

State of Hawaii Real Estate Commission Bulletin

February 2014



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Read This!!! Real Estate Education System - Both CE and Preliminary

Attention all licensees: An updated continuing education ("CE") system will go live in February 2014. (The specific launch date is to be determined.) Along with the updated CE system, will be a new preliminary system for licensing candidates as well as real estate salespersons upgrading to a broker level.

All users of the CE and preliminary systems will **create their own, individual eHawaii account**. You **MUST** create your own account to gain access to the CE or preliminary systems. Go to www.pvl.hawaii.gov/rece to set up your account. You'll need your account in order to renew your license, as this is a renewal year.

To create your own account will require inputting contact information and selecting a password along with a "secret" question and answer for security purposes. Once your individual account is created, you will "link"

your real estate license number to the real estate education system so that you will be able to access information on your "CE status" or preliminary system, if applicable.

The only time a licensee may "link" to another licensee is if the licensee is a principal broker or broker-in-charge and they create a link to the **brokerage's license**. This will enable the principal broker and/or brokers-in-charge to view the CE status of the associated licensees of the brokerage. At no time may an individual salesperson or broker-salespersons link their license to other salespersons/broker-salespersons or to the associating brokerage. Principal brokers may not be linked to associating salespersons/broker-salespersons.

Updated information will appear on the Commission's website, www.hawaii.gov/hirec.

Live Classes for Core A and Core B 2013 - 2014

At its Wednesday, December 11, 2013 monthly meeting, the Commission's Education Review Committee (ERC) voted to allow the offering of live classroom Core A and Core B (when released about June 2014) classes throughout the 2013-2014 biennium.

In 2009, to encourage licensees to take Core A during the first year of the biennium when that year's legislative update was offered, the Commission decided to limit the offering of live classroom Core classes, as it appeared, and still does now, that licensees prefer to attend a live class rather than an online class. During the past two biennia, the numbers of licensees taking Core A during the first year of the biennium, and Core B during the second year, have remained about the same. Licensees tend to procrastinate until the last couple of months before the renewal deadline of November 30th of the even-numbered year, and cram in Core A and Core B, as well as elective courses.

Core A, 2013-2014, will be available in both live and online formats throughout the current biennium. Core B, to be released about June 2014, will be available in both live and online formats throughout the remaining part of the biennium. Effective January 1, 2015 Core A and Core B, 2013-2014 will be available only in an ONLINE format until May 31, 2015. At that point, both Core A and Core B will no longer be available, and licensees restoring or reactivating their license will need to take elective continuing education courses to make up for the core course credits (5 credits).

CORE COURSE 2015-2016

REMINDER: The mandatory core course hours will increase from the current 5 hours to 8 hours for the 2015-2016 biennium. This change was approved by the ERC at its monthly March 6, 2013 meeting. Licensees will be required to complete the 8 hours of the mandatory core course plus 12 continuing education elective hours.

The Chair's Message

HAPPY NEW YEAR! Welcome to 2014! A look at 2013 (in a Nutshell)...



Time definitely flies when you are having fun! I thoroughly enjoyed my second full year on the Commission as chair, having to grapple with some very exciting, interesting and sometimes challenging situations and issues. The Commission is still working toward certain long term goals, such as the promulgation of the condominium and real estate licensing administrative

rules, and made great headway in the last year towards such goals. Several of our short term goals were fulfilled along the way with the Commission's emphasis on consistency in enforcement and consumer protection, as well as the use of technology to expedite and make licensing processes more efficient and user friendly. The following are highlights of the Commission's year "in a nutshell."

Condominiums

A total of 234 condominium projects were registered in the fiscal year (FY) 2013. Of the 234 total registrations, 128 were new residential projects and 106 were conversions.

As for legislative or administrative matters, during the 2013 legislative session, a bill proposing an increase in the Condominium Education Trust Fund fees to be used solely for mediation was passed to promote the use of mediation to resolve condominium disputes.

