

School Files

Hawaii Real Estate Commission

October 2015

www.hawaii.gov/hirec

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REMINDERS!

Please submit the 2015-2016 CORE A course evaluations to the Real Estate Branch.

Please also submit the prelicense course evaluations for all online course offerings (or alternative delivery classes) to the Real Estate Branch.

CONTINUING EDUCATION COURSE MONITORING

Course monitoring is conducted on a random basis, and is dependent on a course monitor requesting to monitor a specific continuing education course. At this time, the Commission does not have a course monitoring schedule. The course monitor will receive course credit for monitoring the course, and the credit is input into his or her CE history by the Real Estate Branch, not by the Continuing Education Provider who offered the monitored course.

The course monitor receives an evaluation form to be completed and submits the completed evaluation to the Real Estate Branch when done.

The Continuing Education Provider is notified in writing that the specific course will be monitored. The provider is instructed to let the course instructor know that the monitor is not to be acknowledged during the course.

According to Hawaii Administrative Rules (“HAR”) §16-99-119, “Review, evaluation, and investigation. . . . With or without any prior notice, the commission may conduct a review, evaluation, or investigation of a course offering or a registered continuing education provider’s operations and performance. A review, evaluation, or investigation may be conducted by any means including but not limited to surveys, observations, physical inspections, and on-site monitoring, as well as interviews with providers, owners, administrators, instructors, and students. . . .”

If the course monitor observes that the provider is not following the rules pertaining to verifying licensee identification upon entering the course, the signing in and out of attendees during the course, allowing any students to enter the course late, or leaving before the course was completed, or that the course’s instructional time was

not at least as long as the number of credit hours given, the Real Estate Branch will follow-up in writing with the provider regarding the comments and observations. The provider is asked to remedy the problem(s), if any.

In the past, course monitors have included members of the Real Estate Commission and Real Estate Branch staff. They are few and far between. The Commission has not put out an all-points bulletin to recruit course monitors, nor is it expected that the Commission will. If information is received in writing that a CE Provider is cutting short its courses, a monitor may be asked to sit in on one of the Provider's offerings. The Real Estate Branch HAS "heard" of this practice, but to date, no specific information has been received.

At its Education Review Committee ("ERC") meeting held on Kauai in June, 2015, the ERC members agreed to individually select an online continuing education course to monitor. This will be done by the end of 2015 (original suggestion was to complete the monitoring by September, 2015). The suggestion was made during a discussion that noted that while most licensees appear to prefer to take the Commission's core courses in a live classroom format, when it is nearing the license renewal deadline (November 30th), more licensees will take online CE, including the core course.

If you, as a CE Provider, are concerned that you are being targeted by CE course monitors, please rest assured that you are not. Often, the monitor resides on a Neighbor Island, for example, so it is only natural that the courses selected for monitoring will be offered by that island's providers.



RECORDS RETENTION

What to Keep and For How Long

Real Estate Brokerages

Let's start with the "place of business" as defined in the Hawaii Administrative Rules ("HAR"), Chapter 99. Included in this lengthy definition is the following: ". . . on-site maintenance of confidential clients' files which shall be immediately accessible to the commission upon request; . . . the on-site maintenance of personnel and compensation records on all real estate salespersons and broker-salespersons employed by or associated with the brokerage firm. Client files as used in this definition includes but is not limited to: *real estate contracts, escrow records, trust account records, and confidential client data.*" (emphasis added)

HAR §16-99-3(n) states, "A brokerage firm shall maintain a principal place of business located in this State at a business address registered with the commission from which the brokerage firm conducts business and where the brokerage firm's books and records are maintained."

HAR §16-99-4(b) states, "Every brokerage firm shall retain for *at least three years* (emphasis added) records of all trust funds which the brokerage firm has received. . . . *The three-year requirement shall be for real estate license law purposes only. The brokerage firm may be required to keep records for a longer period of time for other purposes.* (emphasis added) The records shall be kept in Hawaii in accordance with standard accounting principles and shall clearly indicate the following:

- (1) Names of the persons from whom funds are received, for whom deposited, and to whom disbursed;
- (2) Dates of receipt, deposit, withdrawal, and disbursements, and amounts received, deposited, withdrawn, and disbursed;

- (3) Description of the trust fund and the purpose for its establishment;
- (4) Purposes for the money; and
- (5) Other pertinent information concerning the trust fund transactions.”

