

School Files

Hawaii Real Estate Commission

January 2016

www.hawaii.gov/hirec

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Happy New Year

WHAT'S HAPPENING WITH THE RULE AMENDMENTS?

Governor Ige's office has the rules. We have not heard from them regarding the status of the proposed rule changes. The rules were submitted to Governor Ige's office in October, 2015.

What's going on? An 11th hour push, spear-headed by the Hawaii Association of REALTORS® ("HAR"), was made in the form of a "Call to Action" to HAR members. The "Call to Action" was an attempt to "clarify" the proposed rule change regarding the inclusion of the individual's or entity's license number on all advertising and promotional material. The concern was capsulized in the scenarios where a brokerage's name appeared on a building. Would the brokerage's license number have to be included on the building displaying the brokerage's name? On a smaller scale, what about pens and brokerage shirts worn by the associated licensees? Does the individual's license number have to appear on the shirt and pen?

Throughout the long, transparent process, the proposed rule amendments were not an adversarial issue. All parties that would be affected by the proposed rule amendments were provided ample and prescribed opportunities to provide their input regarding the changes. In fact, HAR appeared before the Small Business Regulatory Review Board ("SBRRB") supporting the rule amendments, as well as the TWO public hearings that were scheduled.

The rule-making process is a long one involving 26 steps where the rules are reviewed by various State agencies and the AFFECTED PARTIES. The last rule-making was in 2001. The current rule-making was initiated in 2010. Now, five years down the road, a roadblock has suddenly appeared.

At this time, it is unfortunate that the HAR roadblock has been raised. It is not clear if this was done from an incomplete understanding of the rule-making process, a misunderstanding of the same, or with the clear intention of blocking the passage of the rules. Years of hard work is now on hold, and may not result in the

anticipated outcome. This will affect more than just those brokerages who happen to have signage on buildings.

For example, one of the proposed rule changes is to eliminate the necessity for prelicense instructors to take and pass every three years the instructor's exam. This will continue to be in effect until such time the rule amendments are approved.

Also on hold is the rule permitting licensees to take the same continuing education course for credit every other biennium. Currently, under the rules, licensees may NOT EVER take the same continuing education course for credit.

There were also proposed changes to the rules affecting continuing education providers and evaluation of continuing education instructors. The rules pertaining to the certification of prelicense instructors was tightened up to prohibit the certification of an individual if they have been disciplined by the Commission for fraud, misrepresentation, or deceit in connection with a real estate transaction. This mirrors the rules affecting continuing education instructors. General housekeeping changes were also included.

What if the proposed rules were approved by the Governor? The rules are not set in stone. There is always opportunity to clarify, amend, or even delete existing rules. Concerns regarding any of the approved rule changes may be addressed in several ways:

1. **File for Declaratory Relief.** Hawaii Revised Statutes, §91-8, "**Declaratory rulings by agencies.** Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders."
2. **File for Rule Relief.** Hawaii Administrative Rules, §201-66, "**Contents of petition for rule relief.** The department or any interested person may petition the authority for the amendment, adoption, or repeal of a rule. The petition for rule relief shall set forth the text of the rule to be repealed, or the text of any proposed rule, the adoption of which is being sought, or the text of any existing rule, the amendment of which is being sought, together with the proposed amendment. The petition shall further state concisely and with particularity the facts and circumstances giving rise to the petition, including the petitioner's interest and reasons for filing the petition, the necessity for the relief and the anticipated effect or impact of the relief, the questions or issues raised and petitioner's position or contentions with respect thereto."
3. **File for Informal Interpretation.** Hawaii Administrative Rules, §16-201-85, "**Purpose, scope, and construction.** (a) The purpose . . . is to clarify that any board or commission may issue informal interpretations The purpose . . . is to facilitate prompt decision making in matters where no formal ruling is desired or needed by any person and where the interpretation can be stated without the necessity of an evidentiary hearing and without consideration of legal arguments. (b) This Subchapter shall be construed in a way that will allow informal, just, speedy, and inexpensive resolution of inquiries. . . ."

Hawaii Administrative Rules, 16-201-88, "**Form of requests for informal interpretations.** (a) A board or commission may consider any written communication from any person asking a question for processing . .

