

Avoiding Scams

By the Hawaii Foreclosure Information Center



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Scams aren't always easy to spot – but it helps if you know the warning signs to look for. Here are six red flags to indicate that you may be dealing with a loan modification scammer:

1. A company/person asks for a fee in advance to work with your lender to modify, refinance or reinstate your mortgage. They may pocket your money and do little or nothing to help you save your home from foreclosure.

2. A company/person guarantees they can stop a foreclosure or get your loan modified. Nobody can make this guarantee to stop foreclosure or modify your loan. Legitimate, trustworthy HUD-approved counseling agencies will only promise they will try their very best to help you.

3. A company/person advises you to stop paying your mortgage company and pay them instead. Despite what a scammer will tell you, you should never send a mortgage payment to anyone other than your mortgage lender. The minute you have trouble making your monthly payment, contact your mortgage lender.

4. A company pressures you to sign over the deed to your home or sign any paperwork that you haven't had a chance to read, and you don't fully understand. A legitimate housing counselor would never pressure you to sign a document before you had a chance to read and understand it.

5. A company claims to offer "government-approved" or "official government" loan modifications. They may be scam artists posing as legitimate organizations approved by, or affiliated with, the government. Contact your mortgage lender first. Your lender can tell you whether you qualify for any government programs to prevent foreclosure. And, remember, you do not have

to pay to benefit from government-backed loan modification programs.

6. A company/person you don't know asks you to release personal financial information online or over the phone. You should only give this type of information to companies that you know and trust, like your mortgage lender or a HUD-approved counseling agency.

Phony Counseling or Foreclosure Rescue Scams

The scam artist poses as a counselor and tells you he can negotiate a deal with your lender to modify your loan or save your house—if you pay him a fee first. The fee may be called a processing fee or administrative fee. He may even tell you not to contact your lender, lawyer or housing counselor—that he'll handle all details. He may even insist that you make all mortgage payments directly to him while he negotiates with the lender. Once you pay the fee, or a few mortgage payments, the scammer disappears with your money.

Fake "Government" Modification Programs

Some scammers may claim to be affiliated with, or approved by, the government, or they may ask you to pay high, up-front fees to "qualify" for government mortgage modification programs. The scammer's company name and Website may sound like a real government agency, but the Website may end with .com or .net instead of .gov. You may also see terms like "federal," "HAMP," "MHA," "HARP" or other words related to official U.S. government programs. Contact your lender first. Your lender will be able to tell you if you qualify for any government programs to prevent foreclosure or modify your loans. And you do not have to pay to benefit from these programs.

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The Chair's Message



Aloha!

In anticipation of an upswing in the economy and real estate-related activity, the Legislature reviewed a number of industry-related measures. Industry members need to think about how these new laws may impact current practices and whether the new laws are beneficial or burdensome to what you do.

The following is a summary of the more salient and pertinent measures that were passed, which affect real estate licensees, especially those who engage in property management, and manage condominium associations.

Act 42 Relating to Private Transfer Fees (House Bill 998 SD1). This measure repeals the June 30, 2015 sunset provision in Act 169, SLH 2010, thereby making permanent the prohibition of private transfer fees for a future transfer of real property. Certain fees and charges, however, continue to be excluded from prohibition, including private transfer fees paid to homeowners associations, condominiums, cooperatives, and certain tax-exempt organizations that use private transfer fee proceeds to benefit the property.

Act 163 Relating to General Excise Tax (Senate Bill 1360 SD1 HD1 CD1). This measure amends Act 239, SLH 2007 (as amended by Act 196, SLH 2009, and Act 91, SLH 2010), to provide permanent general excise tax exemptions for: (1) monies received by sub-managers of homeowners and community associations for reimbursements of common expenses, and (2) monies received by hotel operators and sub-operators from their owners, operators, or timeshare associations to pay employee costs. The measure also eliminates the aggregate cap of \$400,000 for taxpayers eligible for the exemptions.

Act 186 Relating to Real Estate Seller Disclosure (Senate Bill 502 SD1 HD1 CD1). This measure establishes a uniform standard of document disclosure for condominium projects, cooperative housing corporations, and other community associations (e.g., planned community associations). Disclosure of these documents must be given to the purchaser within ten (10) days after the title report is received. In addition, the measure allows buyers to electronically receive disclosure documents. The intent of this measure is to clarify for buyers, sellers, and real estate licensees which documents and information must be disclosed during sales of real property subject to a recorded declaration.

Act 187 Relating to Condominiums (Senate Bill 505 SD2 HD1 CD1). The purpose of this measure is to support and encourage the use of mediation to settle condominium-related disputes by: (1) adding support for mediation of condominium related disputes as an educational purpose eligible to be funded by the Condominium Education Trust Fund; (2) beginning with the July 1, 2015, biennium registration, establishing an additional annual Condominium

Education Trust Fund fee dedicated to supporting mediation of condominium-related disputes; and (3) requiring the Real Estate Commission to make adjustments to the Condominium Education Trust Fund prior to July 1, 2015, to ensure that adequate funds are available for mediation of condominium-related disputes. This measure also ensures that condominium owners have access to the services of professionally trained mediators with extensive subject matter expertise, including retired judges and individuals with appropriate professional mediation training.

Act 196 Relating to Condominiums (House Bill 21 HD2 SD2 CD1). This measure permits the board of directors of a condominium association to collect a six-month special assessment from the mortgagee or other purchaser of a unit with a recorded lien for delinquent common assessments. The measure also specifies how excess rental income received by a condominium association after a foreclosure proceeding is to be paid against existing lien holders. The intent of the measure is to assist condominium associations with the collection of unpaid common assessments. This would alleviate the costs of default in condominiums often carried by condominium associations, non-defaulting unit owners, and mortgagors and will protect the lending industry's interests by preserving the value of the projects.

