

# Real Estate Commission Bulletin



## TEAMS

The proliferation of “teams” across the country as a different way to do real estate business is a major concern for many jurisdictions, including Hawaii. Hawaii has no rules in place specifically regarding teams, but you can be sure that in the next round of rule-making, the issue of teams will be addressed. Specific language is yet to be developed, and a review of how other jurisdictions are addressing the team concept is on-going.

In the meantime, all licensees operating within a team context must abide by the current laws and rules in place in Hawaii Revised Statutes (“HRS”), Chapter 467, and Hawaii Administrative Rules (“HAR”), Chapter 99, Real Estate Brokers and Salespersons.

Specifically, HAR §16-99-11 Advertisement, states the following: “(a) All real estate advertising and promotional materials shall include the legal name of the brokerage firm or a trade name previously registered by the brokerage firm with the business registration division and with the commission.”

COMMENT: The registration of a trade name expires five years after initial registration, so be sure that the trade name registration is current. It is a violation of HAR §16-99-5.1(2) if the brokerage firm is no longer registered with the Business Registration Division (BREG).

The brokerage name is first registered with the BREG, and then the trade name must be also registered and

attached or linked to the brokerage’s legal name as registered with the BREG AND the Commission. If adding a registered trade name post-licensing, use the Change Form to “Add Trade Name”.

HAR §16-99-11(e): “All advertising and promotional materials that refer to the individual licensee’s name, including but not limited to business cards, shall:

- (1) Include the licensee’s legal name, name as licensed by the commission, or sole proprietor’s trade name as licensed by the commission;
- (2) Identify the licensee with the licensee’s associating or employing brokerage firm; and
- (3) Specify that the licensee is a broker (B), or salesperson (S) or if a current member of the Hawaii Association of Realtors, Realtor (R) or Realtor-Associate (RA).”

COMMENT: An advertisement that includes a team name, “Team ABC”, as an example, must, at a minimum, include the name of the brokerage in the same advertisement. Names of real estate licensee team members must be the names of these individuals as registered with the Commission. Each individual licensee must specify if they are a broker or salesperson.

At its February 27, 2015 meeting, the Commission approved a non-binding interpretation request that “. . . as long as the ‘team name’ is advertised in addition to and not as a replacement of the brokerage firm’s name, the requirements of HAR §16-99-11(a) will be met. (see §16-99-11(a) above)

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## Succession Consideration for Small Brokerages

Recently the Real Estate Commission has received numerous inquiries about what happens to a brokerage's operations upon the death or disability of the principal broker, or an unexpected event which prevents the principal broker from managing and supervising the brokerage. If the principal broker is unable to act due to prolonged illness or death and no temporary principal broker has been designated pursuant to Hawaii Administrative Rules ("HAR") §16-99-3(o), all individual licensees shall be placed on involuntary inactive status. In the case of a sole proprietorship, the brokerage ceases to exist upon the death of the sole proprietor.

If possible, smaller brokerages should consider associating a designated broker-in-charge ("BIC"). If an unexpected event occurs, which means the principal broker cannot function, the BIC may continue operations of the brokerage, until a new principal broker is put in place.

The Business Registration Division ("BREG") of the Department of Commerce and Consumer Affairs ("DCCA") provides information about different types of legal entities on their website located at: <http://cca.hawaii.gov/breg>. Below, the chart compares a sole proprietorship and a limited liability company ("LLC"). As you can see, an LLC can survive the death of a principal broker provided certain contingencies are in place including but not limited to the appointment of a temporary principal broker in accordance with HAR §16-99-3(o).

Licensees operating as sole proprietorships are encouraged to consult with their legal and tax advisors regarding forming a single member LLC with respect to succession, taxation, and compliance with the laws and rules for real estate brokers and salespersons. Likewise, licensees who are currently operating as a single member LLC should review their operating plans and successions plans with their legal and tax advisors to ensure they are in compliance with applicable laws and rules.

