

Real Estate Commission Bulletin



Beware of Possible RESPA Violations

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”). 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. 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.

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.

¹ Chapter 454F, Hawaii Revised Statutes

² 12 C.F.R. 1024.14

³ 12 C.F.R. 1024.14(g)

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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!

Being a Principal Broker...Are You Up To the Challenge?

Not all real estate salespersons and brokers want to be a principal broker. But, for those of you who do want to be a principal broker, or for those of you who are designated as a broker-in-charge, or for those of you who want to know just exactly what is required of a principal broker, read on.

A helpful, tidy list of responsibilities is presented in Hawaii Revised Statutes (“HRS”) §467-1.6, Principal brokers. First off, §467-1.6 states, “The principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees.” The key word is “direct.” The principal broker must be present and accounted for, so to speak. He or she is NOT a figurehead . . . not a straw-broker . . . not letting others “use” his broker’s license. The definition of “supervision” in Hawaii Administrative Rules (“HAR”), §16-99-2, “. . . means the act of directing, inspecting, and reviewing.”

There are instances where the owner of the brokerage is actually the person overseeing the real estate activity of a brokerage, despite having a principal broker. Sometimes the owner is a licensed real estate salesperson, sometimes the owner is not a real estate licensee. It is the principal broker that is ultimately responsible for all real estate activity that emanates from the brokerage.

The problem with situations where the principal broker is not the individual in charge of the real estate activities of the brokerage is that the licensed salesperson-owner may be found to be acting beyond the scope of his or her license, or the unlicensed owner may be found to be engaging in unlicensed real estate activity. If these findings are determined by the Regulated Industries Complaints Office (“RICO”), the principal broker may be scrutinized and may be disciplined as well. The principal broker’s real estate license is ultimately at risk.

§467-1.6(b), HRS, states, “The principal broker shall be responsible for:

- (1) The client trust accounts, disbursements from those accounts, and the brokerage firm’s accounting practices;
- (2) The brokerage firm’s records, contracts, and documents; . . .”

Whenever reading the real estate licensing laws, such as the above, there may be accompanying Hawaii Administrative Rules that expand and clarify the related statute. Further clarification pertaining to §467-1.6(b)(1) and (2), HRS, may be found in HAR §16-99-4, Client’s account; trust funds; properties other than funds. Note

The Chair's Message



Aloha!

Here's the latest update on the Chapter 99, Hawaii Administrative Rules (HAR) amendments.

Chapter 99, HAR, relating to real estate salespersons and brokers ("Rules") continues to move forward.

As you may recall, the Rules were on a brief hold based on concerns over HAR §16-99-11 ("Advertisement Provision") and that the new language requiring licensees to include license numbers on advertising and promotional materials was too broad. In order to move the rest of the Rules forward, the Commission decided to leave the current language of HAR §16-99-11 intact and to move the remaining revisions through the system. As such, the Rules are currently with the Attorney General's office for review. Once the Attorney General's office signs off on the Rules as to form, it will be sent to the Director of the DCCA, then to the Governor for approval. Upon the Governor's approval, the Rules will become effective 10 days after filing with the Lieutenant Governor pursuant with Hawaii Revised Statutes (HRS) §91-4.

As for the Advertising Provision, the Commission and the Honolulu Board of REALTORS® ("HBR") have been collaboratively working on suitable language. The Commission's goal is con-

sumer protection and all agree that license numbers (of licensee or the brokerage firm) should be on certain advertising materials to clearly identify licensees. As a practical matter, however, there are certain promotional sundries items (i.e., such as pens, hats, keychains, magnets, etc.) on which the inclusion of the license number could be difficult and/or impractical. In weighing consumer protection with the industry's concerns over the practicality of doing business, the Commission has agreed to collaborate with HBR to create an Advertising Provision workable for all. Once the Real Estate Commission's Laws and Rules Committee finalizes the Advertising Provision and it is adopted by the Commission, then it will need to go through the entire regulatory rule making process. Although a bit optimistic, we are targeting the end of the year for the Governor's review.

As stated earlier, based on the specific and unique circumstances surrounding the Rules and Advertising Provision in this case, the Commission does not intend to pursue licensees who have included their license number on advertising or other solicitation materials. Also, the Commission will not pursue licensees who have their license number, but not their license status (i.e., (B), (S), (R), (RA)), on their advertising, business cards, letterhead and other materials.

We will continue to update you on the Rules and the Advertising Provision.

(s) Nikki Senter, Chair

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 30th.

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.

Being a Principal Broker...Are You Up To the Challenge?

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that this section always references the “principal broker or broker in charge.”

