

## Real Estate Commission Bulletin



## contents

Proposed Rule Changes  
(1, 4 - 6)

Real Estate Commission  
Informational Notice New  
License Applicants, License  
Renewal and Continuing  
Education Requirement  
(2)

The Chair's Message  
(3)

Administrative Actions  
(7 - 11)

Statutory/Rule Violation  
(12)

Reappointments to Real  
Estate Commission  
(12)

Act 204, SLH 2015  
On Island Local Contact  
Required  
(13)

Why Mediation? Why Not?  
(13, 14)

Prelicense Schools/  
Continuing  
Education Providers  
(15)

Real Estate Commission  
Meeting Schedule  
(16)

## Proposed Rule Changes

There has been much activity surrounding the proposed rules, and here's what has been happening. In a nutshell, the proposed changes to Hawaii Administrative Rules, §16-99-11, on advertising, have been taken out of the rule package. This move was done because the Hawaii Association of REALTORS® and the Commission could not agree to advertising language, and to stop the passage of legislation that would have codified advertising language in Hawaii Revised Statutes, Chapter 467. The rest of the rule package sent up to the Governor's office in October, 2015, remains intact. Here is a sample of the proposed rule changes that may be of interest. Changes for consistency and form are not included. Again, it is ONLY the proposed changes to §16-99-11 that will be carved out of the rule amendments that will once again be forwarded to the Governor's office for review and approval. (see highlighted text below for the carved-out section)

New, proposed rule language for §16-99-11 will be developed working collaboratively with the Hawaii Association of REALTORS®. The Commission looks forward to come up with mutually agreeable language for an amendment to HAR §16-99-11, to be introduced into the rule-making process in the near future, specifically incorporating some form of "including but not limited to" language and examples of materials requiring license numbers.

To view a complete draft of the proposed rule changes, go to [www.hawaii.gov/hirec](http://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.

(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.

(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 un-

# Real Estate Commission Informational Notice

## New License Applicants, License Renewal and Continuing Education Requirement

All real estate licenses must be renewed by the renewal application deadline, November 30, 2016. All real estate licenses expire at the end of each even-numbered year, regardless of the initial date of licensure. Submission of a complete renewal application, payment of fees, and for active licensees, completion of continuing education courses, are required by the renewal application deadline to ensure the successful renewal of licenses before January 1, 2017. Licenses not successfully renewed will be considered forfeited as of January 1, 2017 and the licensee will not be able to conduct real estate activity or receive compensation.

If you are renewing your license on an active status, you must fulfill the mandatory continuing education requirement prior to submitting your renewal application. For a new salesperson licensee with a new license issued in 2016, see below- SALESPERSON APPLICANTS and SALESPERSON LICENSEES. If you are not able to complete the continuing education requirement, your license may be renewed on an inactive status and you may not conduct real estate activity or receive compensation. There is a \$25.00 fee to change from inactive status to active status, in addition to completion of the continuing education requirement.

### SALESPERSON APPLICANTS and SALESPERSON LICENSEES:

- If you apply for a new salesperson license before the end of 2016, you will have to pay license fees twice in 2016. In addition to the fees you pay for your new license, you will have to pay renewal fees to renew your license by November 30, 2016. Fees are not prorated and basically cover the cost of processing, reviewing, and decision on the application.
- All salesperson licensees must complete the continuing education requirement prior to the renewal application deadline to successfully renew on an active status, unless you were issued a new salesperson license during calendar year 2016 and renew your license by November 30, 2016. If you were issued a new salesperson license in calendar year 2016 and renew your license by the renewal application deadline, you will be deemed to have completed the equivalent to the continuing education requirement and will not have to complete the continuing education requirement for this license renewal.
- If your new salesperson license application deadline is on or after December 31, 2016 and you do not desire to be licensed as a salesperson in 2016, and the licensing renewal application period is in effect, you may submit your complete salesperson license application during the renewal application period and request that your new salesperson license be effective January 1, 2017. Please call for specific information on this procedure. The aforementioned continuing education equivalency will not be applicable if licensed in calendar year 2017.

