

Real Estate Commission Bulletin



Proposed Rule Changes Are Moving Along

The last time Hawaii Administrative Rules (HAR), Chapter 99, “Real Estate Brokers and Salespersons”, was amended was in 2001 via then Lt. Governor Mazie Hirono’s “Slice Waste and Tape” (SWAT) initiative. Fourteen years later, the Real Estate Commission and real estate licensees are seeing the light at the end of the tunnel as far as the proposed rule amendments gaining final approval from the Governor.

What’s up for amendment, deletion, addition? Draft 8 of the proposed rule changes was approved for adoption at its March 2015 meeting by the Small Business Regulatory Review Board shortly after the Real Estate Commission approved Draft 8 at its monthly meeting on Friday, February 27, 2015. The proposed rules will now go to the Attorney General’s Office, and once it passes review, will head to the Governor.

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

§16 99 3 Conduct.

(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.

§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.

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§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).

§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:

- (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.]

The Chair's Message



The Commission's 2015-2016 core course will be on condominiums. This is a very timely and important topic for all real estate licensees, especially with the numerous condominium developments being constructed in the Kaka'ako area.

Just because a Hawaii condominium project is registered for sale in Hawaii doesn't mean that it can be marketed and sold in other states. In many instances, selling Hawaii condominiums in other states requires some type of out-of-state registration in such state. Up until recently, federal law also required the filing of a disclosure document prior to selling new condominium units or subdivisions in any state (subject to certain exceptions). Developers and brokers should be aware of the types of registrations that need to be obtained, as well as the types of disclosures that must be delivered to purchasers, prior to launching a new condominium project for sale.

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INTERSTATE LAND SALES FULL DISCLOSURE ACT: New Condominium Exemption Effective March 25, 2015

The federal Interstate Land Sales Full Disclosure Act of 1968 ("ILSA"), which is under the jurisdiction of the federal Consumer Financial and Protection Bureau ("CFPB") was enacted to protect purchasers from fraudulent sales of subdivided lots that were not developable or lacked the infrastructure for development.

Most developers and real estate brokers are familiar with the ILSA Property Report, which is the disclosure document required to be delivered to purchasers of new condominium units or subdivisions prior to execution of a sales contract for the property. Similar to the Hawaii Developer's Public Report, the purchaser must also sign a receipt for the federal Property Report and the purchaser receives a 7-day rescission period after execution of a binding sales contract. Typically, the Hawaii 30-day rescission period runs concurrently with the 7-day period so the federal rescission period is not an issue.

House Resolution 2600 became law on March 25, 2015 (the "Condominium Exemption"). The Condominium Exemption exempts condominium units from the ILSA registration requirements, including, without limitation, delivery of the Property Report. Developers and the project sales agents will no longer be required to do ILSA filings or deliver Property Reports to prospective purchasers of new condominium projects.

The exemption automatically applies, whether or not the condominium project was previously registered with ILSA or not. In other words, no further action is required from condominium projects in connection with any ILSA filings previously submitted to CFPB. Note that although this permits developers to be exempt from ILSA's more rigorous reporting requirements, the antifraud provisions of ILSA still apply to condominiums.

SALE OF HAWAII CONDOMINIUM PROJECTS OUTSIDE OF HAWAII

Developers of Hawaii condominium projects and project salespersons intending to sell units in the project outside of Hawaii should be aware that the project may need to be registered in the targeted jurisdiction prior to commencing sales. Some states require an application and a copy of the issued Hawaii Developer's Public Report be filed, and other jurisdictions require that the developer complete a lengthy application, which equates to a disclosure report, similar in content to the Hawaii Developer's Public Report. Also, the fees, process of approval and timing of approval vary among the different jurisdictions.

The following summarizes a few of the jurisdictions that are popular among developers for sales of Hawaii projects.

California

California requires registration of an out-of-state land promotion when a person acting as a principal or agent intends, in California, to sell or lease or offer for sale or lease lots, parcels, or interests in a subdivision (including condominium units) situated outside of California, but within the United States. A completed registration is required prior to any such sale, lease or offer.

The California Bureau of Real Estate (CABRE) accepts a copy of the issued Hawaii Developer's Public Report, which must be submitted together with the following:

- Completed Out-of-State Registration Application (RE 626C) signed by an authorized party
- Consent to Service of Process on behalf of developer
- State Certificate of Status issued by the California Secretary of State
- Filing fee

The sales contract for the unit must also contain certain explicit disclosures set forth in the California Business and Professions Code, Section 10249.8, as amended.