The Principal Broker (“PB”) or Broker-in-Charge (“BIC”) may provide written authorization to an associating salesperson, broker-salesperson, or employee to place trust properties received on behalf of the brokerage firm anywhere the PB or BIC would place them, but shall not authorize any other disposition. The PB and any BIC providing such authorization will be jointly responsible. (See HAR, §16-99-4(i))

HAR, §16-99-4(k) states, “A principal broker may allow a broker in charge to have custody and control of trust properties on behalf of the principal broker. The principal broker and broker in charge shall be jointly responsible for any trust properties the principal broker authorizes the broker in charge to handle.”

While both the PB and BIC are “jointly responsible for any trust properties the principal broker authorizes the broker in charge to handle,” it is the principal broker who must make sure all delegated responsibilities are in writing and the delegation is done according to the brokerage’s written policies and procedures.

Generally speaking, records of trust funds, personal property other than trust funds coming into the possession of the principal broker or broker in charge as trustee(s), information about escrow accounts and records for real estate transactions shall be retained for at least three years.

The principal broker shall be responsible for “All real estate contracts of the brokerage firm and its handling by the associated real estate salesperson;” . . . (§467-1.6(b)(3)) Although amendments to HAR §16-99-3(f) deleted the language “reviewed by the principal or broker-in-charge of the licensee,” in reference to real estate contracts and agreements, the intent of §467-1.6, “the principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees” and the definition of “supervision” as “directing, inspecting, and reviewing” (HAR §16-99-2), combine to provide guidance to licensees and imply that the principal broker or broker in charge should be reviewing all real estate contracts of the brokerage firm.

The principal broker shall be responsible for: §467-1.6(b)(4), “The proper handling of any Commission application, real estate license application, or renewal application that the principal broker or the brokerage firm expressly agrees to handle on behalf of the applicant, including without limitation, verifying for completeness and appropriate fees, and mailing or delivering the appropriate documents to the Commission by the required deadline;

§467-1.6(b)(5), “Developing policies and procedures for the brokerage firm concerning the handling of real estate transactions and the conduct of the associated real estate licensees and other staff, including education and enforcement of the policies and procedures;

§467-1.6(b)(6), “Setting a policy on continuing education requirements for all associated real estate licensees in compliance with the statutory requirement;

§467-1.6(b)(7), “Ensuring that the licenses of all associated real estate licensees and the brokerage firm license are current and active;

§467-1.6(b)(8), “Establishing and maintaining a training program for all associated real estate licensees; and

§467-1.6(b)(9), “Ensuring that all associated real estate licensees are provided information and training on the latest amendments to real estate licensing laws and rules as well as other related laws and rules. . . .”

The above responsibilities stated in HRS §467-1.6(b)(4) and (7), cover the administrative aspects of licensing requirements such as notification to the Commission of any changes to information previously submitted, and license application and renewal application procedures and deadlines. Along with this responsibility is the responsibility to ensure that all the brokerages licensees are current and active in their license requirements.

The PB is also responsible for developing and maintaining a policies and procedures manual for the brokerage. (HRS §467-1.6(b)(5)) What should be included in this manual? Here are some suggestions:

- 1) All delegations of responsibilities to the brokers-in-charge
- 2) Copies of the Real Estate Commission Bulletin
- 3) Copies of real estate-related article of general interest, discussions regarding ethics, conduct, licensing requirements
- 4) Copies of the laws and rules for real estate licensees – HRS Chapter 467, HAR Chapter 99
- 5) Copy of the Hawaii Residential Landlord-Tenant Code – HRS Chapter 521 (especially if the brokerage engages in property management activities)
- 6) Copy of HRS Chapter 436B, Professional and Vocational Licensing Act

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- 7) Copy of HRS Chapters 514A, Condominium Property Regimes and 514B, Condominiums, and accompanying rules
- 8) Copy of HRS Chapter 508D, Mandatory Sellers Disclosures in Real Estate Transactions
- 9) Copy of HRS Chapter 514E, Timesharing Plans
- 10) Any related laws and rules relative to real estate and activities conducted by the brokerage
- 11) Step-by-step procedures to guide associated licensees and staff in their day-to-day duties and responsibilities
- 12) Continuing education requirements
- 13) Brokerage policy on dual agency

(NOTE: this is by no means an exhaustive list of what to include in a policies and procedures manual. Items may vary from brokerage to brokerage.)

An issue that pops up from time to time is the sudden, unexpected incapacitation or death of the principal broker. What happens to the brokerage? What happens to the associated licensees? Procedures should be laid out which clearly describe what needs to happen in case a situation like this occurs. Oftentimes, a smaller brokerage has no other BIC or RBS. If the brokerage is a partnership, corporation, LLC, or LLP, the entity's officers may meet to select a replacement principal broker. If the brokerage is a sole

proprietorship, and the sole proprietor is incapacitated or dies, unfortunately, the sole proprietorship is no more, as it is tied to the principal broker's individual real estate broker's license. If procedures are in place, the brokerage and its associating licensees will all be able to continue with their work without unnecessary interruptions and delays.