Act 197 Relating to Suspension of Foreclosure Actions by Junior Lienholders (House Bill 25 HD2 SD2 CD1). This measure seeks to improve the foreclosure process by: (1) allowing a condominium or planned community association, as a junior lienholder, to commence or continue a non-judicial foreclosure action on a property subject to a judicial foreclosure even if the lender has filed for foreclosure; and (2) preserving the right of owner-occupants to require the foreclosing mortgagee to participate in dispute-resolution process. Previously, an association could not commence a non-judicial foreclosure if a lender was in the process of foreclosing on a property. Even if an association had already begun a non-judicial foreclosure before the lender commenced foreclosure, that association's non-judicial foreclosure needed to be suspended. This measure strives to mitigate the potential damage, neglect, and loss of revenue and value caused by lengthy delays in judicial foreclosures by mortgagees.

The above is a limited selection of real estate-related legislation. There are more real-estate related Acts passed by the Legislature which are included in the Commission's 2013-2014 Core Course, Part A.

Nikki T. Senter, Chair

The contents of this message is provided for informational purposes only and is not a full description of each Act or an exhaustive list of all measures that have a potential to impact the real estate industry. A list of measures passed this past session may be found at www.capitol.hawaii.gov.

Avoiding Scams (cont. from page 1)

Forensic Loan Audit

The scammer who may be called a forensic or mortgage loan “auditor” offers to review your mortgage loan documents to determine whether your lender complied with state and federal mortgage lending laws. The scammer will usually require that you pay a fee to start the process. The scammer may say you can use the audit report to avoid foreclosure, accelerate the loan modification process, reduce your loan principal, or even cancel your loan.

There is no proof that a forensic loan audit can save your home from foreclosure although it’s conducted by a licensed, legitimate and trained auditor, mortgage professional or lawyer. Even if you sue your lender and win, your lender is not required to modify your loan to make it more affordable. If you cancel your loan, you will have to return the borrowed money, which may result in you losing your home.

Mass Joinder Lawsuit

The scam artist, usually a lawyer, law firm or a marketing partner, will promise that they can force your lender to modify your loan. They will tell you that by joining other homeowners in a mass joinder lawsuit against a particular lender, you will be able to stop a foreclosure, reduce your loan balance or interest rate, receive monetary damages, or even receive title to your house free and clear. Mass joinder lawsuits can be used legitimately; these lawyers are usually paid *after* the lawsuit is over, on a contingency basis. However, mass joinder lawsuit scammers will try to “sell” you participation in a lawsuit against your mortgage lender, claiming that you cannot participate in the lawsuit until you pay some type of fee.

Source: NeighborWorks America

HFIC.hawaii.gov

To report a scam: (808) 587-3222 / 1-800-394-1902

Department of Commerce and Consumer Affairs

335 Merchant Street

Honolulu, HI 96813

Specialists’ Office for the Day on Kauai

The Real Estate Commission’s Real Estate and Condominium Specialists set up offices for the day at the Lihue State Office Building, on Wednesday, June 12, 2013, to discuss real estate licensing and condominium concerns with interested parties.

The Specialists are prepared to discuss questions about licensing laws and rules, license applications, broker experience certificate applications, examination administration, continuing education, new legislation, Commission procedures, educational programs, and related topics.

Other questions that may come up at the sessions concern boards, associations, meetings, managing agents, condominium association registration, condominium hotel operators, fidelity bonding, the condominium property regime statute, public reports, project registration, the condominium dispute resolution program, new legislation, reserves, and other condominium-related topics.

If you have any questions, you may contact a Real Estate Specialist or a Condominium Specialist at (808) 586-2643. You may also write to:



Real Estate Commission, 335 Merchant Street, Room 333, Honolulu, HI 96813, or you may email staff at hirec@dcca.hawaii.gov.

The Specialists’ Office for the Day program is funded by the Condominium Education Trust Fund and the Real Estate Education Fund.

2013 Legislation

The 2013 session of the Hawaii Legislature resulted in the following Acts that are now law or soon to be law. The legislation is a compilation of real estate-related bills and Acts that may be of significance to your real estate practice.

For more information on any bills, visit the Hawaii State Legislature's website at www.capitol.hawaii.gov.

HOUSE BILLS

Bill	Title	Description
H.B.21 H.D.2 S.D.2 C.D.1	RELATING TO CONDOMINIUMS	Permits the board of directors of a condominium association to collect a six-month special assessment from a mortgagee or other purchaser of a unit with a recorded lien for delinquent common assessments. Specifies how excess rental income received by a condominium association shall be paid to existing lienholders.
ACT 196 6/25/13		Comments: Provides associations some relief on common expense delinquencies by requiring lien mortgagees to pay a special assessment.
H.B.25 H.D.2 S.D.2 C.D.1	RELATING TO SUSPENSION OF FORECLOSURE ACTIONS BY JUNIOR LIENHOLDERS	Allows a condominium association, as a junior lienholder, to commence or continue a non-judicial foreclosure action on a property subject to a judicial foreclosure, even if the lender has filed for foreclosure. Preserves the right of owner-occupants to require the foreclosing mortgagee to participate in the dispute resolution process in situations where: <ul style="list-style-type: none"> • an association forecloses on residential real property occupied by one or more owner-occupant mortgagors for whom the unit is, and has been, the primary residence for a continuous period of not less than 200 days immediately preceding the date the notice is served; and • the mortgagee subsequently forecloses its lien on the same property. Effective July 1, 2013.
ACT 197 6/25/13		Comments: Allows associations to file and foreclose on their liens, even if there is a judicial foreclosure pending. Owner-occupant borrowers may still compel the dispute resolution process.
H.B.424 H.D.1 S.D.2 C.D.1	RELATING TO TIMESHARE CONVEYANCES	Authorizes the Governor to appoint commissioners of deeds to administer oaths, take acknowledgements, and take proofs of execution outside the United States in connection with the execution of conveyance documents relating to a timeshare interest, any property subject to a timeshare plan, or the operation of a timeshare plan covering any property located within the state. Requires written notice be provided to consumers. Establishes bonding requirements, penalties and liabilities for commissioners of deeds. Makes appropriations. Effective July 1, 2013, commissioners appointed by July 1, 2014.
Act 277 7/9/13		Comments: Intended to facilitate foreign conveyancing of Hawaii timeshare interests as a convenience to foreign owners and to make the purchase of such interests more appealing to them.
H.B.998 Act 042 4/24/13	RELATING TO PRIVATE TRANSFER FEES	Makes permanent the prohibition of private fees for a future transfer of real property.
		Comments: Removes a prior-existing sunset date. The elimination of private transfer fees is intended to help preserve real estate values.