Oregon

Oregon law requires that prior to negotiating within Oregon for the sale of a condominium unit located in another state, that the developer files the following items with the State of Oregon Real Estate Commissioner:

- A disclosure statement prepared containing the information set forth in Oregon Revised Statutes ("ORS"), Section 100.655, as amended. In lieu of the disclosure statement, the Commissioner may accept a disclosure report issued or approved by another state or governmental agency and has previously accepted a copy of the issued Hawaii developer's public report for the project.
- A deposit and certain other condominium forms. Note that the Commissioner is authorized to physically inspect the project and charge an hourly fee for the Commissioner's review, approval, inspection, and revision of the filed documents.
- Information required under ORS 100.640, as amended, including without limitation, the recorded declaration, bylaws, condominium map, signed escrow agreement, form of sales contract and title report.
- Copies of all sales pamphlets and literature entering Oregon.

Developers should make careful review of the Oregon out-of-state registration laws since there are also specific disclosures that must be inserted on the information provided.

Washington

Washington does not have a formal out-of-state registration requirement. There are, however, real estate broker and marketing and advertising requirements for out-of-state projects that must be complied with prior to marketing in the state.

It is important to note that in addition to the registration requirements set forth above, these jurisdictions also have detailed marketing and advertising laws, which must be complied with in advertising out-of-state condominium projects in their respective jurisdictions, including the requirement for specific printed disclosures on the materials. Additionally, most jurisdictions require that developers retain a locally licensed broker in order to perform solicitation, sales and marketing, and advertising, in the jurisdiction. As such, developers should carefully review the broker, advertising and marketing requirements in each jurisdiction concurrently with the requirements for registration. Also, Hawaii licensed real estate salespersons should not perform any real estate activities in a jurisdiction in which he or she is not licensed. Real estate licensees should ascertain their responsibility to their clients in seeing their client receives all relevant reports pertaining to their purchase.

(s) Nikki Senter, Chair

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

§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.

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

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

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

§16 99 121 Faculty

(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.

New Rule-Making to Begin Again

The Real Estate Commission will embark on ANOTHER rule-making journey shortly. While the current rule-making process is nearing an end, the Commission believes that there are many other potential amendments and updates that need to be formalized in the Hawaii Administrative Rules. Updates will be provided.

Administrative Actions

January 2015

Estrellita G. Miguel

RB 37030

Case No. REC 2013-87-L

Dated 1/23/15

Findings of Fact:

1. Respondent was originally licensed as a real estate salesperson, License No. RS 37030, on or about September 27, 1985. Said license expired on December 31, 2012 and is currently forfeited.

2. On or about November 16, 2011, a Superseding Indictment was filed in the United States District Court of Hawaii in a case designated as *United States of America vs. Estrellita "Esther" Garo Miguel, et al., Cr. No. 10-00527 SOM* ("Criminal Case").

3. The Indictment charged the defendants, including Respondent, with knowingly conspiring and agreeing with others to commit federal offenses including conspiracy to commit wire fraud and making false statements on loan applications, wire fraud, mortgage loan fraud and money laundering.

4. According to the Indictment, Respondent engaged in a conspiracy the purpose of which was to defraud lending institutions and others by making materially false representations that induced them to engage in and fund loan transactions related to residential properties, and in so doing, to obtain a portion of the funds, as well as to profit from the fees and commissions.

5. On or about June 12, 2012, Respondent entered into a plea agreement in the Criminal Case in which she entered a voluntary plea of guilty to the charges of knowingly conspiring and agreeing with others to commit federal offenses, to wit, conspiracy to commit wire fraud and making false statements on loan applications, wire fraud, mortgage loan fraud and money laundering.

6. Respondent acknowledged, among other facts; that during the period from about September 2003 to 2008, she worked as a loan broker, loan officer and real estate agent while running the business of "Easy Mortgage". During this period, Respondent knowingly prepared and caused to be prepared loan application and origination forms with false information including inflated income amounts and false representations regarding the borrower's intent to occupy the property as a primary residence.