The PB is also responsible for establishing and implementing training programs for the brokerage's licenses. This may include updates on the latest amendments to real estate licensing laws and rules, as well as other related laws and rules. (HRS §467-1.6(b)(9))

The PB has a large amount of responsibilities. Can a busy PB or BIC carry out all of these responsibilities? Real-life practice appears to indicate the answer is NO. The art of delegation must be wisely utilized. BICs play an important role in brokerages, if the brokerage is lucky enough to have one or more BICs. There should be at least one BIC designated for each brokerage as a matter of safe and practical business practice. BICs have been authorized with almost as much responsibility as the principal broker. All delegations to BIC(s) must be in writing. All delegations must be set forth in the brokerage policies and procedures manual. It is the principal broker who is responsible for creating the policies and procedures manual for the brokerage, enforcing the policies and procedures, and keeping records required.

The role of the principal broker in creating an educated, well-informed disciplined, and competent cadre of associated licensees, as well as staff, cannot be emphasized enough. This is a monumental task. Are you up to the challenge?

6 Administrative Actions

April 2016

Cynthia A. Krog
RB 16051

Case No. REC 2014-120-L
Dated 4/29/16

Uncontested Facts:

RICO received information indicating on or about April 11, 2001, Respondent was convicted in the U.S. District Court of embezzling proceeds from Kilauea Military Camp. Respondent states the conviction was related to her employment as a data entry clerk. Respondent was sentenced to probation for a period of five (5) years with special conditions, including payment of a \$100.00 fine and 300 hours of community service. Respondent was discharged from probation by Order dated May 3, 2006.

RICO alleges Respondent failed to maintain a record or history of trustworthiness and/or financial integrity.

Sanction: Probation for a period of five (5) years.

Report, in writing, judgments entered against Respondent or Respondent's employer in connection with Respondent's activities as a property manager to the Commission within fifteen (15) days.

Fine of \$2,500.00.

Violation: HRS §436B-19(8).

Leslie B. Vargas
RS 59137

Case No. REC 2009-316-L
Dated 4/29/16

Uncontested Facts:

Upon information and belief from at least sometime in or around 2007 through sometime in or around December 2009, and while licensed as a real estate salesperson affiliated with Hawaiian Condo Resorts, Inc. (hereafter "HCR"), the Respondent appears to have:

- Engaged in property management activity for numerous rentals outside of HCR and without the knowledge or consent of HCR's principal broker;
- Advertised the rentals, and engaged in said property management by, with the assistance of, and/or through Hawaii Condos in Waikiki, LLC, 1 a company not registered with the Commission and not licensed as a real estate broker;
- Engaged in property management also by, with the assistance of, and/or through "Jorge & Leslie Vargas, RA, Property Management," an entity not registered with the Commission and not licensed as a real estate broker;
- Acted alone or with the assistance of the unlicensed entities mentioned previously in handling substantial sums of trust monies such as rents and security deposits;
- Entered into with an owner, and thereafter administered, a written property management agreement without the knowledge or consent of the principal broker of HCR;
- Entered into with an individual, and thereafter administered, at least two rental agreements without the knowledge or consent of the principal broker of HCR;
- Used Respondent's name and "Hawaii Condos in Waikiki" on each of the two rental agreements previously mentioned. The names were written at the top of the first page in the blank space that is reserved for principal brokers or brokers in charge who are responsible for reviewing such agreements (see form RR301 Rev. 6/06 (NC) of the Hawaii Association of Realtors);
- Used Respondent's name and "Hawaii Condos in

Waikiki" as the LANDLORD in paragraph 8 of each of the two rental agreements previously mentioned. The identifying address for the LANDLORD was 1650 Ala Moana Blvd., #3209;

- Designated the tenant's security deposit for holding with "Hawaii Condos in Waikiki" per paragraph 8 of each of the two rental agreements previously mentioned;
- Used Respondent's name and "Hawaii Condos in Waikiki" as the Brokerage Firm on page 5 of each of the two rental agreements previously mentioned. The identifying address for the brokerage firm was 1650 Ala Moana Blvd., #3209; and
- Gave her principal broker, sometime in 2009, copies of the property management and rental agreements previously mentioned. The Respondent did so only after the tenant researched Respondent's license status and called the Respondent's principal broker to report and to complain about his real estate dealings with the Respondent. Some of the information in the copies that the Respondent gave to the tenant and the owner in 2007, however, did not match the information in the copies furnished to the principal broker in 2009. The unlicensed allegations involving Hawaii Condos in Waikiki, LLC are being pursued in a separate proceeding.