During the 2013 calendar year, the Commission considered several requests for informal non-binding interpretations from practitioners and/or developers. One of the issues presented to the Commission was whether a spatial condominium unit needs to be considered in an owner occupant offering. The Commission issued an informal non-binding interpretation that based on the facts presented, the Commission would accept the developer's proposal of publishing for one residential unit the required sales to owner-occupant publication of §514B-95.5, HRS. In another informal non-binding interpretation, the question presented was whether spatial units include temporary (housing / dwellings) structures within the spatial unit boundaries or should be considered conversions of existing structures, subject to HRS §514B-84. The Commission issued an informal non-binding interpretation that based on the specific facts presented in the request, that the spatial units with existing structures therein was considered a conversion

and that the developer had to comply with HRS §514B-84. The third request for informal non-binding interpretation was a request for an administrative rule interpretation. In its informal non-binding interpretation, the Commission stated that HAR §16-107-19 (availability of rescission) does not apply to a sales contract of time share interests duly registered in compliance with HRS, Chapter 514E that constitute interests within units of condominium projects.

As part of its rule promulgation efforts, the Commission approved the establishment of a Blue Ribbon Panel, consisting of practitioners and stakeholders from Oahu and the neighbor islands, to be headed by Commissioners Sherley and Arakaki to continue the rulemaking process for Hawaii Administrative Rules, Chapter 107. We are fortunate that there has been much interest from the various stakeholders and the industry to serve on the panel.

Real Estate Salespersons and Broker Licensing

During FY 2013, 1,083 new licenses were issued, which is a 12.2% increase over the prior year. Broker entity licenses increased by 22.6%, broker licenses by 12.6% and salesperson licenses by 10.9%. Overall, the number of real estate licenses decreased 8.5% by the end of FY 2013. The total number of licenses in the state is 17,183 (active and inactive). Oahu has the most active licenses, with a total of 7,648.

In its enforcement and consumer protection efforts, the Commission took disciplinary action against 46 licensees, as compared to the 29 licenses disciplined in FY 2012. There were no revocations of licenses; however, there were 9 suspensions. The number of disciplinary actions and suspensions are the highest since 2003. The most common statutory violations were of HRS §467-1.6 (principal broker responsibilities) and HRS §467-14(20) (failure to maintain a reputation or record of competency, honesty, truthfulness, financial integrity and fair dealing). The most common rule violations were of HAR §16-99-3(a) (protection of the public in transactions) and HAR §16-99-3(b) (protection of the public against fraud, misrepresentation, or unethical practices).

Salesperson/Broker Education

Approximately 554 brokers and 3,720 sales persons tested for a real estate license, with the passage rate of 53.6% for brokers and 48.7% salespersons.

As for courses, the Commission determined that the Core B topic for 2013-2014 will be "agency," a very applicable and evolving topic.

The Chair's Message

(cont. from page 2)

Many instructors also attended and highly enjoyed the Instructors Development Workshop ("IDW") in 2013, "Inviting Technology into the Classroom," presented by Alycea Snyder, Innovation Developer for the CE Shop. The IDW was offered on the Big Island, Maui and Oahu in October and November and covered the utilization of modern tools, such as smartphones and tablets in the teaching environment.

Finally, the Education Review Committee increased the continuing education core course hours to 8 hours, effective the 2015-2016 biennia.

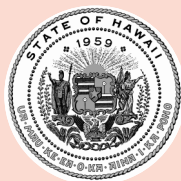
Salesperson/Broker Laws

As you know, the Hawaii Administrative Rules, Chapter 99 is going through an update after over 10 years. The draft proposed rules already made its way through the Legislative Reference Bureau and the Attorney General's Office for review and comment. As a next step, the Commission will be submitting the proposed draft of the rules to the Small Business Regulatory Review Board. After the Board's review, the final step will be a public hearing. An updated Chapter 99 is well on its way!