7. On January 14, 2013, Judgment was entered in the Criminal Case.

Final Order: License revocation

Violations: HRS §467-14(20), §436B-19(12), (14)

March 2015

Judy J. Jakobovits, a.k.a. Judith S. Jakobovits, a Real Estate Broker

RB 8521

Case No. REC 2014-129-L

Dated 3/27/15

Allegations:

1. Upon information and belief, on or around 4/18/14, an Information was filed against the Respondent in the United States District Court for the District of Hawaii in United States of America v. Judith Jakobovits, CR. No. 14-00457 SOM. Count 1 of the Information charged the Respondent with money laundering, totaling \$200,000, in violation of federal law, as follows:

On or about May 30, 2013 through August 9, 2013, in the District of Hawaii; the Defendant, JUDITH JAKOBOVITS, with the intent to conceal and disguise the nature, location, source, ownership and control of property believed to be proceeds of a specified unlawful activity, did knowingly conduct and attempt to conduct a financial transaction affecting interstate commerce, involving property represented to be proceeds of a specified unlawful activity, that is the transmission of wagering information[.]

2. On or around 5/5/14, the United States and the Defendant filed a Memorandum of Plea Agreement in the federal proceedings that recited, in part, the following:

6. Defendant enters this plea because she is in fact guilty of Money Laundering as charged in the Infor-

mation, and agrees that her plea is voluntary and not the result of force or threats.

8. Defendant admits the following facts and agrees that they are not a detailed recitation, but merely an outline of what happened in relation to the charges to which Defendant is pleading guilty:

a. On December 2, 2013, in Criminal No. 13-01034 LEK, Allan Yamada (hereinafter "Yamada") pled guilty to the offense of Transmission of Wagering Information, in violation of Title 18, United States Code[.] ... Yamada's criminal charges were based on his role as a Master Agent in an internet gambling organization.

b. On November 7, 2012, Yamada debriefed with the Federal Bureau of Investigation and stated that he paid \$830,000 for his residence and gave his realtor, the Defendant, \$300,000 cash for his down payment. Yamada stated that the Defendant knew that the money was illegal gambling proceeds and she structured the money into a down payment for the purchase of the property.

c. On May 30, 2013, Yamada made a consensually recorded telephone call to Defendant and informed the

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Defendant that he had cash and wanted to buy a house. Yamada informed Defendant that he wanted to set it up like last time when he gave the Defendant cash and she wrote checks to escrow. The Defendant asked Yamada how much money would be involved this time and Yamada stated \$200,000.

d. On June 30, 2013, Yamada made a consensually recorded telephone call to Defendant and informed Defendant that he had \$200,000 from internet gambling and wanted to buy a house using the same procedure as last time. The Defendant stated that if she remembered correctly, she would get 5% and Yamada acknowledged that would amount to \$10,000. The Defendant informed Yamada that she would take the money out of her credit line and it would be available by the 30th. The Defendant told Yamada that he would give her cash and she would put it in her safe and then she would give Yamada a couple of checks. The Defendant stated she would put his cash into her account over time, she could not put \$200,000 in the bank at one time because there would be questions. The Defendant stated she would put \$7,000- \$8,000 in at a time.

e. On July 2, 2013, Yamada participated in a consensually recorded telephone call in which he informed the Defendant that the exchange would be delayed for a week because one of his bookies was on the mainland collecting his money and would be back in a week with the \$200,000 plus Defendant's 5%.

f. On July 10, 2013, Yamada informed the Defendant that he had to take a trip to meet up with his bookie and would be gone for a couple of weeks.

g.. On August 4, 2013, Yamada made a consensually recorded telephone call to the Defendant and informed her that he was back in town and the cash was ready. Yamada informed the Defendant that they could meet next Friday and he would give her the cash and she could give him checks. Defendant asked Yamada if he wanted the checks made payable to him and Yamada told her to make them payable to Charis Escrow Company.

h. On August 8, 2013, Yamada made a consensually recorded telephone call to the Defendant and they agreed to meet the next day at Kahala Mall. The Defendant asked Yamada, "I'm not going to get into any trouble -- none of the bills are marked -- you know what I mean -- the FBI won't be after them."

i. On August 9, 2013, the Defendant met with Yamada at Kahala Mall. Upon entering Yamada's vehicle, the Defendant stated, "I better not get arrested for doing this". Yamada gave the Defendant \$210,000 in cash which he previously represented was proceeds from his internet gambling operation. In exchange for the \$210,000, the Defendant gave Yamada two cashier's checks: (1) Central Pacific Bank Cashier's Check No. 2391326 made payable to Charis Escrow Company in the amount of \$160,000, and (2) American Savings Bank Cashier's Check No 500192760 made payable to Charis Escrow Company in the amount of \$40,000. The Defendant and Yamada discussed how the Defendant should structure the deposits of Yamada's cash back into Defendant's accounts. Yamada indicated that the Defendant deposited the money quickly last time and the Defendant stated she would do it slower this time because she only had three accounts to work with. The Defendant indicated she would deposit,\$8,000, then \$8,000, then \$8,000, and stop every five days. Yamada said he thought the Defendant deposited \$50,000 at a time last time and Defendant stated she never deposited more than \$8,000 at a time for a total of \$40,000 per week, but this time it would take longer. The Defendant said she would never deposit over \$10,000 in a day.