Administrative Actions (cont. from page 6)

Sanction: Respondent accepts full responsibility for her previous actions. Respondent admits to the RICO allegations set forth in section B.
Fine of \$20,000.00.

Violations: HRS §§436B-19(2), (6), (7), (16), HRS §467-1, HRS §§467-14(1), (3), (6), (8), (13), (20), HAR §16-99-4(a), (d), (g), (i).

Representations by Respondent:

Respondent represents that:

- Revocation or suspension of the license will detrimentally affect her existing clients and business which she has managed legitimately and professionally since receiving a broker's license in December of 2009;
- The fine amount is overwhelming and substantial

especially for an individual. Respondent cannot at this time pay it in full because, among other obligations, Respondent is responsible for her mother's elder care costs. In good faith Respondent understands the severity of the fine, however, and intends to and will pay the fine in full pursuant to the agreed-upon payment plan;

- There are other mitigating factors Respondent wishes the Commission to consider including, but not limited to, having cooperated fully with RICO's investigation from the start, accepting the consequences of her previous actions, studying for and receiving a broker's license eventually, and practicing real estate uninterrupted and without complaint and in full compliance of the licensing laws since the facts of this case first came to light.

Charlene Butchart,
a.k.a. Charlene L. Butchart
RS 61168

Case No. REC 2014-43-L
Dated 4/29/16

Uncontested Facts:

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

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

Sanction:

Fine of \$500.00.

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

Judith Ann Pryne,
dba Keale Realty

Case No. REC 2012-267-L
Dated 4/29/16

Uncontested Facts:

On November 25, 2015, the Real Estate Commission ("Commission") issued its Final Order in this matter, accepting the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearings Officer. For the violation found, the Commission ordered Respondent to pay a \$1,000 fine within sixty days of the Commission's Final Order. The Final Order further stated that, if Respondent failed to pay the fine within sixty days, Respondent's license shall be automatically revoked upon filing of an affidavit from the Regulated Industries Complaints Office ("RICO") attesting to Respondent's noncompliance.

On January 27, 2016, RICO staff attorney John Hassler filed an affidavit attesting that Respondent has failed to pay any amount to RICO.

Accordingly, the real estate broker's license of Respondent is hereby revoked. Pursuant to §92-17(c)(1), Respondent shall not be permitted to reapply for a license to practice real estate until the expiration of at least five years from the effective date of the revocation of her license. Payment of the \$1,000 fine shall be a condition for any re-licensure after the expiration of the five-year period.

Order:

Revocation of license.

Fine of \$1,000.00 as a condition for re-licensure

Administrative Actions (cont. from page 7)

Kristin R. Sharp
RS 73328

Case No. REC 2015-271-L
Dated 5/27/16

Uncontested Facts:

On or about November 13, 2015, Respondent pleaded guilty to and was convicted of one misdemeanor count of assault in violation of 49 U.S.C. §46506 and 18 U.S.C. 113(a)(4) in United States v. Sharp, United States District Court for the District of Hawaii, Criminal No. CR11-00773-00 1 (“the criminal action”). Respondent was fined and sentenced to a three-year probation.

The conviction arose from an incident that took place on or about September 24, 2015 on Allegiant Airlines flight 1051 between Las Vegas, Nevada and Honolulu, Hawaii, when Respondent knowingly and intentionally assaulted a flight attendant by striking him in the back with a half-filled can of soda.

On or about March 10, 2016, a U.S. Magistrate Judge entered a written modification of Respondent’s probation based on a written report of a U.S. Probation Officer documenting that Respondent had failed to comply with a term of her probation that required her to refrain from the use of alcohol.

Respondent’s probation was modified on or about March 10, 2016 and her random drug/alcohol testing regimen was increased to four tests per month. Respondent began group outpatient substance abuse counseling with Lokahi Treatment Center.

Respondent has not been convicted of any federal or state crimes since November 13, 2015.

Respondent reported the Judgment to the Real Estate Commission in writing on or about November 30, 2015.

Sanction:

Fine of \$2,500.00.

Violation: HRS §436B-19(12).

Christopher Beck
RS 62358

Case No. REC 2013-187-L
Dated 5/27/16

Uncontested Facts:

RICO alleges that Respondent’s real estate license expired on or about December 31, 2012 and was restored on or about April 29, 2013. Respondent mistakenly believed his license was current and restored his license as soon as he learned otherwise. Respondent engaged in the practice of real estate while his license was not active. Respondent fully cooperated with RICO in the investigation of this matter.

RICO has separately investigated the conduct of Respondent’s principal broker and has resolved any claims brought in that case in a separate proceeding.

Sanction:

Fine of \$1,000.00.

Violation: HRS §467-7.

