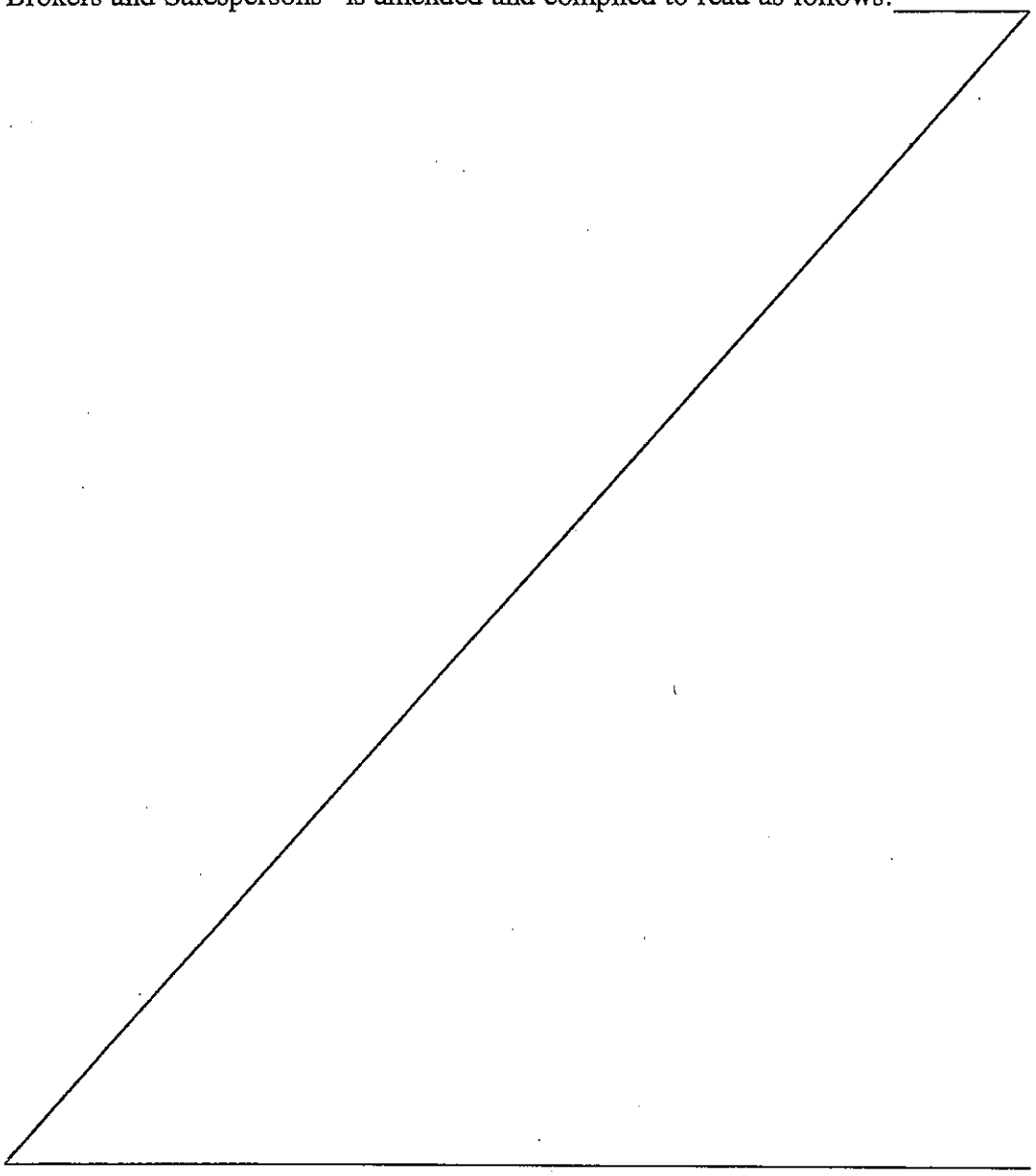
DRAFT 8

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-99
Hawaii Administrative Rules

1. Chapter 16-99, Hawaii Administrative Rules, entitled "Real Estate Brokers and Salespersons" is amended and compiled to read as follows:



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"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 99

REAL ESTATE BROKERS AND SALESPERSONS

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-99-1 Objective. This chapter, adopted by the real estate commission, hereafter referred to as "commission," is intended to clarify and implement chapter 467, Hawaii Revised Statutes, as amended, to the end that the provisions thereunder, for the protection of the general public in its real estate transactions, may be best effectuated and the public interest most effectively served. [Eff 12/26/74; am and ren §16-99-1, 4/27/81; am and comp 6/28/82; comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §467-4)

§16-99-2 Definitions. As used in this chapter:

"Approved curriculum" means the curriculum or courses approved by the commission as satisfying the education requirements established for real estate broker and salesperson license examination applicants.

"Branch office" means a place of business other than the principal place of business from which real estate business is conducted. Branch offices located on an island different from the principal place of business shall be registered [by] with the commission. Branch office registration shall not be required for places of business located on the same island as the principal place of business and registration shall not be required for any additional place of business from which real estate broker activities are engaged in exclusively relative to a condominium project, real estate subdivision, larger community development developed by a single developer, time share project, new or existing shopping center, or other commercial building.

"Brokerage firm" or "firm" means a sole proprietor broker licensee, or a partnership, corporation, or limited liability company licensed as a broker.

["Broker in charge"] "Broker-in-charge" means an individual broker licensee designated by the principal broker as the broker directly in charge of and responsible to the principal broker for the real estate operations conducted at the principal place of business or a branch office. The principal broker may designate one or more [brokers in charge] brokers-in-charge of the principal place of business or branch office, provided that there shall be at least one [broker in charge] broker-in-charge

of each branch office. A broker-in-charge may be designated to more than one branch office.

"Broker-salesperson" means an individual broker licensee who associates that individual's own license with a brokerage firm as an employee or independent contractor.

"Commingling" means to mingle or mix, such as a deposit of client's funds in the broker's personal account.

"Inactive" means the status of a current license that is not forfeited, suspended, revoked, or terminated, the holder of which cannot transact any real estate business until the license status is changed to "active" status.

"Involuntary inactive" means the status of a current license resulting from the forfeiture, suspension, revocation, termination, or inactive status of a principal broker, [broker in charge] broker-in-charge, branch office, or brokerage firm, as the case may be.

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

"Place of business" means the physical place where business is conducted other than a post office box, telephone, telephone answering service, letter or mail drop service, or motor vehicle within the State, and may include a home occupation office. The place of business shall conform with the permitted use under the zoning code of the county in which the place of business is situated and with any declarations, bylaws, house rules, recorded restrictions, or covenants that may govern the place of business. The commission may use as guidelines, but is not limited to, the following factors in finding that a brokerage firm is maintaining a place of business: physical presence of the broker during reasonable scheduled office hours; on-site maintenance of confidential clients' files which shall be immediately accessible to the commission upon request; the prominent display of the brokerage firm's name or trade name as licensed by the commission and the listing of the brokerage firm name where permissible in the building directory; the operation of the brokerage firm at a place of business directly accessible to the public; and the on-site maintenance of personnel and compensation records [on] for all real estate salespersons and broker-salespersons employed by or associated with the brokerage firm. Client files as used in this definition include[s] but is not limited to: real estate contracts, escrow records, trust account records, and confidential client data. "Place of business" does not include the operation of a place of business designed to evade the requirements of the definition as set forth in this paragraph. Each brokerage firm shall have one, and only one, principal place of business.

"Supervision" means the act of directing, inspecting, and reviewing.

"Trust properties" includes funds in the form of cash or checks, and personal property[,] other than cash or checks, received by the licensee to be held in trust for the benefit of the depositor of the property or for the benefit of third persons, or both.

"Wall certificate" means a certificate of license issued by the commission to a qualified person either as a salesperson or broker. [Eff 12/26/74; am and ren §16-99-2, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am 9/29/86; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §§467-1.5, 467-7, 467-8, 467-11, 467-12, 467-14, 467-25.5)

§16-99-3 Conduct. (a) To fully protect the general public in its real estate transactions, every licensee shall conduct business, including the licensee's own personal real estate transactions, in accordance with this section.

(b) The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate any practices in the community which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission in its efforts to regulate the practices of brokers and salespersons in this State.

(c) The licensee shall not be a party to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

(d) The licensee shall recommend that title be examined, survey be conducted, or legal counsel be obtained when the interest of either party requires it.

(e) The broker shall keep in special bank accounts, separated from the broker's own funds, moneys coming into the broker's possession in trust for other persons, such as escrow funds, trust funds, clients' moneys, rental deposits, rental receipts, and other like items.

(f) The licensee, for the protection of all parties with whom the licensee deals, shall see that financial obligations and commitments regarding real estate transactions, including real property rental management agreements, are in writing, express the exact agreements of the parties, and set forth essential terms and conditions, and that copies of those agreements, at the time they are executed, are placed in the hands of all parties involved.

When working with a seller in a "For Sale By Owner" or a "Courtesy to Broker" situation, the licensee shall disclose who, if anyone, the licensee represents and who will pay a commission, if any.

(g) The licensee shall not acquire, rent, lease, or exchange an interest in or buy, rent, lease, or exchange for one's self, any member of the licensee's immediate family or brokerage firm, or any entity in which the licensee has any ownership interest, property listed with the licensee, licensee's brokerage firm, or listed with any other brokerage firm or licensee without making the true position known in writing to the listing owner or property owner. When offering for sale, lease, exchange, or rental, property which the licensee owns or has an interest in, the licensee shall fully inform the principal broker of the licensee's intention to sell, lease, exchange, or rent, and of the licensee's interest in the property. The licensee shall reveal the interest to the purchaser, lessee, or tenant in writing prior to accepting any offer.

(h) When acting as agent in the management of property, the licensee shall not accept any commission, rebate, or profit on expenditures for or from an owner, without the owner's and principal broker's knowledge and consent.

(i) The brokerage firm shall not submit or advertise property without written authorization, and in any offering the price quoted shall not be other than that agreed upon with the owner as the offering price.

(j) A licensee shall transmit immediately all written offers in any real estate transaction as defined in section 16-99-3.1 to the listing broker who has a written unexpired exclusive listing contract covering the property. Each written offer, upon receipt by the listing broker, shall be transmitted to the seller immediately. In the event that more than one formal written offer on a specific property is made before the owner has accepted an offer, any other formal written offer presented to the broker, whether by a prospective purchaser or another broker, shall be immediately transmitted to the owner for decision. If an offer or counter offer is rejected, the rejection shall be noted on the offer or counter offer, or in the event of seller's or buyer's neglect or refusal to do so, the broker for the rejecting party shall note the rejection on the offer or counter offer and a copy shall be returned immediately to the originator of the offer or counter offer.

(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 <u>or the licensee's estate</u> is receiving compensation from a former brokerage firm for commission earned while <u>the licensee was</u> affiliated with that former brokerage firm[.], <u>regardless of whether the licensee is on inactive status or on forfeited status or deceased.</u>

(l) A licensee shall not place any sign or advertisement indicating a property is for sale, rent, lease, or exchange without the written authorization of the owner or seller and approval of the principal broker or [broker in charge] <u>broker-in-charge</u>.

(m) There shall be a principal broker or one or more [brokers in charge] brokers-in-charge, or both, at the principal place of business, and one or more [brokers in charge] brokers-in-charge at a branch office who shall be immediately responsible for the real estate operations conducted at that place of business.

(n) A brokerage firm shall maintain a principal place of business located in this State at a business address registered with the commission from which the brokerage firm conducts business and where the brokerage firm's books and records are maintained.

(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, 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.

(p) No licensee shall act as a broker, broker-salesperson, or salesperson for more than one brokerage firm except that this subsection shall not apply to those situations as described in subsection (o).