3. Upon information and belief, on or about 9/8/14, a Judgment in a Criminal Case was entered, in the federal proceedings, in which the Respondent pled guilty to Count 1 of the Information.

Sanction: Revocation of License. Respondent agrees to the voluntary revocation of license

Violations: §437B-19(12), (14), (17), §467-14(8), (13), (20)

Darlene Osterman
RS 54233

Case No.
REC-LIC-2013-002
Dated 3/27/15

Factual Findings:

On August 21, 2014, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law, and Recommended Order ("recommended decision") in the above captioned matter to the Real Estate Commission ("Commission"). On October 8, 2014, Respondent filed Exceptions to the Hearings Officer's recommended decision. On December 19, 2014, and January 23, 2015, the Commission reviewed the recommended decision.

Upon review of the record of this proceeding, the Commission adopts the Hearings Officer's Findings of Fact except for FOF Nos. 23 and 26, which it, rejects without replacement, and FOF Nos. 1, 15-19, 22, 25, 27, 30, 33-35, and 37, which it modifies to read as set forth below. The remaining findings of fact are set forth sequentially without substantive change. The Commission further rejects and modifies the Conclusions of Law to read as set forth below.

I. INTRODUCTION

Ms. Darlene Osterman (hereinafter "Petitioner") is challenging the denial of her application for a Real Estate Salesperson's License.

By letter dated September 27, 2013, Petitioner was notified of the denial of her license application and right to request a contested case. By letter dated November 26, 2013, Petitioner appealed this decision and requested an administrative hearing.

A notice of Pre-Hearing Conference was transmitted to the parties and a Pre-Hearing Conference was held on April 7, 2014. A Prehearing Order was issued on April 8, 2014, and an Amended Prehearing Order was issued on May 22, 2014.

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On June 10, 2014, a hearing was conducted by the Senior Hearings Officer. Petitioner represented herself at the hearing.

Petitioner presented her case herself and called Ms. Marion Libbie Kamisugi as a witness. Ms. Kamisugi testified by telephone. Respondent called Mr. David J. Grupen as a witness.

II. FINDINGS OF FACT

I. On July 22, 2013, Petitioner submitted her application for a Real Estate Salesperson's license to the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs (hereafter "PVL"). Her application included ten favorable unsigned letters and emails of reference that appear to have been assembled by Petitioner. Her application also included a letter by Petitioner dated July 22, 2013, in which she describes her understanding of a lawsuit filed against her. According to Petitioner,

In 1994, there was a complaint filed against my broker, another agent in the company and myself. The client was being represented by the other agent in my firm and bought a condo listed my (sic) me. When he tried to sell the condo several years later, he was not able to get the same price he had purchased it for. The economy had slumped since the condo was bought in 1983. He said the price he had originally paid was too high. At the time all appropriate market studies had been done and the price was competitive. He (sic) suit was completely unfounded. Unfortunately, the jury had little or no experience in real estate and ruled against us.

Emphasis added.

2. By letter dated August 2, 2013, PVL informed Petitioner that her application was incomplete. On her application, Petitioner responded "YES" to question # 1: "Are you taking this examination for the purpose of reinstating or restoring a Hawaii real estate license?" PVL's letter of August 2, 2013, informed Petitioner that she was not eligible to reinstate or restore a prior license, stating that:

You are NOT eligible to reinstate or restore your license and you are applying as a new applicant. Submit a written letter that #1 was answered in error and should be "NO". (Emphasis in original)

3. In accord with the PVL letter of August 2, 2013, Petitioner submitted a letter dated August 7, 2013, correcting the error on her original application and stating that she was "applying as a new candidate."

4. Petitioner previously held a Hawaii Real Estate Salesperson's license, License No. 25638, which was set to expire on December 31, 1992.

5. A disciplinary proceeding, REC-92-60-L, was instituted against Petitioner's broker, Marion Libbie Kamisugi, her broker's company, Libbie & Company, Inc., Petitioner, and salesperson Clyde H. Allison.

