

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: Tuesday, November 10, 2015

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
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
Amy Endo, Real Estate Specialist
David Grupen, Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Benedyne Stone, Condominium Specialist
Dathan Choy, Condominium Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary
Ruth Yamada, Office Assistant

Others: Myoung Oh, Hawaii Association of REALTORS®
John Dotten

Absent: Aileen Wada, Broker / Honolulu Commissioner

Call to Order: The Chair called the meeting to order at 9:05 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 Wada was excused from today's meeting. Prior notice of her non-attendance was received.

The agenda was taken out of order to accommodate the pending departure of HAR's representative.

Program of Work: **Rulemaking, Chapter 99, HAR, Real Estate Brokers and Salespersons**

Myoung Oh of the Hawaii Association of REALTORS® informed the committee that since the last Laws and Rules Review Committee meeting, HAR has met with the Governor's representatives regarding the pending proposed rules. HAR expressed at that meeting possible suggestions to further clarify the rules such as entering into a Memorandum of Agreement (MOA), issuing an Advisory, or a Bulletin. The goal and objectives would be if a violation were found, the MOA, Advisory, or Bulletin would help impede the infraction so that it is not pursued to a license violation.

HAR staff also paid their annual courtesy visit with DCCA's Director and updated her of their meeting with the Governor. HAR is looking at the MOA as guidance so that RICO does not enforce minor violations.

HAR's President Arabel L. Cambler submitted its response to the Commission's comments of September 25, 2015 at which time HAR had requested for an informal non-binding interpretation of the draft rules (Chapter 99) relating to advertising. HAR's compilation of 15 State Jurisdictions note that Hawaii's proposed advertising language mirrors closest to California's requirements which also provides language to help define solicitation materials.

Mr. Oh commented that HAR was satisfied that the Commission had agreed to make changes to the rules based on HAR's requests. He acknowledged that HAR should have reviewed the draft rules again to note any further changes to request.

EO Ino questioned what the more pressing issue was, promotional materials or building signage?

Mr. Oh responded that speaking in generalities, enforcement of rules governing promotional materials is the more pressing matter. De-circulating of promotional material which do not meet the advertising requirement may be excessive. They are unsure if the name and company recognition on building signage will require a license number.

The Committee requested that Mr. Oh explain who the MOA would be between, what the substance of the MOA would include, and how it is expected to be enforced.

Mr. Oh said that HAR is leaving the decision making of the MOA up to the people in power to come up with the MOA form, language and enforcement.

Commissioner Senter questioned if HAR is looking at an MOA with the Governor and RICO, and not the Real Estate Commission? HAR currently has a pending request for an informal non-binding interpretation of the draft rules relating to advertising with the Commission, but now HAR is asking for a MOA?

Mr. Oh responded that HAR wants RICO to not enforce certain violations and that the Commission provide a response to HAR's request for an informal non-binding

interpretation which could then be worked into the next rulemaking. HAR wants a directive to RICO, by whichever body can effect the MOA, to not enforce those advertising violations.

Commissioner Klein asked Mr. Oh if he was testifying on behalf of the HAR Government Affairs committee; the BOD, and or the Executive Committee. She inquired if HAR was relying on advice of counsel to interpret the rule making process?

Mr. Oh responded that HAR has committees and legal counsel that make decisions and speak on behalf of HAR. The most recent involvement of legal counsel was through Nathan Aipa who was present at the Commission's September meeting. HAR understands that they are making an unusual request at the 11th hour, but is looking for guidance from the Commission.

Commissioner Faulkner noted that the word "All" in "All advertising and promotional materials..." is important and without exception.

Chair Arakaki noted in question number 4 of the request for an informal non-binding interpretation, relating to text messaging, tweets, Instagram, etc., what would be the harm to the industry if tweeting about selling a property you were to include along with the name of the brokerage, the license number?

Mr. Oh responded that in general practice, social media communication will include a website link. Some links are owned by the licensee with a link to the brokerage's website.

EO Ino questioned if HAR's position is that the license number should not be required on any promotional items?

Mr. Oh responded in the negative and stated that there needs to be a distinction between solicitation items and promotional items. Certain items should not contain a license number such as a pen or a mug, and then there are those promotional items that may have been out in circulation for a long time that could be mistaken for promotional material not meeting the requirements. Corporate wear should also not fall under advertising.

Chair Arakaki noted that if the issue was raised earlier in the rulemaking process, there could have been a fuller discussion. At this point, the Commission is restricted by the current approved language of the proposed rules. The Commission will review HAR's remaining questions of its request for an informal non-binding interpretation.

Mr. Oh responded that HAR is considering introducing legislation to clarify areas of the proposed rules.

Upon a motion by Commissioner Sherley, seconded by Commissioner Faulkner, it was voted on and unanimously carried to take the matter under advisement.

SEO's Report:

Announcements, Introductions, Correspondence and Additional Distribution

SEO Fujitani informed the Commissioners whose terms have expired and would be expiring, should they be interested in reappointment to please complete a new application which can be found on the Governor's website.