2013 Legislation (cont. from page 4)

SENATE BILLS

Bill	Title	Description
S.B.19 S.D.1 H.D.2 C.D.1	RELATING TO RENEWABLE ENERGY	Exempts landlords and lessors who install renewable energy systems on their property and provide, sell or transmit electricity generated from those renewable energy systems to tenants or lessees on the premises from the definition of "public utility," under certain conditions.
Act 261 7/3/13		Comments: Generally removes lessors with renewable energy systems who provide their tenants with electricity from public utility regulations.
S.B.305 S.D.1 H.D.1 C.D.1	RELATING TO DEVELOPMENT OF PUBLIC HOUSING	Authorizes the Hawaii Public Housing Authority (HPHA) to develop public housing projects. Authorizes the HPHA to develop commercial and industrial properties and sell or lease other properties in connection with the development of public housing dwelling units. Effective July 1, 2013.
Act 151 6/21/13		Comments: Provides for the development of more public housing projects and the lease or sale of existing properties in furtherance of such development.
S.B.328 S.D.1 H.D.2 C.D.1	RELATING TO ANIMALS	Amends the Residential Landlord-Tenant Code to provide for security deposits that include an additional amount to pay for damages caused by any pet animal, other than an assistance animal, allowed to reside in the premises pursuant to the rental agreement. Effective for rental agreements entered into on or after November 1, 2013.
Act 206 6/26/13		Comments: Allows landlords to collect a security deposit of more than a total of one month's rent if the tenant has a pet. The additional pet deposit can be in an amount up to one month's rent. Limitations apply. This may encourage more landlords to allow pets.
S.B.502 S.D.1 H.D.1 C.D.1	RELATING TO REAL ESTATE SELLER DISCLOSURE	Establishes a uniform standard for disclosure for condominium projects, cooperative housing corporations, and other community associations. Clarifies the types of documents that are required to be disclosed. Requires the disclosure of documents within 10 days after the title report is received. Allows for the electronic receipt of documents with the buyer's consent. Effective November 1, 2013.
Act 186 6/25/13		Comments: A consumer protection bill that clarifies what community association documents must be given to buyers and when.
S.B.505 S.D.2 H.D.1 C.D.1	RELATING TO CONDOMINIUMS	Adds support for the mediation of condominium-related disputes as one of the educational purposes supported by the Condominium Education Trust Fund (CETF). Beginning with the July 1, 2015, biennium registration, imposes an additional annual CETF fee dedicated to supporting mediation of condominium-related disputes. Specifies the total fee payable into the CETF. Requires the Real Estate Commission to make adjustments to the CETF to ensure adequate funds are available for mediation of condominium-related disputes and any mediation requests are fully accommodated prior to the commencement of the additional annual CETF fee. Effective July 1, 2013.
Act 187 6/25/13		Comments: Provides for eventually increasing fees to the CETF to support mediation of disputes as part of the fund's program.

2013 Legislation (Senate Bills cont. from page 5)

S.B.633 Act 026 4/18/13	RELATING TO UNLICENSED CONTRACTING ACTIVITIES	<p>Prohibits the value of any work done by an unlicensed contractor to be used as an offset for the value of the property calculated in unlicensed contractor fraud cases.</p> <p>Comments: The effect of this bill will be forfeiture of an unlicensed contractor's right to offset the values of his work against any sums he owes for fraudulent activities.</p>
S.B.913 S.D.1 Act 049 4/24/13	RELATING TO TIMESHARES	<p>Requires a timeshare plan's disclosure of the financial obligation of the purchaser, to consist of:</p> <ul style="list-style-type: none"> • a statement that the purchaser is obligated to pay the initial price in the purchase agreement; and • a list or description of any additional charges. <p>Clarifies that a sales or acquisition agent is not required to provide any promotional device or instrument to a prospective purchaser prior to making a sales presentation.</p> <p>Comments: Clarifies which initial disclosures are required from sellers as to buyers' financial obligations. Also clarifies that the gift of a promotional device need not precede a sales presentation.</p>
S.B.960 S.D.1 H.D.1 C.D.1 Act 181 6/25/13	RELATING TO FORECLOSURES	<p>Establishes a notice of postponement or cancellation of sale requirement under Part IA, Chapter 667, Hawaii Revised Statutes (HRS) ("Mortgage Foreclosures"), relating to judicial foreclosures.</p> <p>Comments: Requires financial institutions to give notice when they cancel or postpone foreclosure sales. Addresses the "zombie title" problem, when homeowners move out after receiving notice of a foreclosure sale but the financial institution walks away and cancels the sale without notifying them.</p>
S.B.966 H.D.1 C.D.1 Act 284 7/9/13	RELATING TO THE UNIFORM MEDIATION ACT	<p>Adopts the Uniform Mediation Act of the National Conference of Commissioners on Uniform State Laws. Effective July 1, 2013.</p> <p>Comments: Of interest to local realty boards, among others, this bill strengthens the confidentiality protections of the involved parties and mediators and provides for more uniform procedures.</p>
S.B.1025 H.D.3 C.D.1 Act 135 5/21/13	RELATING TO THE HOUSING LOAN AND MORTGAGE PROGRAM	<p>Updates the Hula Mae Single Family Mortgage Loan Program to allow broader program participation by potential homeowners, add down payment and other cost assistance as a program feature, and make housekeeping and conforming amendments. Effective July 1, 2013.</p>
S.B.1069 S.D.2 H.D.2 C.D.1 Act 168 4/21/13	RELATING TO MORTGAGE LOAN ORIGINATION	<p>Raises application and renewal fees for individuals and companies that conduct mortgage loan origination activities. Updates licensure and regulatory requirements.</p> <p>Comments: Raises fees for mortgage loan originators, updates requirements.</p>