(q) Within ten days of receiving a written request, it shall be the responsibility of the principal broker or [broker in charge] broker-in-charge of the brokerage firm to provide broker applicants formerly or presently employed by or associated with them with an accurate experience certification statement in the form provided by the commission attesting to the length of time that the broker applicant has been actively associated with or employed full-time by the brokerage firm. Falsification of information contained in the certification form shall be cause for revocation or suspension of the broker's or brokerage firm's license and of the salesperson's license if that person is a party to the falsification.

(r) A broker licensee shall not sit for any Hawaii real estate broker or salesperson examination during the period in which the licensee has a real estate broker license unless specifically permitted by the commission.

(s) A salesperson licensee shall not sit for any Hawaii real estate salesperson examination during the period in which the licensee has a real estate salesperson license unless specifically permitted by the commission.

(t) An exclusive listing shall state a definite termination date.

(u) The licensee shall not add to or modify the terms of an instrument previously signed or initiated by a party to a transaction without written consent of all the parties.

(v) The licensee shall not convert other people's moneys to the licensee's own use.

(w) Violation of any part of this chapter may be cause for revocation or suspension of license. [Eff 12/26/74; am and ren §16-99-3, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am 9/29/86; am 7/11/87; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §467-4) (Imp: HRS §467-14)

§16-99-3.1 Disclosure of agency. (a) As used in this section:

"Buyer" includes a vendee, lessee, party to an exchange, or grantee of an option.

"Buyer's agent" means a real estate broker who acts as the agent of the buyer.

"Contract between the buyer and seller" includes a ["deposit receipt, offer and acceptance",] purchase contract, an option, an offer to purchase, a sales contract, an offer to lease, or a lease.

"Listing brokerage firm" means the real estate brokerage firm that obtains a listing of real estate for sale, lease, exchange (residential, time share, industrial, or commercial) or for an interest in a residential cooperative housing corporation.

"Seller" includes a vendor, lessor, party to an exchange, or grantor of an option.

"Selling brokerage firm" means a real estate brokerage firm that acts in cooperation with a listing broker and finds and obtains a buyer in a transaction.

"Subagent" means a real estate brokerage firm or salesperson to whom an agent delegates agency powers.

"Transaction" means any sale, lease, rent, or exchange of real estate (residential, time share, industrial, or commercial) transaction or a sale or exchange of, or option involving, an interest in a residential cooperative housing corporation, but excluding leases for one year or less.

(b) At the time a listing brokerage firm obtains a listing, the listing brokerage firm shall disclose the following:

(1) Whether the seller authorizes the listing brokerage firm to appoint seller's subagents through a multiple listing service or otherwise; and

(2) Whether the seller authorizes the listing brokerage firm to share commissions with seller's subagents or buyer's agents.

The disclosure shall be in writing, dated, and signed by the seller and the listing brokerage firm.

(c) Prior to preparing any contract between the buyer and the seller, the following disclosure shall be made at least once to the buyer, in writing or orally:

(1) If the licensee acting as the listing brokerage firm is acting alone and providing services to the buyer, the licensee shall disclose who the licensee represents in the transaction;

(2) If the licensee, acting in cooperation with a listing brokerage firm, has found the buyer in the transaction, the licensee shall disclose who the licensee represents in the transaction; or

(3) If there is no listing brokerage firm, each licensee providing services to the buyer with respect to the transaction shall disclose whether the licensee represents the buyer or the seller in the transaction.

(d) Prior to presenting a contract between the buyer and the seller to the seller, the following disclosure shall be made at least once to the seller, in writing or orally:

(1) The licensee acting as the listing brokerage firm shall disclose to the seller who the selling brokerage firm represents in the transaction; or

(2) If there is no listing brokerage firm, each licensee involved in the transaction shall disclose to the seller whether the licensee represents the buyer or the seller in the transaction.

(e) Any disclosure required by subsections (c) and (d) shall be confirmed in writing in a separate paragraph titled "AGENCY DISCLOSURE" in the contract between the buyer and the seller. The title shall be in no less than ten-point bold print. No particular disclosure language is required. To assist licensees, the commission approves the following language:

"AGENCY DISCLOSURE(S):

_____, and all licensees
(Print name of Selling Brokerage Firm,)
(or Listing Brokerage Firm if acting alone)
employed by or associated with the brokerage firm,
represents the _____. By
(Buyer or Seller)

[initialling] initialing below, the Buyer and Seller confirm that oral or written disclosure of such representation was provided to them before the signing of this contract.

_____ _____

Buyer's initials Seller's initials"

(f) Unless specifically restricted by the real estate brokerage firm in writing, any real estate salesperson, employed by or associated with a real estate brokerage firm, shall be authorized to make the required disclosures on behalf of the real estate brokerage firm. Failure to make the disclosure required by subsections (b), (c), and (d) or to obtain the written confirmation thereof shall subject the real estate brokerage firm and the real estate salesperson to disciplinary action by the commission.

(g) A licensee may not be the agent for both the buyer and the seller without obtaining the written consent of both the buyer and the seller. The written consent shall state that the licensee made a full disclosure of the type of representation the licensee will provide and shall briefly describe the type of representation the licensee will provide to the buyer and to the seller. A general statement in the consent signed by the buyer and seller that the licensee represents both buyer and the seller is not sufficient.

(h) A licensee representing a buyer shall disclose, orally or in writing, such agency to the seller, or the listing brokerage firm if there is a listing brokerage firm, before negotiations are initiated. The licensee shall disclose, orally or in writing, to the seller, or the listing brokerage firm if there is a listing brokerage firm, whether the licensee is, or intends to be, the buyer, before negotiations are initiated.

(i) If any change occurs in a transaction which makes a prior written or oral disclosure required by this section incomplete, misleading, or inaccurate, the licensee shall promptly make a revised written disclosure if the prior disclosure was in writing, or a revised oral disclosure if the prior disclosure was made orally, to the buyer or seller, or both, as the case may be. Any revised written disclosure shall include the date of the revised disclosure and be acknowledged separately by the signature of the buyer or seller, or both, as the case may be.

(j) The obligation of either the seller or buyer to pay compensation to a brokerage firm is not determinative of the agency relationship.

(k) Nothing in this chapter shall affect the validity of title to real property transferred, based solely on the reason that any licensee failed to conform to the provisions of this chapter. [Eff 7/11/87; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §467-4) (Imp: HRS §467-14(12))

§16-99-4 Client's account; trust funds; properties other than funds. (a) Every brokerage firm that does not immediately place all funds entrusted to the brokerage firm in a neutral escrow depository, shall maintain a trust fund account in this State with some bank or recognized depository, which is federally insured, and place all entrusted funds therein. The trust fund account shall designate the principal broker as trustee and all trust fund accounts, including interest bearing accounts, shall provide for payment of the funds upon demand.

(b) Every brokerage firm shall retain for at least three years records of all trust funds which the brokerage firm has received. All records and funds shall be subject to inspection by the commission or its representative. The three-year requirement shall be for real estate license law purposes only. The brokerage firm may be required to keep records for a longer period of time for other purposes. The records shall be kept in Hawaii in accordance with standard accounting principles and shall clearly indicate the following:

(1) Names of the persons from whom funds are received, for whom deposited, and to whom disbursed;
(2) Dates of receipt, deposit, withdrawal, and disbursements, and amounts received, deposited, withdrawn, and disbursed;
(3) Description of the trust fund and the purpose for its establishment;
(4) Purposes for the money; and
(5) Other pertinent information concerning the trust fund transactions.

(c) Trust fund accounts shall be either interest bearing or non-interest bearing, as agreed to in writing between the owner of funds and the principal broker or [broker in charge] broker-in-charge receiving the funds and all other individuals who are parties to the real estate agreement. For interest bearing accounts, these same parties to the real estate agreement shall also agree in writing as to who shall pay for any early withdrawal penalty. The principal broker or [broker in charge] broker-in-charge shall keep any interest belonging to others in the trust fund account and shall not commingle the accrued interest with the brokerage firm's, principal broker's, or [broker in charge's] broker-in-charge's general operating account or with the brokerage firm's, principal broker's, or [broker in charge's] broker-in-charge's own funds. All agreements relating to disbursements of the accrued interest from the client trust account shall be in writing, signed by the owner of the trust fund, the principal broker or [broker in charge] broker-in-charge receiving the funds, and all other individuals [that] who are parties to the real estate agreement. The interest accrued on any trust account deposit shall be disbursed in strict compliance with the written disbursement agreement. In the absence of a written agreement, any interest accrued shall be paid to the owner of the 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.

(e) [Every] Each principal broker or [broker in charge] broker-in-charge who receives personal property, other than funds, in trust for other people, [by the next business day] shall safeguard the property by placing the property by the next business day in a secure place located in the State.

(f) The principal broker or [broker in charge] broker-in-charge shall retain for at least three years records of all personal property other than trust funds coming into the possession of the principal broker or [broker in charge] broker-in-charge as trustee. All records of the personal property held in trust shall be subject to inspection by the commission or its representative and kept in the State at the place of business. The records shall clearly indicate the following:

(1) Date of receipt of the personal property to be held in trust;

(2) A description of and the type of trust property received;

(3) From whom the personal property held in trust was received;

(4) For whose benefit the personal property is being held in trust; and

(5) The date and to whom the personal property is to be delivered.

(g) Property of others coming initially into the possession, custody, or control of a salesperson or broker-salesperson, to be held in trust for the benefit of the depositor[, and] or [for the benefit of] third persons, shall be received on behalf of the salesperson's or broker-salesperson's principal broker or [broker in charge] broker-in-charge, and shall be delivered immediately by the next business day after receipt to the salesperson's or broker-salesperson's principal broker or [broker in charge] broker-in-charge, unless the salesperson or broker-salesperson is instructed as to another time in writing by the depositor. The received property shall include but not be limited to: cash or checks as down payments, earnest money deposits, security deposits, and rental income; other checks payable to third persons or trust accounts; and personal property other than cash or checks.

(h) The principal broker or [broker in charge] broker-in-charge shall not commingle client's funds with other moneys; provided, however, it shall not constitute commingling to:

(1) Hold an uncashed check until acceptance of an offer when directed to do so by the buyer or offeror;

(2) Hold an uncashed check after acceptance of an offer when directed to do so by the seller or offeree; or

(3) Maintain a minimum amount in the client's account to keep the account open.

The fact that a check is being held in an uncashed form in paragraph (2) shall be specifically disclosed in writing to the seller or offeree before acceptance of the

offer. Commingling of the client's funds with other moneys shall include, but not be limited to, keeping undisputed commissions, management fees, and other fees in the brokerage firm's client trust account beyond a reasonable time after those commissions, management fees, and other fees have been earned.

(i) A salesperson, broker-salesperson, or employee shall not handle trust properties in any way without the express written authorization of the person's principal broker or [broker in charge] broker-in-charge. A principal broker or [broker in charge] broker-in-charge may authorize a salesperson, broker-salesperson, or employee, in writing, to place trust properties on behalf of the brokerage firm anywhere the principal broker or [broker in charge] broker-in-charge could place them, but shall not authorize any other disposition. A principal broker or [broker in charge] broker-in-charge shall be held responsible for any trust properties the principal broker or [broker in charge] broker-in-charge authorizes a salesperson, broker-salesperson, or employee to handle.

(j) A principal broker or [broker in charge] broker-in-charge shall not allow any person to have custody or control of trust properties held by the principal broker or [broker in charge] broker-in-charge except as provided in chapter 467, HRS, and this chapter.

(k) A principal broker may allow a [broker in charge] broker-in-charge to have custody and control of trust properties on behalf of the principal broker. The principal broker and [broker in charge] broker-in-charge shall be jointly responsible for any trust properties the principal broker authorizes the [broker in charge] broker-in-charge to handle.