### BROKER APPLICANTS and BROKER LICENSEES:

- All broker applicants and broker licensees must complete the continuing education requirement prior to the renewal application deadline in order to successfully renew their salesperson or broker license on an active status.
- If your broker license application deadline is on or after December 31, 2016, and you do not desire to be licensed as a broker in 2016, and you received the renewal application for your salesperson license, you may submit your complete broker license application during the renewal application period (must be received by November 30, 2016) and request that your salesperson license not be renewed and the new broker license be effective January 1, 2017. This procedure does not excuse completion of continuing education requirements for active licensees. Please call for specific information on this procedure.

For more information, please contact our office at 586-2643, or visit our website at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec).

THE LAW DOES NOT PROVIDE FOR: PRORATION OF FEES OR REFUND OR CREDIT OF FEES PAID; EXTENSION OF TIME TO APPLY FOR LICENSE; EXTENSION OF TIME TO RENEW A LICENSE.

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

## The Chair's Message



Aloha all!

The long-awaited and much-needed revisions to Hawaii Administrative Rules (HAR), Chapter 99 relating to real estate salespersons and brokers ("Rules"), are finally back on track!

As you recall from our last update, the Rules were sent to the Governor's office for signature in October 2015. That same month, the Hawaii Association of REALTORS® ("Association") opposed HAR §16-99-11 (advertising) wanting to exclude certain types of promotional items. As a result, in January, SB 2328 was introduced in the legislature, which proposed language to limit the license number disclosure requirement only to specific "solicitation materials". The Real Estate Commission ("Commission") opposed SB 2328, our position being that 1) materials requiring license numbers should be determined by whether there is an intent to use the item to solicit business, rather relying on a list and 2) the list in the bill is not comprehensive enough to protect the consumer from the most prevalent types of scams and frauds – those through the internet and social media.

There have been over 145 identified cases of unlicensed activity reported by the Regulated Industries Complaints Office over the last 3 years. This number does not include any fraud, misrepresentation and/or identity theft cases for unlicensed activity. The addition of the license numbers on advertising was designed to help support and aid consumers in clearly identifying licensees by their unique license number through the Professional and Vocational Licensing Division's new internet-based license search webpage (and future mobile application) to know they are dealing with a licensed salesperson or broker and to view a licensee's complaint history.

After much effort, it became apparent that the language pertaining to the new HAR §16-99-11 and the language in the SB 2383 could not be reconciled in a timely manner to the satisfaction all parties.

As a result, the parties concurred to pursue the following process: 1) HAR §16-99-11 will be kept in its current form (no license number requirement); 2) the remaining Rules will be sent to the Governor with both sides requesting approval; 3) indefinitely defer SB 2328 SD1; and 4) the parties will work collectively and collaborative on mutually agreeable language for an amendment to HAR §16-99-11 to be introduced into the rule-making process in the future, specifically incorporating some form of "including but not limited to" language and examples of materials requiring license numbers.

We recognize that many licensees already complied with the previously proposed HAR §16-99-11 and commend those who have anticipated compliance with the Rules. Based on the specific and unique circumstances surrounding the advertising rule in this case, the Commission does not intend to pursue salespersons and brokers who have included their license number, but not their license status (i.e., (B), (S), (R), (RA)), on their advertising, business cards, letterhead and other materials. Based on my impression, the Commission and the Association both realize the growing number of fraudulent real estate brokers and salespersons and the need for more consumer protection. Both agree that the license numbers will eventually be required on certain items in the future. The Commission is committed to working together with the Association, stakeholders and the public through the rule making process in determining how to best accomplish that goal.

(s) Nikki Senter, Chair

## Proposed Rule Changes (cont. from page 1)

less, 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.

(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.

§16 99 5.1 Involuntary inactive license status.

(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).

**(The highlighted material below will be carved out of the rule amendment package that will be forwarded once again to the Governor.)**

§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).

(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.

(e) All advertising and promotional materials that refer to the individual licensee's name, including but not limited to business cards, shall:

(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.

§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; [~~of~~] 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:

## Proposed Rule Changes (cont. from page 4)

- (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.

(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:

(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:

- (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:

"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.~~

"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.~~

§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.]~~

§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.

§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.