(s) Nikki Senter, Chair

**Statistics presented herein are taken from the 2013 Real Estate Commission Annual Report and are based on the 2013 fiscal year (July 1, 2012, through June 30, 2013).*



State of Hawaii Real Estate Commission

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

Proposed Rule-Making on Advertising

Of the MANY rule changes proposed for Chapter 99, Hawaii Administrative Rules, §16-99-11 has caused the most stir among the real estate community. Either licensees do not agree with the proposed change, or do not clearly understand the change being proposed. Most often, it is the latter – there appears to be confusion based on a misinterpretation or misunderstanding of the rule change.

In non-legalese, the existing rules in §16-99-11 that may be changed basically state that when advertising, a real estate licensee using his or her name as licensed by the Commission in the advertisement, shall include the name of the brokerage firm or a trade name (approved by the Commission) in the same advertisement.

The proposed change is this: when an advertisement includes the licensee's name as licensed by the Commission, the name of his associating brokerage needs to be included in the ad, "prominently and conspicuously". This proposed change is to address those advertisements where the name of the brokerage, while appearing somewhere in the advertisement, is included in such a small-sized font, that it may be easily overlooked by the consumer. The proposed change also includes language which requires the license number of the brokerage to appear. HOWEVER, the change goes on to state, "The license number of the brokerage shall not be required for all advertising and promotional materials that comply with paragraph (e)."

What does "paragraph (e)" state? "All advertising and promotional materials that refer to the individual licensee's name, including but not limited to business cards, shall: . . . (3) Include the licensee's license number as issued by the commission."

DELETED from the proposed rule change is language that addressed the font size of the name of the brokerage being at least the same size as the font used for the licensee's name. Again, this language is DELETED. GONE. NO MORE.

So, in a nutshell, if the proposed rule change is accepted, all real estate licensees, when advertising with their name as licensed by the commission, shall include their license number as issued by the commission. If the individual licensee's license number is in the advertisement, as required, there is NO REQUIREMENT to include the license number of the brokerage in the advertisement.

Other Proposed Rule Changes

The Real Estate Commission is slowly going through the established rule-making process. The proposed changes, in addition to the advertising rule recommendations are outlined below.

A complete copy of the approved rough draft of proposed rule changes is available on the commission's website at www.hawaii.gov/hirec. (Note: underscored material is a proposed addition to the rules. Material that is lined through is proposed for deletion.)

Here is a sample of some proposed rule changes that may be of interest.

HAR, Section 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 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.

HAR, Section 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 receipts. The neutral escrow depository shall be located in the same state where the property is located.

HAR, Section 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 commission approved temporary principal broker has been designated;
 - (4) The brokerage firm has no registered 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).

HAR, Section 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 examination for:

- (1) those who hold a current license that was active within one year immediately prior to the date of application as a sales person or broker in another state with similar or superior education requirements as determined by the commission;
- (2) Graduates of an accredited United States law school;
- (3) Bachelor of arts or bachelor of science degree graduates of accredited United States colleges and universities 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 examination for:

(cont. on page 5)

Other 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;
- (2) Graduates of an accredited United States law school.

HAR, Section 16-99-58 Faculty. . . .

- (c) Each instructor shall initially take and pass an examination with a minimum passing score of 85% 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.]~~

HAR, Section 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 determined by the commission.

HAR, Section 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].~~

HAR, Section 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 biennia, 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.

HAR, Section 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.

HAR, Section 16-99-104 Criteria for certification of a continuing education instructor. . . .

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

- (d) The commission may require that each instructor complete an instructor's workshop as approved by the commission ~~or complete viewing a commission approved audio video tape of such workshop within the biennium,]~~ prior to teaching in each biennium.

HAR, Section 16-99-121 Faculty.

- (b) The administrator shall be responsible for:
- (5) Administering and maintaining the student evaluations; and
- (6) Ensuring that instructors do not fall below minimum rating standards.

HAR, Section 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.