2013 Legislation (Senate Bills cont. from page 6)

S.B.1070 S.D.2 H.D.1 C.D.1	RELATING TO MORTGAGE SERVICERS	Authorizes the Commissioner of Financial Institutions to conduct examinations and investigations and adjust the fees for mortgage servicer licensees to use the Nationwide Mortgage Licensing System.
Act 92 5/31/13		Comments: Provides for examination and investigation of mortgage loan servicers also, adjustment of fees.
S.B.1077 S.D.2 H.D.2 C.D.1	RELATING TO THE OWNER- BUILDER EXEMPTION	Sets forth specific responsibilities of and protections for owner-builders exempted from contractor licensing and other requirements. Amends the fine schedule to be based on the circumstances of each case.
Act 176 6/25/13		<p>Comments: More specifically, the bill:</p> <ul style="list-style-type: none"> • limits the application of the owner-builder exemption to residential or farm property only. • requires contractors to disclose certain information and provide a written contract to an owner-builder. • indicates the responsibilities of an owner-builder to: <ul style="list-style-type: none"> o supervise construction activity; o hire subcontractors appropriately licensed to perform any part of the construction for which a license is required; o ensure that any electrical or plumbing work is performed by licensed electricians or plumbers; o deduct Federal Insurance Contributions Act taxes and withholding taxes; and o provide workers' compensation for persons who are not licensed and are considered employees. • authorizes inspections of owner-builder records during and after completion of the project. • increases the fine amounts for noncompliance with owner-builder requirements. Effective July 1, 2013. <p>Caution: If the seller is, or was, an owner-builder, there may be problems.</p>
S.B.1087 S.D.2 H.D.3 C.D.1	RELATING TO GREEN INFRASTRUCTURE	Establishes a regulatory financing structure that authorizes the Public Utilities Commission and the Department of Business, Economic Development and Tourism (DBEDT) to provide low-cost loans for green infrastructure equipment to achieve measurable cost savings and Hawaii's clean energy goals. Appropriates funds. Requires a report by DBEDT to the Legislature. Requires a report by the Hawaii Green Infrastructure Authority to the Legislature. Effective July 1, 2013.
Act 211 6/27/13		Comments: Authorizes a low-cost loan program to help reach the state's 70 percent clean energy goal for 2030. The program also authorizes the purchase of energy-saving devices that will achieve cost-savings and clean energy goals.
S.B.1092 S.D.1 H.D.1 C.D.1	MAKING AN APPROPRIATION TO RECAPITALIZE THE HURRICANE RESERVE TRUST FUND	Makes a general fund appropriation of \$50 million for fiscal year 2013-2014 to recapitalize the Hurricane Reserve Trust Fund. Effective July 1, 2013.
Act 266 7/3/13		Comments: A start at replenishing sums earlier withdrawn from the Hurricane Reserve Trust Fund. A separate bill does the same for recapitalizing its rainy day trust fund.

2013 Legislation (Senate Bills cont. from page 7)

S.B.1188 S.D.1 H.D.1	RELATING TO THE ESTATE AND GENERATION-SKIPPING TRANSFER TAXES	Amends the applicable exclusion amount by adding a definition for “nonresident not citizen.” Clarifies the application of estate and generation-skipping taxes for civil union couples. Makes technical, housekeeping amendments to Chapter 236E, HRS (“Estate and Generation-Skipping Transfer Tax”), for consistency. Effective on approval for tax returns after 12/31/2012.
Act 060 4/30/13		Comments: This bill and S.B. 1203 would be of particular relevance to those whose estates include considerable real property, as the bills might affect their estate planning.
S.B.1192 S.D.1	RELATING TO COLLECTION OF TAXES	Increases the amount of time that the Department of Taxation has to sell property that has been seized due to a failure of the taxpayer to pay the tax delinquency. Provides for a tolling of the time period if any party commences an action concerning the seized property.
Act 044 4/23/13		Comments: Allows the Department of Taxation more time to sell a property seized for failure to pay delinquent taxes.
S.B.1194 S.D.2 H.D.1 C.D.1	RELATING TO TRANSIENT ACCOMMODATIONS TAX	Repeals the additional tax on transient accommodations imposed by Act 61, Session Laws of Hawaii (SLH) 2009. Repeals the daily tax on transient accommodations furnished on a complimentary or gratuitous basis imposed by Act 103, SLH 2011. Makes permanent allocations of the Transient Accommodations Tax (TAT) revenue to the Convention Center Enterprise Special Fund, the Tourism Special Fund, and the counties. Makes permanent the TAT rate of 9.25 percent. Allocates funds from the Tourism Special Fund for the operation of a Hawaiian Center and the Museum of Hawaiian Music and Dance at the Hawaii Convention Center. Removes allocations to the State Parks Special Fund and the Special Land and Development Fund. Allocates certain excess TAT revenues deposited into the general fund for natural resources important to the visitor industry, facilities, and public lands connected with enhancing the visitor experience. Effective July 1, 2013.
Act 161 6/21/13		Comments: Amends the law concerning TAT in many ways, but most significantly by: <ul style="list-style-type: none"> • making the current rate of 9.25 percent permanent; • reallocating certain special funds; • repealing the transient accommodations tax on gratuitous units; and • repealing the additional tax on transient accommodations enacted in 2009.
S.B.1203 S.D.1	RELATING TO CONFORMITY OF THE HAWAII ESTATE AND GENERATION-SKIPPING TRANSFER TAX LAW TO THE INTERNAL REVENUE CODE	Amends the Hawaii Estate and Generation-Skipping Transfer Tax Law to conform to the Internal Revenue Code in existence on January 2, 2013.
Act 045 4/23/13		
S.B.1360 S.D.1 H.D.1 C.D.1	RELATING TO GENERAL EXCISE TAX	Makes permanent the General Excise Tax exemptions for condominium common expenses paid by managers, submanagers, and suboperators and for hotel employee expenses paid by hotel operators and timeshare projects. Eliminates the aggregate cap of \$400,000 for taxpayers eligible for the exemptions. Affects tax returns after 12/31/2012.
Act 163		Comments: This exemption was previously extended from time to time, but this bill makes it permanent. The elimination of the aggregate cap is welcome news for associations and managers.