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

## Proposed Rule Changes (cont. from page 5)

(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 for complete viewing a commission approved audio videotape of such workshop within the biennium.] prior to teaching in each biennium.~~

### §16 99 121 Faculty

(b) The administrator shall be responsible for:

(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.

§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

(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.

§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.

# Administrative Actions

## January 2016

**G.K. Pua Correa, also known as Greta K. Correa, a Real Estate Salesperson**  
RS 54936

Case No. REC 2015-183-L  
Dated 1/29/16

### **Allegations:**

While licensed as a real estate salesperson, the Respondent served as treasurer of the Big Island Pop Warner Football Conference (hereafter "League") and had access to the League's funds in said capacity.

During Respondent's tenure as treasurer, more than \$90,000.00 in League funds went missing, were unaccounted for, and/or were allegedly taken through forged checks made out to the Respondent.

Respondent was charged with crimes associated with the League's missing, unaccounted for, and/or taken funds. Specifically, on or around 4/29/15, a Complaint was filed against the Respondent in the District Court of the Third Circuit, South Kohala Division, State of Hawaii, in State of Hawaii vs. Greta K. Correa, No. 3DCW-15- 0001142. Count 1 of the Complaint charged the Respondent with theft in the first degree, in violation of Hawaii law, as follows:

On or between March 25, 2009 and May 9, 2012, in the County and State of Hawaii, GRETA K. CORREA, as part of one scheme and/or continuing course of conduct, obtained or exerted unauthorized control over the property of another, currency belonging to BIG ISLAND POP WARNER FOOTBALL CONFERENCE, having an aggregate value exceeding \$20,000.00, by deception with intent to deprive BIG ISLAND POP WARNER FOOTBALL CONFERENCE of the property, thereby committing the offense of Theft in the First Degree, in violation of Sections 708-830(2), and 708-830.5(1)(a), Hawaii Revised Statutes, as amended. (A class "B" felony).

In or around 6/9/15, an Order and Notice of Entry of Order was filed in the proceedings to remove the case to the Circuit Court of the Third Circuit, State of Hawaii. See State of Hawaii v. Greta K Correa, C.R. No. 15-1-149K.

In or around 7/17/15, the Respondent filed a No Contest Plea and Motion to Defer in which Respondent agreed to enter a "no contest" plea to Count 1 of the Complaint and to make \$98,100.00 in restitution to the Big Island Pop Warner Football Conference.

In or around 7/21/15, an Order Granting Motion for Deferred Acceptance of No Contest Plea & Notice of Entry was filed. Said Order noted that the Respondent pleads no contest to Count I - Theft in the First Degree, and, that the deferral period is ten (10) years. Among other things, the Order required the Respondent to be placed under the supervision of the Adult Probation Division during the period of deferral; to be committed to the custody of the Director of the Department of Public Safety for a period of one (1) year jail, with all of the jail time stayed if the Respondent remains gainfully employed and makes monthly restitution payments consistent with her ability to pay; and, to pay \$98,100.00 in restitution to the Big Island Pop Warner Football Conference.

The matter involving the League's missing, unaccounted for and/or taken funds, and the resulting criminal proceedings against the Respondent, were broadcast in the Hawaii media and on the internet, and, published in local, state and national news. Some of the news reported that the Respondent holds a real estate license. Therefore, upon information and belief, the integrity of the Hawaii real estate profession has been impacted negatively by the League matter involving the Respondent and the criminal proceedings that resulted.

Respondent has two outstanding tax liens from the State of Hawaii for nonpayment of general excise and income taxes during the period of licensure. One outstanding lien is for \$120,728.43 and the other is for \$39,003.28.

**Sanction:** Voluntary revocation of Respondent's license.

**Possible Violations:** HRS §436B-19(12), (17), HRS §467-14(7), (8), (13), (20), HAR §16-99-3(b), (v).

# Administrative Actions (cont. from page 7)

## January 2016

**Branden Lee**

RS 71997

Case No. REC 2014-456-L

Dated 1/29/16

**Uncontested Facts:**

RICO received a request for investigation from the Commission based on an October 9, 2014 Restoration Application in which Respondent disclosed he had inadvertently engaged in real estate transactions while his license was not current. RICO alleges Respondent failed to maintain license requirements.

