to Governor Ige in October, 2015. The Real Estate Commission has not received any updates from the Governor's office regarding the status of the proposed rule changes.

As some of you may know, the Hawaii Association of REALTORS® ("HAR") initiated a "Call to Action" to HAR members on October 1, 2015, asking the members to write to the Governor to urge him to not sign the proposed rules. The "Call to Action" was premised on the "primary concern ...that there is no clear guidance on what is considered 'advertising and promotional' under the rules."

Rulemaking is a deliberate and transparent process undertaken in accordance with Hawaii Revised Statutes ("HRS") Chapter 91. All parties that would be affected by the proposed rule amendments are provided prescribed opportunities to provide their input regarding the proposed rule changes. Additionally, the Small Business Regulatory Review Board ("SBRRB") of the Department of Business, Economic Development and Tourism ("DBEDT"), reviews the proposed rule changes with respect to its impact on small business. Finally, throughout the rulemaking process, the Commission regularly included articles in the Real Estate Bulletin to advise real estate licensees of the proposed revisions to the rules.

The rule-making process involves 26 defined steps where the rules are reviewed by various State agencies and the affected parties. It should be noted that the last rule-making was completed in 2001 and revisions were long over-due. The current rule-making endeavor was initiated in 2010 and included two public hearings as well as a hearing before SBRRB. The Real Estate Commission did not receive substantive concerns or revisions at these public meetings. Consequently, the rules received an approval as-to-form from the Attorney Generals' office and were transmitted to the Governor for approval.

The concerns raised by HAR in the Call to Action were never raised by HAR at the two public hearings nor the hearing before SBRRB. In fact, HAR supported the current revisions of the rules at the hearing before SBRRB. Additionally, HAR has never raised any concern over what constitutes "advertising and promotional material" since the current version of the rules were filed on May 11, 2001.

It is understandable that every action can have unintended consequences. Laws are enacted every year and it is not unreasonable to expect that the new laws will have some unforeseen impact. However, the mere fact that a law has unintended consequences does not invalidate the law. Legislators respond every year to recommendations to revise a particular statute to address these very exigencies.

With respect to the Ch. 99 rules, there are established means to clarify, amend, or even delete existing rules. Concerns regarding any of the approved rule changes may be addressed in several ways:

- 1. File for Declaratory Relief.** Hawaii Revised Statutes, §91-8, "Declaratory rulings by agencies. Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders."

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What's Happening with the Rule Amendments? (cont. from page 1)

2. File for Rule Relief. Hawaii Administrative Rules, §201-66, "Contents of petition for rule relief. The department or any interested person may petition the authority for the amendment, adoption, or repeal of a rule. The petition for rule relief shall set forth the text of the rule to be repealed, or the text of any proposed rule, the adoption of which is being sought, or the text of any existing rule, the amendment of which is being sought, together with the proposed amendment. The petition shall further state concisely and with particularity the facts and circumstances giving rise to the petition, including the petitioner's interest and reasons for filing the petition, the necessity for the relief and the anticipated effect or impact of the relief, the questions or issues raised and petitioner's position or contentions with respect thereto."

3. File for Informal Interpretation. Hawaii Administrative Rules, §16-201-85, "Purpose, scope, and construction. (a) The purpose . . . is to clarify that any board or commission may issue informal interpretations The purpose . . . is to facilitate prompt decision making in matters where no formal ruling is desired or needed by any person and where the interpretation can be stated without the necessity of an evidentiary hearing and without consideration of legal arguments. (b) This Subchapter shall be construed in a way that will allow informal, just, speedy, and inexpensive resolution of inquiries. . . .

"16-201-88. "Form of requests for informal interpretations.

(a) A board or commission may consider any written communication from any person asking a question for processing (b) In determining whether a particular inquiry is appropriate for the issuance of an informal interpretation, the following factors shall be among those considered: (1) Whether the facts set forth by the requester are sufficiently detailed and clear to allow the board or commission to understand the requester's circumstance; (2) Whether the question being asked is clear; and (3) Whether there has been a consistent historical pattern of deciding similar inquiries upon which the board or commission can base its response."

Proposed Rule Changes

Here is a sample of the proposed rule changes that may be of interest. Changes for consistency and form are not included. To view a complete draft of the proposed rule changes, go to www.hawaii.gov/hirec. (Note: underscored material is a proposed addition to the rules. Material that is crossed through is proposed for deletion.)

§16-99-3 Conduct.

