

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: Friday, January 23, 2015

Time: 9:00 a.m.

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

Present: Nikki T. Senter, Chair, Public/Honolulu Commissioner
Scott Sherley, Vice Chair, Broker, Hawaii Island Commissioner
Scott Arakaki, Public/Honolulu Commissioner
Rowena Cobb, Broker/Kauai Commissioner
Bruce Faulkner, Broker/Maui Commissioner
Laurie Lee, Broker/Honolulu Commissioner
Aileen Wada, Broker/Honolulu Commissioner
Aleta Klein, Broker/Honolulu Commissioner
Michael Pang, Broker/Honolulu Commissioner

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

Other: Ben Fukuyama
Myoung Oh, Hawaii Association of REALTORS®

Call to Order: Chair Senter called the meeting to order at 9:03 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.

Executive Officer's Report: No report was presented.

The Executive Officer (EO) informed the Commissioners that the original applications, with any original associated documents considered at the meeting, were available for review.

EO announced that the Commission shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item and shall provide all interested parties an opportunity to present oral testimony on any agenda item subject to the conditions set forth in Section 16-99-83, HAR. The Commission may remove any person or persons who willfully disrupts a meeting to prevent and compromise the conduct of the meeting in accordance with Section 92-3, HRS.

Additional Distributions:

4. Committees and Program of Work
 - b. Condominium Review Committee – Mediation Contracts

6. Licensing – Application
 - c. Manuel M. Roberto

Minutes of the Previous Meetings:

Upon a motion by Commissioner Sherley, seconded by Commissioner Arakaki, it was voted on and unanimously carried to accept the minutes of the December 19, 2014 meeting.

The Chair took the agenda out of order.

Chapter 91, HRS, Adjudicatory HRS: Matters:

The Chair called for a recess from the meeting at 9:12 a.m., to discuss and deliberate on the following adjudicatory matters, pursuant to Chapter 91,

**In the Matter of the Real Estate License of Estrellita G. Miguel:
REC 2013-87-L**

Commissioner Arakaki moved to adopt the Hearings Officer's Findings of Fact, Conclusions of Law and Recommended Order. Commissioner Sherley seconded the motion, it was voted on and unanimously carried.

Following the Commission's review, deliberation, and decisions in these matters, pursuant to Chapter 91, HRS, the Chair announced that the Commission was reconvening its scheduled meeting at 9:17 a.m.

Committees and Program of Work:

Condominium Review Committee – Mediation Contracts

Mediation and Arbitration

Memorandum dated January 12, 2015, was provided to the Commissioners. At the December 10, 2014 CRC meeting, the Commissioners approved the payment proposal of \$375 per hour for

evaluative mediation and gave Real Estate Branch (REB) staff discretion to bring the names of evaluative mediation providers to the Commission and to determine an amount of Condominium Education Trust Funds (CETF) to dedicate to mediation.

The recommendations are Mediation Center of the Pacific; and Dispute Prevention and Resolution, Inc. (DPR); and two private attorneys in solo practice. Specialist Stone also recommended that the Commission approve a ceiling of \$200K a year for the CETF dedicated funds for evaluative mediation. Further, Specialist Stone recommended that the interested participants pay \$375 to participate in an evaluative mediation process.

Commissioner Cobb inquired what is the average time of mediation. Specialist Stone responded that a mediation of such would take an average time of 6-8 hours maximum.

Commissioner Klein disclosed that she is a mediator for the Mediation Center of the Pacific (MCP). MCP does facilitative mediation, which is the type of mediation where parties are encouraged to reach a mutually agreeable resolution. The mediator is in charge of the process, while the parties are in charge of the outcome. This type of mediator comes from all types of backgrounds and does not necessarily have the expertise concerning the area of dispute.

Commissioner Klein also mentioned that 14 credits at Straus Institute for Dispute Resolution is costly. For example, a minimum certificate could cost an estimated \$27,000. If mediators are restricted to a few education providers, the outcome of eligible mediators may be too restrictive.

Specialist Stone said that both types of mediation, facilitative and evaluative, will continue to be offered. Evaluative mediation would be supported by the increase in condominium fee, under Act 187. Commissioner Klein inquired if there will be a limit to the disputed amount Specialist Stone responded that there will be no maximum.

Commissioner Klein was concerned that the process may corral disputes into evaluative mediation. Commissioner Klein further inquired about smaller disputes, for example, elderly versus AOA, and how each party will be informed of its options.

Deputy Attorney General Wong suggested language be put into the contract that each party will be informed of their options.