Administrative Actions (cont. from page 8)

Annalies J. Aragon
RS 61938

Case No. REC 2013-251-L
Dated 5/27/16

Uncontested Facts:

RICO alleges that Respondent falsely answered questions regarding prior convictions on her license application in 2003 and on her renewal application in 2012.

Sanction:

Voluntary revocation of her license.

Violation: HRS §467-20.

**Roxanne S. Reyes and
Kim M. Asuncion**
RS 59575
RS 68822

Case No. REC 2008-72-L
Dated 5/27/16

Uncontested Facts:

[Re Kim M. Asuncion] On 2/4/16 Petitioner commenced this matter by filing, with the Office of Administrative Hearings, a *Petition for Disciplinary Action Against Real Estate Licenses; Demand for Disclosure to Respondent(s) (hereafter "Petition")*.

On 4/4/16 the pre-hearing conference was held. Following the pre-hearing conference the Petitioner and the Respondent reached an agreement to resolve this case as it pertains to the Respondent.

Respondent does not anticipate working in the real estate industry again but explains that she didn't know she may have been engaged in wrongful activity. During all relevant times Respondent says she was helping a very busy friend, Roxanne S. Reyes, as the office manager for Reyes' business. Respondent was paid by, worked under and followed the directions of Ms. Reyes' including obtaining a real estate license because Ms. Reyes asked her to so that open houses and other matters could be covered if Reyes traveled out of state or was not available.

Sanction:

Voluntary revocation of Respondent's license. (Asuncion)

Violations: HRS §467-1, HRS §§467-14(6), (8), (13), (20), §436B-19(6), (7), (8), (16), Hawaii Administrative Rules (hereafter "HAR" §16-99-3(b), HAR §§16-99-4(a), (d), (g), (i)

**Roxanne S. Reyes and
Kim M. Asuncion**
RS 59575
RS 68822

Case No. REC 2008-72-L
Dated 5/27/16

**COUNT I – redacted as case is still
pending against Respondent Reyes**

Sometime in or around 2006 All Star opened a business savings and a business checking account at Bank of Hawaii. Respondent Asuncion was an authorized signer for the business checking account.

COUNT II

(Respondent Asuncion)

From approximately 9/15/06-2/28/08 Respondent Asuncion was affiliated as a real estate person with licensed broker Fred M. Uedoi dba Komo Mai Asset Management.

All Star was never licensed as a real estate broker in Hawaii nor did it at any time have a licensed principal broker affiliated with it.

From sometime in or around 2005 through sometime in or around 2010 All Star engaged in and/or assisted with real estate activity in the state without a license as required by law.

FACTS SUPPORTING LICENSING VIOLATIONS

**Unauthorized & Unlicensed Real Estate Activity;
Unauthorized Handling of Trust Property With and
Through R & R All Star Inc., LLC.**

Sometime in or around 2005 R & R All Star, LLC (hereafter "All Star") registered as a business entity in the State of Hawaii with Respondent Roxanne Reyes as a member and agent.

Respondent Asuncion engaged in real estate activity, with and through All Star, for a period of time in or around 2005 - 2006 when Respondent Asuncion was not yet licensed to engage in real estate activity in the state.

According to the records of the DCCA, All Star's mailing address was identical to Respondent Reyes' address at the time.

After becoming licensed as a real estate salesperson in 2006 Respondent Asuncion cooperated with, assisted and/or abetted the unlicensed real estate activity of

Administrative Actions (cont. from page 9)

All Star during all or part of the time period specified in paragraph II(A)(5).

Respondent Asuncion, through and/or with the assistance of Respondent Roxanne Reyes, and/or through and/or with the assistance of All Star, received and/or handled and/or disbursed trust funds such as rents or security deposits without being licensed as a broker and without being designated as a principal broker of a licensed brokerage firm, during all or part of the time period specified in paragraph II(A)(5).

Respondent Asuncion, through and/or with the assistance of Respondent Roxanne Reyes, and/or through and/or with the assistance of All Star, received and/or handled and/or disbursed trust funds such as rents or security deposits outside of escrow and outside of a licensed brokerage firm's designated client trust account, during all or part of the time period specified in paragraph II(A)(5).

Continuous Unauthorized & Unlicensed Real Estate Activity: Unauthorized Handling of Trust Property: Aiding Unlicensed Activity.

In or around 2009- 2010 Respondent Asuncion alone, and/or through and/or with the assistance of All Star, and/or through and/or with the assistance of Respondent Reyes, continued to engage in unauthorized and unlicensed property management activity.

In or around 2009 – 2010, Respondent Asuncion alone, and/or through and/or with the assistance of All Star, and/or through and with the assistance of Respondent Reyes, received and/or handled and/or disbursed trust funds such as rents or security deposits without being licensed as a broker or without being designated as a principal broker of a licensed brokerage firm.