.. (b) In determining whether a particular inquiry is appropriate for the issuance of an informal interpretation, the following factors shall be among those considered: (1) Whether the facts set forth by the requester are sufficiently detailed and clear to allow the board or commission to understand the requester’s circumstance; (2) Whether the question being asked is clear; and (3) Whether there has been a consistent historical pattern of deciding similar inquiries upon which the board or commission can base its response.”

- 4. **Additional Rule-making.** The Commission has previously announced that another round of rule-making will commence after the current proposed rules have been approved.

There was a concern raised about the enforcement by the Regulated Industries Complaints Office (“RICO”) of the new advertising rule regarding the inclusion of the license number on all advertising and promotional material. We are not speaking for RICO when we say that the enforcement of any law or rule is subject to the policies, procedures, priorities, and interpretations of the law/rule by the enforcement agency. The Commission is the final arbiter of all disciplinary cases.



PROPOSED RULE CHANGES

Here is a sample of the proposed rule changes that may be of interest. Changes for consistency and form are not included. To view a complete draft of the proposed rule changes, go to www.hawaii.gov/hirec. (Note: underscored material is a proposed addition to the rules. Material that is crossed through is proposed for deletion.)

§16-99-3 Conduct.

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(k) The brokerage firm shall not compensate a licensee of another brokerage firm in connection with a real estate transaction without paying directly or causing the payment to be made directly to the other brokerage firm. This requirement shall not apply in cases where the licensee or the licensee’s estate is receiving compensation from a former brokerage firm for commission earned while the licensee was affiliated with that former brokerage firm[.], regardless of whether the licensee is on inactive status or on forfeited status or deceased.

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(o) Prior to the time the principal broker or the [~~broker in charge~~] broker-in-charge is absent from the principal place of business for more than thirty calendar days, and no other [~~broker in charge~~] broker-in-charge is registered [~~with~~] for the principal place of business, the principal broker shall submit to the commission a signed, written notification of the absence designating a temporary principal broker or temporary [~~broker in charge~~] broker-in-charge, who shall acknowledge the temporary designation by signing the notification. In case of prolonged illness or death where the principal broker or [~~broker in charge~~] broker-in-charge is unable to act, another broker shall be designated as the temporary principal broker or [~~broker in charge~~] broker-in-charge within thirty days of the illness or death with appropriate notification [~~to the commission.~~] and statement of a licensed medical doctor certifying to the commission the inability of the broker to practice. [~~A temporary principal broker or broker in charge arrangement shall not exceed a period of six months, with the right to extend prior to expiration for another six months for good cause and with the approval of the commission.]~~

A temporary principal broker or broker-in-charge arrangement shall not exceed a period of six months unless, prior to expiration of the initial six-month period, the principal broker requests and obtains, upon a showing of good cause for such extension, approval of the commission to extend the temporary arrangement for up to an additional six months.

§16-99-4 Client's account; trust funds; properties other than funds.

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(d) Every brokerage firm shall deposit or place trust funds received into a neutral escrow depository or in a trust fund account with some bank or recognized depository, which is federally insured, by the next business day following their receipts. The neutral escrow depository shall be located in the same state where the property is located.

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§16-99-5.1 Involuntary inactive license status.

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(d) A brokerage firm's license, whether a corporation, limited liability company or partnership, shall be placed on an involuntary inactive status upon the occurrence of one or more of the following:

- (1) The principal broker's license is placed on an inactive, forfeited, suspended, revoked, or terminated status;
- (2) The brokerage firm is no longer registered with the business registration division;
- (3) The principal broker is unable to act in the case of prolonged illness or death and no temporary principal broker has been designated pursuant to section 16-993(o);
- (4) The brokerage firm has no approved place of business; and
- (5) The principal broker is absent from the place of business for more than thirty days, or moves out-of-state, and no commission approved temporary principal broker or broker-in-charge has been designated pursuant to section 16-99-3(o).

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§16-99-11 Advertisement. (a) All real estate advertising and promotional materials shall prominently and conspicuously include the legal name of the brokerage firm or a trade name previously registered by the brokerage firm with the business registration division and with the commission[.] and the license number of the brokerage. The license number of the brokerage shall not be required for all advertising and promotional materials that comply with paragraph (e).

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(c) Current individual real estate licensees [~~whether active or inactive,~~] on inactive status shall disclose the licensee's inactive status [~~as a real estate licensee~~] in all advertising and promotional material.