ISSUES TO CONSIDER	SOLE PROPRIETORSHIP	LIMITED LIABILITY COMPANY
<b>Ownership</b>	By a single individual	1 or more persons or entities
<b>Business Registration</b> (State Dept. of Commerce & Consumer Affairs)	Not required, unless public notice of trade name is desired	File Articles of Organization. For non-Hawaii LLCs, file a Certificate of Authority for LLCs
<b>Management (Control)</b>	Entirely in hands of owner	Member-managed or manager-managed
<b>Life of the Business</b>	Will terminate with death or disability of owner	May be for a specific agree-upon time or at will
<b>Liability</b>	Owner liability unlimited. Personal property can be attached by creditors to settle business debts	Limited to amount of investment or as specified in Articles of Organization
<b>Taxation</b>	Owner taxed on business profits whether or not distributed. Business does not file a separate tax return.	Members taxed on share of company income, whether or not distributed. Alternatively, can elect to be treated as a corporation for tax purposes.
<b>Advantages</b>	Uncomplicated Ease of formation Greater flexibility of action Singleness of control Economy of operation Tax advantage by avoiding corporate income tax Maximum centralized authority	Legal entity separate from individuals Limited personal liability Continuity of existence Continuity of management Easier to raise capital Incentive to key employees Readily transferable interests Possible separation of ownership & management
<b>Disadvantages</b>	Unlimited personal liability Legal life ends with owner's death Difficulty in raising capital Possible personnel difficulties Owner's salary cannot be treated as an expense, hence, not tax deductible	Difficult, costly formation Subject to close government regulation Scope limited by company charter Inflexibility of operations

## The Vice-Chair's Message

For this issue of the Real Estate Commission Bulletin, Scott Arakaki, Public Member, O'ahu, is delivering the Chair's Message, or in this instance, the Vice-Chair's Message.

Aloha!

Beginning with a Hawaiian blessing, Hawaii welcomed and proudly hosted the Annual Conference for the Association of Real Estate License Law Officials ("ARELLO"), an international organization of real estate regulators, at the Sheraton Waikiki from September 20 to 24, 2017.

Over 200 attendees gathered to discuss a wide range of real estate topics and consumer protection issues, including real estate best practices, Fair Housing discrimination trends, real estate scams, and real estate education issues. These conferences provide an important networking opportunity for regulators, especially from Hawaii who seldom meet regulators from other States due to Hawaii's geographic location, to share regulatory ideas and experiences and to help each other resolve important real estate issues impacting the real estate industry and consumers in Hawaii and other jurisdictions.

The 2017 ARELLO Annual Conference also attracted nationally prominent presenters and speakers from the Real Estate Educators Association President Michael McAllister to the National Fair Housing Alliance President Shanna Smith. In addition, the Conference included Hawaii speakers and presenters from the Hawaii Civil Rights Commission Deputy Director Marcus Kawatachi to the Conference's keynote speaker, Ka'ala Souza, who shared Hawaii's values with this international audience and challenged everyone to think "Nui" (large, big, and abundant).

Among the many Conference highlights, Hawaii's Real Estate Commission ("Commission") was proud to receive the 2017 ARELLO Education Award for Hawaii's Core A continuing education live classroom and online course. The Commission selected the topics and approved the Core A course, which was written by Everett Kaneshige, Esq., with assistance from The CE Shop, Inc. The Core A course won this prestigious award for its concept methodology, quality, and benefits, which included many embedded links to excellent resource materials.

The Annual Conference closed with heartwarming and inspirational speeches from the outgoing ARELLO President Miriam Baer and from the newly installed ARELLO President David Raphael. The next day after the Conference ended, ARELLO held its live Commissioner's College course, which is a highly regarded educational program that prepares new commissioners for their term as regulatory decision-makers.