In or around 2009-2010 Respondent Asuncion alone, and/or through and/or with the assistance of All Star, and/or through and with the assistance of Respondent Reyes, received and/or handled and/or disbursed trust funds such as rents or security deposits outside of escrow and a licensed brokerage firm's designated client trust account.

Goh Yanagida
RS 75949

Case No. REC 2016-35-L
Dated 6/24/16

Uncontested Facts:

RICO received information indicating Respondent engaged in real estate activity while his license was not current. Information obtained by RICO indicates Respondent participated in a real estate transaction while Respondent's license was delinquent and not current.

RICO alleges Respondent failed to maintain license requirements.

Sanction:

Fine of \$2,500.00.

Violation: HRS §436B-19(1).

Chad T. Fujiwara
RS 65148

Case No. REC 2014-104-L
Dated 6/24/16

Commission's Final Order:

On May 9, 2016, the duly appointed Hearings officer issued her proposed Findings of Fact, Conclusions of Law and Recommended Order in the above-entitled matter. The parties were given an opportunity to file written exceptions and on May 16, 2016, Chad T. Fujiwara ("Respondent") filed exceptions to the recommended decision and a request for oral argument. On May 19, 2016, the Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs ("Petitioner") by and through its attorney Marc T. Nakamura, Esq. filed a statement in support of the recommended decision.

On June 24, 2016, the Commission heard oral argument from the parties. Petitioner was represented by Mr. Nakamura and Respondent appeared pro se.

Introduction:

On December 18, 2015, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner") filed a petition for disciplinary action against the real estate salesperson's license of Chad T. Fujiwara ("Respondent"). The matter was set for hearing pursuant to Hawaii Revised Statutes ("HRS") Chapters 91, 92, and 467 and the Notice of Hearing and Pre-Hearing Conference ("Notice") was transmitted to the parties. Respondent received a copy of the Notice and Petition on January 9, 2016.

On March 29, 2016, the hearing was convened by the undersigned Hearings Officer. Petitioner was represented by Marc T. Nakamura, Esq. Respondent failed to enter an appearance. Since proper service was made, the hearing proceeded as scheduled.

Administrative Actions (cont. from page 10)

Findings of Fact:

The Real Estate Commission (“Commission”) issued Respondent a real estate salesperson’s license on January 27, 2005, RS 65148. Respondent’s license expired on December 31, 2012.

On September 12, 2014, Respondent entered into a Plea Agreement in United States of America v. Chad Fujiwara, Cr. No. 13-00826 SOM, which was filed in the United States District Court for the District of Hawaii. In the Plea Agreement, Respondent agreed to enter a voluntary plea of guilty to one count of: (1) Transmission of Wagering Information, (2) Filing False Tax Return. Respondent also agreed to the related Criminal Forfeiture and agreed to pay restitution in the amount of \$37,601 to the U.S. Department of Treasury, Internal Revenue Service.

In the Plea Agreement, Respondent admitted that from January 1, 2009 to November 15, 2012, he was engaged in the business of sports betting and wagering as an agent for internet gambling websites in Costa Rica. As an agent, Respondent recruited sports gamblers, assisted in establishing gambling accounts, instructed the gambler on how to access the gambling site and make bets, and monitored bets and do payouts and collections from gamblers.

In the Plea Agreement, Respondent also admitted that he submitted a federal income tax return to the Internal Revenue Service that understated his adjusted gross income for the calendar year 2009. Respondent reported an adjusted gross income of \$37,571 when he

knew that his adjusted gross income was substantially greater than reported. During the year 2009. Respondent intentionally failed to report \$152,538 of income he received as an agent which resulted in a tax loss of \$37,601.00.

On January 21, 2014, Judgement was entered against Respondent. Respondent was sentenced to five (5) years probation, ordered to pay \$37,601 in restitution to the Internal Revenue Service, and perform 200 hours of community service. Respondent was also ordered to forfeit to the United States \$96,316.31 in United States currency and other valuables pursuant to a Final Order of Forfeiture filed on February 10, 2014.

On March 7, 2014, the Commission received a letter from Respondent informing the Commission that he had been convicted of internet gambling and tax evasion.

On June 20, 2014, Petitioner’s investigator received a letter from Respondent which was intended to give Petitioner’s investigator a “better insight into what transpired and how it has affected my life”.

Order:

Revocation of license. Fine of \$1,000.00 as a condition of re-licensure.

Violation: HRS §§467-14(8), (20), §436B-19(17).



Statutory/Rule Violations

Settlement Agreement (Allegations/Sanction): The Respondent does not admit to the allegations set forth by the Regulated Industries Complaints Office (RICO) and denies having violated any licensing law or rule. The respondent enters in a Settlement Agreement as a compromise of the claims and to conserve on the expense of proceeding with a hearing on the matter.