(k) The brokerage firm shall not compensate a licensee of another brokerage firm in connection with a real estate transaction without paying directly or causing the payment to be made directly to the other brokerage firm. This requirement shall not apply in cases where the licensee or the licensee's estate is receiving com-

Additional Rule-making. The Commission has previously announced that another round of rule-making will commence after the current proposed rules have been approved.

HAR's call to action to urge the Governor to halt the rulemaking process would also entail some consequences, a few of which are detailed below:

1. On hold is the rule revision permitting licensees to take the same continuing education course for credit every other biennium. Under the current version of the rules, licensees may NOT EVER take the same continuing education course for credit.
2. One of the proposed rule changes is to eliminate the necessity for prelicense instructors to take and pass every three years the instructor's exam. This will continue to be in effect until the rule amendments are approved.
3. There were also proposed changes to the rules affecting continuing education providers and evaluation of continuing education instructors. The rules pertaining to the certification of prelicense instructors were tightened up to prohibit the certification of an individual if they have been disciplined by the Commission for fraud, misrepresentation, or deceit in connection with a real estate transaction. This mirrors the rules affecting continuing education instructors. General housekeeping changes were also included.

There was a concern raised about the enforcement by the Regulated Industries Complaints Office ("RICO") of the new advertising rule regarding the inclusion of the license number on all advertising and promotional material. We are not speaking for RICO when we say that the enforcement of any law or rule is subject to the policies, procedures, priorities, and interpretations of the law/rule by the enforcement agency. The Commission is the final arbiter of all disciplinary cases.

pensation from a former brokerage firm for commission earned while the licensee was affiliated with that former brokerage firm[.], regardless of whether the licensee is on inactive status or on forfeited status or deceased.

(o) Prior to the time the principal broker or the [~~broker in charge~~] broker-in-charge is absent from the principal place of business for more than thirty calendar days, and no other [~~broker in charge~~] broker-in-charge is registered [~~with~~] for the principal place of business, the principal broker shall submit to the commission a signed, written notification of the absence designating a temporary principal broker or temporary [~~broker in charge~~] broker-in-charge,

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The Chair's Message



Aloha and Happy New Year!

Since 2010, the Real Estate Commission ("Commission") has successfully proceeded through 19 of the 26 steps of the administrative rulemaking process to revise majority of the much outdated provisions in Hawaii Administrative Rules ("HAR") Chapter 99, relating to real estate brokers and salespersons. The final draft was submitted to the Governor's office on or about October

2, 2015 and is on his desk awaiting final approval and signature.

By a letter dated October 1, 2015, the Hawaii Association of REALTORS® ("Association") requested that the Governor "hold" the present amended rules generally because of the proposed amendment to HAR §16-99-11, which requires that all real estate advertising and promotional material include the brokerage's or individual licensee's license number. While appreciating the Association's participation and involvement in reviewing, commenting on and proposing revisions to the draft rules over the last several years, the Commission is unable to support the Association's suggestion in its letter that the rule amendments be held indefinitely until the Commission clarify the revisions to HAR § 16-99-11(a) and (e) for several reasons.

First, the rulemaking process is designed to ensure the public and any interested party the right and opportunity to comment and present concerns at multiple junctures during the process. The Commission publicized the draft rules as it evolved and was updated on the Hawaii Real Estate Division website, sent out notices for hearings and solicited testimony for such hearings in accordance with law. The Association remained actively engaged in the rule making process by providing oral and written testimony and memorandums commenting on the proposed revisions during the Commission meetings over the past several years without commenting on or revising HAR §16-99-11(a) and (e), which became a part of the draft rules early on. When the proposed amendments have gone through the process and are good on balance, concerns inappropriately raised at the eleventh hour should not be used to hold up the administrative process. The Commission's position is that entertaining a request to suspend the process at this point, would also cut against public policy, question the integrity of the administrative rule making process, and would hinder the ability of regulators to fairly and efficiently update much outdated rules through a predictable and well-established administrative process.

Second, a clear majority of the provisions in the amended rules that have been supported by the Association and that are being put on "hold" by the Association would benefit and protect consumers and would also benefit and provide clarity for brokerages and licensees. Although the Commission can appreciate the effort and potentially additional cost necessary to comply with the HAR §16-99-11, as revised, there is a real potential for consumer harm to consider, especially in this new day and age of technology and creative structuring of brokerage companies and licensee relationships. Also by stalling its enactment, the public and licensees have no choice but to rely on archaic provisions promulgated over a decade ago that are obsolete. The "School Files" (January 2016), also available at www.hawaii.gov/hirec, highlight a few of these benefi-

cial revisions. The Association's request to "hold" all the proposed rule revisions, wholesale without any further plan, is not practical, effective or beneficial to anyone.