Many contributed to the success of the 2017 ARELLO Annual Conference and should be thanked for their hard work and

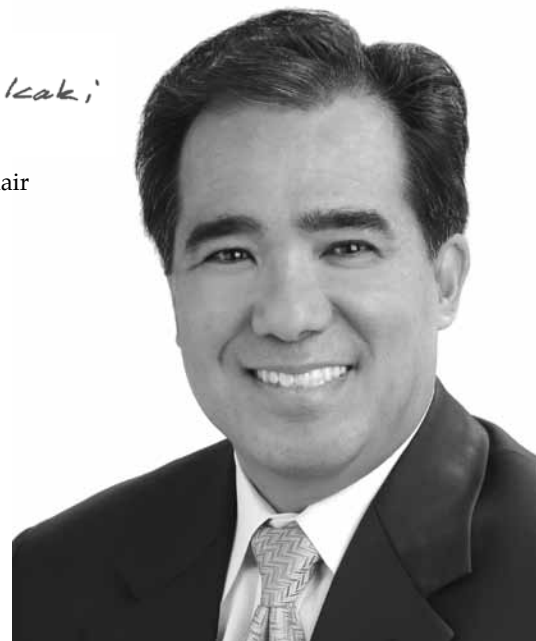


*Left to right: Bruce Faulkner (Maui), Rowena Cobb (Kauai), Everett Kaneshige (author), Scott Arakaki (Public Member, Vice Chair), Nikki Senter (Public Member, Chair)*

support. They include ARELLO and its sponsors, conference attendees, Commission Chair Nikki Senter, ARELLO Program Co-Chair/Commissioner Rowena Cobb, ARELLO Commissioner Resource Committee Co-Chair/Commissioner Scott C. Arakaki, Commissioners Bruce Faulkner, Sean Ginoza, Aleta Klein, Laurie Lee, Aileen Wada, and Michael Pang, Supervising Executive Officer Neil Fujitani and everyone at the Department of Commerce and Consumer Affairs, Real Estate Branch, welcome-reception sponsor Hawaii Association of Realtors, the Hawaii Civil Rights Commission, Senate President Ronald Kouchi, James "Kimo" Stone, Esq., speakers, presenters, entertainers, lei makers, Sheraton Waikiki, and many others.

If you would like to know more about ARELLO, please visit ARELLO's website at [www.arello.org](http://www.arello.org). Mahalo again for everyone's efforts and support.

Scott C. Arakaki, Vice Chair



# 4 Administrative Actions

## August 2017

**Anthony Provenzano**

RS 71628

Case No. REC 2016-281-L

Dated 8/25/17

**RICO Allegations:**

Before being issued a license by the Commission the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant or what is commonly referred to in this state as a "DUI" - driving under the influence (hereafter "Conviction"). The Respondent did not disclose the Conviction when Respondent answered the licensing application and renewal questions that asked for criminal convictions. Respondent self-reported the Conviction eventually to the Commission.

**Violations:** HRS § 436B-19(2),

HRS § 436B-19(5), HRS § 436B-19(17), and HRS § 467-20

**Sanctions:**

Fine of \$500.00.

**David W. Siefker**

RB 15202

Case No. REC 2016-134-L

Dated 8/25/17

**RICO Allegations:**

Upon information and belief in or around 2016 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant 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.

**Violations:** HRS § 436B-19(12),

HRS § 436B-19(14), and HRS § 436B-19(17)

**Sanctions:**

Fine of \$500.00.

**Andrew L. Geiser**

RB 18084

Case No. REC 2017-173-L

Dated 8/25/17

**RICO Allegations:**

In 1989 and 1997 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant or what is commonly referred to in this state as driving under the influence ("DUI"). Despite the convictions, the Respondent answered "NO" to the question on his 1999 real estate salesperson application form, and his 2003 broker application form, that asked: "During the past 20 years have you ever been convicted of a crime where there has not been an order annulling or expunging the conviction?"

During all relevant times the Respondent served as principal broker of HI Sites Realty, LLC, a licensed brokerage firm. From January 2015- January 2017 a real estate salesperson affiliated with HI Sites Realty engaged in real estate activity, and otherwise acted as a real estate salesperson, without a current or active license.

**Violations:** HRS § 436B-19(2),

HRS § 436B-19(5), HRS § 436B-19(17), HRS § 467-1.6(b) (7) , HRS § 436B-14(13), and HRS § 467-20

**Representations by Respondent:**

Respondent acknowledges the right to be represented by an attorney in this matter and he is in fact represented by Kobayashi, Sugita & Goda, LLP, attorney Charles D. Hunter, Esq.