(Note: The definition of “trust properties” in §16-99-2, “includes funds in the form of cash or checks and personal property, other than cash or checks, received by the licensee to be held in trust for the benefit of the depositor of the property or for the benefit of third persons, or both.”)

HAR §16-99-4(f) states, “The principal broker or broker in charge shall retain for *at least three years* (emphasis added) records of all personal property other than trust funds coming into the possession of the principal broker or broker in charge as trustee. All records of the personal property held in trust shall be subject to inspection by the commission or its representative and kept in the State at the place of business. The records shall clearly indicate the following:

- (1) Date of receipt of the personal property to be held in trust;
- (2) A description of and the type of trust property received;
- (3) From whom the personal property held in trust was received;
- (4) For whose benefit the personal property is being held in trust; and
- (5) The date and to whom the personal property is to be delivered.”

HAR §16-99-4(l) states, “Information about escrow accounts and records for real estate transactions under the real estate brokerage firm shall be retained for *at least three years . . .*” (emphasis added)

In summary, real estate transaction-related records and real estate brokerage records shall be retained for at least three years. Records of trust properties received must be clearly documented, and kept in the State at the place of business. Records must be immediately accessible by the Commission if so requested. Often, inquiries are made as to whether or not these records may be electronic. The current rules do not specify in what format records must be maintained. The records must be “immediately accessible” at the “place of business.”

Prelicense Schools

HAR §16-99-62, “Records. (a) Each school shall maintain records on the following:

- (1) Class attendance of each student;
 - (2) Tuition and other charges collected from each student;
 - (3) The names of the students to whom it issued a certificate of completion, the course for which the certificate of completion was issued, and the date when the certificate of completion was issued; and
 - (4) The qualifying exams administered for purposes of issuing a school completion certificate of completion.
- (b) These records shall be maintained for *a three-year period*, shall be current, and shall be available for inspection by the commission.” (emphasis added)

Continuing Education Providers

HAR §16-99-112(a), Record keeping information and retention period. “A real estate continuing education provider shall maintain for a period of *at least four years* (emphasis added) records of course offerings (including names of instructors, dates of and locations of course offerings), student attendance, student registration, course completions, and personal information and resumes of its instructors and administrators. Each student records shall include, at a minimum, the following:

- (1) The student’s name, address, real estate license number, license status, continuing education course completion information including course and instructor names, course offering number and date, and whether

the student completed the course, course completion certificate number, and amount of approved clock hours of continuing education credits earned; and

- (2) Proof of actual course attendance including a verified sign-in and sign-out attendance sheet or a student certification statement in the case of a continuing education course offered by alternative delivery methods with interactive instructional techniques. The sign-in and sign-out sheet may be kept in another location other than the student’s records, provided that reference to such location shall be made in each student’s record. The name, address, and phone number of the individual who verified the student’s attendance shall also be noted in the student’s record.”



2015 LEGISLATIVE UPDATE

The following 2015 real estate-related legislation is part of the Commission’s 2015-2016 Core Course, Part A.

The bills are arranged numerically by House and Senate followed by bill titles (which are not always descriptive of a bill’s contents) and a brief description. Copies of the bills and committee reports can be viewed at the Hawaii Legislature’s website <http://www.capitol.hawaii.gov>.

| Bill Number | Title | Explanation |
|--|--|--|
| HB169 HD1 SD1 CD1 ACT 93 | RELATING TO TAXATION. Effective January 1, 2016. | Amends the definition of fair market rental value. Increases the transient accommodations tax imposed on resort time share vacation units by 1 per cent each year to gradually achieve a rate of 9.25 per cent of the fair market rental value. |
| HB279 HD2 SD1 ACT 141 | RELATING TO REAL ESTATE BROKERS AND SALESPERSONS. Effective November 2, 2015. | Allows the real estate commission to take disciplinary action if a real estate broker or salesperson for a seller or purchaser of real estate acts in a manner that prohibits a prospective purchaser or seller from being able to retain a real estate broker or salesperson. |