6. In the Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Order filed October 20, 1993, in that disciplinary proceeding, the Hearings Officer concluded that Petitioner violated §§ 467-14 (1), 467 -14(8), 467-14(13), Hawaii Revised Statutes ("HRS") and two sections of the Hawaii Administrative Rules. The Hearings Officer recommended that Petitioner's license be suspended for one

year (and also recommended that Allison's license be revoked and Ms. Kamisugi's license and the brokerage company's license be suspended for two years).

7. A large part of the basis for the Hearings Officer's Recommended Order was a Circuit Court case entitled Heinz W. Kuhnert and Sheryllyn Marie Kuhnert v. Clyde H. Allison, et al., Civil No. 88-3197, wherein the jury found Petitioner liable for fraudulent misrepresentation or fraudulent concealment. The judgment in that case was affirmed by the Hawaii Supreme Court in 1992.

8. The Commission issued a Final Order in REC-92-6-L, filed March 1, 1994, and ordered that Mr. Allison's license be revoked, that Petitioner's license be suspended for one year, that Ms. Kamisugi's license be suspended for two years, and that the brokerage company's license be suspended for two years.

9. The effective date of Petitioner's one year license suspension was January 28, 1994.

10. Ms. Kamisugi and her brokerage company appealed the Commission's Final Order to the First Circuit Court. The Court affirmed the Commission's Final Order by an Order filed June 4, 1997. Petitioner did not appeal the Commission's Final Order to Circuit Court.

11. Ms. Kamisugi regained her license after her suspension period concluded. Based on the information supplied by Petitioner in her 2013 license application, the Commission knew or should have known that Ms. Kamisugi was licensed after her suspension period concluded.

12. Petitioner, however, moved to the mainland and/or was otherwise employed and did not seek to be licensed again until her application in 2013. Petitioner's previous license was forfeited on December 31, 1994.

13. By letter dated September 20, 2013, PVL notified Petitioner that her license application was coming before the Commission on September 27, 2013. Petitioner attended the Commission meeting on that date.

14. Petitioner's application was considered by the Commission that day in executive session. Petitioner was present at the beginning of that executive session. Mr. Dave Grupen, real estate specialist for PVL, was also present at that session.

15. Petitioner was excused from that executive session before the Commission discussed her application. Mr. Grupen remained with the Commission in executive session while it discussed her application.

16. The Commission has written minutes of the executive session meeting with Petitioner on September 27, 2013. A copy of these minutes were provided to Petitioner on June 2, 2014, the deadline set by the Hearings officer for the exchange of proposed exhibits in this present proceeding.

17. The executive session minutes for September 27, 2013 reflect the discussion during executive session between Respondent and Commissioners. The executive session minutes do not include any discussion on the decision the Commission would make regarding her ap-

(cont. page 8)

Administrative Actions (cont. from page 7)

plication because the Commission does not make decisions during executive session.

18. Mr. Grupen did not prepare the minutes of the executive session.

19. There was no tape recording of any portion of the executive session because the Commission does not tape record its meetings.

20. If there were any handwritten notes of these executive sessions, there was no evidence that such handwritten notes are still in existence.

21. The executive session minutes state in part: Commissioner Faulkner commented that the unit should have been based on an actual appraised value at that time vs. utilizing the appraised value of a comparable condo. Ms. Osterman agreed but had no further comment.

22. Mr. Grupen testified that Petitioner responded to Commissioner Faulkner that an appraisal would have been a good idea.

23. INTENTIONALLY LEFT BLANK

24. Petitioner's memory of the executive session was not completely clear because in her testimony at the hearing herein she confused the questioners at the executive session and thought Mr. Faulkner had asked all the questions when he had only asked some of the questions and Ms. Senter had also asked questions. However, Petitioner clearly testified that she recalled that the final question at the executive session pertained to the Circuit Court lawsuit and responded about obtaining separate representation.

25. The executive session minutes also state in part: Chair Senter asked Ms. Osterman if she had any regrets and/or if she could, what would she have done differently. Ms. Osterman indicated that she had no regrets and would have done things the same.

26. INTENTIONALLY LEFT BLANK

27. Mr. Grupen's memory as to whether Petitioner "indicated" she "would have done things the same" is not clear. He testified that he could not say at the hearing "word for word" what Petitioner said and could only testify to the extent he could remember.

28. In response to Petitioner's assertion that she did say in executive session that she would have done something differently by obtaining separate representation in the Circuit Court lawsuit, Mr. Grupen's memory was again not clear because he remembered Petitioner mentioning an attorney but, could not recall the context in which that was said.