Upon a motion by Commissioner Arakaki, seconded by Commissioner Sherley, it was voted to approve the following recommendations, as amended:

- 1) the maximum amount of dedicated to payment of evaluative mediations per year from the CETF is \$200K; and,
- 2) individual mediations are limited to 8 hours with flexibility given to the mediator extend the mediation beyond 8 hours; and,
- 3) each party to evaluative mediation to pay a fee of up to one hour fee to participate in the mediation process

Senior Specialist Yee commented that Hawaii Revised Statutes (HRS) §514-161 Mediation would address condominium mediation and assessment fees.

Deputy Attorney Wong also commented that the term “assessment fee” can be interpreted differently. Specialist Stone agreed and responded that the legal term of an “assessment fee”, can indeed have different meanings. Further, Specialist Stone recommended that we move forward with an initial mediation contract of one year, evaluate the results, and make any necessary adjustments.

Commissioner Klein suggested that mandated training at a sole provider facility may be too restrictive. Specialist Stone responded MCP and DPR are currently utilizing Straus Institute for Dispute Resolution. Commissioner Arakaki suggested that Straus Institute for Dispute Resolution or an equivalent may be a more suitable language.

Laws and Rules Review Committee – Rulemaking, Chapter 99 Rules

EO announced that the first public hearing was initially scheduled December 1, 2014, 9:00 am to 12:00 pm at the Capitol Auditorium Chamber level. Due to a last minute cancellation, the public hearing venue was changed and it was held at the King Kalakaua Conference Room, King Kalakaua Building.

At the Commission’s meeting on December 19, 2014, upon the advice of Deputy Attorney General Wong, the Commission voted unanimously to conduct a second public hearing. The second public hearing is scheduled for February 13, 2015, at 9:00 a.m. On January 14, 2015, a notice of public hearing was published in the Garden Island, Maui News, West Hawaii Today, Hawaii Tribune-Herald, and the Honolulu Star Advertiser newspapers.

The draft of the proposed rules are already posted on the real estate branch’s website, under "HRS/HAR" section under "Proposed Rulemaking". A draft is also available for viewing in real estate branch’s reception area, and hard copies of the draft are available to the public for a fee.

The Executive Officer of Small Business Regulatory Review Board (SBRRB) requested our appearance before the SBRRB on February 18, 2015 due to impact that the amendments may have upon business. EO

Ino mentioned that two (2) attempts were made to appear before the SBRRB but were unsuccessful due to a lack of quorum.

Program of Work – Legislative and Government Participation Report

Supervising Executive Office (SEO) Fujitani reported that the new legislation session has officially started on Wednesday, January 21, 2015 and advised of a couple of bills not yet introduced but could affect REB. SEO requested the Commission's comments on two upcoming bills, one relating to Real Estate Brokers and Salespersons; and the other relating to Taxation.

Bill Relating to Real Estate Brokers and Salespersons

Chair Senter addressed dual agency representation and the similarities of this particular bill. Chair Senter inquired if this was a statutory issue or an ethics code issue. Based on her personal experience, Commissioner Klein commented that if a broker is not present with their client(s) at the time of viewing, condominium project developers may not offer compensation for a Buyer's outside representation.

Commissioner Pang suggested that Page 6, Paragraph 18, should eliminate the word "all", as it is difficult to provide all material facts concerning every property. Commissioner Arakaki added that it depends on the nature of the litigation to determine what is material.

Also, Commissioner Pang suggested that Page 7, Paragraph 22 should replace the word "prevents" with discourages. Commissioner Lee interpreted the bill to address the seller's market when a broker is not present. A developer's broker may not pay the cooperating broker but does not bar representation.

Myoung Oh of Hawaii Association of REALTORS® indicated that this particular bill involves a situation where a son accompanied his mother to a showing and he signed in. On a subsequent visit, the mother was advised that she could not have her own broker. Mr. Oh mentioned that in some instances, there is an internal agreement in place between the brokerage firm and developer in regards to representation. In some instances, an internal agreement is flexible and outside representation is allowed.

Commissioner Lee inquired if the potential buyers were asked if they were already represented. Mr. Oh replied that he was not certain on the actual circumstances but mentioned that the sign-in, consisting of multiple pages, could have been a contract.

Commissioner Wada mentioned that the brokerage firm usually makes the call on representation. Commissioner Sherley said that in some instances, the developer can be the brokerage firm. Commissioner Arakaki mentioned that it will need to be clarified if refusing to share the

commission would be a violation. Commissioner Arakaki also reminded the Commissioners of its primary focus of consumer protection and public service.

Bill Relating to Taxation

Mr. Oh explained that the Transient Accommodations Tax (TAT) was established due to the increase in residential vacation rentals. The Landlord Tenant code requires an on island agent when an owner does not reside on the same island as the rental. Act 236 required local contact information be provided to renters and be included in the contract. Those who are not in compliance, deny the State from collecting the taxes that are due. The purpose of this bill is to help consumer protection in the State's transient accommodations. Current TAT will expire on June 30, 2015 and determination needs to be made whether to change and/or extend.