(l) Information about escrow accounts and records for real estate transactions under the real estate brokerage firm shall be retained for at least three years, subject to inspection by the commission or its representative at the place of business. [Eff 12/26/74; am and ren §16-99-4, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am 9/29/86; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §467-4) (Imp: HRS §§467-1.6, 467-14)

§16-99-5 Notification and filing of names, addresses, and changes. (a) Each individual licensee shall file with the commission and shall notify the commission of any change in writing, within ten days of the change, on a form provided by the commission:

(1) The licensee's legal name, residence address, and mailing address; and

(2) The name and license number of the brokerage firm with whom the licensee is employed or associated.

(b) Each brokerage firm shall file with the commission:

(1) The address of the brokerage firm's principal place of business and the name and license number of the principal broker and each [broker in charge] broker-in-charge;

(2) The address of each branch office;

(3) The name and license number of each licensee employed by or associated with the brokerage firm; and

(4) In the case of a partnership, corporation, or limited liability company, the names and addresses of the partners, officers and directors, or members and managers as the case may be.

(c) Upon closing the principal place of business or a branch office, the principal broker or [broker in charge] broker-in-charge shall immediately notify the affected licensees. Within ten days of the date of closing the principal place of business, the principal broker shall provide the commission in writing on a form provided by the commission, the names and license numbers of the affected licensees.

(d) A principal broker or [broker in charge] broker-in-charge shall release a licensee from employment or association within ten days upon written request. Any individual licensee who changes employing or associating brokerage firm shall notify the commission in writing, on a form provided by the commission, within ten days of the change, or immediately place the individual's license on inactive status.

(e) Any licensee whose license has been forfeited, suspended, revoked, or terminated shall immediately cease employment and shall return the licensee's wall certificate and identification card to the commission.

(f) A licensee who resides in another state or country shall be subject to receipt of service of process by the principal broker or [broker in charge] broker-in-charge on the licensee's behalf.

(g) All changes submitted to the commission pursuant to this section shall be effective as of the dates indicated on a form provided by the commission.

(h) The principal broker or any [broker in charge] broker-in-charge of the brokerage firm may sign the form submitted to the commission to report changes pursuant to this section.

(i) A licensee shall be subject to disciplinary action for failure to submit notifications required by this section within ten days of the change. [Eff 12/26/74; am and ren §16-99-5, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §467-4) (Imp: HRS §§467-1.5, 467-8, 467-11, 467-12)

§16-99-5.1 Involuntary inactive license status. (a) An individual's license 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, whether a corporation, limited liability company, or partnership, with which the licensee is affiliated or employed, is no longer registered with the business registration division;

(3) The license of the licensee's brokerage firm is placed on an inactive, terminated, revoked, forfeited, or suspended status;

(4) The principal broker is unable to act in the case of prolonged illness or death and no [commission approved] temporary principal broker has been designated[;] pursuant to section 16-99-3(o);

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

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

(b) A branch office license shall be placed on an involuntary inactive status upon the occurrence of one or more of the following:

(1) The license of the brokerage firm or the principal broker is placed on an inactive, forfeited, suspended, revoked, or terminated status; and

(2) The principal broker is unable to act in the case of prolonged illness or death and no commission approved temporary principal broker or [broker in charge] broker-in-charge has been designated pursuant to section 16-99-3(o).

(c) A principal broker or [broker in charge] broker-in-charge may place an individual licensee associated with or employed by the brokerage firm on an involuntary inactive status after written notification to the affected individual licensee.

(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 16-99-3(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). [Eff and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §467-4) (Imp: HRS §§467-7, 467-11, 467-12)

§16-99-5.2 Statewide license. A brokerage firm may associate or employ a salesperson or broker-salesperson who resides on an island different from that of the principal place of business, provided that:

(1) The principal broker shall maintain compliance with section 467-1.6, HRS, and all other requirements for supervision;

(2) The salesperson or broker-salesperson shall not maintain or advertise a place of business other than the principal place of business;

(3) Any advertisements on an island different from that of the principal place of business shall disclose the name of the brokerage firm and the address and phone number of the principal place of business;

(4) All agency disclosures required by section 16-99-3.1 shall include that the principal place of business is located on a different island; and

(5) The salesperson or broker-salesperson shall provide clients with an effective means of communication with the principal broker, at no cost to the client. [Eff and comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §§467-1.6, 467-12)

§16-99-6 Display of license. The brokerage firm's certificate of license shall be conspicuously displayed in the principal place of business. [Eff 12/26/74; am and ren §16-99-6, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §467-14) (Imp: HRS §§467-8, 467-12)

§16-99-7 Renewal of license. The biennial renewal fee and completed renewal application shall be submitted on or before the commission prescribed deadline. Unless renewed, all real estate licenses expire at the end of every even-numbered year. When the renewal deadline falls on a non-working day, renewal fees paid by mail shall be considered as paid when due if the envelope bears a postmark of no later than the first working day thereafter. Failure to submit a completed renewal application and failure to pay the renewal fee when due, or if the check is not honored by the bank for whatever reason, shall constitute automatic forfeiture of license. The principal broker shall [see to it] ensure that all licensees are currently licensed at all times during employment or association. [Eff 12/26/74; am and ren §16-99-7, 4/27/81; am and comp 6/28/82; comp 3/3/84; am 9/29/86; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §§467-1.6, 467-11, 467-14)

§16-99-8 Repealed. [R 5/21/01]

§16-99-9 Suspended license. The commission, as a form of disciplinary action against a licensee, may suspend the right of the licensee to use the license for a period not to exceed five years. Prior to conducting any real estate activity, a licensee with a suspended license shall reinstate the license pursuant to section 92-17(c)(3), HRS. If the licensee fails to file for reinstatement within thirty days after the end of the suspension, the license shall be forfeited. [Eff 12/26/74; am and ren §16-99-9, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §§92-17(c)(3), 436B-20, 467-8, 467-9, 467-9.6, 467-14)

§16-99-10 Revoked license. An individual whose license has been revoked shall apply for a new real estate salesperson license by filing an application and complying with all requirements for new applicants. The commission may waive the applicable education requirements of section 467-9.5, HRS, pursuant to section 16-99-37. [Eff 12/26/74; am and ren §16-99-10, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §§467-8, 467-9, 467-14)

§16-99-10.5 Other requested material. The commission may require the person requesting reinstatement of a suspended license or applying for a new license following license revocation to submit other information and documents that may be helpful to the commission in evaluating the person's request. [Eff and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §§92-17(c)(3), 467-9)

§16-99-10.6 Surrender of real estate license. (a) A licensee who has no pending complaints, investigations, disciplinary petitions filed against the licensee, or disciplinary hearings before the commission may surrender the person's real estate license, and shall:

(1) Return the licensee's pocket identification card and wall certificate to the commission; and

(2) Cease conducting any real estate activities.

(b) Should an individual desire to engage in any real estate activities the individual shall obtain a new license as a new applicant for a salesperson license. [Eff and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §§467-7, 467-10)

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

For advertising and promotional purposes only, a brokerage firm may:

(1) Abbreviate "Incorporated[,]", "Corporation[,]", "Limited[,]", "General Partnership[,]", "Limited Partnership[,]", "Limited Liability Company[,]", or "Limited Liability Partnership" from the licensed name; and

(2) Use "dba" in conjunction with the licensed name and a trade name.

(b) No licensee shall advertise "For Sale by Owner[,]", "For Rent by Owner[,]", "For Lease by Owner[,]", or "For Exchange by Owner[.]".

(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.

(d) A leasehold property advertised for sale in any medium shall be identified by the word "leasehold[.]".

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

(1) Include the licensee's legal name, name as licensed by the commission, or sole proprietor's trade name as licensed by the commission;

(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.

(f) If the address of any unregistered place of business is included in advertising materials, then the street address of the principal place of business or the branch office, as the case may be, shall be included and respectively identified as such. [Eff 12/26/74; am and ren §16-99-11, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §467-4) (Imp: HRS §467-7)

§16-99-12 Exam site solicitation. On the day of a real estate licensing examination, a licensee shall not at the exam site or at any place on the property where the exam site is located, directly or indirectly, recruit, solicit, offer to employ, discuss employment with, or distribute literature promoting the licensee to any individual who sits for that examination. [Eff and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §467-25)

SUBCHAPTER 2

APPLICATIONS

§16-99-17 Forms and instructions. An application filed with the commission shall be prepared in accordance with and contain the information and documentation called for in the application form and the accompanying instructions provided by the commission. All applications shall be accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS. [Eff 12/26/74; am and ren

§16-99-17, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §§26-9(k), 467-9, 467-9.6, 467-11, 467-14)

§16-99-18 Repealed. [R 5/21/01]

§16-99-19 License applications. (a) All applications for a real estate salesperson or broker license shall be accompanied by:

(1) The required fee; and

(2) Supporting documents to satisfy the applicable education and experience requirements. Applications not accompanied by supporting documents shall be rejected. In the event an applicant has not satisfied the applicable education and experience requirements, the applicant's examination score shall be declared void and license application rejected.

(b) An application for a branch office registration shall be accompanied by the required branch office registration fee. [Eff 12/26/74; am and ren §16-99-19, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §467-9)

§16-99-19.1 License name. (a) An individual may designate a license name different from the individual's legal name, provided that:

(1) The license name of individual broker, broker-salesperson, or salesperson:

(A) Shall include the individual's full legal surname;

(B) May include the individual's initials, full legal first name, full legal middle name, full legal name, or nickname; and

(C) May retain the individual's former legal surname if the surname is legally changed subsequent to licensing, provided that the change is reported pursuant to section 16-99-5;

(2) The license name of a sole proprietor broker:

(A) Shall comply with the provisions of [subsection] paragraph (1); and

(B) May include a trade name currently registered by the broker with the business registration division and with the

commission, provided that the trade name complies with section 467-9, HRS.

(b) The license name of a corporation, limited liability company, or partnership:

(1) Shall be its legal name, provided that the name complies with section 467-9, HRS; and

(2) May include a trade name currently registered by the entity with the business registration division and with the commission, provided that the trade name complies with section 467-9, HRS. [Eff and comp 5/21/01; am and comp] (Auth: HRS §467-4) (Imp: HRS §467-9)

§16-99-19.2 Experience certificate application. (a) Candidates for the broker examination shall submit to the commission a completed experience certificate application together with:

(1) A nonrefundable application fee; and

(2) A certified statement by the principal broker or a broker in charge of each of applicant's brokerage firms during the three years immediately preceding the application for experience certificate, that attests to the length of time that the applicant has been actively associated or employed full-time with the brokerage firm.

Applicants shall have experience in this State as a full-time Hawaii-licensed real estate salesperson, associated as an employee or independent contractor with an active Hawaii-licensed brokerage firm, for [the three-year] at least three years within the five-year period immediately prior to the application for experience certificate.

(b) "Full-time" means averaging at least forty hours a week devoted to real estate salesperson activity. No pro rata credit shall be given to part-time real estate salesperson activity.

(c) The commission shall verify the applicant's dates of employment or association with each brokerage firm, and dates of release from the firm's employment or association, on the experience certification statements with the records of the commission. An applicant shall not receive credit for any experience for periods during which the applicant's license was inactive, forfeited, suspended, revoked, or terminated.

(d) The commission may grant an equivalency for [a portion of] the experience requirement based on real estate license experience in another state with similar education requirements; provided that [the maximum equivalency shall be two years for out-of-state experience as a full-time licensed real estate

salesperson, and two and one-half years for out-of-state experience as a full-time licensed real estate broker. The amount of equivalency shall be computed with a ratio of 1-1 (Example: one month experience equal to one month equivalency).] an out-of-state applicant shall have experience as a full-time licensed real estate salesperson with an active out-of-state brokerage firm, for at least three years within the five-year period immediately prior to the application for experience certificate; or possess a current, unencumbered out-of-state real estate broker's license. All requests for equivalency to the experience requirement shall be submitted in writing together with all required documents of an official nature with the experience certification application.