The following material was distributed to the Commissioners prior to the start of the meeting:

4. Program of Work, FY16
 - c. Advice, Education, and Referral – Request for Informal Non-binding Interpretation §467-7, HRS

Minutes of Previous Meetings

Commissioners Klein and Senter noted their corrections to the draft of the October 7, 2015 Laws and Rules Review Committee meeting minutes.

Upon a motion by Commissioner Klein, seconded by Commissioner Lee, it was voted on and unanimously carried to accept the minutes of the October 7, 2015, Laws and Rules Review Committee meeting with noted changes.

Program of Work:

Advice, Education, and Referral – Request for Informal Non-binding Interpretation §467-7, HRS

A request for an informal non-binding interpretation of HRS §467-7 was received from David M. Hector. Mr. Hector was present via teleconference.

Chair Senter questioned if through their Exclusive Marketing System, they are conducting real estate activity.

Mr. Hector responded that they are not violating any Hawaii laws.

Mr. Hector was asked to describe what he is proposing.

Mr. Hector stated that he has submitted all of his documents on what he is proposing. They want to start an Exclusive Marketing Service (EMS) and ensure that they are not violating any Hawaii laws. The EMS produces motivated buyers for Hawaii property. They are not requesting a referral fee even though they refer both the Hawaii sellers and buyers to Hawaii Realtors and attorneys. In the event that he should produce a traditional buyer, then he would expect a generous referral fee.

Mr. Hector was asked if he intends to market via a website.

Mr. Hector replied that his Exclusive Marketing System does not involve a website. The EMS is an effective way to find motivated buyers who would want to exchange California property for Hawaii property. They have approximately 4900 California property owners on their lists who are motivated to exchange their California property for Hawaii property. After searching criteria, the Hawaii seller can mail postcards to buyers selected from their California property owners list.

The EMS classified marketing strategy is the only one in the world which involves sending postcards to California property owners motivated to exchange their property with Hawaii property owners. They will print over 1000 labels of owners who may be willing to exchange their property. More effective than exchange websites. It produces offers for Hawaii property that no other marketing strategy will provide.

Mr. Hector was asked how he finds the Hawaii property and Hawaii property owners.

Mr. Hector responded that he will not reveal his classified marketing strategy as they are his trade secrets.

Commissioner Klein questioned if it is a direct exchange, California owner and Hawaii owner directly exchanging property, who represents the California person buying Hawaii property?

Mr. Hector responded that he does not represent either party.

Mr. Hector was then asked if the Hawaii property owner is then unrepresented and who represents the California individual purchasing the property in Hawaii?

Mr. Hector responded that the California buyer signs a buyer representation fee agreement.

Upon a motion by Commissioner Sherley, seconded by Commissioner Pang, it was voted on and unanimously carried to take the matter under advisement.

Executive Session:

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

Advice, Education, and Referral – Request for Informal Non-binding Interpretation §467-7, HRS

After a review of the information presented both written and oral, Commissioner Senter moved that pursuant to §16-201-88, Hawaii Administrative Rules, due to the lack of sufficiently clear and detailed facts to allow the Commission to understand the circumstances of the inquiry, to not issue an informal, non-binding interpretation on this matter. However, based on the general information provided, it does appear a real estate license is required to conduct the purported activity. In the alternative, it is recommended that the requestor consult with a Hawaii licensed real estate attorney regarding compliance with all Hawaii laws. Commissioner Cobb seconded the motion. The motion was voted on and unanimously carried.

Rulemaking, Chapter 99, HAR, Real Estate Brokers and Salespersons

Upon a motion by Commissioner Klein, seconded by Commissioner Senter, it was voted on and unanimously carried that in light of the Commission's charge to protect the public, the Commission decided the proposed revisions to Hawaii Administrative Rules ("HAR") Chapter 99 should be interpreted according to its plain and ordinary meaning.

ARELLO, Other
Organizations And
Jurisdictions:

ArellloGram and Other Informational Reports

The article entitled "Texas Appellate Court: Bank Not Liable for Brokerage's Counterfeit Check Loss" from the October 2015 issue of *ARELLO Boundaries* was distributed for informational purposes.

Meetings, Workshops, and Reports

A written report on the Commission's participation at the ARELLO Annual Conference held September 9 – 13, 2015 in Washington D. C. by Commissioners Arakaki, Cobb, Lee, Faulkner, Klein and SEO Fujitani was distributed for informational purposes.

SEO Fujitani noted that with the large number of representatives attending the conference, staff is encountering administrative issues with reimbursements and asked the Commissioners for their understanding and patience.

Special Issues: None reported.

Budget and Finance Report: No report presented.

Next Meeting: Wednesday, December 2, 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, the Chair adjourned the meeting at 10:52 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

Neil K. Fujitani
Supervising Executive Officer

November 17, 2015

Date

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