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(e) All advertising and promotional materials that refer to the individual licensee's name,

including but not limited to business cards, shall:

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- (2) Identify the licensee with the licensee's associating or employing brokerage firm; and
- (3) ~~[Specify that the licensee is a broker (B), or salesperson (S), or if a current member of the Hawaii Association of Realtors, Realtor (R) or Realtor Associate (RA).]~~ Include the licensee's license number as issued by the commission.
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§16-99-37 Education equivalency. (a) The commission may grant an equivalency to the respective education requirements for applicants for the salesperson ~~[and broker]~~ license examinations for:

- (1) Those who hold a current license that was active within one year immediately prior to the date of application as a salesperson or broker in another state with similar or superior education requirements as determined by the commission;
- (2) Graduates of an accredited law school in the United States; ~~[or]~~ or
- (3) Bachelor of Arts or Bachelor of Science degree graduates of accredited colleges and universities in the United States who have majored in real estate or business[;] .
- . .

(b) The commission may grant an equivalency to the respective education requirements for applicants for the broker license examinations for:

- (1) Those who hold a current license that was active within one year immediately prior to the date of application as a broker in another state with similar or superior education requirements as determined by the commission; and
- (2) Graduates of an accredited law school in the United States.

§16-99-58 Faculty.

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

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(g) ~~[Every instructor, every three years, as a condition of recertification for each course the instructor chooses to teach, shall take and pass an instructor's exam, demonstrating the instructor's current command of the prelicense course.]~~ An instructor may not be certified if the individual has been:

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- (1) Disciplined by the commission or any state or by any licensing regulatory body for fraud, misrepresentation, or deceit in connection with the sale, purchase, exchange, or property management of any interest in real estate or for any other conduct substantially related to the practice or profession of real estate; or
- (2) Convicted of a crime which substantially relates to the profession of teaching or to the practice or profession of real estate.

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

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"Course and course offering" means a continuing education module of instruction certified by the commission, consisting of a minimum of three clock hours [.] and a maximum as the commission may determine.

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"Professional standards and practice courses" means course content relating to real estate professional development[.] that improves real estate competency of the licensee or for the benefit of the real estate consumer, or both.

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§16-99-95 Duplicate continuing education hours. Except as provided by the commission or by this subchapter, a licensee shall not take a continuing education course [~~that is substantially similar to a course~~] for which the licensee has already received a certificate[.] within two consecutive biennia. [~~A continuing education provider shall not issue to a licensee a certificate for substantially the same course completed by the licensee. "Substantially similar" as used in this section means that at minimum, seventy five per cent of the course content of a course is repeated in another course offering.~~]

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§16-99-96 An instructor who is a licensee. In satisfying the continuing education hours of a license period, an instructor who is a real estate licensee, may use once in any two consecutive biennium, the clock hours for each course taught[.] except the core course which may be recognized for clock hours each biennium. The one time use applies even when the instructor has taught the course more than once.

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§16-99-101 Courses not acceptable for continuing education course certification. The commission may not certify a continuing education course, or any portion thereof, which:
(1) Does not directly relate to real estate law or real estate practice;
(2) Is related to passing a prelicense real estate salesperson or broker exam;
(3) Teaches general office [~~and business~~] skills, such as [~~typing,~~] word processing, basic internet skills, computer software or other technology, [~~speed-reading, memory improvement, report writing,~~] personal motivation, [~~salesmanship, sales psychology,~~] and time management;
(4) Includes sales or promotions of a product or service or other meetings held in conjunction with general real estate brokerage activity;
(5) Is devoted to meals or refreshments;
(6) Is less than three clock hours in duration; and
(7) Does not meet the definition of continuing education as determined by the commission.

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§16-99-104 Criteria for certification of a continuing education instructor.

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(d) Any individual meeting the criteria for approval as a continuing education instructor, may not be certified by the provider if the individual has been:

(3) Determined to have scored below the minimum requirements as established by the commission, which may include a standardized student evaluation rating.

(e) The commission may require that each instructor complete an instructor's workshop as approved by the commission [or complete viewing a commission approved audio videotape of such workshop within the biennium.] prior to teaching in each biennium.

§16-99-121 Faculty

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(b) The administrator shall be responsible for:

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(5) Administering and maintaining the student evaluations; and ~~minimum rating standards of instructors~~

(6) Ensuring that instructors do not fall below minimum rating standards.

§16-99-121.1 Instructor evaluation. (a) Course providers shall implement a standardized student evaluation process as determined by the commission.