Third, the Association commenced another administrative process with the Commission that wasn't completed before initiating the call to action requesting that the Governor "hold" the rules. The Association submitted a formal written request and provided oral and written testimony to the Commission for an informal interpretation of HAR §16-99-11(a) and (e) at its September 25, 2015 meeting. After listening to and collecting testimony, the Commission deferred giving an interpretation at the meeting and requested additional information on similar marketing provisions in other jurisdictions cited to by the Association in its testimony. Soon after the Commission's request for more information on these other jurisdictions, the Association sent the letter to the Governor to "hold" the rules. As a result, the process for the informal nonbinding request initiated by the Association is still active and the Commission's interpretation is still pending.

Fourth, there are other options available in the law if at any time after the rules go into effect an interested party fails to raise specific concerns during the formal process. These include a request for declaratory relief (HRS §91-8 and HAR §16-201-48), request for rule relief (HAR §16-201-66), and a request for informal interpretation (HAR §16-201-85, -88). These statutory and administrative options provide interested persons a venue to address, amend, adopt, repeal or obtain clarification on the application of a specific regulatory provision. Since the Association's concern is mainly over HAR §16-99-11 and not over all or even most of the revisions to the rules, these options are more appropriate to address the Association's concern. If the proposed amended rules are not adopted as submitted to the Governor, then the Commission would need to go back to square one and the process which took 5 years to get to this point would start all over again. The attempt to "hold" the entire amended rules seems overreaching and is not logical or practical.

Finally in anticipation of the rules being passed, we understand that there are licensees and brokerages who have already invested time and money in updating marketing and promotional materials to include license numbers to ensure they are compliant with the rules if enacted. The Commission has announced the new proposed marketing requirement for years and this indicates that at least a portion of the industry supports the revisions and has taken steps toward compliance.

Despite the delays, the Commission remains optimistic that the rules will move forward. We remain hopeful that this unanticipated roadblock can be overcome and that none of the interested parties, including the Association, want the time, resources and effort already spent on the proposed amended rules by the many involved to go to waste. We look forward to working with the various interested parties and stakeholders, including the Association, to overcome this roadblock and to collaboratively work through any future issues that may arise in the applicability of the proposed revised rules if adopted.

(s) Nikki Senter, Chair

Proposed Rule Changes (cont. from page 2)

who shall acknowledge the temporary designation by signing the notification. In case of prolonged illness or death where the principal broker or ~~[broker in charge]~~ broker-in-charge is unable to act, another broker shall be designated as the temporary principal broker or ~~[broker in charge]~~ broker-in-charge within thirty days of the illness or death with appropriate notification ~~[to the commission.]~~ and statement of a licensed medical doctor certifying to the commission the inability of the broker to practice. [A temporary principal broker or broker in charge arrangement shall not exceed a period of six months, with the right to extend prior to expiration for another six months for good cause and with the approval of the commission.]

A temporary principal broker or broker-in-charge arrangement shall not exceed a period of six months unless, prior to expiration of the initial six-month period, the principal broker requests and obtains, upon a showing of good cause for such extension, approval of the commission to extend the temporary arrangement for up to an additional six months.

§16-99-4 Client's account; trust funds; properties other than funds.

(d) Every brokerage firm shall deposit or place trust funds received into a neutral escrow depository or in a trust fund account with some bank or recognized depository, which is federally insured, by the next business day following their receipts. The neutral escrow depository shall be located in the same state where the property is located.

§16-99-5.1 Involuntary inactive license status.

(d) A brokerage firm's license, whether a corporation, limited liability company or partnership, shall be placed on an involuntary inactive status upon the occurrence of one or more of the following:

(1) The principal broker's license is placed on an inactive, forfeited, suspended, revoked, or terminated status;

(2) The brokerage firm is no longer registered with the business registration division;

(3) The principal broker is unable to act in the case of prolonged illness or death and no temporary principal broker has been designated pursuant to section 16-993(o);

(4) The brokerage firm has no approved place of business; and

(5) The principal broker is absent from the place of business for more than thirty days, or moves out-of-state, and no commission approved temporary principal broker or broker-in-charge has been designated pursuant to section 16-99-3(o).

§16-99-11 Advertisement. (a) All real estate advertising and promotional materials shall prominently and conspicuously include the legal name of the brokerage firm or a trade name previously registered by the brokerage firm with the business registration division and with the commission[.] and the license number of the bro-

kerage. The license number of the brokerage shall not be required for all advertising and promotional materials that comply with paragraph (e).

(c) Current individual real estate licensees~~[, whether active or inactive,]~~ on inactive status shall disclose the licensee's inactive status [as a real estate licensee] in all advertising and promotional material.

