

# School Files

Hawaii Real Estate Commission

July 2016

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## **How Does RESPA Affect Real Estate Licensees?**

By Iris Ikeda, Commissioner and Alison Kiyotoki, Mortgage Supervisor  
The Division of Financial Institutions, DCCA

RESPA may affect the real estate industry in a nuanced way depending on the particular activity between the real estate licensee and the mortgage broker. Since 2010, mortgage brokers in Hawaii must be licensed by the Division of Financial Institutions, DCCA (“DFI”), as mortgage loan originators (“MLO”).<sup>1</sup> As a regulated industry, the DFI requires MLOs to comply with state and federal laws. This new regulatory scheme might have an effect on the interaction between real estate licensees and MLOs.

The Real Estate Settlement Procedures Act of 1974 (“RESPA”) was enacted by Congress in 1974 (and became effective in 1975) as a response to abuses in the real estate settlement process. RESPA prohibits kickbacks and unearned fees stating that “No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, A company may not pay any other company or the employees of any other company for the referral of settlement service business.” A “thing of value” is broadly defined in section 3(2) of RESPA ([12 U.S.C. 2602\(2\)](#)) and does not require transfer of money. An agreement or understanding need not be written or verbalized but may be established by a practice, pattern or course of conduct.<sup>2</sup> RESPA does allow normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto.<sup>3</sup>

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<sup>1</sup> Chapter 454F, Hawaii Revised Statutes

<sup>2</sup> 12 C.F.R. 1024.14

<sup>3</sup> 12 C.F.R. 1024.14(g)

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In the past, mortgage companies may have sponsored a luncheon or sponsored other events for real estate agents. Under RESPA, before you accept the luncheon or event paid by the mortgage company or MLO, you should ask yourself the following questions: (1) is the mortgage company or MLO sponsoring the educational event as a way to promote its services; (2) are the costs associated with the event what the real estate agent would normally pay; and (3) is the event sponsored on the implicit condition of referring business to the MLO? Is the MLO holding him/herself out in such a way that you want to refer your clients to because of the expertise? If you answered “yes” to these questions, you may find yourself in a possible RESPA violation.

Scenario 1: To attract business, title and escrow companies, mortgage companies, and other similar companies who rely on real estate licensees to refer business to them, may offer continuing education (“CE”) credit courses. Before you accept one of these events, you may want to ask yourself (1) is the cost of the CE something you would normally pay for; (2) if there is a minimal charge for the CE, is this fee charged the normal cost of CE or is the cost of the CE defrayed by the sponsor; (3) is the sponsor’s name a marketing activity or advertisement? Generally if the cost is underwritten by the sponsor so the real estate licensees do not have to pay fees or pay minimal fees they would otherwise have to pay, such sponsorship could be interpreted as a “thing of value” received by the licensee for RESPA purposes. And, the real estate licensee may be in violation of federal law.

Scenario 2: To attract business, title and escrow companies, mortgage companies, and other similar companies who rely on real estate licensees to refer business to them offer to put on education sessions about the services the companies offer to real estate licensees. *Use the same analysis in Scenario 1. In this case, if a title/escrow company and/or a mortgage company were to sponsor a free educational seminar for real estate agents (with no CE credit provided), this would be consistent with the marketing of settlement service provider business allowed under RESPA.*

*Recently a mortgage loan originator (not licensed in Hawaii) and a Hawaii mortgage loan originator company offered a continuing education session for continuing education credits to real estate licensees. The CE credits were offered for “free” at a hotel. The CE course was previously certified by the Real Estate Commission. A question was raised by the Division of Financial Institutions, DCCA (“DFI”), about whether the session was prohibited by RESPA. DFI used the same analysis above and determined that the CE session could violate RESPA as the course was offered for free and ordinarily there would be a cost incurred for CE courses and for the venue. The MLO and MLOC were not providing the allowable educational information about the services that could be provided by the MLO and MLOC. The CE session was cancelled by the CE provider offering the course after discussion with DFI and the Real Estate Commission.*

The Dodd-Frank Act granted authority to the Consumer Financial Protection Bureau (“CFPB”) to supervise for and enforce compliance with RESPA. The CFPB has taken violations seriously and has been cracking down on violations for kickbacks, fees and things of value. Violations of Section 8 provisions of RESPA are subject to criminal and civil penalties. Fines can be up to \$11,000 per incident and one year and one month in prison. The Dodd-Frank Act also provided enforcement authority to states that regulate settlement services.

As you can see, RESPA violations are serious and can be expensive! In addition to the two scenarios identified in this article, and the real-life occurrence described above, there are many other types of scenarios that could be RESPA violations. Please be aware...knowledge is power!



## **CORE B 2015-2016, CONDOMINIUM GOVERNANCE**

Core B, 2015-2016 Condominium Governance and 2016 Real Estate-Related Legislation was approved by the Commission at its June 24, 2016 monthly meeting. The Train-the-Trainer session was held on Thursday, June 30, 2016 at the Honolulu Board of REALTORS®.

Continuing Education Providers who wish to offer Core B 2015-2016, must use instructors who completed the Train-the-Trainer session. The Core B materials will be provided to those CE providers. The Core B 2015-2016 online version will be ready at the same time, and may be offered by those CE Providers who have an instructor(s) who completed the Train-the-Trainer. CE Providers may also create their own online version of Core B, using the approved course materials. Please provide a statement to the Real Estate Branch certifying that the approved Core B 2015-2016 materials are used to create the online version of the course.