(b) Course providers shall ensure that student evaluations of instructors do not fall below the minimum rating standards as determined by the commission.

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§16-99-147.1 Condominium hotel operations. The condominium hotel operator shall operate only in areas specifically authorized by county zoning codes. The condominium project declaration and bylaws shall specifically permit transient lodging of less than thirty days

§16-99-147.2 Who may register as a condominium hotel operator. (a) Only those persons who do not hold a real estate license, either salesperson or broker, may register as a condominium hotel operator.

(b) Where an entity includes the following persons holding a real estate salesperson or broker's license, that entity may not register as a condominium hotel operator:

(1) General partner or employee of a partnership condominium hotel operator;

(2) An officer or employee of a corporation condominium hotel operator;

(3) A member of a member-managed limited liability company condominium hotel operator;

or

(4) A principal having direct management and responsibility over condominium hotel operations, including performing or facilitating the delivery of customary hotel services.

§16-99-148 Fidelity Bond

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(g) The fidelity bond shall not be required of an individual owner providing apartments or units for transient lodging; provided that ownership of the apartment or unit is in the individual owner's name and not in an entity's name; and provided further that the owner has no

employees. Where the individual owner has an employee, the individual owner shall obtain and maintain a fidelity bond.

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§16-99-149 Client's trust funds, accounting, and records. (a) Condominium hotel operators, including condominium hotel operators who are [excluded or exempt from obtaining a real estate broker's license pursuant to section 467-30(f), HRS] precluded from holding a license as a real estate broker or real estate salesperson pursuant to 467-30(g)(2), HRS shall comply with section 16-99-4. For purposes of compliance, when the condominium hotel operator is not a real estate broker, references to broker or principal broker in section 16-99-4 shall also mean "condominium hotel operator."



CHANGE TO CONTENT OUTLINE – NATIONAL EXAM ONLY

All prelicense schools and instructors were notified via email in October, 2015, that the national content outline will have one additional topic area added regarding the new Truth in Lending Act (“TILA”) and Real Estate Settlement Procedures Act (“RESPA”) Integrated Disclosure (“TRID”) forms, implemented on October 3, 2015.

New Candidate Information Booklets will be sent to all of our prelicense schools. Please be sure to distribute the new booklet to all licensing candidates. In the new booklet, the TRID item is on Page 7, item 5.a.iii.

The PSI licensing exam will reflect the modifications to the broker exams in January, 2016, and to the salesperson exams later in 2016.

For additional information about the new TRID rule, the following websites are considered by PSI to be reliable:

<http://www.realtor.org/topics/trid-tila-respa-integrated-disclosure>

http://files.consumerfinance.gov/f/201503_cfpb_tila-respa-integrated-disclosure-guide-to-the-loan-estimate-and-closing.pdf



CONTINUING EDUCATION PROVIDERS’ POLICIES

Just as the principal broker of a real estate brokerage is responsible for directly managing and supervising all real estate activity of the brokerage and its associated licensees, the continuing education provider’s administrator is responsible to see that the continuing education courses offered and the instruction of these offered courses meet the requirements of Hawaii Administrative Rules (“HAR”) Subchapter 9, “Continuing Education.”

In HAR §16-99-99, Application for registration as a continuing education provider. There is a list of information to be submitted when applying to be a continuing education provider. Section 16-99-99(5) states, “. . . the provider has a student attendance policy and procedures for monitoring attendance and

record keeping for a minimum of four years;”, and §16-99-99-(6) states, “. . . the provider has a policy for a refund, issuance of a certificate of completion of course, and the means by which the statement of policies shall be provided to a student prior to registering for the course;”

The provider’s policies should address potential situations that could arise. What if a licensee leaves the course before it is finished? In §16-99-87, “Completion of course means licensee’s orderly attendance throughout the entire course.” Is a licensee texting, reading emails, and otherwise preoccupied with their smartphone, etc.? One of the provider’s policies may address this conduct and deem it unacceptable resulting in confiscation for the remainder of the class of the phone, or other results set by the provider.

Course completion certificates are now downloadable from the Commission’s online system website. Providers may either provide hard-copy course completion certificates, or the licensee may print out the certificates themselves. The availability of the course completion certificates should be addressed in the provider’s policies statement.



WHAT TOPICS MAKE APPROPRIATE CONTINUING EDUCATION FOR REAL ESTATE LICENSEES?