Administrative Actions

November 2013

Jeff LaFrance

Application for Real Estate
Broker's License

Case No. REC-LIC-2013-001

Dated 11/27/13

Introduction: On 4/2/13, Mr. LaFrance, the petitioner, filed a request for an administrative hearing with the Real Estate Commission ("Commission") to contest the denial of the Application for Prelicensing Education Equivalency-Real Estate.

On 7/31/13, the hearing was convened and the petitioner appeared pro se by telephone.

Findings of Fact:

On 10/26/09, Petitioner signed an Application for License – Real Estate. Petitioner answered "yes" to the question: "Are there any pending law suits, unpaid judgments, outstanding tax obligations, or any other type of involuntary liens against you?" In a letter dated 1/1/10 to the Commission, Petitioner stated that he had only recently received a copy of his credit report and that he never expected to find as many errors that exist and that he would be actively working to resolve all questionable matters.

By letter dated 3/25/10, Petitioner was informed that his application was incomplete because copies of documents relating to pending lawsuits, unpaid judgments, outstanding tax obligations or any other involuntary liens were not submitted. Petitioner received a second and final notice regarding his 3/25/10 letter on 6/4/10.

By letter dated 6/8/10, Petitioner responded by stating that there are no pending lawsuits against him, to his knowledge. Petitioner also stated that he does not intend to pay for taxes he does not owe (State of California tax lien for 1995 to 1997).

By letter dated 7/6/10, Petitioner was requested to provide documents related to the appeals filed for, and payments made towards the outstanding tax liens even though Petitioner disagrees with the unpaid judgments and outstanding tax liens.

By letter dated 7/19/10, Petitioner provided copies of documents related to the unpaid judgments and tax liens.

By letter dated 1/20/11, Petitioner updated his progress to clear up the items in question that have a bearing on his application for licensure. In this letter, Petitioner states that he is withdrawing his application for sole proprietor and was now pursuing his license status as associate broker.

By letter dated 5/4/11, Petitioner updated his progress to clear up the matter of amounts owed to Katzoff & Riggs Attorneys at Law and the State of California tax liens.

By letters dated 5/18/11, 10/4/11, 4/3/12, and 5/16/12, Petitioner updated the progress of clearing up discrepancies in his credit report.

By letter dated 5/24/12, Petitioner explained that of the twelve creditors listed on his credit report, two matters had been resolved, of which Petitioner provided documentation, two others Petitioner indicated were resolved but did not provide written verification, two other items were being contested by Petitioner and were unresolved, and five matters remained unresolved. Petitioner was questioned about a conviction for a DUI and a notation on the State of California Department of Real Estate's website which indicated that Petitioner's real estate license had been suspended in 1999. These matters were not reported on Petitioner's application for licensure.

By an email dated 8/3/12, Petitioner responded by saying that the answers on his application were honest to the best of his knowledge at the time he answered the questions. Petitioner stated that he had not pulled a credit report in many years and only then did he become aware of the "incredible disaster" it was.

By letter dated 8/3/12, Petitioner provided an update of the progress of clearing up discrepancies in his credit report. According to Petitioner, he resolved 10 of the 12 items on his credit report and he was contesting the two unresolved items – one in the amount of \$91.00 (Lakeport Medical Group) and the other in the amount of \$137.00 (Wine Country Imaging Group). With respect to the DUI, Petitioner stated that it was a traffic citation; that he appeared in traffic court on a moving violation, paid a traffic fine and attended traffic school. Petitioner denied

Administrative Actions (cont. from page 6)

November 2013

that he was in criminal court or criminal proceedings were held against him. Petitioner also stated that he does not remember receiving a notice of license suspension from the State of California. In this letter Petitioner also stated:

If I did in fact receive any such notice I do not recall receiving it at a time which I became disabled due to an accident, and I still am partially 30% disabled. I answered the question according to memory, of which I have no memory of any suspension notice or action.

Petitioner believes that his real estate license might have been affected by child support payments that he denied owing.