(e) All advertising and promotional materials that refer to the individual licensee's name, including but not limited to business cards, shall:

(2) Identify the licensee with the licensee's associating or employing brokerage firm; and

(3) [Specify that the licensee is a broker (B), or salesperson (S), or if a current member of the Hawaii Association of Realtors, Realtor (R) or Realtor Associate (RA).] Include the licensee's license number as issued by the commission.

§16-99-37 Education equivalency. (a) The commission may grant an equivalency to the respective education requirements for applicants for the salesperson ~~[and broker]~~ license examinations for:

(1) Those who hold a current license that was active within one year immediately prior to the date of application as a salesperson or broker in another state with similar or superior education requirements as determined by the commission;

(2) Graduates of an accredited law school in the United States; [of] or

(3) Bachelor of arts or bachelor of science degree graduates of accredited colleges and universities in the United States who have majored in real estate or business[.]; .

(b) The commission may grant an equivalency to the respective education requirements for applicants for the broker license examinations for:

(1) Those who hold a current license that was active within one year immediately prior to the date of application as a broker in another state with similar or superior education requirements as determined by the commission; and

(2) Graduates of an accredited law school in the United States.

§16-99-58 Faculty.

(d) Each instructor shall initially take and pass an examination with a minimum passing score of eighty-five percent or as prescribed by the commission and shall:

(g) ~~[Every instructor, every three years, as a condition of recertification for each course the instructor chooses to teach, shall take and pass an instructor's exam, demonstrating the instructor's current command of the precourse.]~~ An instructor may not be certified if the individual has been:

Proposed Rule Changes (cont. from page 4)

- (1) Disciplined by the commission or any state or by any licensing regulatory body for fraud, misrepresentation, or deceit in connection with the sale, purchase, exchange, or property management of any interest in real estate or for any other conduct substantially related to the practice or profession of real estate; or
- (2) Convicted of a crime which substantially relates to the profession of teaching or to the practice or profession of real estate.

§16-99-87 Definitions. As used in this subchapter:

“Course and course offering” means a continuing education module of instruction certified by the commission, consisting of a minimum of three clock hours [.] and a maximum as the commission may determine.

“Professional standards and practice courses” means course content relating to real estate professional development[.] that improves real estate competency of the licensee or for the benefit of the real estate consumer, or both.

§16-99-95 Duplicate continuing education hours. Except as provided by the commission or by this subchapter, a licensee shall not take a continuing education course [~~that is substantially similar to a course~~] for which the licensee has already received a certificate[.] within two consecutive biennia. [A continuing education provider shall not issue to a licensee a certificate for substantially the same course completed by the licensee. “Substantially similar” as used in this section means that at minimum, seventy five per cent of the course content of a course is repeated in another course offering.]

§16-99-96 An instructor who is a licensee. In satisfying the continuing education hours of a license period, an instructor who is a real estate licensee, may use once in any two consecutive biennium, the clock hours for each course taught[.] except the core course which may be recognized for clock hours each biennium. The one time use applies even when the instructor has taught the course more than once.

§16-99-101 Courses not acceptable for continuing education course certification. The commission may not certify a continuing education course, or any portion thereof, which:

- (1) Does not directly relate to real estate law or real estate practice;
- (2) Is related to passing a prelicense real estate salesperson or broker exam;
- (3) Teaches general office [and business] skills, such as [typing,] word processing, basic internet skills, computer software or other technology, [speed reading, memory improvement, report writing,] personal motivation, [salesmanship, sales psychology,] and time management;
- (4) Includes sales or promotions of a product or service or other meetings held in conjunction with general real estate broker-

age activity;

- (5) Is devoted to meals or refreshments;
- (6) Is less than three clock hours in duration; and
- (7) Does not meet the definition of continuing education as determined by the commission.

§16-99-104 Criteria for certification of a continuing education instructor.

(d) Any individual meeting the criteria for approval as a continuing education instructor, may not be certified by the provider if the individual has been:

- (3) Determined to have scored below the minimum requirements as established by \the commission, which may include a standardized student evaluation rating.
- (e) The commission may require that each instructor complete an instructor’s workshop as approved by the commission [~~or complete viewing a commission approved audio videotape of such workshop within the biennium.~~] prior to teaching in each biennium.

§16-99-121 Faculty

- (b) The administrator shall be responsible for:
- (5) Administering and maintaining the student evaluations; and minimum rating standards of instructors
- (6) Ensuring that instructors do not fall below minimum rating standards.

§16-99-121.1 Instructor evaluation. (a) Course providers shall implement a standardized student evaluation process as determined by the commission.