Respondent admits to incorrectly answering the question about crimes on his real estate license application forms because he sincerely believed, at the time, that a DUI was a traffic infraction. Concerning the salesperson affiliated with the brokerage firm, Respondent does not dispute that the license was not in active status from 2015 - 2017. Respondent did not know that the salesperson's license was not active, however, until he was notified of the same through RICO's investigation of the case.

**Sanctions:**

Fine of \$2,000.00.

## Administrative Actions (cont. from page 4)

**Andrew S. Bashrum**  
RB 19505

Case No. REC 2015-247-L  
Dated 8/25/17

**RICO Allegations:**

In or around 2015 the Respondent was convicted, in the United States District Court for the District of Hawaii, of the crime of operating a vehicle under the influence of an intoxicant in a National Park (Volcanoes National Park) (hereafter "Conviction").

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

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

**Sanctions:**  
Fine of \$500.00.

## September 2017

Rebecca Ruppenthal  
RS 68665

Case No. REC 2017-36-L  
Dated 9/29/17

**RICO Allegations:**

In or around 2016 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant 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, self-reported the Conviction in writing to the Commission.

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

**Sanctions:**  
Fine of \$500.00.

**Christianna N. Brown**  
RB 21287

Case No. REC 2017-37-L  
Dated 9/27/17

**RICO Allegations:**

In or around 2016 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant 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.

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

**Sanctions:**  
Fine of \$500.00.

**Mark H. Young**  
RS 72387

Case No. REC 2017-35-L  
Dated 9/27/17

**RICO Allegations:**

In or around 2015 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant or what is commonly referred 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 when renewing his license in 2016.

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

**Sanctions:**  
Fine of \$500.00.

## Administrative Actions (cont. from page 5)

**Dominique T. Nguyen**  
RS 76002

Case No. REC 2017-260-L  
Dated 9/27/17

**RICO Allegations:**

Before being issued a license by the Commission the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant or what is commonly referred to in this state as a "DUI" - driving under the influence (hereafter "Conviction"). Despite the Conviction the Respondent answered "NO" to the question on her 2014 license application form that asked: "During the past 20 years have you ever been convicted of a crime where there has not been an order annulling or expunging the conviction?"

**Violations:** HRS § 436B-19(2),  
HRS § 436B-19(5), HRS § 436B-19(17), and HRS § 467-20

**Sanctions:**  
Fine of \$1,000.00.

**Cheslynn N. Wooten,**  
**a.k.a. Noelani Wooten,**  
**a.k.a. Cheslynn N. Ubaldo**  
RS 75209

Case No. REC 2017-28-L  
Dated 9/27/17

**RICO Allegations:**

In 2016 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant 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.

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

**Sanctions:**  
Fine of \$500.00.

**Benjy Gilholm a.k.a.**  
**Benjamin M. Gilholm**  
RS 67831

Case No. REC 2017-41-L  
Dated 9/29/17

**RICO Allegations:**

In 2017 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant 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.

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

**Sanctions:**  
Fine of \$500.00.

**Yvonne R. Cablay**  
RS 60062

Case No. REC 2017-258-L  
Dated 9/27/17

**RICO Allegations:**

In or around 2013 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant 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, but, answered "NO" to the question on the 2014 renewal application that asked: "In the past 2 years have you been convicted of a crime in which the conviction has not been annulled or expunged?"

**Violations:** HRS § 436B-19(2),  
HRS § 436B-19(5), HRS § 436B-19(12), HRS § 436B-19(14), HRS § 436B-19(17), and HRS § 467-20

**Sanctions:**  
Fine of \$1,000.00.

# Administrative Actions (cont. from page 6)

## John P. Carr

RS 79501

Case No. REC 2017-259-L

Dated 9/29/17

## RICO Allegations:

Before being issued a license by the Commission the Respondent was convicted of the crime of operating a vehicle under the influence of an intoxicant or what is commonly referred to in this state as a "DUI" - driving under the influence (hereafter "Conviction"). Despite the Conviction the Respondent answered "NO" to the question on his 2017 application that asked: "During the past 20 years have you ever been convicted of a crime where there has not been an order annulling or expunging the conviction?"