According to records from the Municipal Court, County of Lake, State of California, on 6/20/94, Petitioner was convicted of a misdemeanor and was granted summary probation for 3 years. Petitioner was sentenced to imprisonment for 48 hours, fined \$1,650.00, assessed a booking fee of \$74.09, and ordered to attend DUI school.

The Commission reviewed Petitioner's application at its 12/21/12 meeting. The Commission decided to defer decision-making and requested that Petitioner provide documentation that (1) the terms of the misdemeanor conviction have been satisfied and (2) that he reported the conviction, if necessary, when applying for his California salesperson's and broker's licenses.

On Petitioner's California real estate salesperson's license application dated 8/22/97, Petitioner answered "yes" to the question, "Have you ever been convicted of any violation of law?" (You may omit any traffic violation where the disposition was a fine and the amount was \$100 or less.) Petitioner disclosed his 6/21/94 DUI conviction.

On Petitioner's California real estate broker's license application, dated 3/3/03, Petitioner disclosed that his salesperson's license was temporarily suspended. Petitioner also answered "yes" to the question "Have you ever been convicted of any violation of law?"

Petitioner's application provides that all the judgments/liens identified since Petitioner's application was filed was either satisfied or removed from the credit report except a debt to Braiton Buckingham Marina,

which Petitioner first stated was removed from the credit report but later stated that it was identified in error.

The Commission considered Petitioner's application at its 2/22/13 meeting. According to the minutes of the meeting, Petitioner was present at this meeting and answered questions from Commission members. The minutes of the meeting state in part:

Commissioner Arakaki asked Mr. LaFrance about his memory loss issue and if it will affect him as a real estate agent. Mr. LaFrance responded that he remembers events and he doesn't think that it will be an issue as a real estate agent. . . .

The Chair questioned Mr. LaFrance why he did not disclose on his Hawaii application his prior conviction and license suspension when he had made these disclosures on his California application for license. Mr. LaFrance responded that he dropped the ball in doing so.

According to the minutes of the 2/22/13 meeting, the Commission voted unanimously to deny Petitioner's application based on Hawaii Revised Statutes ("HRS") §§467-8, 436B-19(1) and 436B-19(12).

By letter dated 2/25/13, Petitioner was informed that the Commission denied his application for a real estate broker's license.

Petitioner admitted that he incorrectly answered questions on his application but stated that he did not intentionally mislead or cover up. Petitioner stated that he had just gotten through one of the worst times in his life – he lost everything he worked for in 2008 – and simply forgot about the DUI conviction. Petitioner had fallen down a flight of stairs and hit his head a couple of months before he filed his application in 2009, and believes that it affected the way he filled out the application. Petitioner also feels that he

Administrative Actions (cont. from page 7)

November 2013

has done his best to follow through and take care of the concerns raised by the Commission. Petitioner admits he was in error and apologizes to the Commission.

Order:

The Hearings Officer recommends that the Commission find and conclude that it did not act improperly by denying Petitioner's application for a real estate broker's license.

Violations:

HRS §§ 467-8(a)(3), 467-20, 436B-19(1), 436B-19(2), 436B-19(5), 436B-19(12), 436B-19(13), 436B-19(14)

Ronald Gordon Wright

Broker – RB 14853

Case No. REC 2013-128-L

Dated 11/27/13

Allegations: Respondent pled guilty in the Superior Court of California, County of San Diego, to the crime of driving under the influence. The conviction was disclosed in writing to the Commission on or about 12/26/12 via a letter and the license renewal application. The Respondent asserted that he fulfilled all Court-imposed terms and conditions of the conviction.

Sanction: Pay a \$500.00 administrative fine.

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

December 2013

BPG Hawaii, LLC dba

Bridge Real Estate and

Deborah Oakley-Melvin

Broker – RB 20478

Broker – 20631

Case No. REC 2012-75-L

Dated 12/20/13

Allegations: On or about 12/7/12, a judgment in the amount of \$3,401.66 was entered against BPG in Hawaii District Court of the Second Circuit, Small Claims Case No. 11-1-0452, a lawsuit concerning unpaid real estate commissions.