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| <p>HB830 HD1 SD1 CD1</p> <p>ACT 224</p> | <p>RELATING TO RESIDENTIAL PROPERTY.</p> <p>Effective July 1, 2015.</p> | <p>Creates an exemption from DLNR historic review for proposed projects on privately-owned single-family detached dwelling units or townhouses that meet certain criteria. Defines "dwelling unit", "single-family detached dwelling unit", and "townhouse".</p> |
| <p>HB858 HD2 SD2 CD1</p> <p>ACT 220</p> | <p>RELATING TO DOMESTIC VIOLENCE.</p> <p>Effective November 1, 2015.</p> | <p>Permits the termination of residential rental agreements in cases of domestic violence. Specifies additional procedures under the residential landlord-tenant code for instances of domestic violence.</p> |
| <p>HB1140 HD1 SD2 CD1</p> <p>ACT 120</p> | <p>RELATING TO CESSPOOLS.</p> <p>Effective July 1, 2015. Sunsets December 31, 2020.</p> | <p>Provides a temporary income tax credit for the cost of upgrading or converting a qualified cesspool to a septic system or an aerobic treatment unit system, or connecting to a sewer system. Permits DOH, as a pilot program, to certify no more than 2 residential large capacity cesspools as qualified cesspools. Defines terms.</p> |
| <p>SB1291 SD2 HD2 CD1</p> <p>ACT 242</p> | <p>RELATING TO MEDICAL MARIJUANA.</p> <p>Effective July 14, 2015.</p> | <p>Prohibits discrimination against medical marijuana patients and their caregivers by schools and landlords and voids provisions of condominium and planned community association's documents which discriminate against who has a valid certificate for the medical use of marijuana unless the document prohibits the smoking of tobacco and the medical marijuana is used by means of smoking.</p> |
| <p>SB1316 SD2 HD2 CD1</p> <p>ACT 164</p> | <p>RELATING TO ELECTRIC VEHICLES.</p> <p>Effective July 1, 2015.</p> | <p>Establishes a working group to examine the issues regarding requests to the board of directors of an association of apartment owners, condominium association, cooperative housing corporation, or planned community association regarding the installation of electric vehicle charging systems.</p> |

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| <p>SB14 SD1 HD2</p> <p>ACT 29</p> | <p>RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE.</p> <p>Effective November 1, 2015.</p> | <p>Amends the Residential Landlord-Tenant Code to allow use of the security deposit to: replace keys, including key fobs, parking cards, garage door openers, and mail box keys; and pay for utility service provided by the landlord under the rental agreement but not included in the rent.</p> |
| <p>SB17 HD2 CD1</p> <p>ACT 135</p> | <p>RELATING TO REAL ESTATE SELLER DISCLOSURE.</p> <p>Effective November 1, 2015.</p> | <p>Clarifies that the required disclosure of documents by a seller for residential real property that is subject to restrictions or conditions on use applies to documents relating to restrictions or conditions subject to section 508D-9, Hawaii Revised Statutes.</p> |
| <p>SB519 SD2 HD3 CD1</p> <p>ACT 204</p> | <p>RELATING TO TAXATION.</p> <p>Effective January 1, 2016.</p> | <p>Authorizes fines to be deposited into the tax administration special fund. Increases the balance that may be retained in the tax administration special fund in each fiscal year. Authorizes DOTAX to enforce civil penalties for operators and plan managers who fail to display the certificate of registration and registration ID numbers for transient accommodations and resort time share vacation plans. Authorizes DOTAX to issue citations for failure to provide the registration identification number or link to the number and the contact information of the local contact in an advertisement for a transient accommodation or resort time share vacation plan.</p> |
| <p>SB756 SD1 HD2 CD1</p> <p>ACT 125</p> | <p>RELATING TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT.</p> <p>Effective July 9, 2015.</p> | <p>Establishes a mortgage license exemption for seller-financed mortgage loans, if certain conditions are met. Requires the seller to provide the buyer with the terms of the financing. Also, requires the seller to provide a disclaimer, to be initialed by the buyer, regarding the financing.</p> |



OUT-OF-STATE REAL ESTATE LICENSEES

How Do they Obtain a Hawaii Real Estate License?