## Violations:

HRS § 436B-19(2),

HRS § 436B-19(5), HRS § 436B-19(17), and HRS § 467-20

## Sanctions:

Fine of \$1,000.00.

## Solcrest Properties LLC and Meredith Stuart Murphy

RB 19640

RB 17727 (see Note below)

Case No. REC-2009-217-L;

REC-2009-218-L; REC-

2009-224-L; REC-2009-

225-L; REC-2009-227-L;

REC-2009-232-L; REC-

2009-248-L

Dated 9/29/17

Note: Meredith Stuart Murphy entered into a settlement agreement of the charges brought against her. The Commission approved the Settlement Agreement on 8/29/16.

## Findings of Fact:

Respondent was originally licensed as a real estate broker by the Real Estate Commission ("Commission") on August 10, 2007. Respondent's real estate broker's license, License No. RB 19640, expired on December 31, 2010.

At all relevant times herein, Respondent conducted its vacation rental business under the trade names, "Anini Aloha", "Anini Aloha Properties" and/or "Anini Aloha Vacation Rentals". The trade name, "Anini Aloha Properties" was registered with the Commission as Respondent's trade name.

From and after May 28, 2009, Respondent had no principal broker. Meredith Stuart Murphy was designated as Respondent's principal broker prior to May 28, 2009.

In or about May 2007, Respondent opened a business checking account ("Operating Account") and a client trust account ("Client Trust") at First Hawaiian Bank. Frank J. Klenner and Teresa M. Klenner ("Klenners") were identified as the only authorized signers for the Operating Account.

The Klenners were never licensed as real estate brokers or salespersons in Hawaii.

Rents and security deposits were regularly processed through Respondent's Operating Account and Client Trust by the Klenners even though no licensed broker was authorized to handle the monies.

REC-2009-217-L

In or about April 2009, Audrie Allyn and Keith Hardin reserved, through Respondent, a vacation rental on Kauai for part of October 2009.

Allyn and Hardin entered into a Vacation Rental Agreement and paid for the vacation rental in full by way of an initial credit card deposit of \$657.30 and by check in the sum of \$2,271.90 sent to Respondent in May 2009.

The check for the \$2,271.90 payment was deposited into the Client Trust.

On June 26, 2009, Allyn and Hardin received a letter from Respondent informing them that the vacation rental they had reserved was no longer available due to a county ordinance and cease and desist order. The letter said that because the majority of Respondent's rental in the Anini area were covered by the ordinance, Respondent had to close its office and cease business operations and was filing bankruptcy. The letter also indicated that Respondent would not be processing refunds at this time.

Ally and Hardin were eventually reimbursed \$657.30 by their credit card company but never received a refund for the \$2,271.90 they had paid to Respondent.

REC-2009-218-L

On May 5, 2009, Donald White reserved, through Respondent, a vacation rental on Kauai for part of October 2009.

White entered into a Vacation Rental Agreement and paid for the vacation rental by way of an initial credit card payment of \$1,488.86. The balance was not due until July 2009.

In the summer of 2009, Respondent closed its doors and ceased doing business.

White was eventually reimbursed \$1,488.86 by his credit card company.

## Administrative Actions (cont. from page 7)

REC-2009-224-L

On February 23, 2009, Katherine Cox reserved, through Respondent, a vacation rental on Kauai for part of October 2009.

Cox entered into a Vacation Rental Agreement and paid for the vacation rental by way of an initial credit card deposit of \$780.20.

In the summer of 2009, Cox discovered that Respondent had ceased doing business.

By letter dated June 10, 2009 to Respondent, Cox cancelled her vacation rental reservation and demanded a refund of \$780.20. Respondent did not provide Cox with a refund.

Cox was eventually reimbursed \$780.20 by her credit card company.

REC-2009-225-L

In or about February 2009, Adam Sargent reserved, through Respondent, a vacation rental on Kauai for part of July and August 2009.

Sargent entered into a Vacation Rental Agreement and paid for the vacation rental by way of two credit card payments totaling \$1,840.56.