(e) The commission may reject an application for experience certificate if the application is incomplete or if the applicant's real estate salesperson license is in forfeited, suspended, revoked, or terminated status.

(f) If the applicant has satisfied the three-year full-time experience requirement, the commission shall issue to the applicant an experience certificate that shall be valid for two years from the date of issuance. The experience certificate shall be produced at the applicant's examination appointment and submitted with the applicant's application for individual broker license. [Eff and comp 5/21/01; am and comp] (Auth: HRS §467-4) (Imp: HRS §467-9.5)

§16-99-20 Repealed. [R 3/3/84]

§16-99-21 Denial. In the event an application for admission to the examination, for issuance, reinstatement, or restoration of a license is denied, the commission shall notify the applicant by letter of the commission's action which shall include a concise statement of the reasons therefor and if the applicant is entitled to a hearing, a statement informing the applicant of the right to a hearing if the applicant so desires. [Eff 12/26/74; am and ren §16-99-21, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §467-15)

§16-99-22 Demand for a hearing. Any person whose application for admission to the examination, for the issuance, reinstatement, or restoration of a license has been denied by the commission, shall be entitled to a hearing; provided that a demand for a hearing is filed with the commission within sixty days of the date of the letter informing the applicant of the denial of application; and provided

further that this section shall not apply to a denial based on the failure to file an application within the period provided by this chapter. [Eff 12/26/74; am and ren §16-99-22, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §467-15)

§16-99-23 Proceedings upon demand for hearing. If a demand for a hearing is filed within the time prescribed, the commission shall order a hearing pursuant to chapters 91 and 92, HRS, and chapter 16-201, Administrative Practice and Procedure. [Eff 12/26/74; am and ren §16-99-23, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §467-15)

§16-99-24 Repealed. [R 5/21/01]

§16-99-25 Falsification of application. The commission may deny an applicant admission to the examination, or issuance of license, void applicant's examination score, or revoke a license on the ground of falsification of any information supplied in the application for examination, application for experience certificate, application for license, or supporting documents. [Eff and comp 6/28/82; comp 3/3/84; comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §467-14)

SUBCHAPTER 3

EXAMINATION

§16-99-29 Examination for broker and salesperson license. (a) No license shall be issued to any individual unless the individual takes and passes an examination as prescribed by the commission for the license applied for. The minimum passing score for the uniform and the State portions of the examination shall be seventy for salesperson applicants and seventy-five for broker applicants. Any individual who fails to obtain a passing score in any part of the examination shall repeat that part of the examination. Failure to obtain a passing score in all parts thereof within the two-year period after the first examination date, shall result

in failure of the examination as a whole and the entire examination shall be repeated by the candidate.

(b) Any eligible individual shall forfeit the examination fee if the individual does not sit for the examination.

(c) Unsuccessful candidates, rejected applicants, and individuals granted withdrawal who wish to sit for subsequent examinations shall file a new application and comply with all requirements each time.

(d) The examinations shall be given on dates and at locations as determined by an agreement between the commission and a professional testing service, and may include examination locations outside the State.

(e) Examinations shall be conducted in accordance with procedures formulated by the testing agency authorized by the commission to administer examinations. Failure to follow such procedures shall result in immediate disqualification from the examination and may bar candidates from being examined in any future examinations.

(f) Any individual who passes the salesperson or broker examination shall be required to apply for the individual's active or inactive license within two years of the individual's last examination date. Failure to apply for a license within two years of the last examination date shall cause the examination and license application to be abandoned pursuant to section 436B-9, HRS, and the individual shall be required to pass the examination again.

(g) At the location for examination, all candidates for salesperson or broker examination shall present a current real estate school completion certificate or current education equivalency certificate. Candidates for broker examination also shall present a current experience certificate at the examination location. [Eff 12/26/74; am and ren §16-99-29, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-9) (Imp: HRS §§467-8, 467-9, 467-9.5)

§16-99-30 Examination subject matter. Candidates shall demonstrate, by passing with a grade satisfactory to the commission an examination given by it and appropriate to the license sought, that they have a reasonable knowledge of general principles and practices of real estate transactions and the law and rules pertaining to or relating to real estate, and such other subjects and matters which the commission or its designated examining agency determines to be essential to the protection of the general public in its real estate transactions. [Eff 12/26/74; am and ren §16-99-30, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; comp 11/3/90;

comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §467-8)

SUBCHAPTER 4

EDUCATION AND EXPERIENCE

§16-99-36 Education requirement. The education requirement for the salesperson license examination shall be satisfied by successful completion of a curriculum in real estate at an accredited institution, consisting of a minimum of [forty-five] sixty class hours and conforming to the approved curriculum for salesperson adopted by the commission or such equivalent education or experience as shall be determined by the commission. The education requirement for the broker license examination shall be satisfied by successful completion of a curriculum in real estate at an accredited institution, consisting of a minimum of [forty-six] eighty class hours and conforming to the approved curriculum for brokers adopted by the commission or equivalent education or experience as shall be determined by the commission. A "class hour" as used in this section means sixty minutes of classroom instruction. [Eff 12/26/74; am and ren §16-99-36, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §467-4) (Imp: HRS §§467-8, 467-9.5)

§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[;] .

[(4) Those who have successfully completed at least six semester credits in real estate, business, business law, real estate development, or finance courses at an accredited college or university; and

(5) Those who have received a professional designation and recognized certificates of completion as accepted by the commission including a GRI designation; certificate in advanced real estate from the University of Hawaii, small business management program.]

(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.

[(b)] (c) All requests for equivalency to the educational requirements shall be submitted in writing, together with all supporting documents of an official nature to the commission for its review, prior to filing the application for examination.

[(c)] (d) An approved education equivalency shall be valid for two years from the date of issuance. [Eff 12/26/74; am and ren §16-99-37, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §467-4) (Imp: HRS §467-9.5)

§16-99-38 Repealed. [R 5/21/01]

§16-99-39 Repealed. [R 5/21/01]

§16-99-40 Repealed. [R 3/3/84]

§16-99-41 Repealed. [R 3/3/84]

§16-99-42 Repealed. [R 3/3/84]

§16-99-43 Repealed. [R 3/3/84]

§16-99-44 Repealed. [R 3/3/84]

§16-99-45 Repealed. [R 3/3/84]

§16-99-46 Real estate education fund. The commission may authorize the use of funds deposited in the real estate education fund for the benefit of and improvement of services to the consuming public, licensees, commissioners, and staff. The education fund may be used for classes, media exposure, participation in national associations, publications, research, seminars, studies, and any other educational purpose as the commission may determine. [Eff and comp 6/28/82; am and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §467-19)

SUBCHAPTER 5

REGISTERED REAL ESTATE SCHOOLS

§16-99-50 Policy. (a) A registered school shall not offer courses which may be used to fulfill the educational requirements for a real estate license unless it first registers with the commission and complies with the requirements of this subchapter.

(b) "School" as used in this subchapter includes, but is not limited to, a private school, or an accredited college or university offering courses used to fulfill the educational requirements for initial licensing. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-51 Registered school. (a) A registered school shall be a school which applies for a certificate of registration from the commission and which is found by the commission to have met the requirements imposed by chapter 467, HRS, and this chapter.

(b) A registered school shall have on file at the school's principal office, for commission inspection upon request, unit and daily lesson plans implementing the school's approved curriculum. Such plans should specify at minimum: the objectives of the unit and daily lesson plan stated in student performance terms; and an evaluative method to determine that the students have been taught the objectives of the unit and daily lesson. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §§467-9.5, 467-25.5)

§16-99-52 Repealed. [R 5/21/01].

§16-99-52.1 Independent study courses. (a) Independent study courses shall conform to commission-approved curricula and shall meet the specific standards of this section and all other applicable requirements of this chapter.

(b) An independent study course for satisfaction of the salesperson education requirement shall reasonably require the student to expend [forty-five] a minimum of sixty hours in completing the course. An independent study course for satisfaction of the broker education requirement shall reasonably require the student to expend [forty-six] a minimum of eighty hours in completing the course.

(c) Every registered school offering an approved independent study course for satisfaction of the salesperson or broker education requirement shall:

(1) Be available to answer students' questions or provide them assistance as necessary;

(2) Provide reasonable oversight of students' work in order to insure that the student who completes the work is the student who is enrolled in the course;

(3) Obtain from each student the following certification statement: "I certify that I have personally completed each assigned module of instruction.

_____ _____

Date Student's Signature"

(4) Certify students as successfully completing an independent study course only if the student has:

(A) Completed all instructional modules required to demonstrate mastery of the material, and

(B) Passed the final examination. [Eff and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-5.5) (Imp: HRS §467-25.5)

§16-99-53 Application for registration. (a) A registration shall be granted to the owner for a specific school registered under a particular name to teach specific real estate courses.

(b) Application for the initial registration of a school shall be made to the commission not less than ninety days before the opening date of the school.

(c) The following shall accompany an application:

(1) Current certificates of clearance from the county building department, the county fire department, and the state department of health for each classroom;

(2) A description of the courses to be offered which contains the course title, curriculum, curriculum objectives in student performance terms, evaluative procedure to be used to demonstrate the accomplishment of the curriculum objectives and procedures for student evaluation of the instructor;

(3) A copy of the student enrollment or student registration form;

(4) A copy of the school catalogue or brochures and a statement of the content of advertising and the media to be used;

(5) A schedule of all fees, tuition, and charges to be made, including the advance deposit charged per student and statement of refund procedures;

(6) The name and qualifications of the school's principal;

(7) The names of the school's instructors and the instructors' teaching qualifications and experience;

(8) A surety bond to the commission conditioned for the protection of the contractual rights of real estate students in an amount equal to the sum of:

(A) The maximum number of students permitted in each broker classroom as determined by the county building department multiplied by the advance deposit charged per student for the broker course multiplied by the maximum number of broker courses to be held at any one time during the first year of the school's registration; and

(B) The maximum number of students permitted in each salesperson classroom as determined by the county building department multiplied by the advance deposit charged per student for the salesperson course multiplied by the maximum number of salesperson courses to be held at any one time during the first year of the school's registration. In no event shall the amount of the bond be less than $2,000. The bond shall be issued by a surety authorized to do business in the State. An accredited college or university shall not be required to submit to the commission a surety bond or license fee as required by this section;

(C) No bond shall be required to cover real estate students only enrolled in an independent study course delivered electronically or as approved by the commission;

(9) A license fee;

(10) A statement of ethical practices;

(11) If the applicant is a partnership, the names of the partners in the entity and a copy of the partnership agreement;

(12) If the applicant is a corporation, the names of any persons who own five per cent or more of the stock of the entity, and a copy of the articles of incorporation; and

(13) Other additional information as may be required by the commission.

(d) A school shall not begin operation until it has registered with the commission.

(e) A school shall not solicit students until it has registered with the commission. However, a school in the process of obtaining a license may advertise "subject to completion of all registration requirements" and the statement shall be a part of all representations.

(f) A school shall limit its course offerings to courses approved by the commission.

(g) The registration of a school shall expire at the end of every even-numbered year. Registrations shall be renewed biennially by the commission-prescribed deadline.

(h) A school ceasing to operate shall so inform the commission and shall surrender its registration within thirty days after cessation of operations. The registration of such a school shall be canceled automatically thirty days after cessation of operations unless a longer period of inactivity has been applied for in writing and approved by the commission. For the purposes of this subsection, "a school ceasing to operate" means a school which has not held any classes for a period of three months.