Administrative Actions

April 2013

Julieanne B. Dimitrion
Salesperson-RS 70347
Case No. REC 2010-194-L
Dated 4/26/13

Factual Findings: On or about 4/20/09, Respondent entered into a Memorandum of Plea Agreement (“Plea Agreement”) in a criminal case filed in the U.S. District Court for the District of Hawaii designated as *United States of America vs. Julie Anne Balduenza Dimitrion, CR. No. 09-0057*. Respondent admitted to multiple instances of knowingly and willfully devising and intending to devise a scheme and artifice to defraud lenders by means of materially false promises, statements, and representations, and by omissions of material facts, and in doing so, used the mails and the wires for the purpose of executing the scheme; and to knowingly making false statements and reports for the purpose of influencing the action of a financial institution in connection with applications and loans.

Respondent entered into the agreement “because she is in fact guilty of conspiring to commit wire fraud, mail fraud, and false statements on loan applications submitted to a federally insured financial lending institution, as well as committing money laundering violation . . .”

Respondent admitted to the following: During the period of the charged conspiracy, within the District of Hawaii, [Respondent] was co-owner of Total Advantaged, LLC, doing business as Mortgage Alliance, a mortgage brokerage firm doing business in Honolulu, HI. In conjunction with her husband, John Dimitrion, who is also charged in this indictment, she worked with loan officers and processors, and also solicited her own loans. Beginning in or about July, 2005, [Respondent] agreed with John Dimitrion and others to process loan transactions, . . . that involved using the wires and mails to further a scheme to defraud home owners and lenders, some of which were federally insured financial institutions. [Respondent] created Global Financial Holdings, LLC, an unlicensed escrow company that she and John Dimitrion used to hold funds derived from the real estate transactions charged in the Indictment.

Sometime prior to 7/28/05, [Respondent] and John Dimitrion agreed with other Mortgage Alliance employees . . . to engage in fraudulent real estate transactions involving three properties located in Hawaii. Employees or associates of Mortgage Alliance agreed to act as straw purchasers of the three properties in that these individuals would apply for an owner-occupied mortgage and take title to the respective property, even though [Respondent] knew that they did not intend to occupy the property. [Respondent] knew that the original owners of the properties, all of whom were facing foreclosure, believed the transactions were part of a foreclosure bailout program and that their properties would

be returned to them at the end of one year if the terms of the agreement were met.

John Dimitrion, in his capacity as a loan officer, and the respective straw purchasers, signed fraudulent loan applications that were then sent to two lenders: Fremont Investment and Loan and New Century Mortgage Corporation. The loan applications contained materially false and fraudulent information concerning the straw purchasers’ intent to reside in the respective properties. The loan applications and supporting documentation also included materially false information about the straw purchasers’ employment and rental situations. As a result of the false representations in the loan applications, both Fremont Investment and Loan, which was federally insured, as well as New Century Mortgage Corporation, funded the loans . . .

In each of the three cases set forth in the Indictment, the amounts of the new loans exceeded the amounts of the original loans and the homeowners were unable to make the monthly payments. The loans went into default and eviction proceedings commenced against the homeowners.

[Respondent] and John Dimitrion transacted or caused to be transacted three deposits using the proceeds of the real estate transactions. Specifically, [Respondent] arranged for the proceeds from the real estate transactions be disbursed to the account associated with Global Financial Holdings. On 12/16/05, 8/1/05, and 3/14/06, the amounts of the deposits into Global Financial Holdings account were \$25,814.34, \$68,000.00, and \$45,300.00 respectively, and thereby each financial transaction exceeded \$10,000.

On 7/6/10, the U.S. Federal District Court issued a bench warrant against Respondent when she failed to appear for sentencing.

Order: License revocation. Pay a \$10,000.00 fine within 60 days of Final Order.

Violations: HRS §§467-14(1), (2), (3), (8), and (16)

Administrative Actions (cont. from page 9)

May 2013

Kalea Freda

Salesperson-RS 73941
Case No. REC 2012-284-L
Dated 5/24/13

Allegations: On or about 7/2/12, Respondent pled no contest in the District Court of the Second Circuit, State of Hawaii, for the crime of driving under the influence. The Respondent disclosed the Conviction in writing to the Commission on or about 7/30/12.

Sanction: Pay a \$500.00 administrative fine.