**Sanction:** Fine of \$3000.00.

**Violations:** HRS §436B-19(1)

**Raymond N. Oishi**

RB 15841

Case No. REC 2015-276-L

Dated 1/29/16

**Uncontested Facts:**

RICO received a request for investigation after Oishi Property Management Corp. reported small claims court judgments relating to its property management practice.

**Sanction:** Fine of \$1,900.00.

**Violations:** HRS §436B-16

RICO alleges that Oishi Property Management Corp. failed to timely report approximately nineteen small claims court judgments related to security deposits.

**Oishi's Property Management Corp.**

RB 9350

Case No. REC 2015-276-L

Dated 1/29/16

**Uncontested Facts:**

RICO received a request for investigation after Respondent reported small claims court judgments relating to Respondent's property management practice.

**Sanction:** Fine of \$2,850.00.

**Violations:** HRS §436B-16

RICO alleges that Respondent failed to timely report approximately nineteen small claims court judgments related to security deposits.

Any allegations related to Respondent's principal broker will be handled as a separate RICO action.

**Alfredo G. Salon**

RB 12488

Case No. REC 2015-292-L

Dated 1/29/16

**Uncontested Facts:**

RICO received a request for investigation after Respondent reported a small claims court judgment relating to property management.

**Sanction:** Fine of \$500.00.

**Violations:** HRS §436B-16

RICO alleges that Respondent failed to timely report a small claims court judgment relating to property management.

# Administrative Actions (cont. from page 8)

## February 2016

**Todd E. Hart, a real estate broker, Debra Hart, a real estate salesperson, and Hart of Kona Realty, Inc., a real estate broker**  
RS 57858

Case No. REC 2008-227-L; REC 2015-169-L (Consolidated Cases)  
Dated 2/26/16

### **Uncontested Facts:**

On or about 9/4/15 RICO commenced these administrative actions by filing, with the Office of Administrative Hearings, two *Petitions for Disciplinary Action Against Real Estate Licenses; Demand for Disclosure to Respondents* (hereafter "*Petition*"). The *Petition* in case REC 2008-227-L, which is incorporated herein by reference, asserts factual allegations concerning the Respondent's conduct while licensed that, if proven by a preponderance of the evidence at a hearing, may constitute violations of these laws as set forth in said *Petition*: HRS § 436B-16(a) (Each licensee shall provide written notice within thirty days to the licensing authority of any judgment, award, disciplinary sanction, or order, or other determination, which adjudges or finds that the licensee is civilly, criminally, or otherwise liable for any personal injury, property damage, or loss caused by the licensee's conduct in the practice of the licensee's profession or vocation. A licensee shall also give notice of such determinations made in other jurisdictions); HRS § 436B-19(7) (Professional misconduct); HRS §436B-19(17) (Violating the chapter); HRS § 467-14(8) (Any other conduct constituting fraudulent dishonest dealings); HRS § 467 -14(20) (Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing); and Hawaii Administrative Rules § 16-99-3(b) protect the public against fraud, misrepresentation, or unethical practices in the real estate field).

On or about 9/30/15.the Office of Administrative Hearings issued a *Notice of Hearing and Pre-Hearing Conference* (hereafter "*Notice*") which set a Pre-Hearing Conference for 11/16/15 and the Hearing for 1/12/16.

In November of 2015 the Respondent, who resides out-of-state, telephoned Petitioner's counsel in response to the *Notice*. During the telephone conversation the Respondent and Petitioner's counsel began discussing case REC 2008-227-L. Thereafter they continued communicating about the case and reached a settlement. There has been, therefore, no adjudication of case REC 2008-227-L in regards to the Respondent and therefore no findings of liability, under Hawaii licensing laws, vis-a-vis the Respondent.

**Sanction:** Voluntary revocation of Respondent's license. (Debra Hart nka Debra Tuck)

### **Representations by Respondent:**

Respondent who lives in another state and recognizes that license RS 57858 has expired already, is entering into this Settlement Agreement as a compromise of the claims only, to conserve on the expense of proceeding with a hearing, and, to put this matter and this period of her life behind her. Respondent enters into this Settlement Agreement also because, at this time in her life, she does not anticipate practicing real estate again.

