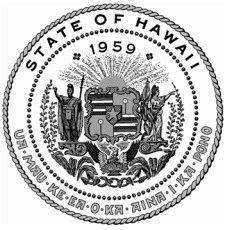


Real Estate Commission Bulletin



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Background Checks

Hawaii does not require a background check of any kind as a licensing requirement for real estate licensees. Although the questions on the licensing application apply to past or pending criminal convictions, pending lawsuits, unpaid judgments, outstanding tax obligations, or any other type of involuntary liens filed against the applicant, and complaints or charges filed against the applicant with the licensing agency of any state, the answers are completely reliant on self-disclosure by the applicant.

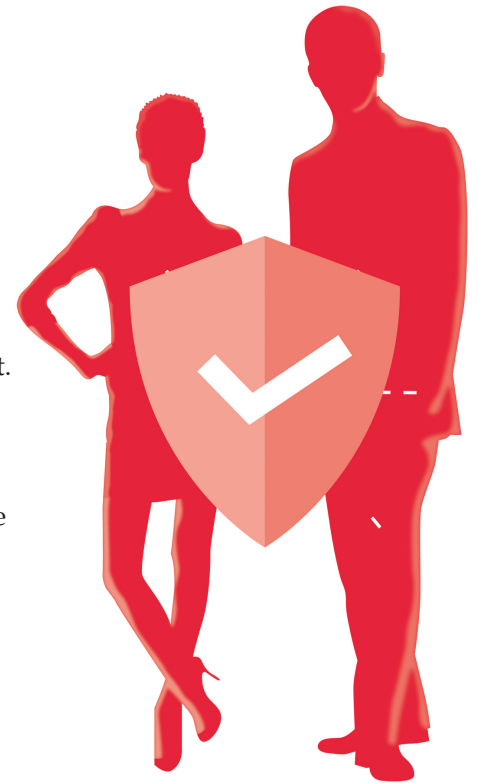
This is not fool-proof, obviously. If a non-disclosed conviction, for example, is discovered after licensure, and reported to the Regulated Industries Complaints Office (RICO) or the Real Estate Commission, the resulting penalties may be compounded based on providing a false statement on the initial license application or renewal application. Failure to disclose prior convictions, etc. on subsequent renewal applications will also increase the penalties assessed. This record of non-disclosure may also impact a licensee from becoming a broker, or being a principal broker of his or her own brokerage.

A primary concern is knowing as much as possible about whom you are dealing with. This could be another licensee, a client, a customer. Safety is the watchword to keep in mind, safety for your client, your customer, fellow licensees, and yourself.

There are available public websites which provide background information. Some of these include:

1. Ho'ohiki, the Hawaii State Judiciary's Public Access to Court Information, www.hoohiki.courts.hawaii.gov/. Information found on Ho'ohiki includes civil case information filed in Circuit and Family Courts, and certain civil cases of the District Courts.
2. eCourt Kokua – Information includes traffic cases, District Court criminal, Circuit Court criminal, Family (Adult) Court criminal and appellate cases. www.courts.state.hi.us/legal_reference
3. Hawaii Criminal Justice Data Center – information includes criminal history records check, sex offender and other covered offender information. Ag.hawaii.gov/hcjdc
4. Regulated Industries Complaints Office (RICO) – prior complaints history on regulated professions and vocations in Hawaii. Cca.hawaii.gov/rico

There are many resources available to real estate licensees to assist in due-diligence research.



Perfecting a Claim for Relief from the Real Estate Recovery Fund

by Ronald T. Michioka

This article was first published in the February 2018 issue of the Hawaii Bar Journal, an official publication of the Hawaii State Bar Association.

A consumer suffers losses because of the acts of a licensed real estate broker or real estate salesperson (“Licensee”), then finds that he or she is unable to recover those losses from the licensee who caused them. Litigation may produce a judgment that proves to be of little or no value because the Licensee is either missing or has no assets that can be attached to enforce the judgment. This results in the consumer being unable to satisfy the judgment. Is this the end of the search for relief? Not necessarily.

When all else fails, there is a measure of relief available from the Real Estate Recovery Fund (“Recovery Fund”). The Recovery Fund, for a variety of reasons, should be considered a last resort for the consumer, after having exhausted other legal remedies available through the judicial system. The amount recoverable is limited, and the consumer must relinquish all of his or her rights against the licensee in exchange for a limited payment that may not be sufficient to make the consumer whole. Nevertheless, the Recovery Fund at least offers a measure of relief that the consumer would not otherwise have. This article discusses what the consumer must do in order to demonstrate his or her entitlement to payment from the Recovery Fund.