SEO mentioned that the TAT drove unlicensed individuals to become licensed. SEO also mentioned that subject bill affects both Hawaii Revised Statutes, Chapter 467 (Real Estate Brokers & Salesperson) and Chapter 237 (General Tax Excise Tax Law).

SEO inquired of the Hawaii Association of Realtors (HAR) position. Mr. Oh acknowledges the problems but does not have a position. Mr. Oh commented that the counties are seeking data and information from Department of Taxation (Dotax) but have hit roadblocks.

Licensing Ratification: Upon a motion by Commissioner Cobb, seconded by Commissioner Klein, it was voted on and unanimously carried to ratify the attached list.

Licensing Applications: EO informed the Commissioners that the information, provided to the Commissioners, is related only to the issue that is before the Commission for consideration. The other materials submitted are available for the Commissioners review should they desire to review it. If the applicants have an issue, which is personal in nature, they have the right to request that their application be considered in executive session.

Ben Fukuyama

Mr. Fukuyama was present and was asked if he wished to have his application for real estate salesperson license considered in executive session. He accepted the offer.

Executive Session: Upon a motion by Commissioner Sherley, seconded by Commissioner Faulkner, it was voted on and unanimously carried to enter into executive session, pursuant to section 92-5(a)(1), HRS, "To consider and evaluate personal information, relating to individuals applying for professional or vocational licenses cited in section 26-9 or both; "and pursuant to section 92-5(a)(4), HRS, "To consult with the board's attorney on questions and

issues pertaining to the board's powers, duties, privileges, immunities, and liabilities."

Upon a motion by Commissioner Sherley, seconded by Commissioner Pang, it was voted on and unanimously carried to move out of executive session.

After review of the information presented by the applicant, Commissioner Sherley moved to deny the real estate salesperson license of Ben Fukuyama, basing its decision on the following grounds of the HRS, which find factual support in Mr. Fukuyama's inconsistent testimonies and the records and files of his application:

- | | |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| HRS § 467-8 | Prerequisites for license, registration, or certificate. (a) No license, registration, or certificate under this chapter shall be issued to: |
| HRS § 467-8(3) | Any person who does not possess a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing;" and |
| HRS § 436B-19 | Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses. In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof: |
| 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(8) | Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;... |
| HRS § 436B-19(12) | Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license;..." |

HRS § 436B-19(14)

Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the license profession or vocation,..."

Commissioner Klein seconded the motion, it was voted on and unanimously carried.

Manuel M. Roberto

After review of the information presented by the applicant, Commissioner Pang moved to most likely approve the real estate salesperson license of Manuel M. Roberto. Commissioner Faulkner seconded the motion. The motion was voted on and unanimously carried.

Chapter 91, HRS,
Adjudicatory HRS
Matters:

The Chair called for a recess from the meeting at 10:47 a.m., to discuss and deliberate on the following adjudicatory matter, pursuant to Chapter 91,

**In the Matter of the Real Estate License of Darlene Osterman:
REC-LIC-2013-002**

The official Office Administration of Hearing (OAH) records were available at the Real Estate Commission meeting for viewing.

The Deputy Attorney General will finalize the proposed final order.

**In the Matter of the Real Estate License of Estrellita G. Miguel;
REC-LIC-2013-87-L**

Commissioner Pang moved to adopt the HORO. Commissioner Sherley seconded the motion, it was voted on and unanimously carried.

Following the Commission's review, deliberation, and decisions in these matters, pursuant to Chapter 91, HRS, the Chair announced that the Commission was reconvening its scheduled meeting at 10:50 a.m.

Next Meeting:

Wednesday, February 27, 2015
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Adjournment: With no further business to discuss, Chair Senter adjourned the meeting at
10:55 a.m.

Reviewed and approved by:

/s/ Miles I. Ino

Miles I. Ino
Executive Officer

February 20, 2015

Date

- X] Approved as circulated.
] Approved with corrections; see minutes of _____ meeting.

**APPROVED APPLICATIONS FOR REAL ESTATE
 REAL ESTATE COMMISSION MEETING ON JANUARY 23, 2015**

<u>Brokers – Limited Liability Companies and Partnerships</u>	<u>Effective Date</u>
Discovery Makena Realty, LLC	11/24/2014
Megan MacArthur Bonnici, PB	
Trestle Realty Advisors, LLC	12/08/2014
Trappeur Rahn, PB	
Family Advisors Realty, LLC	12/23/2014
Takahiro Kono, PB	
Realty Advantage Hawaii, LLC	12/30/2014
Annie K. Moenahela, PB	
Destination Maui Realty, LLC	01/01/2015
Joanne K. Phillips, PB	
Aloha Real Estate Group, LLC dba Aloha Realty Services	01/01/2015
Richard S. Conradt	
Next Step Realty, LLC	01/01/2015
Simone Swanson, PB	
Disney Associates, LLC	01/01/2015
Stacy P. Disney, PB	
Luxury Estate Hawaii, LLC	01/01/2015
Edward Park, PB	