In the event Respondent determines to obtain a professional license again, however, Respondent wishes to state for the record that she responded immediately to the *Notice* in these cases. Respondent also informed Petitioner that there were compelling mitigating circumstances regarding the facts underlying case REC 2008-227-L. Upon further investigation Petitioner confirmed that said mitigating circumstances exist and appear to be true including the fact that the Respondent is no longer legally liable for the outstanding judgment in case REC 2008-227-L. Respondent further states for the record that she did not know of a requirement to timely report to the Commission adverse judgments, and, that had she known she would have. Respondent further notes for the record that in the litigation underlying case REC 2008-227-L there are no separate findings concerning her individual conduct but rather she was held liable because of her status as a married person and because another person's actions were attributed to her. Respondent further asserts and pledges full cooperation with the Commission in regards to this and any other matter.

Respondent agrees that this Settlement Agreement is intended to resolve RICO Case No. REC 2008-227-L as it pertains to her only.

# Administrative Actions (cont. from page 9)

## February 2016

**Derek K. Kanoa**

RS 32367

Case No. REC 2015-156-L

Dated 2/26/16

**Uncontested Facts:**

RICO received a request for investigation from the Commission based on a November 28, 2014 Application for License in which Respondent answered "no" in response to the question concerning whether any complaints or charges had ever been filed against Respondent with the licensing agency of any state.

By Final Order dated September 30, 1988 (in RICO Case Nos. RE 87-90 et seq.), Respondent was fined and ordered by the Commission to

complete continuing education based on alleged sales of unregistered time share units.

RICO alleges the November 28, 2014 Application filed with the Commission was untrue, containing a material misstatement of fact.

**Sanction:** Fine of \$500.00.

**Violations:** HRS §437B-19(17), §467-20

**Charles S. Portwood, III**

RB 15423

Case No. REC 2012-52-L

Dated 2/29/16

**Findings of Fact:**

Respondent admits to the following statements of fact as contained in the Petition.

Respondent's license expired on December 31, 2010 and was restored on or about December 28, 2011. Respondent continued to engage in real estate activity prior to the restoration of his license.

Respondent's license expired on December 31, 2014 and was restored on or about May 26, 2015. Respondent continued to engage in real estate activity prior to the restoration of his license.

Respondent engaged and continues to engage in real estate activity under the trade name "A

Aloha Paradise Realty", a name that is not registered with the Department of Commerce and Consumer Affairs.

On February 17, 2012, Judgment in the amount of \$473.05 was entered against Respondent in the District Court of the First Circuit after trial in Civil No. 1SC11-1-2371. Respondent did not report the Judgment to the Commission.

**Sanction:** Fine of \$2,000.00.

**Violations:** HRS §467-1.6, HRS §467-9, HRS §436B-16.

## March 2016

**Mark Gaughan dba Aloha Realty**

RB 20171

Case No. REC 2015-58-L

Dated 3/24/16

**Allegations:**

In or around 2014 the Respondent was convicted of the crime of driving under the influence of an intoxicant in Nevada.

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction, and, reported the Conviction in writing to the Commission.

**Sanction:** Fine of \$500.00.

**Violations:** HRS §§436B-19(12), (14), (17).

**Reid Ito**

RB 20694

Case No. REC 2014-294-L

Dated 3/24/16

**Allegations:**

The Respondent was the principal broker of a licensed brokerage firm.

For a period in 2013-2014 a real estate salesperson affiliated with the brokerage firm engaged in real estate activity without a current license.

**Sanction:** Fine of \$500.00.

**Violations:** HRS §467-1.6(b)(7), HRS §467-14(13).

# Administrative Actions (cont. from page 10)

## March 2016

**Robert R. Cowan dba Bob Cowan**  
RB 21139

Case No. REC 2014-415-L  
Dated 3/24/16

**Allegations:**

In or around 2013 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant ("OVUII") or what is commonly referred to in this state as a "DUI" - driving under the influence (hereafter "Conviction").

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction, and, self-reported the Conviction in writing to the Commission.