Violations: HRS §§437B-19(12), (14), and (17)

David Yaffe, Maui Resort Rentals, Inc. and Colin Stillwagen

Salesperson-RS 71745
Broker-RB 16866
Broker-RB 17571
Case Nos. REC 2010-308-L,
REC 2010-325-U, REC 2011-6-L, REC 2011-120-L
Dated 5/30/13

On 1/25/13, the Hearings Officer issued her proposed Findings of Fact, Conclusions of Law and Recommended Order. No exceptions were filed. The copy of the recommended decision sent to Respondent Stillwagen at his last known address was returned marked "Unclaimed, Unable to Forward."

Order: First Amended Final Order - License revocation

Violations: Yaffe - HRS §§467-14(7), (8), (10), (16), (20), §§436B-19(1), (6), (7), (11), (12), §467-1.6, HAR §16-99-3(e), (m), §16-99-4
Stillwagen – HRS §§467-14(7), (8), (10), (16), (20), §§436B-19(1), (6), (7), (11), (12), §467-1.6, HAR §16-99-3(e) and 16-99-4
Maui Resort Rentals, Inc. – HRS §§467-14(7), (8), (15), (16), (20), §§436B-19(1), (6), (7), (11), (12) and HAR §16-99-3(m)

June 2013

Tom Mukai, Brian Benton, Helen Lindemann and Prudential Locations, LLC

Broker-RB 11789
Broker-RB 17903
Broker-RB 9039
Broker-RB 17095
Case No. REC 2008-215-L
Dated 6/28/13

Factual Findings: On 6/21/11, the Hearings Officer issued her proposed Findings of Fact, Conclusions of Law and Recommended Order Granting Petitioner's Motion for Summary Judgment. On 12/21/12, the Commission issued an Order Granting in Part and Denying in Part Motion for Summary Judgment Dated 10/19/10, and Remanding the Portion of the Case Regarding Lindemann and Benton. The Commission remanded this matter back to the Hearings Officer "for taking of further evidence as to whether Respondent Lindemann's or Benton's conduct constitutes grounds for disciplinary action pursuant to HRS § 467-1.6,"

Order: No further sanctions.

Violation: HRS §467-1.6

On 4/16/13, a hearing was convened. The parties informed the Hearings Officer that a settlement had been reached in which Respondents Lindemann and Benton admitted to a failure to supervise.

Based on the admission of Respondents Lindemann and Benton to properly supervise Respondent Tom Mukai with respect to the real estate transaction described in RICO case no. REC 2008-215-L, the Hearings Officer concluded that Respondents Lindemann and Benton violated HRS § 467-1.6.

Administrative Actions (cont. from page 10)

June 2013 (cont.)

Hope Lee Hatton, West Coast Island Properties Inc. and Michael D. Pugh
Salesperson-RS 69809
Broker-RB18959
Broker-RB 18935
Case No. REC 2012-326-L
Dated 6/28/13

Allegations: Respondent Hatton's license expired on 12/31/10 and was restored on 8/5/12. Respondent Hatton mistakenly believed her license was current and restored her license as soon as she learned otherwise. Respondents West Coast island Properties Inc. and Pugh failed to ensure Respondent Hatton's license was timely renewed. Respondent Hatton engaged in the practice of real estate while her license was not active.

Sanctions: Hatton – pay a \$1,000.00 fine. West Coast Island Properties Inc. and Pugh – pay jointly a \$1,000.00 fine.

Statutory/Rule Violations

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

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

HRS §467-1.6	Principal brokers.
HRS §467-14 (1)	Making any misrepresentation concerning any real estate transaction.
HRS §467-14 (2)	Making any false promises concerning any real estate transaction of a character likely to mislead another.
HRS §467-14 (3)	Pursuing a continued and flagrant course of misrepresentation.
HRS §467-14 (7)	Failing to account for moneys belonging to others.
HRS §467-14(8)	Conduct constituting fraudulent or dishonest dealings.
HRS §467-14(10)	When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor.
HRS §467-14 (15)	Commingling the money or other property of the licensee's principal with the licensee's own;
HRS §467-14 (16)	Converting other people's moneys to the licensee's own use.
HRS §467-14 (20)	Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.
HRS §436B-19(1)	Failure to meet or maintain the conditions and requirements necessary to qualify for the granting of a license.
HRS §436B-19(6)	Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license.
HRS §436B-19(7)	Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation.
HRS §436B-19(11)	Engaging in business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public.
HRS §436B-19(12)	Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license.
HRS §436B-19 (14)	Criminal conviction.
HRS §436B-19(17)	Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.
HAR §16-99-3(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.
HAR §16-99-3(m)	There shall be a principal broker or one or more brokers in charge, or both, at the principal place of business, and one or more brokers in charge at a branch office who shall be immediately responsible for the real estate operations conducted at that place of business.
HAR §16-99-4	Client's account; trust funds; properties other than funds.

Can a Broker or Salesperson Associated with Brokerage A, Form an Entity and Have Commissions Paid to this Entity?

This is one of the most frequently asked questions of the staff of the Real Estate Branch. The answer is “No.”

“But my accountant advised me to do this for ‘tax purposes!’” Yes, that is the most common response from the inquirer. However, Hawaii Revised Statutes (“HRS”) and the Hawaii Administrative Rules (“HAR”) together dictate that a licensee associated with a brokerage firm cannot form an entity and have the licensee’s earned real estate commissions paid directly to the entity. Once earned, commissions are **paid directly to the licensee by his or her broker**, and the licensee may do what he or she wishes with that commission, once received.

If a real estate salesperson or broker-salesperson licensee, associated with Brokerage A, forms an entity, for example, ABC Realty, Inc., for the purpose of having this entity receive the licensee’s earned commissions under Brokerage A, this would constitute unlicensed activity on the part of ABC Realty, Inc. This would also mean the real estate salesperson or broker-salesperson licensee, would be accepting commissions from other than his own employer or the broker with whom he or she is associated. This would also mean that the real estate salesperson is acting as a real estate broker. The principal broker of Brokerage A may also be aiding and abetting an unlicensed entity by paying the unlicensed ABC Realty, Inc. commissions. These are all possible licensing law violations and may result in disciplinary action by the Regulated Industries Complaints Office (RICO) against the licensee’s license, as well as the license of the principal broker and the brokerage, itself.