29. OMITTED IN ORIGINAL.

30. Mr. Grupen testified that the basis of the Commission's decision to deny Petitioner's application was that Petitioner would not have done anything differently. Mr. Grupen testified somewhat confusingly that Petitioner stated at the executive session that she could have done something differently but her final answer was that she would not have done anything differently.

31. Following that executive session, the Commission voted in public session to take the matter under advisement. Later on during that same public meeting, the Commission voted to deny Petitioner's application.

32. Petitioner called Mr. Grupen in the afternoon on September 27, 2013, to inquire about the results of the Commission's meeting, but Mr. Grupen was not available when she called.

33. The Commission's minutes of its meeting on September 27, 2013 incorrectly state at page 3 that Petitioner was applying for a real estate broker's license. Petitioner was instead applying for a real estate salesperson's license.

34. The minutes were reviewed and approved by the Commission at its next regular meeting.

35. The minutes were corrected on May 30, 2014, after Respondent discovered the error while preparing for the hearing in this matter, and notified the Commission.

36. By letter dated September 27, 2013, PVL informed Petitioner that her application was denied by the Commission. The letter was signed by Mr. Grupen on behalf of the Commission.

37. The letter of September 27, 2013, stated that Petitioner's license application had been denied based on the following statutes: HRS §§ 467-8(3), 467-14(20), 436B-19(7), (8), (11), and (12).

38. Mr. Grupen called Petitioner back in the week after Petitioner received the letter of September 27, 2013. Petitioner told him at that time that she had already seen the September 27, 2013, letter. During this telephone conversation, they briefly discussed the decision, and Petitioner understood the decision was based on the fraud claim in the Circuit Court lawsuit. Mr. Grupen did not testify otherwise, and there is no evidence that Mr. Grupen informed Petitioner that her "no regrets" statements in the executive session were a basis for denying her application.

39. In a telephone conversation shortly after the Commission denied Petitioner's application, Petitioner asked Mr. Grupen what she could do about the denial of her application. He responded by informing her that she could appeal.

40. During the June 10, 2014 hearing herein, Petitioner testified that she was allegedly not represented by her attorney in the Circuit Court lawsuit. Ms. Karnisugi subsequently instituted a malpractice lawsuit against that attorney that resulted in a settlement. Although not a party to that lawsuit, Petitioner believed that she was a party to some sort of settlement with her former attorney and signed a settlement agreement containing a confidentiality clause prohibiting her from discussing the settlement.

41. Petitioner also testified during the June 10, 2014 hearing herein that the opposing counsel in the Circuit Court lawsuit was subsequently disbarred. However, Petitioner admitted that, to her knowledge, the disbarment had nothing to do with events in the Circuit Court lawsuit against Petitioner.

(cont. page 9)

Administrative Actions (cont. from page 8)

III. CONCLUSIONS OF LAW

Respondent's objection to Petitioner's Exhibits 1, 5, and 6 are sustained. The documents were not presented to the Commission for its consideration in its decision to deny Petitioner's application for a license. See HAR § 16-201-32.5.

Petitioner's references to the malpractice lawsuit against her former attorney were also not sufficient to call into question the Circuit Court judgment insofar as it pertained to Petitioner. Ms. Kamisugi made the settlement of the malpractice lawsuit an important part of her request and even went so far as to try to have the confidentiality provision of the settlement agreement abrogated for purposes of demonstrating her point to the Commission. The Hearings Officer can accept that Petitioner was part of a settlement with her former attorney even though she was not actually a party to the malpractice lawsuit, but she made no effort to obtain a limited waiver of the confidentiality provision in order to present the settlement document in her own hearing. Petitioner did not submit evidence of any facts or circumstances particularly relating to her own situation that would justify a conclusion that the Circuit Court judgment against her could be called into question.

Further, Petitioner did not demonstrate that any disciplinary action later taken against the plaintiffs' attorney in the Circuit Court lawsuit was related in any way to the Circuit Court judgment against Petitioner such that the judgment against her could be called into question.

The denial letter of September 27, 2013 specifically relies upon HRS § 467-8(a)(3) as a basis for the denial of Petitioner's application. That statute, entitled "Prerequisites for license, registration, or certificate," states as follows:

(a) No license, registration, or certificate under this chapter shall be issued to:

(3) Any person who does not possess a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.