Sanction: Both BPG and Oakley-Melvin pay a \$200.00.

Violation: HRS §436B-16

RICO further alleges that neither BPG nor Oakley-Melvin reported the judgment to the Commission.

The judgment was later the subject of a settlement agreement between BPG and the petitioner in the Small Claims case above.

Catherine Martin Sequist

Salesperson – RS 35020

Case No. REC 2013-176-L

Dated 12/20/13

Allegations: Respondent pled no contest in the District Court for the Third Circuit, State of Hawaii, to the crime of driving under the influence (hereafter "Conviction").

Sanction: Voluntary revocation of license

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

The Respondent disclosed the Conviction in writing to the Commission on or about 4/8/13 via a letter that included copies of court documents related to the Conviction.

The respondent fulfilled all Court-imposed terms and conditions of the Conviction.

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 §467-8(a)(3)	No license, registration, or certificate under this chapter shall be issued to any person who does not possess a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing
HRS §467-20	False statement
HRS §436B-16	Notice of judgments, penalties
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(2)	Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements.
HRS §436B-19(5)	Procuring a license through fraud, misrepresentation, or deceit.
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(13)	Revocation suspension, or other disciplinary action by another state or federal agency against a licensee or applicant for any reason provided by the licensing laws or this section;
HRS §436B-19 (14)	Criminal conviction.
HRS §436B-19(17)	Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.

Assistance Animals and the Landlord Tenant Code

Scott Sherley, Broker, Commissioner, Big Island

Act 206 of the 2013 Hawaii Legislative Session amends Hawaii Revised Statutes ("HRS"), Chapter 521, the Hawaii Residential Landlord-Tenant Code. Act 206 provides for security deposits that include an additional amount to pay for damages caused by any pet animal, **except for assistance animals**, allowed to reside in the premises pursuant to the rental agreement. The new law applies to rental agreements entered into on or after November 1, 2013.

One key to this legislation is the term "except for assistance animals", meaning you cannot charge a security deposit for an Assistance Animal, nor can you deny occupancy of a prospective tenant with an Assistance Animal. Hawaii law is fairly liberal regarding this type of animal, but there is a need to clarify the differences since there are two Federal Laws that affect what this type of animal is.

Under the Americans with Disabilities Act ("ADA") (Amended March 15th 2011), service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties.

Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support **do not qualify** as service animals under the ADA. In addition to the provisions about service dogs, the Department of Justice revised ADA regulations with a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. However, these are the rules under the ADA, which is for public accommodations such as restaurants, banks, real estate offices etc. This does not change what is allowed as an assistance animal under Federal Fair Housing law. Persons with a disability may have an "Emotional Support Animal". The Dept. of Justice in their memo announcing the change to Service Animals in their official memo clarified that the new rules under the ADA do not change the definitions of service animals under the Federal Fair Housing Act. If a prospective tenant has a valid Emotional Support Animal, they cannot be denied a rental because of the animal nor can the landlord charge an additional security deposit as noted in ACT 206. Care should also be given on how you handle this situation should it occur. You MAY Ask:

Is this a Service Animal?

(cont. on page 10)

Assistance Animals and the Landlord Tenant Code

(cont. from page 9)

What task does this Service Animal provide?

YOU CANNOT:

- *Require special identification for the animal*
- *Ask the person's disability*
- *Charge additional fees*
- *Refuse admittance, isolate, segregate or treat less favorably.*

A person with a disability cannot be asked to remove the service animal
UNLESS:

- *The animal is out of control and the owner does not take effective action to control the animal*
- *The animal possess a direct threat to the health and safety of others*

You may also request verification from the tenant as to the Assistance Animal, such as a form filled out by the prospective tenant's medical provider. Make sure you have an Office Policy in place on how to deal with these situations and request forms reviewed by your attorney. Handling the situation the correct way, and keeping up with Federal and State laws will help keep you out of trouble.