The proposed rule changes, which are currently in limbo at Governor’s Ige’s office, contain a change to §16-99-101, “**Courses not acceptable for continuing education course certification.** The commission may not certify a continuing education course, or any portion thereof, which: . . . (3) Teaches general office [and business] skills, such as [typing] word processing, basic internet skills, computer software or other technology, [speed reading, memory improvement, report writing,] personal motivation, [salesmanship, sales psychology,] and time management;” The bracketed content is to be deleted and the underlined content (not including the bold-face typed portion of the rule), is to be added to the rule.

In reviewing the above rule change, the teaching of office skills, which may include computer software and other technology, is not deemed appropriate content for a continuing education course for real estate licensees. Recently, an inquiry was received as to whether or not a continuing education course on a software program available to members of the Hawaii Association of REALTORS® was an acceptable topic. Based on the above, it would appear that it would not be an acceptable topic. Remember, the new rule wording is NOT in effect yet.



CORE A STATS

As of December 14, 2015, 167 licensees have completed Core A on the internet. A total of 3,784 licensees have completed Core A in a live-classroom setting.

Core B will be developed in 2016 with an expected release date in July 2016. The topic is Condominium Self-Governance.

The Commission has decided to continue the focus on condominiums in Hawaii for the 2017-2018 biennium’s core course.

CONTINUING EDUCATION PROVIDERS

Abe Lee Seminars
All Islands Real Estate School
American Dream Real Estate School, LLC
American C.E. Institute, LLC
American School of Real Estate Express, LLC
Carol Ball School of Real Estate
Carol M. Egan, Attorney at Law
Coldwell Banker Pacific Properties Real Estate School
Continuing Ed Express, LLC
Dower School of Real Estate
Eddie Flores Real Estate Continuing Education
Hawaii Association of Realtors
Hawaii Business Training
Hawaii CCIM Chapter
Hawaii Island Realtors
Honolulu Board of Realtors
Institute of Real Estate Management – Hawaii Chapter No. 34
Institute of Real Estate Management – National International Association of Certified Home Inspectors (InterNACHI)
Kama'aina Realty, LLC dba RP Seminars Unlimited
Kauai Board of Realtors
Lorman Business Center, Inc. dba Lorman Education Services
McKissock, LP
OnCourse Learning Corporation, dba Career WebSchool
Pacific Real Estate Institute
ProSchools, Inc.
Ralph Foulger's School of Real Estate
Real Class, Inc.
Realtors' Association of Maui, Inc
REMI School of Real Estate
Russ Goode Seminars
Servpro Industries, Inc.
Shari S. Motooka-Higa
The CE Shop, Inc
USA Homeownership Foundation, Inc. dba Veterans Association of Real Estate Professionals (VAREP)
Vitousek Real Estate Schools, Inc.
West Hawaii Association of Realtors

PRELICENSE SCHOOLS

Abe Lee Seminars
Akahi Real Estate Network, LLC
All Islands Real Estate School
American Dream Real Estate School, LLC
Carol Ball School of Real Estate
Coldwell Banker Pacific Properties Real Estate School
Continuing Ed Express LLC
Dower School of Real Estate
Fahrni School of Real Estate
Inet Realty
ProSchools, Inc.
Ralph Foulger's School of Real Estate
REMI School of Real Estate
Seiler School of Real Estate
University of Hawaii Maui College – OCET Real Estate School
Vitousek Real Estate Schools, Inc.