Approximately twenty years ago, Petitioner's license was suspended for one year. At that time, the Commission revoked the license of Petitioner's fellow salesperson, so the Commission certainly concluded Petitioner's actions did not warrant a revocation of her license. Having only suspended Petitioner's license and having allowed Petitioner's broker to resume her licensing status after her own two year suspension expired, the basis for denial of Petitioner's current license application must be something other than, or in addition to, the historical fact that she received a one year suspension some twenty years ago and the historical facts that were the basis for that suspension.

Furthermore, it is clear from the testimony of Mr. Grupen that the Commission was not revisiting its March 1, 1994, order and automatically turning a one year suspension twenty years ago into a permanent lifetime licensing ban. The testimony demonstrated that the Commission's decision was not based solely on the historical record of over twenty years ago that culminated in the suspension order of March 1, 1994. This was confirmed in the opening statement made at the hearing process herein by Ms. Fukumura that the Commission's decision was based on the prior disciplinary record and that, when asked, Petitioner said she had no regrets and would do the same thing again.

However, neither the denial letter of September 27, 2013, nor the Commission's minutes of its public meeting on September 27, 2013, state any factual basis for applying HRS § 467-8(a)(3) to Petitioner.

In Section IV, recommendation no. 2, page 18 of the recommended decision, the Hearings Officer recommended that the Commission articulate its decision to deny Petitioner's application. The Commission recognizes that the Hawaii Supreme Court affirmed the civil judgment in which Petitioner was found to be liable for fraudulent misrepresentation or fraudulent concealment. FOF No. 7. However, Petitioner continues to assert that the civil action was "completely unfounded". FOF Nos. 1, 7. Instead of acknowledging that her actions were viewed and considered fairly by the judicial system, Petitioner blamed the jurors for having "little or no experience in real estate", resulting in the ruling "against us." FOF Nos. 1, 7. Petitioner also blamed her attorney and claimed she should have obtained separate representation in the Circuit Court lawsuit. FOF Nos. 24, 28.

Petitioner's appearance and testimony before the Commission on September 27, 2013, further demonstrated her failure to appreciate a real estate licensee's responsibilities regarding the differences in obtaining an actual appraised value of a property at that time instead of relying upon the appraised value of a comparative condo. FOF No. 21. Regardless of whether or not Petitioner used the word "regrets", the Commission ultimately determined that Petitioner would not do anything differently in the future. FOF No. 30. The Commission's denial is not based on Petitioner's past conduct for which she was sanctioned, but on its belief that she would repeat such misconduct. The Commission was concerned by Petitioner's current lack of insight to the seriousness of her actions in this transaction, and her failure to appreciate or even acknowledge her role and responsibilities as a real estate licensee to exercise due diligence in protecting a consumer client's interest.

Despite the affirmation of the civil judgment by the Hawaii Supreme Court, Petitioner refused to accept the significance of the court's findings. The Commission concluded that Petitioner's present lack of personal responsibility and insight to her own actions constituted grounds to deny her application for licensure pursuant to HRS §§436B-19(7) (professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation), (8) (failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity), (9) (engaging in a business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public), and (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).

For these reasons, the Commission upholds its denial of Petitioner's application based on HRS §§ 436B-19(7), (8), (9), and (12).

Regarding the Hearings Officer's conclusions about executive session minutes, the Commission concludes that the executive session minutes reflect the discussion during executive session, as required by HRS § 92-9. This statute states in part that "neither a full transcript nor a recording of the minutes is required". Minutes need not be ver-

(cont. page 10)

Administrative Actions (cont. from page 9)

batim and, although the Hearings Officer suggested that the minutes of the executive session appear incomplete, the executive session minutes do not include any discussion on the decision the Commission would make regarding her application because the Commission does not make decisions during executive session. FOF No. 17. As Respondent cited in her Exceptions to the recommended decision, pages 11-12, "OIP applied HRS § 92-9 and concluded that the primary purpose of meeting minutes is to reflect board action, not what was

said during the meeting." OIP Opn. Ltr. No. 03-13. Thus, the Commission concludes that the executive session minutes comply with the requirements of HRS § 92-9.

Order: Deny Petitioner's application for license

Based on HRS §§436B-19(7), (8), (9), and (12)

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 §467-14(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.
HRS §436B-19(7)	Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation.
HRS §436B-19(8)	Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity.
HRS §436B-19(9)	Conduct or practice contrary to recognized standards of ethics for the licensed profession or vocation.
HRS §436B-19(12)	Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license.
HRS §436B-19(14)	Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation.
HRS §436B-19(17)	Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.