Scott A Sherley, REALTOR is a Continuing Education Instructor specializing in Fair Housing, Americans with Disabilities Act and Property Management courses. He is a broker and the Real Estate Commissioner representing the Big Island.

Update on Act 326 By Department of Taxation

Act 326, Session Laws of Hawaii 2012, required both operators of transient accommodations and associations of unit/apartment owners or planned community associations ("associations") to report certain information. Operators must report their information to their association by March 31, 2014, and must update that information within 60 days of a change. Associations must report their information to the Department of Taxation by April 30, 2014, and must update that information by December 31 or within 60 days of a change, whichever is later, for this year and subsequent years going forward.

Associations must use the website located at <https://dotax.ehawaii.gov/resreport> to report the required information to the Department of Taxation. In order to use the website, an association must create or already have an ehawaii.gov account. The website allows associations or their agents to create unique accounts to report and update the information related to units used as transient accommodations. The website also allows users to manage access to the reported information. Please visit the website and see Department of Taxation Announcement No. 2014-02 for further information.

2014 is A Renewal Year - Early Reminders

SMART Deadline:

Complete the required 20 hours of continuing education ("CE") (15 hours of elective CE courses and 5 hours of the Commission's Core Course) before November 30th, 2012, and submit the license renewal application ONLINE. The Online Renewal went "LIVE" on October 15th. Go to pvl.ehawaii.gov/renewals

If a CE course is completed on November 30th, the CE Provider has 10 days to report the course completions to the Commission. COMPLETE THE REQUIRED CE BEFORE NOVEMBER 30th.

It is highly recommended that the licenses/registrations of the brokerage firm, PB, BICs, and RBOs be simultaneously renewed during early November and prior to renewals of all associating licensees to ensure sufficient time to correct any problems and to ensure successful renewals of associating licensees. If an associating licensee's renewal application is submitted before the renewal applications of the PB, BICs, and brokerage firm, the associating licensee's renewal application may be held in **suspense** until the PB, BIC(s), and brokerage firm have successfully renewed all licenses.

AT RISK to Miss Renewal:

Procrastination in completing the 20 hours of required CE may

impact the successful renewal of your real estate license. If you expect to have a current and active real estate license come January 1, 2013, you must submit your license renewal application before the November 30th deadline. This also assumes you have completed the required CE by the same deadline.

GUARANTEED to Miss Renewal:

Procrastination in completing the required hours of CE and submitting your renewal application after the November 30th deadline is a guarantee that your license will not be current and active on January 1, 2013. Do you have on-going real estate transactions? You will NOT be able to engage in real estate activity. Have transactions on-going? Too bad. Until your real estate license is current and active, all on-going real estate activity must come to a halt.

REMEMBER: by January 1, 2013, licenses which are not renewed are converted to a **forfeited status**. If this conversion takes place, disciplinary action may occur and the consumer may recover all commissions and/or compensations paid. If you engage in real estate activity with a forfeited license, you may face disciplinary action by the Regulated Industries Complaints Office ("RICO").

<http://pvl.ehawaii.gov/rece> - Go to this website to verify your CE history, the specific CE courses you have completed, the number of

(cont. on page 11)

Prelicense Schools

Abe Lee Seminars	808-942-4472
Akahi Real Estate Network LLC	808-331-2008
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
Hawaii Institute of Real Estate, LLC	808-589-0550
Inet Realty	808-955-7653
Property Merchants, Inc. dba All Islands Real Estate School	808-564-5170
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