Salesperson

If an individual has an out-of-state real estate salesperson's license, **current and active**, they may apply for the following applications:

- 1) Prelicense Education Equivalency ("EW") which will waive them from taking the Hawaii salesperson's prelicense course.
- 2) Equivalency to the Uniform Section of the Hawaii Real Estate Licensing Exam ("UEE"), which will waive them from taking the uniform or general portion of the licensing exam. They will only sit for the Hawaii State portion of the exam.

If an individual has an out-of-state real estate license, which is **current but not active**, they may only apply for the UEE. This means they will have to complete the Hawaii prelicense course to obtain the School Completion Certificate, which must be presented at the exam site.

Broker

If an individual has an out-of-state real estate broker's license, **current and active**, they may apply for the EW and the UEE. If they want to be a broker in Hawaii, they must also submit the Broker Experience Certificate application ("BE").

If an individual has an out-of-state real estate broker's license, which is **current but not active**, they may only apply for the UEE, but they must also submit the BE. There is an Experience Certification Statement in the BE application which need not be completed by the out-of-state broker, as the Verification of License ("VOL") certifies the fact that the applicant is an out-of-state real estate broker. (See below)

The VOL form is included in the EW, UEE, and BE applications. The VOL form (one copy) must be submitted to the out-of-state licensing agency for completion. All information requested on the VOL must be provided by the out-of-state licensing agency. The completed VOL will be sent back to the applicant, and must be submitted along with the EW, UEE, and BE applications. The VOL is valid for a six-month period. Thereafter, it must be obtained again from the appropriate licensing agency.

There are some states that are "all-broker" states. They do not have a salesperson level of licensure. Out-of-state licensees from all-broker states may apply to be a broker in Hawaii. However, if they want to be a salesperson in Hawaii, but the VOL does not state they passed the uniform section of the salesperson licensing exam, or the prelicense course at the salesperson level, they will be required to sit for the Hawaii prelicense course, as well as take both the uniform and Hawaii-state portion of the licensing exam.

A pink-colored certificate will be issued to the out-of-state applicant which will list the equivalencies they obtained – EW and/or UEE and/or BE. The certificate **MUST** be presented at the PSI exam site. (PSI is the commission's test administrator.) Any PSI test site may be utilized for testing purposes. The certificate(s) expires in two years from the date of issuance. There are no extensions available.

Once the candidate passes the Hawaii real estate licensing exam, they will receive the license application. The application must be submitted within two years of passing the license exam. If the individual took two parts of the exam, the passing date of the second part of the exam is the date calculated for the two-year expiration period for submitting the license application.



CORE A TRAIN-THE-TRAINER YOUTUBE LINK

<http://youtu.be/fzE-67hWn14>

If you have interested individuals who would like to teach Core A, 2015-2016, “Condominium Structure & Sales” and the 2015 legislative update, please have them view the “Train-the-Trainer” YouTube link above. Once the viewing is complete, please contact the Real Estate Branch at 808-586-2643 and we will provide the certification notice to fill out and submit.



WELCOME, Torrie-ann Primacio

The Real Estate Branch welcomed Torrie-ann Primacio on July 20, 2015, as the Real Estate Recovery Fund clerk. She previously worked as a Human Resource Manager/Trainer for a private company. In her leisure time, she enjoys paddle boarding, diving, hiking, but most of the time, you’ll find her in the ocean.

Welcome, Torrie-ann!





2015 REAL ESTATE COMMISSION MEETING SCHEDULE

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|---|---|
| Laws & Rules Review Committee – 9:00 a.m. | Real Estate Commission 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, October 7, 2015 | Friday, October 23, 2015 |
| Tuesday, November 10, 2015 | Wednesday, November 25, 2015 |
| Wednesday, December 2, 2015 | Friday, December 18, 2015 |

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.



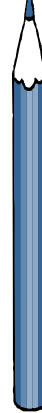
CONTINUING EDUCATION PROVIDERS

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

PRELICENSE SCHOOLS

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





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SCHOOL FILES

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This material can be made available for individuals with special needs. Please call the Senior Real Estate Specialist at 808-586-2643 to submit your request.