(b) Course providers shall ensure that student evaluations of instructors do not fall below the minimum rating standards as determined by the commission.

§16-99-147.1 Condominium hotel operations. The condominium hotel operator shall operate only in areas specifically authorized by county zoning codes. The condominium project declaration and bylaws shall specifically permit transient lodging of less than thirty days

§16-99-147.2 Who may register as a condominium hotel operator. (a) Only those persons who do not hold a real estate license, either salesperson or broker, may register as a condominium hotel operator.

(b) Where an entity includes the following persons holding a real estate salesperson or broker’s license, that entity may not register as a condominium hotel operator.

Proposed Rule Changes (cont. from page 5)

(1) General partner or employee of a partnership condominium hotel operator;

(2) An officer or employee of a corporation condominium hotel operator;

(3) A member of a member-managed limited liability company condominium hotel operator; or

(4) A principal having direct management and responsibility over condominium hotel operations, including performing or facilitating the delivery of customary hotel services.

§16-99-148 Fidelity Bond

(g) The fidelity bond shall not be required of an individual owner providing apartments or units for transient lodging; provided that ownership of the apartment or unit is in the individual

owner's name and not in an entity's name; and provided further that the owner has no employees. Where the individual owner has an employee, the individual owner shall obtain and maintain a fidelity bond.

§16 99 149 Client's trust funds, accounting, and records. (a) Condominium hotel operators, including condominium hotel operators who are [excluded or exempt from obtaining a real estate broker's license pursuant to section 467 30(f), HRS] precluded from holding a license as a real estate broker or real estate salesperson pursuant to 467-30(g)(2), HRS shall comply with section 16 99 4. For purposes of compliance, when the condominium hotel operator is not a real estate broker, references to broker or principal broker in section 16 99 4 shall also mean "condominium hotel operator."

Growing Mediation to Resolve Condominium Disputes

by Tracey Wiltgen

To encourage the use of mediation in condominium-related disputes, in 2014 the Hawaii State Legislature amended the Hawaii Revised Statutes (HRS) §514B-72 to include an additional annual condominium education trust fund fee in an amount equal to the product of \$1.50 times the number of condominium units included in the registered project or association. HRS § 514B-71(a)(4) was also amended to require the Hawaii Real Estate Commission to "budget an amount and expend moneys from the condominium education trust fund specifically to support mediation of condominium related disputes utilizing professionally trained mediators for those parties and disputes specified in HRS § 514B-161."

The changes to HRS §514B-72 and HRS § 514B-71(a)(4) conveyed two important messages. First, that mediation is a valuable process for addressing condominium related disputes and should be used more frequently. And second, that the mediators who mediate condominium disputes specified in section 514B-161, must have specialized training and knowledge to provide the participants with the best possible opportunity for reaching a resolution. In direct response to the statutory changes, starting on July 1, 2015, more options for accessing mediators with the requisite training will be made available and the costs of participating in mediation will be subsidized by the condominium education trust fund.

Prior to the changes to §§ HRS 514B-71 and 72, the cost of participating in mediation was defrayed by the condominium education trust fund for cases mediated through the community mediation centers located throughout the State. Parties who chose to use the services of a private mediator would be responsible for the entire cost. Despite the added expense, private mediators were used in some instances because they could be selected for their skills as a mediator, as well as for their subject matter knowledge of the laws governing condominium associations and the relevant case law. Having knowledge and expertise allowed these mediators to ask

critical questions that helped move the parties towards productive problem solving, as well as enabled them to use an evaluative approach of assessing the strengths and weaknesses of each party's position when the parties were at an impasse.

The evaluative approach to mediation essentially provides a mediator with additional tools to help the parties reach a resolution. While mediators who adhere to a strictly facilitative approach to mediation can also be successful, particularly when relationships and high emotion are involved, the evaluative approach relies on interest based negotiation and reality testing to assist the participants in reaching agreements. It offers the parties more space and flexibility to come up with their own solutions rather than relying on the mediator's perspective of the strengths and weaknesses of each party's case.

Mediators who use evaluation as a strategy to move the parties towards a settlement, can do so in a variety of ways. For example, during a private session with each party, the mediator might serve as an agent of reality by discussing the areas of weakness that s/he sees in each party's case. A mediator may also offer a proposal that represents his/her independent and objective evaluation of the dispute and recommendation for a settlement that would be better for both parties rather than going to litigation. A mediator's evaluation or proposal will only be effective in convincing the parties to settle, if the mediator has credibility with the parties as being knowledgeable of the relevant laws and case law.