Core A 2015-2016 will be available online and live through May 31, 2017. Core B 2015-2016 will also be available through May 31, 2017. Thereafter, real estate licensees wanting to renew, restore, or reactivate their license must take all CE elective courses as the core course for 2015-2016 will no longer be available.

As of July 5, 2016, about 5000 licensees have completed Core A, 2015-2016 in a live classroom format. For the online version of Core A, 2015-2016, about 1400 completed Core A as of July 5, 2016. There are more than 18,000 individual real estate licensees in Hawaii.



## **TWO PSI TEST SITES ON MAUI**

Effective May 31, 2016, there are two PSI test sites available on Maui. The second test site is the Learning Center at the University of Hawaii, Maui College II. The new test site will schedule testing on two work days each week.

Kahului – University of Hawaii Maui College I  
310 W. Ka’ahumanu Avenue  
Laulima Building, Room 212  
Kahului, HI 96732

Kahului – University of Hawaii Maui College II  
310 W. Ka’ahumanu Avenue  
The Learning Center  
Kahului, HI 96732



## **Specialists' Office for the Day in Hilo**

The Real Estate Commission's Real Estate and Condominium Specialists set up offices for the day in Hilo on Wednesday, June 8, 2016, to discuss real estate licensing and condominium concerns with interested parties.

The Specialists are prepared to discuss questions about licensing laws and rules, license applications, broker experience certificate applications, examination administration, continuing education, new legislation, Commission procedures, educational programs, and related topics. There were no real estate-related inquiries.

Other questions that may come up at the sessions concern boards, associations, meetings, managing agents, condominium association registration, condominium hotel operators, fidelity bonding, the condominium property regime statute, public reports, project registration, the condominium dispute resolution program, new legislation, reserves, and other condominium-related topics.

There were no condominium-related inquiries.

The next Specialists' Office for the Day will be held on Kauai, September 14, 2016, at the Grove Farm Building, Lihue, 9:30 a.m.

If you have any questions, you may contact a Real Estate Specialist or a Condominium Specialist at (808) 586-2643. You may also write to: Real Estate Commission, 335 Merchant Street, Room 333, Honolulu, HI 96813.

The Specialists' Office for the Day program is funded by the Condominium Education and the Real Estate Education Fund.





## CHANGES TO COURSE OFFERING DATES

Please try to eliminate or curtail changes to course offering dates, and comply with the minimum 14 days prior to the course offer date in you scheduling on the online website. Our email box is filled with these requests more than any other request.

Mahalo for your consideration and cooperation.



## RENEWAL YEAR REMINDERS

The **renewal deadline** for real estate licensees, prelicense schools, prelicense instructors, and continuing education providers, and continuing education courses is **November 30, 2016**. The certifications and registrations for real estate educators and continuing education courses expires December 31, 2016. The same is true for real estate licensees, but for those licensees, as well as prelicense schools. Instructors, continuing education providers, and continuing education courses that want to be sure they are certified and/or registered for the 2017-2018 biennium, submission of reregistration and recertification forms is encouraged by November 30<sup>th</sup>.

The 2015-2016 core course, parts A and B, is available for offering through May 31, 2017. However, the 2015-2016 core course subjects for A and B, will expire as of 12/31/16, and the subjects will be reloaded for those eligible continuing education providers to offer through 5/31/17. After 5/31/17, the 2015-2016 core course, parts A and B, are no longer available. Licensees reactivating or restoring their license after 5/31/17, must take all elective continuing education courses to successfully reactivate or restore.

All salesperson licensees must complete the continuing education requirement prior to the renewal application deadline to successfully renew on an active status, unless they were issued a new salesperson license during calendar year 2016 and renewing the license by November 30, 2016. If issued **a new salesperson licensed in calendar year 2016** and renewing the license by the renewal deadline, the new salesperson **will be deemed to have completed the equivalent to the continuing education requirement and will not have to complete the continuing education requirement for license renewal.**

All broker applicants and broker licensees must complete the continuing education requirement prior to the renewal application deadline in order to successfully renew their salesperson or broker license on active status.

## CONTINUING EDUCATION PROVIDERS

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

## PRELICENSE SCHOOLS

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



## 2016 REAL ESTATE COMMISSION MEETING SCHEDULE

<b>Laws &amp; Rules Review Committee - 9:00 a.m.</b>  <b>Condominium Review Committee - Upon adjournment of the Laws &amp; Rules Review Committee Meeting</b>  <b>Education Review Committee - Upon adjournment of the Condominium Review Committee Meeting</b>	<b>Real Estate Commission 9:00 a.m.</b>
Wednesday, July 13, 2016	Friday, July 29, 2016
Wednesday, August 10, 2016	Friday, August 26, 2016
*Wednesday, September 14, 2016	Friday, September 30, 2016
Wednesday, October 12, 2016	Friday, October 28, 2016
Wednesday, November 09, 2016	Wednesday, November 23, 2016
Wednesday, December 07, 2016	Friday, December 16, 2016

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

\*The Commission meetings scheduled for Wednesday, September 14, 2016, will be held on Kauai, Grove Farm Building Conference Room, 3-1850 Kaumualii Highway, Lihue, HI.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) or call the Real Estate Commission Office at 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.





**COMMISSIONERS:**

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Real Estate Commission

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Laurie Lee, Vice Chair  
Laws and Rules Review Committee

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Education Review Committee

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Aleta Klein  
Oahu Commissioner

**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.**