(i) A registered school shall not conduct classes when it has been notified by the appropriate county agency that the conditions existing at the school's facilities violate county building, fire, or health codes. The school may resume its operations when it has remedied the violation. [Eff and comp 3/3/84; am 10/3/85; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-53.1 Alternative forms of school bond. (a) Where a surety bond required by sections 16-99-53 and 16-99-65 cannot reasonably be secured and the school owner has received three letters rejecting the owner's application for a surety bond, the commission, after a review of the reasons for rejection, may accept other alternative forms of security including but not limited to:

(1) Submission of an executed agreement between the school owner and two other commission-approved registered real estate school owners guaranteeing that they will honor all students' contracts that were signed or approved by the school owner should the owner be unable to complete the instructing of such courses because of the owner's death, disability, bankruptcy, or extended absence from the State beyond four months; and

(2) Submission of one of the following: a certificate of deposit from a federally insured institution, in the amount equal to the required bond; a cashier's check from a federally insured institution, in the amount equal to the required bond; an irrevocable letter of credit on a form approved by the commission drawn upon a bank or savings and loan association, in the amount of the bond required; or any other alternative security approved by the commission for substitution of the bond.

(b) Any certificate of deposit, cashier's check, irrevocable letter of credit, or other approved alternative security shall be issued from a federally insured institution located in this State, made payable to the commission or in the case of a letter of credit shall designate the commission as beneficiary for the benefit of any eligible person sustaining damage resulting from the school owner's failure to faithfully, promptly, and truly perform the instruction of any real estate courses contracted to teach. The commission shall retain possession of the security as prescribed by this section for a period of six years dating from the first day of the school's registration and dating subsequently each six years from the first day of the school's biennial registration renewal. In the event any of the alternatives to the surety bond earns interest while in the possession of the commission, the interest shall belong to the school's owner. At the expiration of the six-year holding period as calculated pursuant to this section, the commission shall release all alternative forms of school bonds in amounts remaining as security if no claims have been made against any amounts during the time the commission held the security and if the school owners, heirs, personal representatives, successors, or permitted assigns execute appropriate release forms indemnifying the commission and the State.

(c) Cancellation of surety bond. A registered school that has been notified that the school's surety bond required by this subchapter has been [cancelled] <u>canceled</u>, shall not schedule any course offerings until such time that the school submits to the commission proof of a valid surety bond. [Eff and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§26-9(p), 467-4) (Imp: HRS §467-25.5)

§16-99-54 Changes in school's owners: (a) Any change in the ownership status of a school shall be approved by the commission.

(b) A change in partners shall be deemed a change in ownership. Any change in ownership of fifty per cent or more of a corporation's outstanding capital stock or any change in ownership of any number of shares of stock which results in the transferee thereof becoming the owner of fifty per cent or more of the outstanding capital stock, shall be deemed a change in ownership.

(c) The new owner shall submit written evidence to the commission that, as of the effective date of the change in ownership, the new owner shall:

(1) Assume liability for all or substantially all of the school's outstanding debts incurred as a direct result of the school's educational activities; and

(2) Honor all student contracts that were signed or approved by the school's authorities before the effective date of the change in ownership. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-55 Display of certificate of registration and instructor's certificate. Each school granted a certificate of registration and each instructor granted an instructor's certificate shall prominently display it in its business office at all times. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-56 Classrooms. (a) Every school shall have and maintain classrooms which have adequate space, seating, equipment, and instructional material. Each classroom shall be approved by the commission and shall have current certificates of clearance from the county building department, the county fire department, and the state department of health. Classrooms shall be subject to inspection by the commission prior to approval or subsequent thereto during regular school hours.

(b) Classrooms shall conform to the zoning, building, electrical, plumbing, and fire codes of the county in which the facility is located and to State rules as may be applicable to the facility. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-57 Courses. (a) The initial curriculum and any additional courses offered by a school shall be approved by the commission.

(b) Broker and salesperson classes shall not be held together unless approved by the commission. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-58 Faculty. (a) Each school shall designate [some] an individual as principal.

(b) The principal shall be responsible for:

(1) Complying with the commission's rules relating to real estate schools;

(2) Providing reports and information as may be required by the commission;

(3) Informing the commission in writing five business days prior to any changes in school policies, programs, personnel, facilities, tuition, calendar, and all other matters changing the status of the school as originally licensed;

(4) Advertising by the school; and

(5) Directing and supervising the school staff and program.

(c) Every instructor shall be biennially certified by the commission. Certification shall be obtained by each instructor for each course the instructor desires to teach. The commission may, prior to the instructor's initial certification and prior to any recertification, require the instructor to do either or both of the following: to complete a commission sponsored or approved instructor's workshop, or to appear before the commission to demonstrate the instructor's command of and ability to communicate the prelicense course.

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

(1) Hold a current and unencumbered Hawaii real estate broker's license, have at least three years full-time experience in real estate in Hawaii, and fulfill the present experience requirement for a Hawaii broker's license; [or]

(2) Hold a degree in law and be an attorney licensed and in practice in the area of real estate for at least two years in this State; [or]

(3) Hold an appointment to the real estate faculty of an accredited college or university; or

(4) Have graduated from an accredited college or university, have at least three years full-time experience in real estate in Hawaii, and fulfill the present experience requirements for a Hawaii broker's license.

(e) Each instructor shall have had one year prior teaching experience in real estate within three years [preceeding] preceding the application for certification and possess in addition to the requirements in subsection (d):

(1) A certificate of completion from a special real estate instructor institute issued within a year immediately [preceeding] preceding the request for certification; [or]

(2) A certificate of completion from a professional real estate course leading to a professional designation accepted by the commission; [or]

(3) An appointment to the real estate faculty of an accredited institution of higher education; [or]

(4) A certificate of completion from an accredited salesperson and broker course; or

(5) Other as the commission may determine (including successfully passing a qualifying real estate license examination).

(f) School personnel shall comply with applicable state department of health requirements.

(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 prelicense course.] An instructor may not be certified if the individual has been:

(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.

(h) A registered school shall obtain the approval of the commission prior to scheduling the appearance of a guest lecturer or substitute teacher as an instructor for a specified topic of instruction included in its approved curriculum. A guest or substitute teacher shall not be used for more than fifty per cent of its scheduled classes. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-59 Tuition and other charges. (a) Tuition rates and all other charges shall be published in the school catalogue. No school shall deviate from its published tuition rates and charges.

(b) Tuition and other charges collected from enrollees shall be refunded in full by the school if the course for which the tuition and charges were collected is not started on the date published by the school in its catalogue or advertisements.

(c) Tuition and other charges shall be specifically set forth in the school registration form. The registration form shall expressly state the school's policy regarding the return of tuition and other charges when a student is dismissed or withdraws voluntarily. Each student shall acknowledge acceptance of the school's tuition policies on the school's registration form. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-60 Repealed. [R 5/21/01]

§16-99-61 Certificate of completion. A certificate of completion shall be issued by the school in a form and size approved by the commission, and shall be awarded only to a student who attends eighty per cent of the scheduled classes and who completes with a passing grade the final examination of a course of study conforming to the approved curriculum or who completes an independent study course under section 16-99-52.1. The certificate shall be valid for a period of two years from the date of issuance. The date of issuance shall be the class completion date. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §§467-9.5, 467-25.5)

§16-99-62 Records. (a) Each school shall maintain records on the following:

(1) Class attendance of each student;

(2) Tuition and other charges collected from each student;

(3) The names of the students to whom it issued a certificate of completion, the course for which the certificate of completion was issued, and the date when the certificate of completion was issued[;], which shall be submitted to the commission within ten days of the class completion date; and

(4) The qualifying exams administered for purposes of issuing a school certificate of completion.

(b) Within ten days of issuance of a Hawaii school completion certificate, the school shall submit to the commission:

(1) A listing of students who have completed the course with their course completion certificate number, curriculum instructor names and date when the certificate of completion was issued; and

(2) Other information requested by the commission.

[(b)] (c) These records shall be maintained for a three-year period, shall be kept current, and shall be available for inspection by the commission. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-63 Reports. Each school may be required to submit reports to the commission and may be subject to review regarding its educational programs conducted in conformance with this chapter. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-64 Inspections. Registered schools and schools that have applied for registration may be inspected by the commission. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-65 Renewals. (a) Applications for renewal of a school's registration shall be submitted by the commission prescribed deadline of every even-numbered year.

(b) The following shall accompany an application:

(1) A renewal fee;

(2) A statement as to the enrollment and advance deposit charged per student for each of the school's broker and salesperson courses offered during the preceding registration period;

(3) The dates and locations of course of study to be offered if the registration is renewed; and

(4) A surety bond to the commission conditioned for the protection of the contractual rights of real estate students in an amount equal to the sum of:

(A) The largest number of students enrolled in the school's broker course at any one time during the preceding registration period multiplied by the advance deposit charged per student for the broker course; and

(B) The largest number of students enrolled in the school's salesperson course at any one time during the preceding registration period multiplied by the advance deposit charged per student for the salesperson course.

In no event shall the amount of the bond be less than $2,000. The bond shall be issued by a surety authorized to do business in the State.

(c) A registration shall be renewed if the school meets all of the then existing applicable requirements of the commission including but not limited to a reasonable student exam passing percentage, demonstrated evidence that the school curriculum objectives have been taught, certificates of completion issued within the past year, for each instructor, who completed successfully a commission sponsored or approved prelicense instructor's workshop, and an update of the information required for its original application for registration.

(d) An accredited college or university shall not be required to submit to the commission a surety bond or pay the renewal fee as required by this section. [Eff and comp 3/3/84; am 10/3/85; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-11, 467-25.5) (Imp: HRS §467-25.5)

§16-99-66 Advertising. (a) For purposes of this subchapter, "advertising" means an announcement by an accredited real estate school for the purpose of promoting the school or soliciting students and shall include, but not be limited to, all printed, [and] audio, and visual communications, such as newspaper advertisements, direct public mailings, books and periodicals, television and radio commercials, current and future technology, and others.

(b) All advertisements soliciting students shall be of an announcement type listing, at the minimum, the place where a school catalogue or brochure may be obtained.

(c) Prior to publication and dissemination, all schools shall submit to the commission for review all copies or proofs of advertising, brochures, and promotional materials covering its real estate course.

(d) The commission, at any time may require that a school furnish proof of any of its advertising claims. Retractions of advertising claims may be ordered

by the commission, with the retractions published in the same manner as the claims themselves.

(e) A school shall be held strictly responsible for the acts and promises of all its agents or persons engaged in soliciting students. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-67 School brochure or catalogue. (a) Each school shall distribute to prospective students and other interested persons, a brochure or catalogue. Each brochure or catalogue shall include, at minimum, the following:

(1) Name, address, and telephone number of the school;
(2) Date of issue;
(3) School's owner or owners and principal;
(4) Any available locations, and if the class location is tentative, that fact shall be disclosed;
(5) School's calendar;
(6) Class hours;
(7) Schedule of all charges;
(8) A statement that the school's curriculum is available for any student's inspection upon request;
(9) Course titles and objectives;
(10) Course outlines or description;
(11) Length of course;
(12) School's policy on attendance, absences, and make-up;
(13) School's policy on grading, reporting of grades, and standards required;
(14) School's policy on student conduct;
(15) School's policy on refund of tuition and other fees collected;
(16) If a minimum number of students is necessary to operate a class, that fact shall be disclosed and a minimum number given; and
(17) If the course or any portion of the services are advertised as being free, a complete disclosure of all conditions shall be stated.

[(b) Each brochure or catalogue may include the following:
(1) School's financing plans; and
(2) School's placement services.]

(c)] (b) Each brochure or catalogue shall be updated periodically so that the information contained in it is current. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-68 Prohibited advertising practices. (a) No school shall provide any information to the public or to prospective students which is false, misleading, or deceptive. Information is "misleading" when there may be a possibility that it will deceive the class of persons whom it is intended to influence.

(b) No school shall use any name, other than the name under which it registered with the commission, for advertising or publicity purposes.

(c) No school shall advertise that it is "recommended," "endorsed," "approved," or "accredited" by the commission. A school may indicate that it is "registered" with the commission to conduct courses to qualify applicants for the real estate license examination.

(d) No school shall make any warranties or guarantees that a student will pass the real estate license examination by taking its course.