Disciplinary Action (Factual Findings/Order): The respondent is found to have violated the specific laws and rules cited, and the Commission approves the recommended order of the Hearings Officer.

HRS §436B-19(1)	Failure to meet or maintain the conditions and requirements necessary to qualify for the granting of a license.
HRS §436B-19(2)	Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements.
HRS §436B-19(6)	Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license.
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(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(16)	Employing, utilizing, or attempting to employ or utilize at any time any person not licensed under the licensing laws where licensure is required.
HRS §436B-19(17)	Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.
HRS §467-1	Definitions
HRS §467-7	No person within the purview of this chapter shall act as real estate broker or real estate salesperson, or shall advertise, or assume to act as real estate broker or real estate salesperson without a license previously obtained under and in compliance with this chapter and the rules and regulations of the real estate commission.
HRS §467-14(1)	Making any misrepresentation concerning any real estate transaction.
HRS §467-14(3)	Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
HRS §467-14(6)	When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the real estate salesperson's employer or the real estate broker with whom the real estate salesperson is associated;
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.

Statutory/Rule Violations

- HAR §16-99-3(b) The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate any practices in the community which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission in its efforts to regulate the practices of brokers and salespersons in this State.
- HAR §16-99-4(a) Every brokerage firm that does not immediately place all funds entrusted to the brokerage firm in a neutral escrow depository, shall maintain a trust fund account in this State with some bank or recognized depository, which is federally insured, and place all entrusted funds therein. The trust fund account shall designate the principal broker as trustee and all trust fund accounts, including interest bearing accounts, shall provide for payment of the funds upon demand.
- HAR §16-99-4(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.
- HAR §16-99-4(g) Property of others coming initially into the possession, custody, or control of a salesperson or broker-salesperson, to be held in trust for the benefit of the depositor, and or for the benefit of third persons, shall be received on behalf of the salesperson's or broker-salesperson's principal broker or broker in charge, and shall be delivered immediately by the next business day after receipt to the salesperson's or broker-salesperson's principal broker or broker in charge, unless the salesperson or broker-salesperson is instructed as to an other time in writing by the depositor. The received property shall include but not be limited to: cash or checks as down payments, earnest money deposits, security deposits, and rental income; other checks payable to third persons or trust accounts; and personal property other than cash or checks.
- HAR §16-99-4(i) A salesperson, broker-salesperson, or employee shall not handle trust properties in any way without the express written authorization of the person's principal broker or broker in charge. A principal broker or broker in charge may authorize a salesperson, broker-salesperson, or employee, in writing, to place trust properties on behalf of the brokerage firm anywhere the principal broker or broker in charge could place them, but shall not authorize any other disposition.
- A principal broker or broker in charge shall be held responsible for any trust properties the principal broker or broker in charge authorizes a salesperson, broker-salesperson, or employee to handle.

Tax System Modernization by Department of Taxation

The Department of Taxation is pleased to announce the second rollout of Tax System Modernization (TSM) which will go live on August 15, 2016. Among the business taxes converted in the second rollout are the General Excise and Transient Accommodations Tax. TSM is the Department's new tax information system which will be fully implemented by 2020.

Information about the conversion to the new tax information system will be mailed to over 330,000 General Excise and Transient Accommodations taxpayers by the end of July. The letter will highlight the transition to the new tax information system, including the launch of a new website Hawaii Tax Online on August 15, 2016. New services available to business taxpayers include the ability to access and update your own tax account, quicker tax filing and payment options, secure messaging to our Taxpayer Services staff, and authorized third-party access to your tax account.

By the end of August, General Excise and Transient Accommodations taxpayers will receive their new Hawaii Tax Identification Numbers. The new Hawaii Tax ID licenses should replace the old licenses and be visibly displayed at all business locations.

To accomplish the conversion to the new tax information system, the Department will have limited access to taxpayer accounts on August 11-12, 2016. For that reason, although all of the Department's District Tax Offices will be open to serve the public, services may be limited. We apologize in advance for the inconvenience this may cause taxpayers.

For more information about Tax System Modernization, please visit our website at tax.hawaii.gov.

14 Unmanned Aircraft Systems

The Real Estate Branch recently received information from a concerned individual about an Unmanned Aircraft System (“UAS”) flying over multiple properties, which the individual deemed to be reckless, potentially endangering others. The UAS was operating after sunset. A copy of an aerial photo of a property advertisement by the real estate licensee was also submitted. The photo did not show the listed property but included other neighboring properties. A note included in the ad read, “. . . aerial photo is of the property & view from above.”

The following is from a pamphlet issued by the Federal Aviation Administration (“FAA”), “Know Before You Fly”.