Irrespective of whether a mediator uses a facilitative or evaluative approach or both, there are key elements in common for all mediations. First, a foundation must be laid in the mediation process before any negotiating or problem solving can occur. This means that all relevant information is gathered and shared; concerns are heard

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Growing Mediation to Resolve Condominium Disputes

(cont. from page 6)

and are emotions de-escalated. While some mediators may ask for a pre-mediation statement outlining key information and points, all mediators will spend a certain amount of time listening to each party's perspective. Second, interest based bargaining and a facilitated approach is often used first by all mediators, before using tools of reality testing, evaluating or proposals. Finally, whether or not a mediator offers an evaluation or proposal, the final decision is always up to the parties. When mediation isn't successful, the parties may go to litigation.

Mediation is an informal, confidential process for resolving disputes quickly. And while different mediators use different approaches and tools to assist parties in reaching a settlement, the final decision is always up to the parties themselves. It is the perfect

process for addressing disputes that arise within condominiums. It can save an AOUO thousands of dollars in legal fees and may even help to restore a more harmonious relationship within a condominium community. Now thanks to HRS §514B-72 and HRS § 514B-71(a)(4), starting on July 1, 2015, condominium owners and board directors will have more opportunities to use mediation services offered by private mediators as well as community mediation centers, to resolve disputes specified in HRS § 514B-161, at minimal cost to the parties.

Tracey Wiltgen is the Executive Director of the Mediation Center of the Pacific, a 501(c)(3) nonprofit corporation that provides mediation and dispute resolution services for more than 5,000 people annually.

Administrative Actions

October 2015

Jodi Rementer
RS 70667

Case No. REC 2012-68-L
Dated 10/23/15

Uncontested Facts:

On or about June 23, 2011, Respondent was indicted on one count of receipt of a stolen firearm and ammunition and one count of sale of a stolen firearm and ammunition in violation of 18 USC §§922(j) and 924(a)(2) in United States v. Rementer, United States District Court for the District of Hawaii, Criminal No. CR11-00647 SOM ("the criminal action").

On February 7, 2012, Respondent pled guilty to and was convicted of both counts.

Respondent was sentenced to four months incarceration and three years of supervised release following her incarceration.

Respondent complied with all terms of her sentence and supervised release.

On or about May 29, 2014, the Court in the criminal action entered a Report and Order Terminating Probation/Supervised Release ("Report") under which Respondent was discharged early from supervised release.

Respondent has not been convicted of any federal or state crimes since February 7, 2012.

Respondent reported the conviction to the Real Estate Commission in writing on or about December 19, 2012 as part of her license renewal.

Sanction: Fine of \$1000.00.

Violations: HRS §436B-19(12)

Administrative Actions (cont. from page 7)

November 2015

**Judith Ann Pryne,
dba Keale Realty**
RB 14209

Case No. REC 2012-267-L
Dated 11/25/15

Findings of Fact:

Respondent was originally licensed as a real estate broker, License No. RB 14209, on or about January 1, 1987. Said license was placed on inactive status beginning on October 13, 2014, and expired after December 31, 2014.

On December 31, 2010, the real estate salesperson's license of Agustina C. Salon expired. At the time, Salon was associated with Respondent.

Between December 31, 2010 and May 22, 2012, Salon engaged in the activities of a real estate salesperson notwithstanding the expiration of her license.

Salon's real estate salesperson's license was restored on or after May 22, 2012.

Salon ended her association with Respondent on or about December 31, 2012.

On June 27, 2014, the Real Estate Commission ("Commission") approved a settlement agreement between Salon and Petitioner in which Salon admitted to undertaking activities requiring a real estate salesperson's license between approximately January 1, 2011 and May 22, 2012. Pursuant to the settlement, Salon agreed to pay a fine of \$1,000.00.

Since the commencement of this proceeding, Respondent has not responded to the allegations lodged against her in any meaningful way.

Sanction: Fine of \$1000.00.

Violations: HRS §467-1.6(b)(7)

Gary D. Robley
also known as **Gary Dino Robley, a Real Estate Salesperson**
RS 66563

Case No. REC 2015-141-L
Dated 11/25/15

Allegations:

On or about January 30, 2015, Respondent pled no contest in the District Court of the First Circuit, State of Hawaii, to the crime of driving under the influence (hereafter "Conviction").

The Respondent's employer disclosed the Conviction in writing to the Commission.

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction.

Sanction: Fine of \$500.00.

Violations: HRS §§436B-19(12), (14), and (17).