(e) No school shall advertise that it is endorsed by business establishments, organizations, or individuals engaged in the kind of work for which training is given until written evidence of this fact is filed with the commission.

(f) No school shall solicit students in "help wanted" or other employment columns in newspapers or other publications or in any other form of advertising other than that which shows itself clearly to be that of a school seeking to enroll students.

(g) No school shall make or imply any guarantee of employment or income to any student or prospective student unless the school can in fact guarantee employment or income and the school does so in writing.

(h) No school shall advertise a course of instruction which has not been approved by the commission unless the advertisement clearly states that it is a "proposed" or "tentative" offering, subject to the approval of the commission. No money shall be collected from any prospective student for enrollment in such a course until it has been approved by the commission. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-69 Revocation or suspension of school registration, course approval, and instructor certification. The commission may revoke or suspend the registration of any real estate school, the approval of any real estate course, or the certification of any instructor for any of the following causes:

(1) The school, instructor, or course falls below the minimum requirements established by the commission including a student exam passing percentage;

(2) The school or instructor violates any ordinances, codes, statutes, or rules relating to real estate schools or instructors;

(3) The school or instructor solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future examinations;

(4) The school or instructor distributes to any person copies of examination questions or otherwise communicates to any person examination questions, without the prior written approval of the copyright owner of the examination questions so distributed or communicated; or

(5) The instructor sits for a Hawaii real estate license examination during the period the instructor is certified by the commission. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-70 Hearings. (a) When the commission denies an application for registration or renewal of a school, or deems it proper to revoke or suspend the registration of any school, the approval of any course, or the certification of any instructor, the commission shall notify in writing the person or school involved of the commission's action. The notification shall include a concise statement of the reasons for the commission's action and a statement that the person or school involved may request a hearing.

(b) Requests for a hearing shall be filed with the commission within sixty days of the date of the letter informing the school or instructor of the commission's action.

(c) If a demand for a hearing is filed within the time prescribed, the commission shall order a hearing pursuant to chapters 91 and 92, HRS, and chapter 16-201, Administrative Practice and Procedure. [Eff and comp 3/3/84; am 9/29/86; comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-71 Repealed. [R 5/21/01]

SUBCHAPTER 6

PRACTICE AND PROCEDURE

§16-99-75 Administrative practice and procedure. The rules of practice and procedure for real estate shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff 9/29/86; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§91-2, 442-5) (Imp: HRS §§91-2, 442-5)

SUBCHAPTER 7

RECOVERY FUND

§16-99-79 Recovery fund settlement procedures. Upon the occurrence of all of the following, the commission may settle any subsequent claim against the real estate recovery fund involving a licensee that was previously named in an order and on whose behalf the commission had been required to make payments out from the recovery fund:

(1) The claimant is seeking recovery against the same licensee as named in an order for which the commission had been required to make a payment from the recovery fund;

(2) The claimant is similarly situated as the claimant named in an order for which the commission has been required to make a payment from the recovery fund;

(3) The claimant notifies the commission in writing within the same time period specified in section 467-18, HRS, that it has commenced an action for a judgment which may result in collection from the real estate recovery fund;

(4) The claimant files a verified claim with the commission stating with particularity the reasons, grounds, and evidence in support of claimant's request for settlement directly with the commission;

(5) The claimant gives reasonable notice to the licensee at the licensee's last known address by registered or certified mail, restricted delivery to addressee only, return receipt requested that claimant intends to settle the claim directly with the commission together with a copy of the verified claim. Where it is impossible to give licensee notice by mail, claimant shall give notice to licensee by publication once in a

newspaper of general circulation in the State, that the claimant intends to settle the claim directly with the commission, a summary of the reasons, grounds, and evidence supporting claimant's relief from the recovery fund. Any notice given shall also contain a statement to the effect that any payment from the recovery fund shall result in an automatic termination of the licensee's license;

(6) The licensee has had an opportunity to respond within a reasonable time, in writing, to claimant's verified claim;

(7) That claimant is not a spouse of the licensee, or the personal representative of such spouse;

(8) The claimant has made all reasonable searches and inquiries to ascertain whether the licensee is possessed of real or personal property or other assets, which may be used to satisfy the claim and that by such search the claimant has discovered no such assets;

(9) The commission is satisfied, that there is sufficient evidence to support a settlement of the claim; and

(10) The settlement is in the best interest of the real estate recovery fund.[Eff and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §467-16)

SUBCHAPTER 8

ORAL TESTIMONY

§16-99-83 Oral testimony. (a) The commission shall accept oral testimony on any item which is on the commission's agenda, provided that the testimony shall be subject to the following conditions:

(1) Each person seeking to present oral testimony shall so notify the commission no later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;

(2) The commission may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the commission;

(3) The commission may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;

(4) Persons presenting oral testimony, at the beginning of the testimony, shall identify themselves and the organization, if any, that they represent;

(5) The commission may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and

(6) The commission may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this chapter shall require the commission to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another pending proceeding subject to the hearing relief, declaratory relief, or rule relief provisions of chapter 16-201.

(c) Nothing in this chapter shall prevent the commission from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the commission on any particular matter on the commission's agenda. [Eff and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §467-4) (Imp: HRS §92-3)

SUBCHAPTER 9

CONTINUING EDUCATION

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

"Beyond professional entry" means the course objectives involve learning outcomes which help the licensee develop more than minimal entry level competency in the subject matter of the course including consumer protection in real estate transactions.

"Certified" means that the commission has made a determination that the course or course offering satisfies all requirements prescribed by statutes and rules.

"Clock hours" means sixty minutes of classroom instructions excluding time for registration and other non-instructional matters.

"Consumer protection" means course content relating to section 467-14, HRS, or section 16-99-3.

"Continuing education" means clock hours of core courses and elective courses that involve areas designed to improve a licensee's competency or professional standards and practice, and which courses are determined by the

commission to exceed minimum entry level competency in the subject matter of the course, including consumer protection in real estate transactions.

"Continuing education hours" means the [ten] mandatory hours as required in section 467-11.5, HRS.

"Core" course means a mandatory continuing education course or course offering certified and designated as a "core" course by the commission that each individual licensee must complete to satisfy the continuing education hours requirement.

"Completion of course" means licensee's orderly attendance throughout the entire course.

"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.

"Disciplined by the real estate commission" means the commission's issuance of a final order in which a licensee is found in violation of a specific real estate law or rule; or means a commission approved settlement agreement in which a licensee admits to violating a specific real estate law or rule.

"Elective" course means a continuing education course or course offering certified by the commission that an individual licensee may choose to complete to satisfy the continuing education hours requirement.

"Instructor" means an individual who teaches continuing education courses.

"Material change" means a significant deviation, in one or more aspects from the course as originally certified by the commission including a change in course length or clock hours, but not including changes designed to reflect recent changes in statutes, regulations, or case law.

"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.

"Provider" means any person, partnership, association, corporation, limited liability company, educational organization, school, or other entity which sponsors, offers, organizes, develops, delivers, or provides for the instruction of a real estate continuing education course.

"Registered" means a person, partnership, association, corporation, limited liability company, educational organization, school, or other entity has submitted all required documentation for registration as a provider and that the documentation satisfactorily supports the provider's administrative ability for delivering continuing education courses. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-88 Repealed. [R 5/21/01]

§16-99-89 Equivalent continuing education. (a) In reviewing a request for an equivalency of the required continuing education hours as specified in sections 467-4.5 and 467-11.5, HRS, the commission may be guided but may not be limited by all of the following:

(1) The request is for a course completed, within the current biennium prior to license renewal, on or before the license expiration date;

(2) The request is for a course not specifically excluded by the provisions specified in section 16-99-101; and

(3) The course objectives for the requested course equivalency must satisfy the requirements of section 16-99-100, or the request is for a course offered and completed outside the State and is:

(A) Certified by the Association of Real Estate License Law Officials; or

(B) A national course that is delivered by an instructor certified by the National Association of Realtors or its affiliates, the Building Owners and Managers Association, the Community Associations Institute, or any other national organization approved by the commission.

(b) The licensee has the burden of presenting the commission with sufficient information and documentation in support of the request for an equivalency.

(c) A licensee who is issued a Hawaii real estate salesperson license during an even-numbered year shall be deemed to have completed equivalent to the [ten hours of] continuing education hours as required by section 467-11.5, HRS, and section 16-99-90. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-90 License renewal procedure. In renewing an individual license on an active status, the licensee shall provide the commission evidence of completing [ten hours of] the continuing education hours as required in section 467-11.5 HRS, including a mandatory core course if specified by the commission, which have been completed on or before the commission-prescribed deadline of an even-numbered year and within the current license biennium. Such evidence shall include but not be limited to submission by the provider, using a commission-prescribed electronic method, of the licensee's name, license number, license status, course and instructor

names, and other information the commission may require. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-91 Activating an inactive real estate license. Prior to making a written request to activate an inactive status individual license, an applicant who has been inactive for one or more renewal periods, shall first satisfy the prescribed continuing education hours of one prior renewal period. The commission shall credit the applicant with continuing education hours for any certified continuing education core or elective courses completed during the immediate prior renewal period. As an equivalent, where the commission deems appropriate, the inactive licensee may retake and pass the applicable salesperson or broker prelicense examination. The requirements of this section are in addition to other requirements of this subchapter and chapter 467, HRS, for activating an inactive status license. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-92 Continuing education hours in license restoration and reinstatement cases. Prior to applying to the commission for restoration or reinstatement of a license to active status, an applicant shall satisfy the prescribed continuing education hours or the equivalent as determined by the commission for one prior renewal period. The commission shall credit the applicant with continuing education hours for any certified continuing education core or elective courses completed during the immediate prior renewal period. As an equivalent, where the commission deems appropriate, the applicant may either take and pass the applicable salesperson or broker prelicense examination, or complete such other courses as prescribed by the commission, or both. The requirements of this section are in addition to other conditions stated in the order of suspension, and other applicable requirements of this chapter and chapter 467, HRS. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-93 Excess continuing education hours. Except as permitted by sections 16-99-91 and 16-99-92, continuing education clock hours obtained in excess of [ten hours] the continuing education hours required by section 467-11.5, HRS, cannot be carried forward to satisfy the continuing education requirements for any subsequent license renewal. [Eff and comp 2/25/91; comp 5/21/01; am and

comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-94 Continuing education certificates of completion. The form of a continuing education certificate of completion of course shall be as prescribed by the commission. The number of continuing education hours appearing on each certificate shall be the number of hours previously approved by the commission. A continuing education provider may offer a class for more hours than previously approved by the commission. But the number of course hours appearing on the continuing education course completion certificate shall be only for the amount as previously approved by the commission. [Eff and comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§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.] [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§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. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-97 Extensions. Upon application, on a form provided by the commission, and for good cause shown as determined by the commission, the commission may extend the time for completing the continuing education hours.

[Eff and comp 2/25/91; comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-98 Prior to offering a continuing education course. An individual or organization may solicit students for, advertise for, or take reservations for a continuing education course offering, when the proposed continuing education course is:

(1) Certified by the commission;

(2) Identified by a specified commission assigned course number; and

(3) Sponsored by a registered continuing education provider. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-99 Application for registration as a continuing education provider. (a) A continuing education provider shall be responsible for the administration of the course offering. An application for registration as a continuing education provider shall be made to the commission on a form prescribed by the commission. The application shall be submitted with a nonrefundable application fee in an amount as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS, and include at least the following:

(1) The complete legal name of the provider, telephone number, current mailing address, and the provider's administrative office address;

(2) The form of ownership of the provider, whether sole proprietorship, partnership, corporation, or limited liability company, and the name, telephone number, and current address of the provider's owner. When the owner of the continuing education provider is not an individual, the names, titles, and addresses of the directors, officers, members, managers, or partners of the entity together with a stamped filed copy of the articles of incorporation or partnership agreement on file with the State business registration division must be submitted to the commission;

(3) The name, address, and telephone number of the provider's administrator;

(4) A statement that all classroom facilities comply with the county building department, county fire department, and the State department of health requirements;

(5) A statement certifying that the provider has a student attendance policy and procedures for monitoring attendance and record keeping for a minimum of four years;

(6) A statement certifying that the provider has a policy for a refund, issuance of a certificate of completion of course, and the means by which the statement of policies shall be provided to a student prior to registering for the course;

(7) A surety bond conditioned for the protection of the contractual rights of real estate students in an amount not less than $2,000 issued by a surety authorized to do business in the State; provided that no bond shall be required if [the provider submits a statement certifying that no moneys shall be collected from real estate students in advance of the class date;] the course is delivered electronically or as approved by the commission; and

(8) Other additional information as may be required by the commission.