**Sanction:** Fine of \$500.00.

**Violations:** HRS §§436B-19(12), (14), (17).

**Germaine K. Hopkins**  
RS 69930

Case No. REC 2014-172-L  
Dated 3/24/16

**Allegations:**

In or around 2014 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant ("OVUII") or what is commonly referred to in this state as a "DUI" - driving under the influence (hereafter "Conviction").

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction, and, self-reported the Conviction in writing to the Commission.

The Respondent engaged in real estate activity during a period in 2013 – 2014 when the license was not current.

**Sanction:** Fine of \$1,500.00.

**Violations:** HRS §§436B-19(12), (14), (17), HRS §467-7, HRS §467-14(18).

**Lauren Y.I. Miyahara,**  
**f.k.a. Lauren Yoshiko Ige**  
RB 21700

Case No. REC 2014-130-L  
Dated 3/24/16

**Allegations:**

In or around 2014 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant ("OVUII") or what is commonly referred to in this state as a "DUI" - driving under the influence (hereafter "Conviction").

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction, and, self-reported the Conviction in writing to the Commission.

**Sanction:** Fine of \$500.00.

**Violations:** HRS §§436B-19(12), (14), (17).

## 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 §436B-16	Each licensee shall provide written notice within thirty days to the licensing authority of any judgment, award, disciplinary sanction, order, or other determination, which adjudges or finds that the licensee is civilly, criminally, or otherwise liable for any personal injury, property damage, or loss caused by the licensee's conduct in the practice of the licensee's profession or vocation. A licensee shall also give notice of such determinations made in other jurisdictions.
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(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(17)	Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.
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(13)	Violating this chapter, chapters 484, 514A, 514B, 514E, or 515, or section §516-71, or the rules adopted pursuant thereto.
HRS §467-14(20)	Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.
HAR §16-99-3(b)	The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate any practices in the community which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission in its efforts to regulate the practices of brokers and salespersons in this State.
HAR §16-99-3(v)	The licensee shall not convert other people's money to the licensee's own use.

## Reappointments to Real Estate Commission



Aileen Wada was reappointed as a commissioner and will serve her second term which will end on June 30, 2019. She is a broker representing O'ahu, and is a Broker-in-Charge at Locations, LLC, where she has been since 1979. Ms. Wada continues to be an active real estate broker and has received numerous awards from the brokerage including the President's Circle, Leading Edge Society Award, and Client Service Award in 2002 and 2009.

a long-time resident. He is a real estate licensee since 1985, and served as a past President of the REALTORS® Association of Maui, Inc. He is an avid bow and arrow hunter, and is active in the Maui community.



Scott C. Arakaki, public member from O'ahu, was reappointed to the Commission, with his second term ending on June 30, 2020. Mr. Arakaki is an attorney specializing in the areas of real estate and commercial transactions, and personal injury litigation. Mr. Arakaki received his Juris Doctor degree from the University of Notre Dame, and his Bachelor of

Arts degree from the University of Hawaii – Manoa.



Bruce Faulkner, broker, Maui, was reappointed as a second-term commissioner, with his second term ending on June 30, 2020. Mr. Faulkner is a sole proprietor doing business as Maui HI Realty in Makawao. Born and raised on O'ahu, he relocated to Maui where he has been

Mr. Arakaki is an instructor in real estate education, has co-authored real estate continuing education courses, as well as articles which have appeared in several publications.

# Act 204, SLH 2015 On-Island Local Contact Required by the Department of Taxation

During the 2015 legislative session, the Hawaii State Legislature passed Act 204, which became effective January 1, 2016. Act 204 requires that operators of transient accommodations designate an on-island local contact and display that contact's name, phone number and email address inside the unit, and provide that information either in online advertisements, or to the guest upon check-in. Act 204 also requires that a unit's TAT license number be displayed both inside the unit itself and in all online advertisements, either directly in the advertisement or by a link.

The penalty for failure to display the local contact's information is a fine of \$500 per day for first violations, \$1,000 per day for second violations, and \$5,000 per day for third and subsequent violations. Similarly, the penalty for failure to display the TAT license number is \$500 per day for first violations, \$1,000 per day for second violations, and \$5,000 per day for third and subsequent violations. The penalty for failure to display the TAT license number in online advertisements may be imposed on both the operator of the transient accommodation, and the operator of the website advertising the unit.