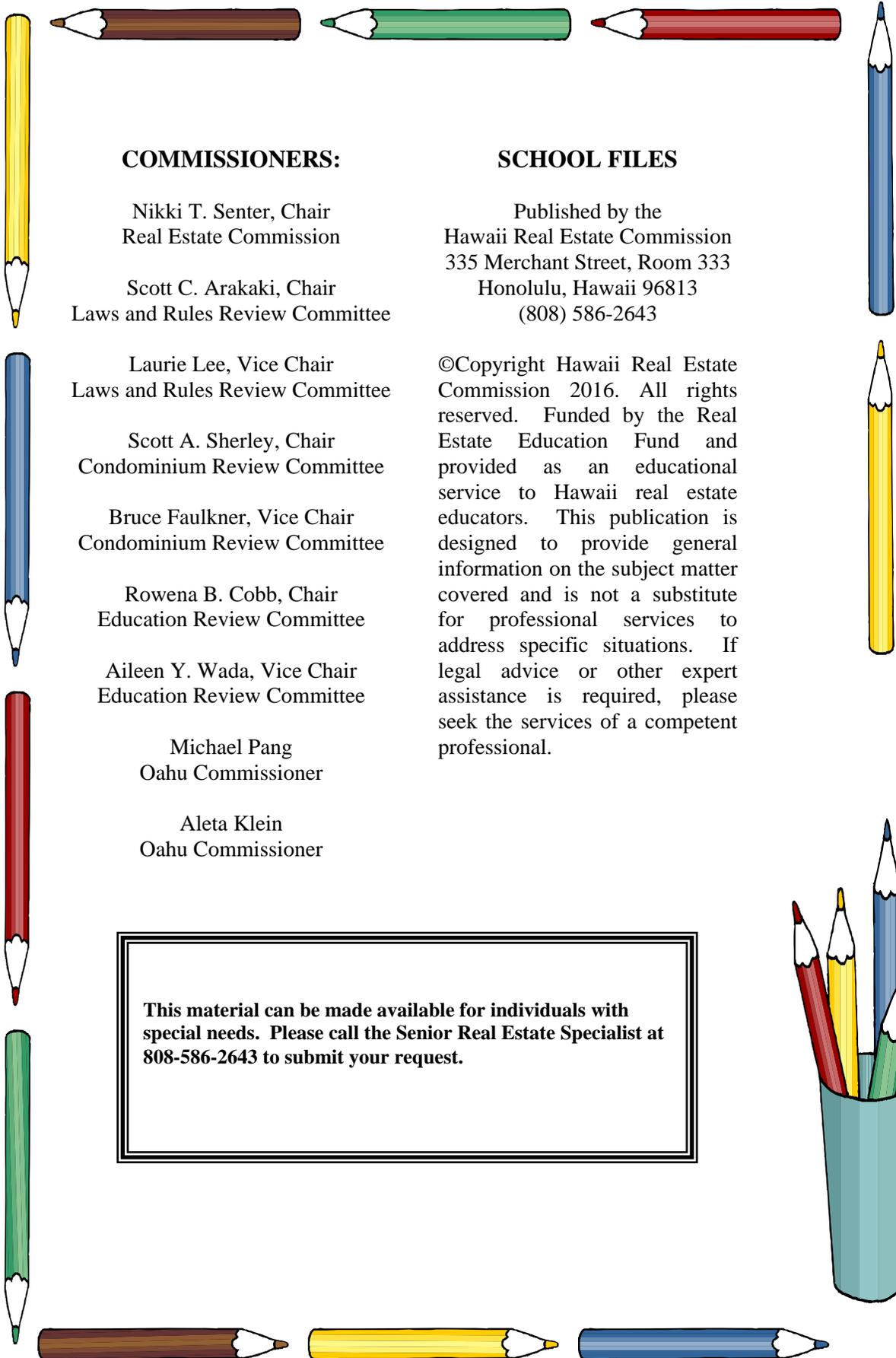
**2016 REAL ESTATE COMMISSION
MEETING SCHEDULE**

<p>Laws & Rules Review Committee - 9:00 a.m.</p> <p>Condominium Review Committee - Upon adjournment of the Laws & Rules Review Committee Meeting</p> <p>Education Review Committee - Upon adjournment of the Condominium Review Committee Meeting</p>	<p align="center">Real Estate Commission 9:00 a.m.</p>
Wednesday, January 13, 2016 *	Friday, January 29, 2016
Wednesday, February 10, 2016	Friday, February 26, 2016
Wednesday, March 09, 2016	Thursday, March 24, 2016
Wednesday, April 06, 2016	Friday, April 29, 2016
Wednesday, May 11, 2016	Friday, May 27, 2016
Wednesday, June 08, 2016	Friday, June 24, 2016
Wednesday, July 13, 2016	Friday, July 29, 2016
Wednesday, August 10, 2016	Friday, August 26, 2016
Wednesday, September 14, 2016	Friday, September 30, 2016
Wednesday, October 12, 2016	Friday, October 28, 2016
Wednesday, November 09, 2016	Wednesday, November 23, 2016
Wednesday, December 07, 2016	Friday, December 16, 2016

* The Meeting will be held at the REALTORS' Association of Maui, 441 Ala Makani Place, Kahului, HI, 9:30 a.m.

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 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 586-2643 to submit your request.



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Oahu Commissioner

SCHOOL FILES

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