On June 26, 2009, Sargent received a letter from Respondent informing him that the vacation rental he had reserved was no longer available due to a county ordinance and cease and desist order. The letter said that because the majority of Respondent's rentals were covered by the ordinance, Respondent had to close its office and cease business operations and was filing bankruptcy. The letter also indicated that Respondent would not be processing refunds at this time.

Sargent was eventually reimbursed \$1,840.56 by his credit card company.

REC-2009-227-L

From 2003 to 2009, Respondent served as the property manager for a vacation rental unit located at 4251 Anini Road on Kauai and owned by Robert Wade.

In June 2009, after learning that Respondent had ceased doing business, Wade terminated his property management agreement with Respondent and demanded an accounting, records, and all outstanding rental income.

Wade never received a complete accounting of the monies received from the rental of his unit or the complete records of his rental unit. Wade did receive a statement for the period from May 1, 2009 to May 31, 2009 showing an accumulated balance of \$22,335.45 and a net balance of \$16,052.56 after various charges were applied.

The charges included a charge of \$2,189.31 for work that had been performed by a landscaping contractor who was never paid, and a charge of \$500.00 for "working capital".

Based on the records available, Wade was owed a minimum of \$18,741.87 (\$16,052.56 + \$500.00 + \$2,189.31) by Respondent.

REC-2009-232-L

On September 26, 2008, Stephanie Mason reserved, through Respondent, a vacation rental on Kauai for part of March 2009.

Mason entered into a Vacation Rental Agreement and paid for the vacation rental in full by way of a credit card payment for \$3,724.11. The payment included a \$500.00 refundable security deposit, which was never returned by Respondent.

Mason was eventually reimbursed \$500.00 from her credit card company.

REC-2009-248-L

On January 26, 2009, Mark Rogers reserved, through Respondent, a vacation rental on Kauai for part of May 2009.

Rogers entered into a Vacation Rental Agreement and paid Respondent a refundable security deposit of \$400.00 by way of his credit card.

In the summer of 2009 Respondent ceased doing business and never returned the security deposit to Rogers.

Rogers was eventually reimbursed \$400.00 by his credit card company.

**Violations:** HRS §§467-1.6(b)(1), (2), (3), HRS §467-14(7), HRS §467-14(8), HRS §467-14(10), HRS §467-14(13), HRS §467-14(16), HRS §436B-19(6), HRS §436B-19(7), HRS §436B-19(8), HRS §436B-19(16), along with HAR §§ 16-99-3(b), 3(m), 3(v), and HAR §3-99-4(a)

**Order:**

Revocation of license.

Respondent be ordered to pay (1) a fine in the sum of \$10,000.00, (2) restitution to Audrie Allyn and Keith Hardin in the sum of \$2,271.90 and Robert Wade in the sum of \$18,741.87, and (3) the cost of publishing notice of the hearing pursuant to HRS §92-17(b) in the sum of \$564.30.



# Administrative Actions (cont. from page 8)

## Melanie Castan Candidate for Broker License Examination

Dated 9/29/17

On its meeting on July 28, 2017, the Real Estate Commission ("Commission") considered information it received from the testing agency, PSI, regarding the above-referenced applicant. According to the PSI email report sent to the Commission with a date of breach on June 27, 2017, at the Honolulu (Ala Moana) test center:

"Additional Notes/Details from PSI state:

Candidate went into her locker because she was having trouble with her contact lens and then went to the restroom with her contact lens solution. When the candidate returned from the restroom, she went back into her locker to place her contact solution back into it.

Candidate then proceeded to go back to her computer station, that is when TCA saw her using her cell-phone through the camera. TCA contacted Shelly and stopped the candidates exam. Candidate has left the testing center."

PSI staff also read a Check In Speech to the candidates before starting the exam. The Check In Speech states in relevant part:

"When taking your exam, you must comply with our Exam Security rules. Our-policy prohibits the following in the testing room:

\*\*\*

Cell phones or other electronic devices

All personal items will be stored in a locker. The locker will be secured at check in and may not be accessed until you've completed your exam.

If you are found in violation of any of the rules, your exam will be stopped, your actions reported to your board or commission and PSI will pursue all legal remedies available to it."