If ABC Realty, Inc. was formed and actually received a real estate broker license, there must be a principal broker in place in order for the brokerage to engage in real estate activity. A licensed entity may not be associated under an existing licensed entity. Licensees may be associated with only one brokerage at a time.

Let’s review what the real estate licensing laws and rules state.

HRS, §467-14(5)

This section states, in part, that a real estate salesperson must not accept any commission or other compensation for any real estate-related activity from any person other than the salesperson’s **employer or the real estate broker with whom the real estate salesperson associates**.

HRS, §467-14(6)

This section states that a real estate salesperson must not act or attempt to act as a real estate broker, and must not represent, or attempt to represent any real estate broker other than the real estate

salesperson’s employer or the real estate broker with whom the real estate salesperson is associated.

HRS, §§467-8(a)(4), (5), (8)

These sections state that no real estate license shall be issued to any partnership, corporation, or limited liability company unless the real estate brokerage business is under the direct management of a principal broker who holds a current active real estate broker’s license.

HRS, §467-8(a)(7)

This section states that no real estate salesperson’s license shall be approved or issued with a trade name.

HRS, §467-14(11)

This section states that a real estate salesperson must file a written statement naming the broker by whom the real estate salesperson is employed or associated.

HAR, §16-99-3(p)

This section states that no real estate licensee shall act as a broker, real estate broker-salesperson or real estate salesperson **for more than one** brokerage firm.

HAR, §§16-99-3(m), (n)

These sections state that there shall be a principal broker or one or more brokers-in-charge at the principal place of business and that the principal place of business must be located in the state with the address registered with the Commission.

HAR, §16-99-2 Definitions

“Broker-salesperson” means an individual broker licensee who associates that individual’s own license with a brokerage firm as an employer or independent contractor.

“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. . . . Each brokerage firm shall have one, and only one, principal place of business.”

What Do You Think?

ABC Realty, LLC is a licensed brokerage. Bob Aloha, a real estate salesperson, associated with ABC Realty, LLC, and forms his own entity, XYZ Real Estate Investments, LLC. XYZ Real Estate Investments, LLC is not licensed as a real estate brokerage. Bob Aloha has an advertisement in the local newspaper which lists his employing broker, ABC Realty, LLC, but in the corner of the adver-

Can a Broker or Salesperson Associated with Brokerage A, Form an Entity and Have Commissions Paid to this Entity? (cont. from page 12)

tisement, he also includes XYZ Real Estate Investments, LLC's name and his contact telephone number. Bob Aloha also lists his name in the advertisement as the person to contact for XYZ Real Estate Investments, LLC. What are the possible violations found in this advertisement?

ANSWERS

Possible violations may include:

Unlicensed entity – XYZ Real Estate Investments, LLC (HRS, §467-7)

Acting as a real estate broker on the part of Bob Aloha (HRS. §467-14(6))

Aiding and abetting an unlicensed entity on the part of ABC

Realty, LLC and its principal broker – (HRS, §436B-19(6))

Misrepresentation – that XYZ Real Estate Investments, LLC is a licensed broker (HRS § 467-14(3), HAR §16-99-3(b))

If you have any questions or concerns, please contact the Real Estate Branch at email, hirec@dcca.hawaii.gov, or telephone, 808-586-2643, or by snail mail to 335 Merchant Street, Room 333, Honolulu, HI 96813.

Welcome to Laurie Lee New O'ahu Commissioner

Laurie Lee is one of the Real Estate Commission's new commissioners with her term effective July 2, 2013 and ending June 30, 2017. She is an O'ahu broker, and, since 2005, the principal broker of Pacific Island Realty, LLC. Pacific Island Realty, LLC is the exclusive broker for Stanford Carr Development, LLC. Her real estate experience includes general brokerage, developer sales, and sales management of new home communities.

Ms. Lee received her B.A. and Masters degree in Business Administration in International Business from the University of Hawaii. In her leisure time, she spends time outdoors, hiking, going to the beach, and occasionally getting in a round of golf. She loves to snow ski.



Welcome to Dorothy Aquino Condominium Projects Registration

The Real Estate Branch welcomed aboard Dorothy Aquino, as the Condominium Projects Registration Clerk as of June 3, 2013. Dorothy comes from 13 years with Moanalua Middle School, where she was an Office Assistant/Meal Tracker. She is new to the world of real estate and condominium projects and learning quickly.

In her free time, Dorothy enjoys reading, arts and crafts, spending time outdoors with her family, volunteering at Church, and watching basketball and volleyball.



Commissioner Experience

By Scott Sherley, Commissioner, Big Island



I was recently asked what I liked about being a Real Estate Commissioner. After a very brief pause, I answered, "Being on the Real Estate Commission has been a learning experience better than all my previous positions within the real estate industry." I have been licensed since 1985 and have served in a number of capacities in the local board arena and the State and National organizational levels. I

served as President of the Maui Board of REALTORS® in 1999 and President of the Hawaii Association of REALTORS® in 2004, as well as serving as a Committee Chairperson and Director a few times for the National Association of REALTORS®.

All these positions over the years have been rewarding in their own ways, and helped expand my understanding of the real estate industry, but I feel I have learned more in the last three years serving on the Hawaii Real Estate Commission. I have understood and worked with the Commission in the past, but being on the Commission changes your perspective and understanding of the value of a real estate license and the real estate industry in Hawaii.