The Department recently promulgated temporary administrative rules to help clarify the TAT license number advertising and posting requirements, including how any penalties may be assessed, and when and how the Department may issue a warning in lieu of a citation. The temporary rules became effective April 4, 2016 and will expire October 4, 2017, unless the Department moves to replace the temporary rules with permanent rules enacted through the regular rulemaking process.

With these rules in place, the Department expects to begin issuing written warnings and citations with fines, if necessary, in the near future.

As part of the process which will replace the temporary rules with permanent rules that do not expire, the Department will hold a public hearing and receive public testimony on these rules. The Department currently expects to hold a public hearing to receive public comment and testimony before the end of 2016. A notice of public hearing will be published on the Department's website and in various state newspapers to announce the date and time of any hearing.

Act 204 does not create any requirements that any information be reported to the Department of Taxation or any other State agency. Nor does it create any obligations for associations of apartment/unit owners or planned community associations. All obligations are strictly on the owners or other operators of the transient accommodations and upon websites or others advertising transient accommodations in the State of Hawaii.

Act 326, Session Laws of Hawaii 2012, which sunset on December 31, 2015, required associations of apartment/unit owners to report certain relevant information on units being operated as transient accommodations and to update that reported information before the end of each year, or within 60 days of a change in their records, whichever is later. Because this reporting period is now closed, the reporting website has been shut down and reporting is no longer required. There is no requirement that associations maintain records of the relevant information required by Act 326 for 2016 and beyond.

## Why Mediation? Why Not?

Across the country, mediation has become the first step in addressing conflicts of all types. Consumer complaints, employee grievances, construction disputes, corporate and family matters and more, are currently worked out in mediation.

No matter how simple or complex the issues, mediation is in the forefront as a tried and true process that enables disputing parties to negotiate customized solutions quickly and privately. It is far less formal, less intimidating and less confusing than going to court or a hearing. There are no strict rules of procedure and the people involved whether two or multiple, have the flexibility to find the best path to agreement. Additionally, the mediation process has proven to be exceptionally valuable for assisting participants with continuing relationships.

With all of its benefits and history of success, mediation is the perfect approach for addressing the myriad of conflicts that arise within condominium associations. In particular, because conflicts arising between owners and boards involve continuing relationships, mediation is a logical first step to address differences. If the participants come to the table prepared to invest the time, energy and commitment to reach a resolution, then the mediation will usually succeed.

For all of these reasons and more, the Hawai'i Revised Statutes (HRS 514B) requires mediation if a condominium owner or board of directors requests mediation of a dispute involving the interpretation or enforcement of an association's declaration, bylaws or house rules, or

(cont. page 14)

## Why Mediation? Why Not? (cont. from page 8)

a dispute involving Part VI of HRS 514B. Unfortunately, the requirement to mediate is not always viewed as a positive step.

The different perspectives and responsibilities of the various players in condominium associations can lead them to believe that mediation is a “waste of time.” For example, some Property Managers and Boards feel it is their responsibility to vehemently enforce house rules and bylaws. Some owners believe they are not required to follow house rules and bylaws when they paid such a high price to purchase their unit.

People often get stuck in mind-sets such as “I’m right and they’re wrong”, “I don’t want to listen to him/her/them anymore”, “we just need someone to decide so we can get this over with.” These attitudes not only create barriers to a successful mediation, they also fail to accept the reality that a “win” in a hearing is never guaranteed. Even when the ruling is in favor of one side, the lasting bad feelings created by the adversarial nature of the hearings process can result in continued discord within an association.

Mediation on the other hand, can provide the participants with the opportunity to “clear the air” as well as problem solve in a way that focuses on everyone’s needs and concerns. To achieve positive outcomes, mediation participants must come to the table: 1) prepared with the information they need to address the issues; 2) committed to “listen” to the other participants (even if they feel they’ve heard it all before), and 3) open to discuss potential creative solutions.