“The FAA currently authorizes the use of unmanned aircraft systems (“UAS”) for commercial or business purposes on a case-by-case basis. You may not fly your UAS for commercial purpose without the express permission from the FAA. You should check with the FAA for further determination as to what constitutes a commercial or business use of small UAS.

Users of commercial and recreational UAS should be aware that in remote, rural and agricultural areas, manned aircraft, including fixed-wing aircraft and helicopters, may be operating very close to ground level. Pilots conducting agricultural, firefighting, law enforcement, emergency medical, wildlife survey operations and a variety of other services all legally and routinely work in low-level airspace. Operators controlling UAS in these areas should maintain situational awareness, give way to, and remain a safe distance from these low-level manned airplanes and helicopters.

What is a commercial use of UAS?

Any commercial use in connection with a business including:

- Selling photos or videos taken from a UAS
- Using UAS to provide contract services, such as industrial equipment or factory inspection
- Using UAS to provide professional services, such as security or telecommunications

What are some examples of commercial uses of UAS?

- Professional real estate or wedding photography
- Professional cinema photography for a film or television production
- Providing contract services for mapping or land surveys

If you want to use UAS for a commercial purpose, you have a few options. You can apply for an exemption from the FAA to operate commercially. You can use UAS with an FAA airworthiness certificate and operate pursuant to FAA rules. In both cases you would also need an FAA Certificate of Authorization (“COA”). For more information about how to apply for an exemption, visit the FAA’s “Section 333” page.

. . . contact@knowbeforeyoufly.org



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



State of Hawaii Real Estate Commission

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

Continuing Education Providers

Abe Lee Seminars	808-942-4472	Kama'aina Realty LLC, dba RP Seminars Unlimited	808-753-3083
All Islands Real Estate School	808-564-5170	Kauai Board of Realtors	808-245-4049
American C.E. Institute, LLC	727-224-3859	Lorman Business Center, Inc. dba Lorman Education Services	715-833-3940
American Dream Real Estate School LLC	720-322-5470	McKissock, LP	800-328-2008
American School of Real Estate Express, LLC	866-739-7277	OnCourse Learning Corporation, dba Career WebSchool	800-532-7649
Carol Ball School of Real Estate	808-871-8807	Pacific Real Estate Institute	808-524-1505
Carol M. Egan, Attorney at Law	808-222-9725	ProSchools, Inc.	800-299-2207
Coldwell Banker Pacific Properties Real Estate School	808-597-5550	Ralph Foulger's School of Real Estate Real Class, Inc.	808-239-8881 808-981-0711
Continuing Ed Express LLC	866-415-8521	Realtors Association of Maui, Inc.	808-873-8585
Dower School of Real Estate	808-735-8838	REMI School of Real Estate	808-230-8200
Eddie Flores Real Estate Continuing Education	808-951-9888	Russ Goode Seminars	808-597-1111
Hawaii Association of Realtors	808-733-7060	Servpro Industries, Inc.	615-451-0200
Hawaii Business Training	808-250-2384	Shari S. Motooka-Higa	808-457-0156
Hawaii CCIM Chapter	808-528-2246	The CE Shop, Inc.	888-827-0777
Hawaii Island Realtors	808-935-0827	USA Homeownership Foundation, Inc., dba Veterans Association of Real Estate Professionals (VAREP)	951-444-7359
Honolulu Board of Realtors	808-732-3000	Vitousek Real Estate Schools, Inc.	808-946-0505
Institute of Real Estate Management – Hawaii Chapter No. 34	808-536-4736	West Hawaii Association of Realtors	808-329-4874
Institute of Real Estate Management – National	312-329-6058		
International Association of Certified Home Inspectors (InterNACHI)	303-502-6214		

State of Hawaii
Real Estate Commission
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2016 Real Estate Commission Meeting Schedule

Laws & Rules Review Committee – 9:00 a.m.

**Condominium Review Committee – Upon adjournment of the Laws & Rules
Review Committee Meeting**

**Education Review Committee – Upon adjournment of the Condominium
Review Committee Meeting**

Wednesday, August 10, 2016

Wednesday, September 14, 2016*

Wednesday, October 12, 2016

Wednesday, November 09, 2016

Wednesday, December 07, 2016

Real Estate Commission – 9:00 a.m.

Friday, July 29, 2016

Friday, August 26, 2016

Friday, September 30, 2016

Friday, October 28, 2016

Wednesday, November 23, 2016

Friday, December 16, 2016

*The committee meetings scheduled for September 14, 2016 will be held on Kauai, at the Grove Farm Building Conference Room, 3-1850 Kaunualii Highway, Lihue, HI.

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

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at www.hawaii.gov/hirec or call the Real Estate Commission Office at (808) 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at (808) 586-2643 to submit your request.