Administrative Actions (cont. from page 8)

November 2015

Brandi S. Nakai
RS 74519

Case No. REC 2015-33-L
Dated 11/25/15

Allegations:

On or about 9/18/14, the Respondent pled no contest in the District Court of the First Circuit, State of Hawaii, to the crime of driving under the influence (hereafter "Conviction").

Respondent disclosed the Conviction in writing to the Commission.

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction.

Sanction: Fine of \$500.00.

Violations: HRS §436B-19(12), (14), and (17).

December 2015

Dayna E. Harris
RB 20019

Case No. REC 2015-262-L
Dated 12/18/15

Uncontested Facts:

RICO received a request for investigation from the Real Estate Commission after Respondent reported an August 13, 2015 small claims judgment in the amount of \$414.24 entered against Respondent in Madonna Dizon vs. Molokai Vacation Properties/Davna Harris/Rebecca Sanders (Civil No. DC-SC 15-1-0136).

RICO alleges Respondent failed to report the judgment within thirty days as required by law.

Sanction: Fine of \$500.00.

Violations: ("HRS") §436B-16

Statutory/Rule Violations

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

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

HRS §467-1.6(b)(7)	Ensuring that the licenses of all associated real estate licensees and the brokerage firm license are current and active;
HRS §436B-16	Each licensee shall provide written notice within thirty days to the licensing authority of any judgement, award, disciplinary sanction, order, or other determination, which adjudges or finds that the licensee is civilly, criminally, or otherwise liable for any personal injury, property damage, or loss caused by the licensee's conduct in the practice of the licensee's profession or vocation. A licensee shall also give notice of such determinations made in other jurisdictions.
HRS §436B-19(12)	Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license.
HRS §436B-19(14)	Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation.
HRS §436B-19(17)	Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.

Operators of Transient Accommodations

by the Department of Taxation

During this past legislative session, the Hawaii State Legislature passed Act 204, Session Laws of Hawaii 2015 (Act 204), which became effective January 1, 2016. Act 204 requires that operators of transient accommodations designate an on-island local contact and display that contact's name, phone number and email address inside the unit, and provide that information either in online advertisements, or to the guest upon check-in. Act 204 also requires that a unit's TAT license number be displayed both inside the unit itself and in all online advertisements, either directly in the advertisement or by a link.

The penalty for failure to display the local contact's information is a fine of \$500 per day for first violations, \$1,000 per day for second violations, and \$5,000 per day for third and subsequent violations.

Similarly, the penalty for failure to display the TAT license number is \$500 per day for first violations, \$1,000 per day for second violations, and \$5,000 per day for third and subsequent violations. The penalty for failure to display the TAT license number in online advertisements may be imposed on both the operator of the transient accommodation, and the operator the website advertising the unit.

The Department is currently in the process of drafting administrative rules to help clarify the TAT license number advertising and posting requirements, including how any penalties may be assessed, and when and how the Department may issue a warning in lieu of a citation. In an effort to provide this guidance as quickly as possible, the Department expects to issue these rules in the early part of this year in the form of temporary administrative rules. Temporary administrative rules have the force and effect of law just as any other administrative rules, but are effective only for a maximum of 18 months.

The Department will hold a public hearing and receive public testimony during the process which will replace the temporary rules with permanent rules that do not expire. As part of that process, the Department currently expects to hold a public hearing to receive public comment and testimony before the end of 2016. Updates on the temporary administrative rules and the public hearing process will be posted on the Department's website: tax.hawaii.gov

Unlike Act 326, Session Laws of Hawaii 2012 (Act 326), Act 204 does not create any requirements that any information be reported to the Department of Taxation or any other State agency. Nor does it create any obligations for associations of apartment/unit owners or planned community associations. **All obligations are strictly on the owners or other operators of the transient accommodations and upon websites or others advertising transient accommoda-**

tions located in the State of Hawaii.

Act 326, which sunset on December 31, 2015, required associations of apartment/unit owners to report certain relevant information on units being operated as transient accommodations and to update that reported information before the end of each year, or within 60 days of a change in their records, whichever is later. To accommodate reporting of any changes that may have occurred in late 2015, the Department will continue to maintain the reporting website until at least March 1, 2016. There is no requirement that associations maintain records of the relevant information required by Act 326 for 2016 and beyond, and no requirement to report any of the information to the Department of Taxation once reporting for 2015 is complete.

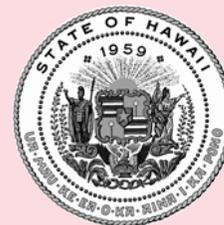
Correction

In the November 2015 Real Estate Commission Bulletin, on page 4, 2015 Legislative Update, HB279 HD2 SD1, Act 141 should read Act 41.