Emphases added. In addition, PSI has a Security Agreement for Examinations in which candidates must click on an "Agree" button before being allowed to proceed in taking the exam.

This Security Agreement states in relevant part:

"I HAVE READ THE FOLLOWING PSI SECURITY AGREEMENT AND CONSENT TO TAKE THE LICENSING EXAMINATION UNDER THE CONDITIONS STATED HEREIN:

- I will maintain the confidentiality of the test.
- I will not have in my possession a cell phone, pager, or other unauthorized materials.

\*\*\*

- I understand that violating the confidential nature of the licensing test can result in severe civil or criminal penalties, invalidation of test scores, reports to the authorized agency."

Emphasis added.

This was Ms. Castan's fourth attempt in taking the broker test.

Given PSI's report that she accessed and used her cell phone, Ms. Castan clearly violated PSI's Security Agreement for Examination, the terms of which she agreed to follow before sitting for the examination.

Pursuant to § 16-99-29( e), Hawaii Administrative Rules (HAR), Examination For Broker and Salesperson License, "Examinations shall be conducted in accordance with procedures formulated by the testing agency authorized by the commission to administer examinations. Failure to follow such procedures shall result in immediate disqualification from the examination and may bar candidates from being examined in any future examinations."

The Commission finds PSI's report of the incident to be credible and that Ms. Castan agreed to but failed to follow PSI's procedures while taking the real estate broker examination on June 27, 2017. The Commission concludes that Ms. Castan is subject to HAR § 16-99-29(e).

Accordingly, the Commission proposes that Ms. Castan be disqualified from the June 27, 2017 examination and barred from being examined in any future examinations for two years.

The earliest date Ms. Castan may take any Hawaii real estate licensing examination is after June 27, 2019.

# 10 Statutory/Rule Violations

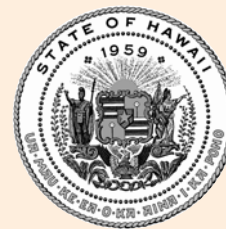
**Settlement Agreement (Allegations/Sanction):** The Respondent does not admit to the allegations set forth by the Regulated Industries Complaints Office (RICO) and denies having violated any licensing law or rule. The respondent enters in a Settlement Agreement as a compromise of the claims and to conserve 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(2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements.
- HRS §436B-19(5) Procuring a license through fraud, misrepresentation, or deceit.
- 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.
- 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.
- 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.
- 467-1.6(b)(1) The principal broker shall be responsible for: The client trust accounts, disbursements from those accounts, and the brokerage firm's accounting practices;
- 467-1.6(b)(2) The principal broker shall be responsible for: The brokerage firm's records, contracts, and documents;
- 467-1.6(b)(3) 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)(7) The principal broker shall be responsible for: Ensuring that the licenses of all associated real estate licensees and the brokerage firm license are current and active;
- HRS §467-14(7) Failing to account for moneys belonging to others.
- HRS §467-14(8) Conduct constituting fraudulent or dishonest dealings.
- HRS §467-14(10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- 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(16) Converting other people's moneys to the licensees own use.
- HRS §467-14(20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.
- HRS §467-20 False statement
- 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 §16-99-3(m) There shall be a principal broker or one or more brokers-in-charge, or both, at the principal place of business, and one or more brokers-in-charge at a branch office who shall be immediately responsible for the real estate operations conducted at that place of business.
- HAR §16-99-3(v) The licensee shall not convert other people's money to the licensee's own use.
- 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.