It is also helpful for participants to consider how to best use the mediation process to work towards a resolution. For example:

- If there are multiple issues to be addressed, then consider prioritizing the issues and setting timelines regarding how much discussion is needed to address each one.
- If emotions are exceptionally high, then plan to spend more time in private meetings with the mediator to vent and de-escalate, before focusing on the substantive issues.
- If an impasse is reached, then ask the mediator for suggestions or even an evaluation of the strengths of each participants view to encourage more brainstorming and creative problem solving.
- If the issues being discussed impact other owners in the association, then discuss and agree on what information if any, will be shared with the other owners.

Committing a sufficient amount of time at the end of the mediation to craft a clear durable agreement is as important as preparing to participate in the mediation. It is also helpful to discuss and include in the agreement how the owner and board want to address potential differences in the future to avoid misunderstandings and escalated battles again.

The mediation process is designed to provide people in almost any type of conflict with a private, flexible forum for talking and negotiating creative solutions. It is an ideal process for condominium owners and boards because of their ongoing relationship within the condo community. If approached with the right attitude, owners and boards can not only resolve the immediate issues that lead to the dispute, they can also pave the way for working and living together more harmoniously in the future.

Tracey Wiltgen is the Executive Director of The Mediation Center of the Pacific, Inc.



## Prelicense Schools

Abe Lee Seminars	808-942-4472
Akahi Real Estate Network LLC	808-331-2008
All Islands Real Estate School	808-564-5170
American Dream Real Estate School LLC	720-322-5470
Carol Ball School of Real Estate	808-871-8807
Coldwell Banker Pacific Properties Real Estate School	808-597-5550
Continuing Ed Express LLC	866-415-8521
Dower School of Real Estate	808-735-8838
Fahrni School of Real Estate	808-486-4166
Inet Realty	808-955-7653
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



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## Continuing Education Providers

Abe Lee Seminars	808-942-4472	Kama'aina Realty LLC, dba RP Seminars Unlimited	808-753-3083
All Islands Real Estate School	808-564-5170	Kauai Board of Realtors	808-245-4049
American C.E. Institute, LLC	727-224-3859	Lorman Business Center, Inc. dba Lorman Education Services	715-833-3940
American Dream Real Estate School LLC	720-322-5470	McKissock, LP	800-328-2008
American School of Real Estate Express, LLC	866-739-7277	OnCourse Learning Corporation, dba Career WebSchool	800-532-7649
Carol Ball School of Real Estate	808-871-8807	Pacific Real Estate Institute	808-524-1505
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Coldwell Banker Pacific Properties Real Estate School	808-597-5550	Ralph Foulger's School of Real Estate Real Class, Inc.	808-239-8881 808-981-0711
Continuing Ed Express LLC	866-415-8521	Realtors Association of Maui, Inc.	808-873-8585
Dower School of Real Estate	808-735-8838	REMI School of Real Estate	808-230-8200
Eddie Flores Real Estate Continuing Education	808-951-9888	Russ Goode Seminars	808-597-1111
Hawaii Association of Realtors	808-733-7060	Servpro Industries, Inc.	615-451-0200
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 Island Realtors	808-935-0827	USA Homeownership Foundation, Inc., dba Veterans Association of Real Estate Professionals (VAREP)	951-444-7359
Honolulu Board of Realtors	808-732-3000	Vitousek Real Estate Schools, Inc.	808-946-0505
Institute of Real Estate Management – Hawaii Chapter No. 34	808-536-4736	West Hawaii Association of Realtors	808-329-4874
Institute of Real Estate Management – National	312-329-6058		
International Association of Certified Home Inspectors (InterNACHI)	303-502-6214		

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## 2016 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, April 06, 2016**

**Wednesday, May 11, 2016**

**Wednesday, June 08, 2016**

**Wednesday, July 13, 2016**

**Wednesday, August 10, 2016**

**Wednesday, September 14, 2016**

**Wednesday, October 12, 2016**

**Wednesday, November 09, 2016**

**Wednesday, December 07, 2016**

### **Real Estate Commission – 9:00 a.m.**

**Friday, April 29, 2016**

**Friday, May 27, 2016**

**Friday, June 24, 2016**

**Friday, July 29, 2016**

**Friday, August 26, 2016**

**Friday, September 30, 2016**

**Friday, October 28, 2016**

**Wednesday, November 23, 2016**

**Friday, December 16, 2016**

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](http://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.