<u>Brokers – Sole Proprietor</u>	<u>Effective Date</u>
Guy J. Seu	11/03/2014
Lisa Week	11/10/2014
Jim Maze	11/26/2014
Catherine Lynch dba Leeward Realty	01/01/2015
John W. Shaw	01/01/2015
Craig A. Kobayashi	01/01/2015
Leilani S. Olson dba Leilani Properties	01/01/2015
Joseph K. Ahina dba Hawaii Realty Group	01/01/2015

<u>Trade Name</u>	<u>Effective Date</u>
Maui Realtors, Inc. dba Berkshire Hathaway HomeServices	12/08/2014
Maui Properties	

<u>Educational Equivalency Certificate</u>	<u>Expiration Date</u>
James Everett Haley, Jr.	12/08/2016
Jennifer Miye Odama	12/09/2016
Lynn Aiko Shimada Araki-Regan	12/16/2016
Christopher C. Holmes	12/18/2016
Elie Eiroku Kato	12/18/2016
Robert Earl Magill	12/18/2016
Zdenka Mahan	12/19/2016
Stephen Christopher Owen	12/19/2016

Ellison Toshiro Shimokawa	12/22/2016
Jorge Dante Cherolini	12/26/2016
Kelly Michael Byrne	01/05/2017
John C. Pinchiaroli	01/05/2017
Amber M Solomonson	01/05/2017
Michael Leroy Sweat	01/07/2017
Diana Lynn Selwyn	01/08/2017

<u>Equivalency to Uniform Section of Examination Certificate</u>	<u>Expiration Date</u>
Jennifer Miye Odama	12/09/2016
Robert Earl Magill	12/18/2016
Zdenka Mahan	12/19/2016
Stephen Christopher Owen	12/19/2016
Jorge Dante Cherolini	12/26/2016
Pinchiaroli, John C	01/05/2017
Byrne, Kelly Michael	01/05/2017
Michael Leroy Sweat	01/07/2017
Jerry Alan Fleenor	01/08/2017

<u>Real Estate Broker Experience Certificate</u>	<u>Expiration Date</u>
James Everett Haley, Jr.	12/08/2016
Jennifer Miye Odama	12/09/2016
Lauren Yoshiko Ige Miyahara	12/09/2016
Ana Evelyn Kuna	12/11/2016
Terri Ann Brauher	12/17/2016
Todd Nathan Hadley	12/18/2016
Lee Wang	12/18/2016
Barbara Lynn Denney	12/23/2016
Carol St. John	01/01/2017
Pinchiaroli, John C	01/05/2017
Jennifer Christine Lucien	01/07/2017
Michael Leroy Sweat	01/07/2017

<u>Real Estate Broker</u>	<u>Effective Date</u>
Megumi Fujioka	11/17/2014
Janella M. Souza	12/08/2014
Jeanne Fusae Harada	12/18/2014
Elena Panigada	01/01/2015
Leilani S. Olson	01/01/2015
Roenaline Kenui	01/01/2015
Kathleen Luiten	01/01/2015
Stacy Punahale Disney	01/01/2015
Jose Miguel Bustamante	01/01/2015
Hiroko Otsuka Miller	01/01/2015
Csaba Meresz	01/01/2015

Donna J. Reising	01/01/2015
Jon McCumsey	01/01/2015
Althea G. Paik	01/01/2015
Liam S. Ball	01/01/2015
Chantel L Smith	01/01/2015
Amanda L. Donaldson	01/01/2015
Matthew Wilson Nichols	01/01/2015

Restoration – Real Estate Salesperson

	<u>Effective Date</u>
Julie E. Rahmer	12/03/2014
Bruce E. Perry	12/17/2014
Chris Leroy Andrews	12/18/2014
Frank Ayon Silva	12/30/2014

Condominium Hotel Operator

	<u>Effective Date</u>
Aqua Hospitality LLC	01/01/2015
Aqua Luana Operators LLC	01/01/2015
InvitedHomeMaui, LLC	11/19/2014

Continuing Education Equivalency

	<u>Effective Date</u>
Mariko Yoshioka Gillam	12/09/2014
William Edward Robertson	12/15/2014
Sandra M Storm	12/15/2014
Bikram Sahdev	12/16/2014
Meline Cardona	12/16/2014
Norine Nakamura	12/22/2014
Jeffrey E Foster	12/29/2014
David Watkins	12/31/2014
Gerald Verratti	12/31/2014