## 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
Bly School of Real Estate	808-738-8818
Carol Ball School of Real Estate	808-871-8807
Coldwell Banker Pacific Properties Real Estate School	808-551-6961
Continuing Ed Express, LLC	866-415-8521
Digital Learning Centers, LLC dba REMI School of Real Estate	808-230-8200
Inet Realty	808-955-7653 ext.102
Maui Real Estate Academy, LLC dba Hawaii Real Estate Academy	808-431-1218
OnCourse Learning Corporation ProSchools	800-299-2207
Ralph Foulger's School of Real Estate	808-239-8881
Seiler School of Real Estate	808-874-3100
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	Institute of Real Estate Management Hawaii	808-384-2801
All Islands Real Estate School	808-564-5170	Chapter #34 (IREM)	
American CE Institute, LLC	512-893-6679	International Association of Certified Home	303-225-9149
American Dream Real Estate School, LLC	720-322-5470	Inspectors (InterNACHI)	
At Your Pace Online, LLC	877-724-6150	International Council of Shopping Centers, Inc.	917-488-5694
The Berman Education Company, LLC	808-572-0853	Kauai Board of Realtors	808-245-4049
Bly School of Real Estate	808-738-8818	McKissock, LLC	800-328-2008
Building Industry Association of Hawaii	808-629-7505	Shari S. Motooka-Higa	808-492-7820
Carol Ball School of Real Estate	808-871-8807	OnCourse Learning Corporation	800-532-7649
The CE Shop, Inc.	888-827-0777	dba Career WebSchool	
CMPS Institute, LLC	888-608-9800	OnCourse Learning Corporation	800-299-2207
Coldwell Banker Pacific Properties Real Estate School	808-551-6961	dba ProSchools	
Continuing Ed Express, LLC	866-415-8521	Preferred Systems, Inc.	888-455-7437
The Council of Residential Specialists	800-462-8841	Ralph Foulger's School of Real Estate	808-239-8881
Eddie Flores Real Estate	808-951-9888	Realtors' Association of Maui, Inc.	808-873-8585
Continuing Education		REMI School of Real Estate	808-230-8200
Hawaii Association of Realtors	808-733-7060	Russ Goode Seminars	808-597-1111
Hawaii Business Training	808-250-2384	Servpro Industries Inc.*	615-451-0200
Hawaii CCIM Chapter	808-528-2246	USA Homeownership Foundation, Inc.,	951-444-7363
Hawaii Island Realtors	808-935-0827	dba Veterans Association of Real Estate	
Ho'akea LLC dba Ku'iwalu	808-539-3580	Professionals (VAREP)	
Honolulu Board of Realtors	808-732-3000	Vitousek Real Estate Schools, Inc.	808-946-0505
		West Hawaii Association of Realtors	808-329-4874

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## UPDATE for Transient Accommodations On-Island Contact By Department of Taxation

Act 204, Session Laws of Hawaii 2015, which became effective January 1, 2016, requires that operators of transient accommodations designate an on-island local contact and display that contact's name, phone number and email address, and provide that information either in online advertisements, or to the guest upon check-in. Act 204 also requires that the operator's transient accommodation tax (TAT) license number be displayed both at the transient accommodation itself and in all advertisements, either directly in the advertisement or by a link.

The penalty for failure to display the local contact's information is a fine of \$500 per day for first violations, \$1,000 per day for second violations, and \$5,000 per day for third and subsequent violations.

Similarly, the penalty for failure to display the TAT license number is \$500 per day for first violations, \$1,000 per day for second violations, and \$5,000 per day for third and subsequent violations. Both penalties may be imposed on the operator of the transient accommodation.

The Department of Taxation (Department) is currently in the process of adopting administrative rules to help clarify the TAT license number advertising and posting requirements, including specifics about where information must be posted, how any penalties may be assessed, and when and how the Department may issue a warning in lieu of a citation. The Department expects to announce a public hearing later this year or early 2018, at which time it will also make a draft of the proposed rules available for inspection. If anyone is interested in providing testimony or commentary on the proposed rules, please watch for an announcement of the public hearing in the local newspaper or on the Department's website at [tax.hawaii.gov](http://tax.hawaii.gov).

Act 204 and the proposed rules do not create any requirements that any information be reported to the Department or any other State agency. Nor do they create any obligations for associations of apartment/unit owners or planned community associations. All obligations are strictly on the operators of the transient accommodations in the State of Hawaii.

## 2017 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 Con-  
dominium Review Committee Meeting**

**Wednesday, October 11, 2017**  
**Wednesday, November 08, 2017**  
**Wednesday, December 06, 2017**

**Real Estate Commission –  
9:00 a.m.**

**Friday, October 27, 2017**  
**Wednesday, November 22, 2017**  
**Friday, December 15, 2017**

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](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.