I have had the pleasure of serving on the Education Review Committee in the first two years of my four-year term, and I now have a clearer understanding of what is needed and required for certifying continuing education courses, registering prelicense schools, and continuing education providers. The value of continuing education cannot be emphasized enough. Too many real estate licensees take it too lightly. I've seen, first hand, that the Commission pays attention to the quality of courses. There is more to be done to improve the quality of continuing education courses, and the Commission is an important step in increasing the quality of continuing education. In the NEXT biennium, 2015-2016, the Commission has approved the increase of the Core Course requirement to 8 hours, from the current 5 hour requirement. Including more hours of a sound continuing education course will hopefully go a long way to better education in general for our real estate licensees.

This year I was appointed to chair the Condominium Review Committee ("CRC"), and even though most of my career has been in

condominium management there was still a learning curve. Participating in the CRC makes it clear how much work goes into reviewing new project applications by both the Staff's Condominium Specialists and the Condominium Consultants hired by the Commission. Condos are a large part of Hawaii living, and the number of projects in the near future is staggering.

One of the areas where I have learned the most is how the Regulated Industries Complaint Office ("RICO") works and its interaction with the Commission. We all read the Administrative Actions in the Commission's quarterly Bulletin. In some cases it's the only section some of us read, if not the first section. I sometimes wondered how RICO and the Commission came to the decisions as reported in the Bulletin.

Taking disciplinary actions against licensees and approving settlement agreements with the respondents is a serious matter. It is not an easy process and sometimes it takes quite some time before a decision is made. Points of discussion may range from the amount of a fine assessed, to the actual licensing law or rule violation found against the respondents.

While on the Commission we have met with RICO to get a clearer understanding of how they operate and prosecute the cases that end up before the Commission. Discussions with RICO are on-going.

Being on the Commission has made me a better educator when I go from island to island teaching continuing education classes. Because of my new understanding and perspective from being a Commissioner, I take it upon myself to pass that information along to my students so they, too, gain a better understanding of how the Commission works and what the Commission's focus is: "Protecting the Consumer". So, in answer to the question, "What do you like about being a Real Estate Commissioner?" I can state sincerely, that I like everything about being a Commissioner, and it has, in turn, made me a better REALTOR®, licensee, and CE instructor.

Prelicense Schools

Abe Lee Seminars	808-942-4472
Akahi Real Estate Network LLC	808-331-2008
Carol Ball School of Real Estate	808-871-8807
Coldwell Banker Pacific Properties Real Estate School	808-597-5550
Dower School of Real Estate	808-735-8838
Fahrni School of Real Estate	808-486-4166
Hawaii Institute of Real Estate, LLC	808-589-0550
Inet Realty	808-955-7653
Property Merchants, Inc. dba All Islands Real Estate School	808-564-5170
ProSchools, Inc.	800-452-4879
Ralph Foulger's School of Real Estate	808-239-8881
REMI School of Real Estate	808-230-8200
Seiler School of Real Estate	808-874-3100
University of Hawaii Maui College - OCET Real Estate School	808-984-3231
Vitousek Real Estate Schools, Inc.	808-946-0505



State of Hawaii Real Estate Commission

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

Continuing Education Providers

Abe Lee Seminars	808-942-4472	Lorman Business Center, Inc. dba Lorman Education Services	715-833-3940
Akahi Real Estate Network LLC	808-331-2008	McKissock, LP	800-328-2008
Carol Ball School of Real Estate	808-871-8807	OnCourse Learning Corporation dba Career WebSchool	800-532-7649
Carol M. Egan, Attorney at Law	808-222-9725	Pacific Real Estate Institute	808-524-1505
Charfen Institute dba Distressed Properties Institute, LLC	800-482-0335	Property Merchants, Inc. dba All Islands Real Estate School	808-564-5170
Coldwell Banker Pacific Properties Real Estate School	808-597-5550	ProSchools, Inc.	800-299-2207
Continuing Ed Express LLC	866-415-8521	Ralph Foulger's School of Real Estate	808-239-8881
Dower School of Real Estate	808-735-8838	Real Class, Inc.	808-981-0711
Eddie Flores Real Estate Continuing Education	808-951-9888	Realtors Association of Maui, Inc.	808-873-8585
Green Building LLC	808-873-2040	REMI School of Real Estate	808-230-8200
Hawaii Association of Realtors	808-733-7060	Russ Goode Seminars	808-597-1111
Hawaii Business Training	808-250-2384	Shari S. Motooka-Higa	808-457-0156
Hawaii CCIM Chapter	808-528-2246	The CE Shop, Inc.	888-827-0777
Hawaii Institute of Real Estate, LLC	808-589-0550	The Seminar Group	206-463-4400
Hawaii Island Realtors	808-935-0827	TM Education Services	808-268-7473
Honolulu Board of Realtors	808-732-3000	University of Hawaii Maui College - OCET Real Estate School	808-984-3231
Institute of Real Estate Management – Hawaii Chapter No. 34	808-536-4736	Vitousek Real Estate Schools, Inc.	808-956-2037
Institute of Real Estate Management – National	312-329-6058	West Hawaii Association of Realtors	808-329-4874
Investment Property Exchange Services, Inc.	808-387-4140		
Kauai Board of Realtors	808-245-4049		
Key Realty School LLC	800-472-3893		

State of Hawaii
Real Estate Commission
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2013 Real Estate Commission Meeting Schedule

Laws & Rules Review Committee – 9:00 a.m.
Condominium Review Committee –
Upon adjournment of the Laws & Rules Review
Committee Meeting
Education Review Committee – Upon adjournment of the
Condominium Review Committee Meeting

Wednesday, August 7, 2013
Wednesday, September 11, 2013
Wednesday, October 9, 2013
Wednesday, November 13, 2013
Wednesday, December 11, 2013

Real Estate Commission – 9:00 a.m.

Friday, August 23, 2013
Friday, September 27, 2013
Friday, October 25, 2013
Wednesday, November 27, 2013
Friday, December 20, 2013

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

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