(b) A nonrefundable application fee and the posting of a bond pursuant to this section shall not be required of a provider that is a college or university accredited by an accrediting organization approved by the Council of Post Secondary Accreditation or the United States Department of Education (USDOE) as an institution of higher learning. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-100 Criteria for approving and certifying continuing education courses. (a) The commission may approve and certify a continuing education course when the course satisfies all of the following:

(1) Is for a core or elective course designed for any one of the following purposes:

(A) Protecting the general public in its real estate transactions;

(B) Enabling the licensee to serve the objectives of the consumer in a real estate transaction; or

(C) Enabling the licensee to develop and improve a licensee's competency and professionalism in a changing marketplace;

(2) Qualifies as either a consumer protection or professional standards and practice course as defined in this subchapter;

(3) Is developed for a knowledge and abilities level beyond "professional entry";

(4) Includes in the course [major course concepts;] clearly defined course objectives;

(5) Specifies course objectives in terms of student performance; for example, when the student completes the course the student can analyze, summarize, identify, and provide resolutions to ethical issues for a specific real estate transaction;

(6) Consists of [at least] a minimum of three clock hours;

(7) Issues upon the completion of the course offering a certificate of course completion;

(8) Requires the completion of the course within the license biennium;

(9) Is offered by a registered continuing education provider;

(10) Is delivered live, [by means of interactive television,] or by other means of [interactive] communication as approved by the commission;

(11) Has a course outline detailing the sequence of topics, amount of time allotted to each topic, and reading assignments; and

(12) Meets such other conditions as requested by the commission.

(b) In making a determination pursuant to this section, the commission may consult with an advisory committee of real estate educators and practitioners having specialized knowledge and practical experience with the subject matter of the proposed course. Where the commission deems necessary, the commission may also retain a consultant to assist the commission in making a determination pursuant to this section. The consultant shall be compensated by moneys provided from the real estate education fund. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§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 brokerage 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. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-102 Application for certification of a continuing education course.

(a) An application for certification of a continuing education course shall be made on a form prescribed by the commission. Applications for course certification shall be made for all courses except those courses which have been developed by the commission. The certification shall be valid for the duration of the biennium license period for which certification is sought, unless sooner terminated as provided by rules of this subchapter.

(b) An application for certification of a continuing education course shall be accompanied by a nonrefundable application fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-103 Offerings of a certified continuing education course. (a) A provider shall not solicit students for registration for any offering of a certified continuing education course without first notifying the commission on a form prescribed by the commission at least [fourteen] three calendar days prior to the course offering date. In notifying the commission, the provider shall do all of the following:

(1) Notify the commission of the provider's intention to solicit students. The notification shall contain at least the course offering date, time, location, fees and charges, and the instructor's name; and

(2) Certify to the commission that the instructor meets the requirements pursuant to section 16-99-104.

(b) The commission may, after a review of the information submitted pursuant to (a)(1) and (2) of this section, confirm the course offering, assign a course offering number, and issue a course offering certificate that shall be prominently displayed at the course site. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-104 Criteria for certification of a continuing education instructor. (a) Every continuing education provider shall determine that each instructor evidences an ability to teach and command knowledge of the subject matter of the course and shall certify to the commission on a form prescribed by the commission that each instructor has met the commission requirements.

(b) A continuing education instructor evidences an ability to teach by possessing:

(1) A bachelor's degree or higher in education;

(2) A current teaching designation from an organization recognized by the commission;

(3) A current teaching credential;

(4) A full-time current appointment to the faculty of an accredited institution of higher education;

(5) Three years of full-time teaching in any field. "Three years of full-time teaching" may have been accumulated over a period exceeding three years;

(6) A certificate of completion from a special real estate instructor institute approved by the commission; or

(7) Other experience or credentials as the commission may approve.

(c) A continuing education instructor evidences a command knowledge of the subject matter of the course by:

(1) Possessing a bachelor's degree or higher from an institution of higher education accredited by the USDOE with a major in a field of study directly related to the subject matter of the continuing education course;

(2) Possessing a bachelor's degree or higher from an institution of higher education accredited by the USDOE and five years of real estate experience directly related to the subject matter of the continuing education course;

(3) Practicing as a licensed attorney for at least three years in an area directly related to the subject matter of the continuing education course;

(4) Serving an appointment to the real estate or any other faculty of an institution accredited by the USDOE in an area directly related to the subject matter of the continuing education course;

(5) Possessing a documented combination of: three years of experience directly related to the subject matter of the continuing education course; substantial participation in the development of real estate curriculum or courses at a knowledge and skill level beyond professional entry; substantial participation in the teaching of real

estate courses directly related to the subject matter of the continuing education course at a knowledge and skill level beyond professional entry, including but not limited to substantial participation in teaching or development of seminars, workshops, educational training courses offered at any state accredited institution of learning, or at any college or university accredited by the USDOE, or at any real estate office; or

(6) Possessing other experience or credentials as the commission may approve.

(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:

(1) Disciplined by the commission of 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[.] ; or

(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.

(f) "Command knowledge" as used in this section means an understanding, application, evaluation, and synthesis of the body of knowledge in connection with the continuing education course at a level past professional entry. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-105 Biennial provider registration and course certification. (a) A continuing education provider shall be biennially registered with the commission. The biennial registration renewal fee shall be paid to the department of commerce and consumer affairs by the commission-prescribed deadline of every even-numbered year.

(b) A continuing education course shall be biennially certified by the commission. The biennial certification renewal fee shall be paid to the department

of commerce and consumer affairs by the commission-prescribed deadline of every even-numbered year.

(c) The registration of a continuing education provider and the certification of a continuing education course shall expire at the end of every even-numbered year. To renew a provider registration or course certification, each provider and each course owner shall, respectively, satisfy all of the following:

(1) Submit a new application for registration as a provider or course certification;

(2) Satisfy, respectively, the initial registration and certification requirements of this subchapter;

(3) Pay all required fees as set forth in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS; and

(4) Meet all other applicable requirements of this subchapter. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-106 Forfeited registration, certification; restoration. (a) Failure, neglect, or refusal by any person to pay the respective biennial renewal provider registration fee or course certification fee shall constitute a forfeiture of the certificate of registration or certification.

(b) Any forfeited certificate of registration or certification may be restored upon satisfaction of all of the following:

(1) Written application;

(2) Continued satisfaction of the respective requirements of sections 16-99-99 and 16-99-100; and

(3) Payment of the applicable fees specified in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-107 Fees. All fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-108 Revocation or suspension of a continuing education course certification. The commission may revoke or suspend the certification of a continuing education course for any of the following causes:

(1) The course no longer satisfies the requirements of section 16-99-100;

(2) The course contains outdated or incorrect information; and

(3) Such other cause as may be determined by the commission. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-109 Revocation or suspension of a continuing education provider registration. The commission may revoke or suspend a continuing education provider's registration for any of the following causes:

(1) The provider allows its instructors to use outdated course information and material in the teaching of any continuing education course;

(2) The provider permits a course to be taught by an instructor who is not qualified to teach the continuing education course pursuant to guidelines of section 16-99-104;

(3) The provider permits an individual who has been disciplined by the commission or by any other licensing regulatory body of this State or of any other state to have direct supervision of the continuing education provider's staff or instructors, or to occupy a position from which the individual can set policy and direct the operations of the provider's continuing education business. The disciplinary action of any other licensing regulatory body must have been for fraud, misrepresentation, or deceit in connection with the purchase, sale, exchange, management of any interest in real estate, or for any other conduct substantially related to the practice or profession of real estate;

(4) The provider permits an individual who has been convicted of a crime in connection with operating a business relating to the delivery of educational courses to have direct supervision of the continuing education provider's staff or instructors, or to occupy a position from which the individual can set policy and direct the operations of the provider's continuing education business;

(5) The provider violates any statutes or rules relating to continuing education providers;

(6) The provider falsifies or misrepresents any information or document submitted to the commission;

(7) The provider fails to correct any noted defect pursuant to section 16-99-119;

(8) The provider fails to satisfy the record keeping requirements of sections [16-99-112 and 16-99-113;] 16-99-111 and 16-99-112; or

(9) Such other causes as may be determined by the commission. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-110 Repealed. [R 5/21/01]

§16-99-111 Record keeping responsibilities of a continuing education provider. (a) A continuing education provider shall submit all required reports and records by the deadline prescribed by this subchapter and by other designated administrative deadlines as from time to time may be imposed by the commission.

(b) When a provider fails to keep, produce, or timely submit any report or record as required by this section, the commission may do any or all of the following:

(1) Suspend, after written notice, without a hearing, the issuance of blank forms of certificates of course completion; [or]

(2) Suspend the issuance of a course number for any subsequent course offering until the provider complies with the record keeping and submittal requirements of this subchapter; or

(3) Revoke or suspend the registration of the provider. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-112 Record keeping information and retention period. (a) A real estate continuing education provider shall maintain for a period of at least four years records of course offerings (including names of instructors, dates of and locations of course offerings), student attendance, student registration, course completions, student evaluations, and personal information and resumes of its instructors and administrators. Each student record shall include, at a minimum, the following:

(1) The student's name, address, real estate license number, license status, continuing education course completion information including course and instructor names, course offering number and date, and whether the student completed the course, course completion certificate number, and amount of approved clock hours of continuing education credits earned; and

(2) Proof of actual course attendance including a verified sign-in and sign-out attendance sheet or a student certification statement in the case of a continuing education course offered by alternative delivery methods with interactive instructional techniques. The sign-in and sign-out sheet may be kept in another location other than the student's record, provided that reference to such location shall be made in each student's record. The name, address, and phone number of the individual who verified the student's attendance shall also be noted in the student's record.

(b) Within ten days of the end of any continuing education course or completion of course offered by alternative delivery methods, the continuing education provider shall issue to each student having completed the course a certificate of completion of course [on a form] as prescribed by the commission. Except as provided in sections 16-99-91 and 16-99-92, the continuing education certificate of completion of course is valid only for the biennium license period in which the course was completed.

(c) Within ten days of the end of the course or completion of course offered by alternative delivery methods, the continuing education provider shall submit to the commission:

(1) A listing of licensees who have completed the course with their issued course completion certificate numbers, course and instructor names, and course offering number and date, using a commission-prescribed electronic method, together with the prescribed number of copies as requested by the commission;

(2) When applicable, completed student evaluations of instructors for each course offering; and

(3) Other information requested by the commission.

(d) A real estate continuing education provider shall issue a student a duplicate certificate of completion of course upon receipt of a student's written request for such a certificate. [The provider may charge the student a reasonable charge for honoring the request. The provider shall give written notice to the commission when issuing a duplicate certificate of completion. The notice shall include the name of the student, the student's license number and status, name of the course, course offering number and date, provider's name, certificate numbers-of the

original and duplicate certificates, and date on which the duplicate certificate was issued.]

