

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, February 14, 2018

Time: 9:00 a.m.

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

Present: Scott Arakaki, Chair, Public / Honolulu Commissioner
Laurie Lee, Broker / Honolulu Commissioner
Rowena Cobb, Broker / Kauai Commissioner
Bruce Faulkner, Broker / Maui Commissioner
Nikki Senter, Public / Honolulu Commissioner
Aileen Wada, 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
Benedyne Stone, Condominium Specialist
Dathan Choy, Condominium Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Rayann E. Chavez, WSB/Abe Lee Seminars
Benjamin Yeung, WSB/Abe Lee Seminars

Absent: Michael Pang, Vice Chair, Broker / Honolulu Commissioner
Aleta Klein, Broker / Honolulu Commissioner

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

Chair's Report: The Chair 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 Pang and Klein 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 Lee, seconded by Commissioner Faulkner, it was voted on and unanimously carried to accept the minutes of the January 10, 2018, Laws and Rules Review Committee meeting as circulated.

Program of Work: **Rulemaking, Chapter 99, HAR, Real Estate Brokers and Salespersons**

The article entitled "Principal Broker Unable to Act – What Happens?" from the November 2014 issue of the *Real Estate Commission Bulletin* was distributed for informational purposes. SEO Fujitani reported that staff receives many inquiries related to this issue.

Commissioner Faulkner suggested the Commission discuss succession planning and come up with suggestion and ideas for the industry. He noted that the issue has been raised at recent meetings by Sole Proprietors on the island of Maui.

Chair Arakaki questioned if this issue was addressed by the recent rulemaking.

Executive Officer Ino responded that the rules are substantially the same in that a temporary principal broker or broker in charge may be appointed for up to 6 months, with an extension of 6 months subject to Commission approval.

In the case of sole proprietors, the license is not transferrable. If the sole proprietor becomes incapacitated, or death, the sole proprietor no longer exists. Entities have members that can appoint a new PB.

The Commissioners discussed the issue and although a suggestion of creating a standard form was raised, it was noted that the State should not be a repository for forms that will quickly become out dated, nor be a repository for industry forms.

It was suggested that the article be reprinted with any updates in an upcoming Real Estate Bulletin.

As HSBA had recently dealt with this issue, Specialist Richelieu was requested to look into the issue of attorney succession planning

Legislative and Government Participation Report

SEO Fujitani reported that Friday is the first lateral deadline, bills will have to be in the last committee they were assigned in order to move forward. Copies of the following bills were provided and available for discussion.

House Bill No. 223, HD2, SD1 Relating to the Residential Landlord-Tenant Code - Allows a landlord or landlord's agent to charge an application screening fee as part of the applicant screening process for renting residential property. Limits the amount that may be charged for an application screening fee. Requires the

landlord or agent to return any unauthorized fee amounts to the applicant. Effective 7/1/2050. Repeals 6/30/2020.

House Bill No. 1607 Relating to Condominiums – Requires a condominium association to maintain a current list of the postal address, email address, or both addresses of each owner and vendee. Requires the association to make the list available to each member of the association.

House Bill No. 1607 may discourage unit owners from volunteering to be a board member. It was also noted that some may use the list for other activities which could invade privacy issues. This bill has only received a single referral.

House Bill No. 1613 Relating to Condominiums – Specifies that in disputes between a condominium unit owner and a condominium association or its board of directors involving activities occurring within the unit owner's unit, bylaws shall be construed in favor of the unit owner.

House Bill No. 1712 HD1 Relating to Condominiums – Increases the minimum number of residential units in a condominium project that must be offered for sale to prospective owner-occupants in the thirty-day period following the initial date of sale of the condominium from 50 percent to 90 percent. (HB1712 HD1)

House Bill No. 1712 has had multiple referrals. The bill was heard by the Housing committee and passed with amendments. It will be heard this afternoon by the Committee on Consumer Protection and Commerce.

It was commented that this bill has no genesis to go from 50 to 90 percent of the units being marketed to be offered only to prospective owner-occupants for a thirty-day period following the initial date of sale of units in a condominium project.

House Bill No. 1874 / Senate Bill No. 2060 Relating to Condominiums – Expands the scope of the condominium education trust fund to cover voluntary binding arbitration between interested parties. Amends the conditions that mandate mediation and exceptions to mandatory mediation. Makes conforming amendments.

The bill in its current state is very broad and allows condominium education trust fund fees designated for education purposes to be used for a new section on voluntary binding arbitration of condominium disputes, in addition to mediation. The proposed bill expands acceptable parties and issues. The Commission's testimony seeks to clarify if the intent was to include all parties and all issues.

House Bill No. 2034 Relating to Homeowners' Associations – Establishes a five-year pilot project for homeowners' association dispute mediation within the Office of the Ombudsman. Provides the Ombudsman with temporary authority to administer the pilot project. Appropriates funds.