Informal Non-Binding Interpretations Issued by Commission

At its Friday, February 27, 2015 meeting, the Hawaii Real Estate Commission ("Commission") issued the following informal, non-binding interpretations:

1) Pursuant to a written request as to whether a team name may be used in addition to identifying the licensee's associating or employing brokerage firm, the Hawaii Real Estate Commission ("Commission") concluded that as long as the "Team Name" is advertised in addition to and is NOT a replacement of the brokerage firm's name, as licensed by the Commission, it meets the requirement of the rule. Hawaii Administrative Rules §16-99-11(a) provides that "all real estate advertising and promotional materials shall 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."

2) Pursuant to a written request as to whether a duly licensed Hawaii real estate broker may continue to act as Broker-in-Charge of a duly licensed Hawaii real estate brokerage firm from California, the Commission concluded that in order to meet the Hawaii Administrative Rules, §16-99-2 definition of broker in charge ("BIC") as "an individual broker licensee designated by the principal broker as the broker directly in charge of and responsible to the principal broker for the real estate operations conducted at the principal place of business or a branch office" the BIC must be physically present within the state. Therefore, the BIC shall not act as a BIC from California.

CE Disclaimer

Attention: Continuing education courses are approved by the Hawaii Real Estate Commission. Real estate licensees may complete these continuing education courses for credit in order to renew or restore their Hawaii real estate license.

Not all approved continuing education courses include information on Hawaii laws and rules relative to the topic of the course. Topics of national interest will not necessarily cover Hawaii laws and rules, and may be generic in coverage.

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

Continuing Education Providers

Abe Lee Seminars	808-942-4472
All Islands Real Estate School	808-564-5170
American Dream Real Estate School LLC	720-322-5470
American School of Real Estate Express, LLC	866-739-7277
Carol Ball School of Real Estate	808-871-8807
Carol M. Egan, Attorney at Law	808-222-9725
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
Hawaii Association of Realtors	808-733-7060
Hawaii Business Training	808-250-2384
Hawaii CCIM Chapter	808-528-2246
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
International Association of Certified Home Inspectors (InterNACHI)	303-502-6214

Welcome to Dathan



The Real Estate Branch (“REB”) welcomed Dathan Choy as a new condominium specialist on January 26, 2015. Dathan was a tax consultant with Deloitte & Touche before joining REB. He also worked as a budget analyst for the Ways and Means Committee at the 2013-2014 legislative session.

Dathan graduated from Punahou School, Honolulu, HI, and earned a Bachelors of Science degree at the University of Oregon and a Masters of Accounting at the University of Hawaii, Manoa.

In his leisure time, Dathan enjoys swimming 1.25-2 miles / day, cooking, trying new restaurants, watching TV, and spending time with friends.

Welcome aboard, Dathan!

Kama'aina Realty LLC, dba RP Seminars Unlimited	808-753-3083
Kauai Board of Realtors	808-245-4049
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
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
Servpro Industries, Inc.	615-451-0200
Shari S. Motooka-Higa	808-457-0156
The CE Shop, Inc.	888-827-0777
Vitousek Real Estate Schools, Inc.	808-946-0505
West Hawaii Association of Realtors	808-329-4874



Welcome to Bee

The Real Estate Branch also extends a warm welcome to Kietsuda Soontornsatienchai, an office assistant on the real estate side of the office. Better known as “Bee”, she was previously an office assistant with the Licensing Branch, and handled real estate-related submissions.

Bee is a native of Thailand, and graduated from Siam University with a BA in English Business Communication. In her leisure time, she enjoys going to the beach, cooking, hiking, watching movies, and bbq-ing with friends!

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Real Estate Commission
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2015 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, May 13, 2015
Wednesday, June 10, 2015
Wednesday, July 8, 2015
Wednesday, August 12, 2015
Wednesday, September 9, 2015
Wednesday, October 7, 2015
Tuesday, November 10, 2015
Wednesday, December 2, 2015

Real Estate Commission – 9:00 a.m.

Friday, May 29, 2015
Friday, June 26, 2015
Friday, July 24, 2015
Friday, August 28, 2015
Friday, September 25, 2015
Friday, October 23, 2015
Wednesday, November 25, 2015
Friday, December 18, 2015

*The June 10, 2015 committee meetings will be held on Kauai at the Grove Farm Building Conference Room, 3-1850 Kaunualii Highway, Lihue, Hawaii.

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at www.hawaii.gov/hirec or call the Real Estate Commission Office at 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at 586-2643 to submit your request.

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