On page 5, SB756 SD1 HD2 CD1, Act 125 should read Act 225.

Prelicensure Schools

Abe Lee Seminars	808-942-4472
Akahi Real Estate Network LLC	808-331-2008
All Islands Real Estate School	808-564-5170
American Dream Real Estate School LLC	720-322-5470
Carol Ball School of Real Estate	808-871-8807
Coldwell Banker Pacific Properties Real Estate School	808-597-5550
Continuing Ed Express LLC	866-415-8521
Dower School of Real Estate	808-735-8838
Fahrni School of Real Estate	808-486-4166
Inet Realty	808-955-7653
ProSchools, Inc.	800-452-4879
Ralph Foulger's School of Real Estate	808-239-8881
REMI School of Real Estate	808-230-8200
Seiler School of Real Estate	808-874-3100
University of Hawaii Maui College - OCET Real Estate School	808-984-3231
Vitousek Real Estate Schools, Inc.	808-946-0505



State of Hawaii Real Estate Commission

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This material may be made available to individuals with special needs. Please call the Senior Real Estate Specialist at 808-586-2643 to submit your request.

Continuing Education Providers

Abe Lee Seminars	808-942-4472	Kama'aina Realty LLC, dba RP Seminars Unlimited	808-753-3083
All Islands Real Estate School	808-564-5170	Kauai Board of Realtors	808-245-4049
American C.E. Institute, LLC	727-224-3859	Lorman Business Center, Inc. dba Lorman Education Services	715-833-3940
American Dream Real Estate School LLC	720-322-5470	McKissock, LP	800-328-2008
American School of Real Estate Express, LLC	866-739-7277	OnCourse Learning Corporation, dba Career WebSchool	800-532-7649
Carol Ball School of Real Estate	808-871-8807	Pacific Real Estate Institute	808-524-1505
Carol M. Egan, Attorney at Law	808-222-9725	ProSchools, Inc.	800-299-2207
Coldwell Banker Pacific Properties Real Estate School	808-597-5550	Ralph Foulger's School of Real Estate Real Class, Inc.	808-239-8881 808-981-0711
Continuing Ed Express LLC	866-415-8521	Realtors Association of Maui, Inc.	808-873-8585
Dower School of Real Estate	808-735-8838	REMI School of Real Estate	808-230-8200
Eddie Flores Real Estate Continuing Education	808-951-9888	Russ Goode Seminars	808-597-1111
Hawaii Association of Realtors	808-733-7060	Servpro Industries, Inc.	615-451-0200
Hawaii Business Training	808-250-2384	Shari S. Motooka-Higa	808-457-0156
Hawaii CCIM Chapter	808-528-2246	The CE Shop, Inc.	888-827-0777
Hawaii Island Realtors	808-935-0827	USA Homeownership Foundation, Inc., dba Veterans Association of Real Estate Professionals (VAREP)	951-444-7359
Honolulu Board of Realtors	808-732-3000	Vitousek Real Estate Schools, Inc.	808-946-0505
Institute of Real Estate Management – Hawaii Chapter No. 34	808-536-4736	West Hawaii Association of Realtors	808-329-4874
Institute of Real Estate Management – National	312-329-6058		
International Association of Certified Home Inspectors (InterNACHI)	303-502-6214		

State of Hawaii
Real Estate Commission
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2016 Real Estate Commission Meeting Schedule

Laws & Rules Review Committee – 9:00 a.m.

**Condominium Review Committee – Upon adjournment of the Laws & Rules
Review Committee Meeting**

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

Wednesday, January 13, 2016 *

Wednesday, February 10, 2016

Wednesday, March 09, 2016

Wednesday, April 06, 2016

Wednesday, May 11, 2016

Wednesday, June 08, 2016

Wednesday, July 13, 2016

Wednesday, August 10, 2016

Wednesday, September 14, 2016

Wednesday, October 12, 2016

Wednesday, November 09, 2016

Wednesday, December 07, 2016

Real Estate Commission – 9:00 a.m.

Friday, January 29, 2016

Friday, February 26, 2016

Thursday, March 24, 2016

Friday, April 29, 2016

Friday, May 27, 2016

Friday, June 24, 2016

Friday, July 29, 2016

Friday, August 26, 2016

Friday, September 30, 2016

Friday, October 28, 2016

Wednesday, November 23, 2016

Friday, December 16, 2016

* The Meeting will be held at the REALTORS' Association of Maui, 441 Ala Makani Place, Kahului, HI, 9:30 a.m.

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

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at www.hawaii.gov/hirec or call the Real Estate Commission Office at (808) 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at (808) 586-2643 to submit your request.