House Bill No. 2141 / Senate Bill No. 2235 Relating to Condominiums – Amends definitions for "common elements" and "limited common elements" under the State's condominium laws. Specifies that determinations of common elements

and limited common elements under an original declaration supersede determinations of common elements and limited common elements under any restated declaration. Requires a vote or written consent of the owners, rather than resolution adopted by the board of directors, when restating the declaration and bylaws, except for determinations of common elements and limited common elements. Limits the board of directors to requiring the submission of one-time only affidavits, when condominium owners request certain association documents.

House Bill No. 2539 HD1 Relating to Planned Communities – Requires the counties to designate an agency to inform the public and hold a hearing when lands included in a community master plan are proposed for sale and intended to be used for a purpose other than as proposed in the master plan.

House Bill No. 2542 Relating to Associations – Requires attorneys hired by an association in an action against a unit owner to communicate directly with the owner or owner's attorney. Prohibits nonjudicial foreclosure on liens, for unpaid assessments unless specified in the purchase agreement. Permits associations to offer delinquent owners a payment plan for unpaid assessments. Requires associations to provide a cost-breakdown of attorney's fees upon request of an owner.

House Bill No. 2619 Relating to Condominium Governing Instruments – Authorizes an alternative method of amendment for a condominium association's declaration and bylaws; provided that certain requirements are met.

No hearing scheduled to date on House Bill No. 2619.

House Bill No. 2630 Relating to Condominium Voting – Provides for the use of an electronic voting device in condominium association meetings; provided that an association's board takes reasonable steps to ensure the secrecy and integrity of the votes, and that an audit trail is made available after the meetings.

Senate Bill No. 164 Relating to Association Legal Fees – Allows unit owners in planned community associations and homeowners associations to withhold legal fees from assessments claimed by associations pending decision in an arbitration or court proceeding in which the owner has filed for a determination of the validity of the amounts and attorney's fees claimed by the association.

Senate Bill No. 2121 Relating to Condominium Property Regimes – Prohibits the establishment of a condominium property regime without obtaining subdivision approval by the county in which the property is located.

This bill originated over a subdivision in Kunia. The developer built homes and planned for two golf courses. Only one golf course was built. The developer CPR'd the second golf course property into 13 units. The homeowners of the subdivision development are questioning the process. This is an education issue. CPR is merely a form of ownership. You cannot apply all subdivision laws to condominiums. The issue at hand is not a development issue, but rather a material change and disclosure issue.

Senate Bill No. 2449 Relating to the Preservation of Agricultural Land – Requires that any subdivision of agricultural lands into more than five lots, any one of which is two acres or less, or any submission of agricultural lands to the department of commerce and consumer affairs for approval for a condominium or horizontal property regime, first be approved by the land use commission. Sets requirements under which the land use commission may approve such a subdivision.

Senate Bill No. 2524 Relating to County Land Use Requirements – Requires condominium property regimes to comply with county subdivision requirements. Allows the real estate commission to adopt rules that require a developer to seek county council approval for significant projects. Requires agricultural lands that are subdivided and leased for agricultural uses or activities to comply with county subdivision standards.

Senate Bill No. 2949 Relating to Condominiums – Clarifies the powers of condominium associations regarding the deduction and application of a portion of an owner's common expense payments to unpaid late fees, legal fees, fines, and interest.

Senate Bill No. 2950 Relating to Condominiums – Requires condominium unit owners' associations to keep additional records and take further actions to make such records available for examination by unit owners and owners' authorized agents. Requires associations to make required documents, records, and information available to owners and owners' authorized agents on a protected internet site.

Senate Bill No. 2980 Relating to Rent – Establishes that effective January 1, 2019, rent for all residential dwelling units shall be established at an amount equal to the amount of rent charged for the same dwelling unit in 2015 and shall not be increased more than three per cent annually or three per cent per lease term. Establishes that each county may adjust rents to a fair rental value for specific areas in each county. Establishes that for any residential dwelling unit for which rent was not collected in 2015, the county shall determine the effective base rent for the dwelling unit. Requires each county to establish a process for granting exemptions from the rent control requirements for those property owners who have invested an unspecified amount to improve or upgrade a residential dwelling unit to meets codes.

A hearing has not yet been scheduled for Senate Bill No. 2980.

ARELLO, Other
Organizations And
Jurisdictions:

ARELLO Boundaries

The following articles from the January 2018 issue of ARELLO Boundaries were distributed for informational purposes: "Texas Real Estate Commission Sharpens Advertising Standards," and "Tech Notes: The Latest Property Showing "Robot."

Budget and
Finance Report:

Upon a motion by Commissioner Cobb, seconded by Commissioner Ginoza, it was voted on and unanimously carried to accept the Real Estate Recovery Fund Financial Report for the period ending September 30, 2017.

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Next Meeting: Wednesday, March 14, 2018
 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, the Chair adjourned the meeting at
 10:04 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

Neil K. Fujitani
Supervising Executive Officer

February 23, 2018

Date

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

NF:tn