(e) For any course attended by more than fifty students, the provider shall provide at least one additional individual other than the instructor to administer the course offering, including but not limited to keeping records of attendance, preparing and distributing certificates, and assuring that physical facilities meet the requirements of this subchapter. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-113 Advertising. (a) For purposes of this subchapter, "advertising" means an announcement by a continuing education provider for the purpose of promoting itself as a provider or for soliciting students and includes, but is not limited to, all printed and visual communications, such as newspaper advertisements, direct public mailings, books and periodicals, television and radio commercials, and others.

(b) All advertisements soliciting students shall be of an announcement type listing, and minimally, include the name and address of the continuing education provider, the place where a catalogue or brochure may be obtained, a brief description of the course, a statement that the course can be used for satisfying continuing education requirements, and the number of course hours approved for continuing education.

(c) A continuing education provider shall keep on file at its place of business all advertising materials, subject to inspection and review by the commission upon written request.

(d) A continuing education provider shall not be advertised or be represented as having been "registered" with the commission until the provider has received written notification of its registration from the commission.

(e) All advertising materials and claims shall be free from misrepresentation and fraud.

(f) The commission, at any time, may require that a continuing education provider furnish proof of any of its advertising claims. Retractions of advertising claims may be ordered by the commission, with the retractions published in the same manner as the claims themselves.

(g) A continuing education provider shall be held strictly responsible for the acts and promises of its agents who solicit students. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-114 Prohibited advertising practices. A continuing education provider shall not engage in any of the following acts:

(1) Provide any information to the public or to a prospective student, which is false, misleading, or deceptive. Information is "misleading" when there may be a possibility that it will deceive the class of persons whom it intended to influence;

(2) Use any name, other than the full name or the trade name registered with the commission, for advertising or publicity purposes;

(3) Advertise that it is "recommended," "endorsed," "approved," or "accredited" by the commission. A continuing education provider may indicate that it is "registered" with the commission to conduct courses to assist the licensee in obtaining the necessary continuing education hours for license renewal;

(4) Advertise that it is endorsed by business establishments, organizations, or individuals engaged in the kind of work for which training is given until written evidence of this fact is filed with the commission;

(5) Make or imply any guarantee of employment or income to any student or prospective student unless the continuing education provider can in fact guarantee employment or income and the continuing education provider does so in writing;

(6) Advertise a course which has not been certified by the commission, unless the advertisement clearly states that it is a "proposed" or "tentative" offering, subject to the certification by the commission; or

(7) Collect from any prospective student any tuition or advance deposits unless the continuing education course is certified by the commission. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-115 Continuing education course entrance requirements. Prior to allowing any licensee into a continuing education course, a continuing education provider shall verify the identification of that licensee. At minimum, the continuing education provider shall require a picture identification and a current real estate pocket card or notification of licensed status from the commission. In limited circumstances, for reasons beyond the licensee's control, by way of example, but not limited to the example where a licensee is in the process of restoring a forfeited license, a provider may admit with a picture identification an individual, but shall

not issue a certificate of completion of the course until the licensee produces a duly issued real estate license pocket card or commission issued real estate license restoration application. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-116 Discontinuing course offerings. Ten days prior to the cancellation of provider registration, a provider shall in writing inform the commission of its intent to cancel its registration and discontinue the offering of courses. Within a reasonable time, after informing the commission of its intention to cancel its registration, the provider shall refund any course tuition and other fees collected in advance. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-117 Material change. Any anticipated material change to a commission certified continuing education course shall be submitted by the course owner to the commission for approval thirty days prior to making the changes. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-118 Repealed. [R 5/21/01]

§16-99-119 Review, evaluation, and investigation. With or without the giving of any prior notice, the commission may conduct a review, evaluation, or investigation of an application for continuing education course certification or continuing education provider registration. With or without any prior notice, the commission may conduct a review, evaluation, or investigation of a course offering or a registered continuing education provider's operations and performance. A review, evaluation, or investigation may be conducted by any means including but not limited to surveys, observations, physical inspections, and on-site monitoring, as well as interviews with providers, owners, administrators, instructors, and students. When the commission has reason to believe that a continuing education provider may be in violation of this subchapter or is otherwise failing to maintain reasonable operating standards, the commission may give appropriate written notice to the provider specifying the grounds for the violation and requiring that corrective action

be taken by the provider within thirty days of the receipt of the notice. The provider may request a hearing of the alleged violations and requested corrective acts pursuant to chapter 91, HRS, and chapter 16-201. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-120 Repealed. [R 5/21/01]

§16-99-121 Faculty. (a) Each continuing education provider shall designate an individual as administrator.

(b) The administrator shall be responsible for:

(1) Complying with the commission's rules relating to continuing education providers as set forth in this subchapter;

(2) Providing reports and information as may be required by the commission;

(3) Informing the commission in writing ten business days prior to any changes in the information on the application for registration as a provider;

(4) Directing and supervising the continuing education provider's faculty, staff, and program[.] ;

(5) Administering and maintaining the student evaluations; and

(6) Ensuring that instructors do not fall below minimum rating standards. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§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. [Eff and comp] (Auth: HRS §§467-4, 467-4.5) (Imp: HRS §467-4.5)

§16-99-122 Display of certificate of registration and instructor's certificate. A continuing education provider shall prominently display its certificate of provider registration in its business office at all times. [Eff and comp 2/25/91; am and

comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-123 Classrooms. (a) A continuing education provider shall have and maintain classrooms that have adequate space, seating, equipment, and instructional material.

(b) A provider shall provide written certification to the commission that each classroom conforms to the zoning, building, electrical, plumbing, and fire codes of the county in which the facility is located and to State rules as may be applicable to the facility. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-124 Classroom compliance. A continuing education provider shall not conduct classes when it has been notified by the appropriate county agency that the conditions existing at the continuing education provider's facilities violate county building, fire, or health codes. The continuing education provider may resume its operations when it has remedied the violation. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-125 Repealed. [R 5/21/01]

§16-99-126 Repealed. [R 5/21/01]

§16-99-127 Denial, revocation, and suspension. (a) In the event an application for provider registration, renewal of registration, course certification, or renewal of certification is denied, the commission shall notify the applicant of the commission's decision, state specifically the reason for denying the application, and inform the applicant of the right to a hearing under chapter 91, HRS.

(b) In the event the commission deems it proper to revoke or suspend a provider registration or course certification, the commission shall notify the provider or course owner by mail of the commission's intent to revoke or suspend the registration or certification, state specifically the reason for revocation or suspension, and inform the provider or course owner of the right to a hearing under

chapter 91, HRS. [Eff and comp 2/25/91; am and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-128 Request for a contested case hearing. Any person whose application for registration or certification has been denied, or whose registration or certification has been revoked or suspended by the commission shall be entitled to a hearing pursuant to chapter 91, HRS, and chapter 16-201; provided that a request for a contested case hearing is filed with the commission in accordance with chapter 91, HRS, and chapter 16-201. [Eff and comp 5/21/01; comp] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

SUBCHAPTER 10

CONDOMINIUM HOTEL OPERATORS

§16-99-147 Registration. (a) Registrations made pursuant to section 467-30, HRS, shall expire on December 31 of each even-numbered year.

(b) All business entities registered pursuant to section 467-30(b), HRS, with the exception of sole proprietors, shall be currently registered, duly authorized, and in good standing with the business registration division.

(c) Trade names used by condominium hotel operators shall be currently registered with the commission and also currently registered, authorized by, and in good standing with the business registration division.

(d) On or before the commission prescribed deadline of each even-numbered year, condominium hotel operators shall submit a complete reregistration application form, pay appropriate fees, submit evidence of a fidelity bond policy, and submit any other additional information substantiating compliance with the registration requirements of section 467-30, HRS, or be deemed by the commission as unregistered and subject to new registration application requirements.

(e) Within ten days of any changes, the condominium hotel operator shall notify the commission, in writing, of any changes in the information contained on the registration or reregistration application, exemption, or exclusion forms.

(f) [An] A registration application [for an exemption or exclusion from the provisions of section 467-30(b)(1), HRS,] made pursuant to section 467-30(g)(2), HRS, shall be [made on a form provided by] submitted to the commission. The applicant shall [submit] certify for each condominium project, unless otherwise approved by the commission, zoning information[, verified by a

county official] that the condominium hotel is in a hotel or transient lodging zone; together with submitting true copies of the condominium project declaration and bylaws certified by the bureau of conveyances or land court [specifically] containing specific language permitting [a condominium hotel] transient lodgings for periods of less than thirty days. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-11, 467-30) (Imp: HRS §467-30)

§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. [Eff and comp] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§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:

(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. [Eff and comp] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§16-99-148 Fidelity bond. (a) The fidelity bond shall be issued by a company currently authorized by the insurance commissioner of Hawaii to issue insurance in this State.

(b) Unless otherwise approved by the commission, the fidelity bond shall:

(1) Name the department of commerce and consumer affairs as the certificate holder;

(2) Provide the department of commerce and consumer affairs with written notification at least thirty calendar days prior to its cancellation or termination;

(3) Provide coverage for condominium hotel operator activity only;

(4) Name the condominium hotel operator registrant only as the insured and exclude any other person, trade name, or business entity as the named insured;

(5) Specify that it is a fidelity bond and whether it is a blanket or name schedule type, and if a name schedule type, lists all persons covered;

(6) Specify an expiration date or that it is continuous;

(7) Specify if the bond contains a deductible provision or a nondeductible provision; and

(8) Provide other information as requested by the commission.

(c) The amount of the deductible shall not exceed the greater of $2,000 or five per cent of the face amount of the fidelity bond. In no case shall the amount of the deductible exceed the maximum deductible amount of $5,000.

(d) When the fidelity bond is a name schedule bond, the condominium hotel operator shall:

(1) Provide a certified statement listing the names of all persons handling or having control of the funds received by the condominium hotel operator; and

(2) Provide any changes in the listing of names submitted pursuant to subsection (d)(1), on an amended certified statement within ten calendar days of the change and an original of the amended fidelity bond policy.

(e) Unless otherwise approved by the commission, the fidelity bond shall not contain a criminal conviction endorsement or rider which requires the prosecution or conviction of the employee as a condition precedent to recovery on the bond.

(f) The commission shall terminate the registration of a condominium hotel operator for failure to maintain a fidelity bond in compliance with section 467-30, HRS, and this chapter.

(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. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§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."

(b) The condominium hotel operator shall not commingle the client's trust funds with funds of other activities such as the association of apartment owners, lease rent, condominium managing agent, or the condominium hotel operator's own funds.

(c) The records of the client's trust funds shall not be commingled with the records of other activities such as association of apartment owners, condominium managing agents, or the condominium hotel operator's own funds. Upon demand, the records of the client's trust funds shall be subject to inspection by the commission or its representative. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§16-99-150 Conduct. (a) The condominium hotel operator shall ensure that the terms and conditions agreed upon between the apartment or unit owner and the condominium hotel operator for operating a condominium hotel are in writing, and that a copy is given to each apartment or unit owner. The terms and conditions shall include but are not limited to financial obligations, responsibilities, and duties of the condominium hotel operator.

(b) The condominium hotel operator shall not accept any compensation, commission, rebate, or profit on any expenditure for or from an apartment or unit owner, without the apartment or unit owner's knowledge and written consent.

(c) The condominium hotel operator shall provide a monthly written accounting of the apartment or unit owner's funds or a periodic written accounting based on the contractual agreement.

(d) The condominium hotel operator and its employees shall not violate any provisions of chapter 514A, HRS, 514B, HRS, or the rules adopted pursuant thereto, and where the condominium hotel operator or its employees possess a real

estate license, the licensees shall also not violate any provisions of chapter 467, HRS, and the rules relating thereto." [Eff and comp 2/25/91; am and comp 5/21/01; am and comp] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilations are not underscored.

4. These amendments to and compilation of chapter 16-99, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on and filed with the Office of the Lieutenant Governor.

NIKKI SENTER, Chair
Real Estate Commission

APPROVED AS TO FORM:

Deputy Attorney General