Continuing Education Providers

Abe Lee Seminars	808-942-4472
Akahi Real Estate Network LLC	808-331-2008
Carol Ball School of Real Estate	808-871-8807
Carol M. Egan, Attorney at Law	808-222-9725
Charfen Institute dba Distressed Properties Institute, LLC	800-482-0335
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
Eddie Flores Real Estate Continuing Education	808-951-9888
Green Building LLC	808-873-2040
Hawaii Association of Realtors	808-733-7060
Hawaii Business Training	808-250-2384
Hawaii CCIM Chapter	808-528-2246
Hawaii Institute of Real Estate, LLC	808-589-0550
Hawaii Island Realtors	808-935-0827
Honolulu Board of Realtors	808-732-3000
Institute of Real Estate Management – Hawaii Chapter No. 34	808-536-4736
Institute of Real Estate Management – National	312-329-6058
Investment Property Exchange Services, Inc.	808-387-4140
Kauai Board of Realtors	808-245-4049
Key Realty School LLC	800-472-3893
Lorman Business Center, Inc. dba Lorman Education Services	715-833-3940
McKissock, LP	800-328-2008
OnCourse Learning Corporation dba Career WebSchool	800-532-7649
Pacific Real Estate Institute	808-524-1505
Property Merchants, Inc. dba All Islands Real Estate School	808-564-5170

2014 is A Renewal Year - Early Reminders (cont. from page 10)

CE hours you have earned, and if you have completed the 20 hours CE required. PBs may also use this site to check on the CE status of their associated licensees.

RENEWAL FEES:

Broker: Corporation, Partnerships, LLC, LLP	\$230.00
Broker: Sole Proprietor	210.00
Salesperson, Broker-salesperson, PB, BIC	180.00
Branch Office	180.00

(Note: Renewal fees include the \$90.00 Compliance Resolution Fund (CRF) fee and a \$40.00 Real Estate Education Fund (REEF) fee, plus the renewal fee.)

Only paper renewals are available for continuing education and pre-license education matters. All pre-license schools, pre-license instructors, CE providers, and CE courses, as well as nationally- or ARELLO-certified CE courses must be re-registered or re-certified, as the case may be, by November 30, 2012. Re-registration and re-certification fees are:

CE Provider	\$190.00
CE Elective Course	75.00
Nationally- or ARELLO-Certified Course	25.00/each 3 hours or portion thereof
Pre-license School	440.00
Pre-license Instructor	190.00
Pre-license Independent Study Course Instructor	50.00
Pre-license Independent Study Course – Salesperson And /Or Broker curriculum	150.00

(Note: There is a \$10.00 restoration fee that should be added on to the above renewal fees if re-registering or re-certifying after December 31, 2012.)

ProSchools, Inc.	800-299-2207
Ralph Foulger's School of Real Estate	808-239-8881
Real Class, Inc.	808-981-0711
Realtors Association of Maui, Inc.	808-873-8585
REMI School of Real Estate	808-230-8200
Russ Goode Seminars	808-597-1111
Shari S. Motooka-Higa	808-457-0156
The CE Shop, Inc.	888-827-0777
The Seminar Group	206-463-4400
TM Education Services	808-268-7473
University of Hawaii Maui College - OCET Real Estate School	808-984-3231
Vitousek Real Estate Schools, Inc.	808-956-2037
West Hawaii Association of Realtors	808-329-4874

State of Hawaii
Real Estate Commission
King Kalakaua Building
335 Merchant Street, Room 333
Honolulu, HI 96813

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2014 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, February 12, 2014
Wednesday, March 12, 2014
Wednesday, April 9, 2014
Wednesday, May 14, 2014
Wednesday, June 18, 2014
Wednesday, July 9, 2014
Wednesday, August 13, 2014
Wednesday, September 10, 2014
Wednesday, October 8, 2014
Wednesday, November 12, 2014
Wednesday, December 10, 2014

Real Estate Commission – 9:00 a.m.

Friday, February 28, 2014
Friday, March 28, 2014
Friday, April 25, 2014
Friday, May 30, 2014
Friday, June 27, 2014
Friday, July 25, 2014
Friday, August 29, 2014
Friday, September 26, 2014
Friday, October 24, 2014
Wednesday, November 26, 2014
Friday, December 19, 2014

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 (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.