

LAWS AND RULES REVIEW COMMITTEE
REAL ESTATE COMMISSION
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.hawaii.gov/hirec

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes.

Date: Wednesday, March 8, 2017

Time: 9:00 a.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Present: Nikki Senter, Chair Pro Tem, Public / Honolulu Commissioner
Laurie Lee, Broker / Honolulu Commissioner
Rowena Cobb, Broker / Kauai Commissioner
Bruce Faulkner, Broker / Maui Commissioner
Aileen Wada, Broker / Honolulu Commissioner
Aleta Klein, Broker / Honolulu Commissioner
Sean Ginoza, Broker / Hilo Commissioner

Neil Fujitani, Supervising Executive Officer
Miles Ino, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Amy Endo, Real Estate Specialist
David Grupen, Real Estate Specialist
Carole Richelieu, Senior Condominium Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: None

Absent: Scott Arakaki, Chair, Public / Honolulu Commissioner
Michael Pang, Vice Chair, Broker / Honolulu Commissioner

Call to Order: Chair Pro Tem Senter called the meeting to order at 9:00 a.m., at which time quorum was established.

Chair's Report: Chair Pro Tem Senter announced that the Commission may move into executive session to consider and evaluate personal information relating to individuals applying for licensure in accordance with Section 92-5(a)(1), HRS, and/or to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.

Commissioners Arakaki and Pang were excused from today's meeting. Prior notice of their non-attendance was received.

SEO's Report: **Minutes of Previous Meetings**

Upon a motion by Commissioner Faulkner, seconded by Commissioner Lee, it was voted on and unanimously carried to accept the minutes of the February 8, 2017, Laws and Rules Review Committee meeting.

Program of Work: **Legislative and Government Participation Report**

Upon a motion by Commissioner Lee, seconded by Commissioner Wada, it was voted on and unanimously carried to add Senate Bill No. 292 to the agenda for discussion.

Senate Bill No. 395 Relating to Real Estate Brokers – Permits a licensed real estate broker to pay a commission to a corporation or partnership; provided that the licensed real estate broker earned the commission on behalf of the corporation or partnership and is a member, officer, shareholder, or partner of the corporation or partnership.

SEO Fujitani reported that Senate Bill No. 395 did not cross over and has died. He reported that the bill proposed to permit paying compensation to an unlicensed entity. In Hawaii's regulatory licensing structure, the principal broker of the brokerage firm is ultimately responsible for the direct management and supervision of the brokerage firm and its real estate licensees. If the State were to allow an unlicensed entity to collect commissions, who would then be in charge? The principal broker then loses oversight and control.

SEO Fujitani further reported that in California this is allowed in a very narrow area, but we are unsure as to how California's regulatory licensing structure works.

Executive Officer Ino responded that Hawaii and California licensing laws and rules are substantially different and not easily transferrable. It would entail a substantial rewrite of Hawaii's laws.

SEO Fujitani suggested that staff reach out to CPAs to educate them and inform them that creating an unlicensed entity to pay commissions through is not allowed in Hawaii.

House Bill No. 242 H.D. 1 – Relating to Condominiums – Establishes a Condominium Unit Owner Hotline to provide unit owners with legal information relating to disputes with a condominium's board of directors. Services are provided free of charge for qualifying low-income households. Appropriates funds.

SEO Fujitani reported that House Bill No. 242, H.D. 1 did not cross over and has died. SEO Fujitani reported that the Real Estate Branch currently provides a free dedicated hotline. A press release regarding this hotline was drafted when the dedicated hotline was first established. The Director's office halted our request for a press release because they wanted more educational information included, and then never released the press release. The hotline and quarterly email blast

information was included in the Commission's Hawaii Condominium Bulletin.

House Bill No. 406 H.D. 1 – Relating to Condominium Property Regimes – Requires and provides funding for the Real Estate Commission to procure an online board member educational training course for the board of directors of residential condominium projects of at least 20 units. Establishes and funds a condominium specialist position to assist condominium owners and support the Commission's condominium hotline.

SEO Fujitani reported that House Bill No. 406, H.D. 1 did not cross over and has died. He reported that although overall education is a step in the right direction, making mandatory board member training is not workable. REB staff has been working on providing more education in the condominium community.

Specialist Richelieu reported that House Bill No. 406's companion bill, Senate Bill No. 378, was gutted and replaced with a proviso requiring DCCA to include a link on the Real Estate Branch's website to an educational video program produced by HCCA. This raises concerns about the specificity and codification of one private nonprofit group on the State's official website without vetting by the department or the State's IT services, causes concern for separation of powers and raises constitutional issues.

House Bill No. 1499 H.D. 1 – Relating to Condominium Associations – Authorizes use of the condominium education trust fund to pay for arbitration of condominium disputes. Provides that use of trust fund moneys to pay arbitrator's fees shall only be allowed if parties agree to binding arbitration and rescind their rights to trial de novo. Provides penalties for noncompliance.

SEO Fujitani reported that the Commission presented testimony supporting the concept of alternative dispute resolution as an avenue for handling condominium disputes but requested that it retain discretion regarding allocation of funds to each program and that it not touch the operational budget.

Commission Klein commented that the cost for arbitration could be extraordinary and we may want to include a cap.

Senate Bill No. 292, S.D. 1 – Relating to Condominiums - Repeals chapter 514A, Hawaii Revised Statutes, relating to condominium property regimes, and ensures that all condominiums in the State are governed under chapter 514B, Hawaii Revised Statutes, relating to condominiums.

Chair Pro Tem Senter commented that many condominiums formed under HRS 514A are 2-unit family condominiums. The repeal of HRS 514A wholesale would require those who have not yet sold, to re-register under HRS 514B which could be quite costly.

Commissioner Faulkner questioned the estimated costs for those to re-register under HRS Ch. 514B.

Chair Pro Tem Senter responded that the cost could be between \$7,000 to \$10,000 as documents may need to be redrafted.

Staff will draft testimony addressing those concerns.

Commissioner Klein suggested including in the legislative matrix the Commission's position on the bills and a brief discussion of the important points of each bill. She further suggested that the legislative matrix be attached to the meeting's agenda to allow for discussion on all bills being tracked.

SEO Fujitani responded that the issue raised by Civil Beat was the lack of transparency on Board agendas and noted as one of the issues that specific bills to include a discussion at the meeting need to be placed on the agenda with detail. PVLs current policy is to list the specific bills the Board intends to discuss with a brief summary of the bill. The problem that may arise is when a bill's status changes between the time the agenda is filed and the date of the meeting.

Deputy AG Wong noted that an attachment could be made a part of the agenda to list all of the bills the Board is tracking.

SEO Fujitani responded that he will research further Commissioner Klein's request.

Next Meeting: Wednesday, April 12, 2017
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii'

Adjournment: With no further business to discuss, Chair Pro Tem Senter adjourned the meeting at 9:41 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

Neil K. Fujitani
Supervising Executive Officer

March 10, 2017

Date

Approved as is.
 Approved with amendments. See minutes of _____ meeting.