

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

MINUTES OF MEETING

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

Date: Wednesday, December 10, 2014

Time: 9:00 a.m.

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

Present: Scott Arakaki, Chair, Public / Honolulu Commissioner
Laurie Lee, Vice Chair, Broker / Honolulu Commissioner
Rowena Cobb, Broker / Kauai Commissioner
Bruce Faulkner, Broker / Maui Commissioner
Nikki Senter, Public / Honolulu Commissioner
Scott Sherley, Broker / Hawaii Commissioner
Aileen Wada, Broker / Honolulu Commissioner – late arrival
Michael Pang, Broker / Honolulu Commissioner – late arrival

Neil Fujitani, Supervising Executive Officer
Miles Ino, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Amy Endo, Real Estate Specialist
David Grupen, Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Benedyne Stone, Condominium Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Daria Loy-Goto, Complaints Enforcement Officer, RICO
Carol Ball, Carol Ball Inc.
Elarka Yuen, Coldwell Banker Real Estate School
Carlton Choy, INET Realty
David Ng, INET Realty
Everett Kaneshige
Marsha Shimizu, Hawaii Association of REALTORS®
Susan Yoshioka, INET Realty
Carol M. Egan, Carol M. Egan Attorney at Law

Absent: Aleta Klein, Broker / Interim Honolulu Commissioner

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

Chair's Report: The Chair announced that the Commission may move into executive session to consider and evaluate personal information relating to individuals applying for licensure in accordance with Section 92-5(a)(1), HRS, and/or to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.

Commissioner Klein was excused from today's meeting. Prior notice of her non-attendance was received.

The agenda was taken out of order to accommodate those who were present.

Commissioner Pang arrives.

Program of Work: **Division and Department Programs**

Daria Loy-Goto, Complaints Enforcement Officer of the Regulated Industry Complaints Office was present. Ms. Loy-Goto distributed materials produced by RICO and provided to attendees at the New Boards and Commission Member Orientation for informational purposes. Two of the brochures produced by RICO relate specifically to Condominiums, "Got records? – Information for Condo Owners About Access to Information"; and "Resolution Tips – Condominium Associations & Condo Owners."

Ms. Loy-Goto informed the Committee that RICO is the enforcement arm of over 48 boards, commissions and programs that are administratively attached to DCCA. RICO receives, investigates and prosecutes possible license violations including unlicensed activity.

RICO receives approximately 12,000 complaint inquiries a year, of which about 7,800 are resolved before a complaint is filed. RICO has been managing the expectation of consumers and has successfully resolved over 40% of the complaints it receives at the intake level. RICO is currently operating with 19 investigators and 8 staff attorneys.

RICO is committed to providing education to consumers and licensees. Educational material such as RICO's published brochures and consumer tips may be accessed through RICO's website at www.cca.hawaii.gov/rico.

RICO's current complaint management system does not allow flexibility. Currently complaints filed in the past 2 years where no action has been taken are removed after 2 years, but archived for an additional 3 years. If legal action was taken on the complaint, the complaint record is kept an additional 3 years.

RICO is in the process of upgrading its complaint management system which in the future will hopefully include an online filing system and email status notification. As PVL is moving forward with the upgrade of its licensing system, RICO is hoping that the vendor will be able to put a package together and marry the two systems. RICO is currently watching PVL's system move forward and does not have any current estimates from a vendor and will not speculate on the cost. RICO's main concern is the shape of the data. Bulk of the cost will be to convert the current data into a new system.

SEO Fujitani noted that RICO is capturing fees to upgrade its system. He questioned how much of the fees being captured will come from Real Estate licensees.

Ms. Loy-Goto responded that the fee increase was done by PVL and not RICO.

Commissioner Wada arrives.

Specialist Yee informed Ms. Loy-Goto that the Real Estate Branch staff has received complaints from association unit owners who have filed a complaint with RICO relating to the condominium managing agent and have been told that there are no administrative rules to follow although condominium managing agents are real estate licensees which fall under Ch. 467.

Ms. Loy-Goto responded that it needs to be clear in the laws or rules for RICO to move forward with a complaint and that she will look into the matter. Not all managing agent contracts read the same.

SEO Fujitani questioned how RICO is handling the DUI cases.

Ms. Loy-Goto responded that RICO takes the Commission's past decisions into account. RICO's staff has an ethical obligation to have a good faith bases to move a case forward and proceed with prosecution.

Deputy Attorney General Wong noted that prior cases, settlement agreements and REC past decisions set guidance on DUI cases for RICO. DAG Wong asked Ms. Loy-Goto to 1) Describe how RICO discovers the DUI and 2) Length of time when a DUI occurred and when the settlement agreement is reached, etc.

Ms. Loy-Goto responded that most DUI's are self-reported as part of the license renewal process. She further responded that she was not certain if the current statute allows for a sliding scale on sanctions.

Specialist Fujimura also noted that staff has received inquiries relating to custodial caretakers and that RICO has informed consumers that there is no definition for employ or employee so they are unable to pursue. Is RICO looking into amending the law to include a definition of employ?

Ms. Loy-Goto responded in the affirmative and noted that currently there is no definition in the real estate laws of what employ details, unlike contractors which are specific on the employment relationship.

Commissioner Lee noted that she attended the New Boards and Commission Members Orientation and thanked Ms. Loy-Goto for the very informative information.

SEO's Report:

Minutes of Previous Meetings

Upon a motion by Commissioner Faulkner, seconded by Commissioner Sherley, it was voted on and unanimously carried to accept the minutes of the November 12, 2014, Laws and Rules Review Committee meeting as circulated.

Program of Work: **Legislative and Government Participation and Report**

Ms. Marsha Shimizu was present on behalf of the Hawaii Association of REALTORS®. Ms. Shimizu reported that HAR has several priority issues for the upcoming legislative session. The three issues are: 1) Use of Security Deposit for Unpaid Charges and Assessments; 2) Accurately reflect the requirement to disclose documents within the seller's knowledge or control; and 3) Amend historic preservation definition of 50 years old or older.

Licensing Renewals

As of December 2, 2014, there were approximately 19,000 licensees and of those licensees, approximately 12,400 renewals received. Of the 12,400 renewals received, 11,800 have been received online.

ARELLO, Other Organizations And Jurisdictions: The following real estate related articles were distributed for informational purposes: "New Illinois Law Strengthens Sanction Standards," "Delaware Real Estate Commission Ruled Immune From Disciplinary Licensee's Lawsuit," and "California Extends Agency Disclosure to Commercial Transactions."

Special Issues: None.

Budget and Finance Report: Upon a motion by Commissioner Cobb, seconded by Commissioner Wada, it was voted on and unanimously carried to accept the Real Estate Recovery Fund Financial Report for the period ending September 30, 2014.

Next Meeting: Wednesday, January 7, 2015
9:30 a.m.
REALTORS Association of Maui
441 Ala Makani Place
Kahului, Maui

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 949 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

Neil K. Fujitani
Supervising Executive Officer

December 26, 2014

Date

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