The Recovery Fund was created in 1967 by Hawaii Revised Statutes (“HAW. REV. STAT.”) Chapter 467 (“Statute”) to provide relief to consumers “aggrieved” by the acts or omissions of duly-licensed real estate brokers and/or real estate salespersons. The Recovery Fund statutes established the Recovery Fund “[t]o furnish financial protection to the consumer public . . . by providing a fund which, under certain circumstances, will satisfy unpaid judgments” in favor of the consumer and against a Licensee.¹

The Recovery Fund is administered by the Real Estate Commission (“REC”), which is administratively attached to the Department of Commerce and Consumer Affairs (“DCCA”) through the Professional and Vocational Licensing Division (“PVL”). Complaints against Licensees may also be filed with the enforcement arm of DCCA, the Regulated Industries Complaints Office (“RICO”), but the filing of such complaints will not entitle the consumer to relief from the Recovery Fund, which relief requires the commencement of a civil lawsuit or arbitration proceedings described below.

If qualified, an aggrieved consumer may recover up to \$25,000.00 per transaction for “damages sustained” as a result of fraud, misrepresentation, or deceit by the Licensee. “Damages sustained” includes fees, costs and reasonable attorneys’ fees.² The phrase “damages sustained” refers to “compensatory damages” that compensate the injured party “for the injury sustained, and nothing more.” “Damages sustained” does not include punitive or trebled damages designed to punish the wrongdoer as an example and deterrent to others and not to compensate the aggrieved consumer.³ The maximum liability of the Recovery Fund for any one Licensee is fixed at \$50,000.00 by HAW.REV.STAT. §467-24.

The Recovery Fund is not funded by taxes paid by the general public. Instead, by the authority of HAW.REV.STAT. §467-16(b), Licensees fund the Recovery Fund by paying a “real estate recovery fund fee” at the time they apply for an original real estate license in Hawaii. If the license is not issued, the applicant is refunded the Recovery Fund fee. Additional assessments are provided by HAW.REV.STAT. §467-17(a) whenever the balance in the Recovery Fund is less than \$350,000.00.

The path to proving entitlement to and receiving payment from the Recovery Fund is set out in the Statute and the Hawaii Administrative Rules (“HAR”) Title 16, Chapter 99,4 as follows.

Conditions Precedent: First, the Licensee involved must have been “duly licensed” at the time of the acts or omissions that caused the consumer’s losses. The term, “duly licensed,” is not defined in the Statute, and the licensure status of the Licensee will have to be determined on a case-by-case basis. For example, a Licensee whose license has been suspended may still be considered “duly licensed” for purposes of a claim for payment from the Recovery Fund. The statute defines what is necessary in order to obtain and maintain a real estate license⁵ and provides a list of bases for revocation of a license.⁶ Arguably, if the Licensee has not been compliant with these sections of the Statute, there may be a question of whether he or she continues to be “duly licensed” for purposes of a claim for payment from the Recovery Fund.

In addition, in order for the consumer to be entitled to payment from the Recovery Fund, HAW.REV.STAT. §467-18(b) required that he or she first obtain a “valid judgment” from “any circuit or district court where the violation occurred.” Judgments from other

The Chair's Message

Aloha Real Estate Licensees:

As mentioned, the primary focus of the Hawaii Real Estate Commission ("REC") is consumer protection, while for Hawaii's REALTOR® boards it is member benefit, and despite the potential for differences, these organizations regularly cooperate with one another. One area of interest to both, which supports consumer protection and member benefit, is professionalism.

Professionalism: Past and Present

When I was licensed 40 years ago, real estate was looked upon by the public at or near the bottom of all the professions, nowhere close to the desired status for an industry that needs a high level of public trust and competence. There was much discussion on how to improve professionalism, but there was no easy or quick fix. I am happy to say that today, the professionalism of our real estate industry has improved considerably. Some significant reasons for this may be:

1. Licensing exams.

40 years ago, the passing rate was over 90% for new licensees. The exams were manually created and questions infrequently changed so the licensing schools were able to "teach from the historic experience of the exams."

Today, licensing exams are electronic and questions are balanced each year to remove the ones that are too easy or too hard, and add new ones. A standard for real estate licensees called "minimally-competent candidate" was implemented to guide creation of questions and passing rates declined. This wasn't done to deprive anyone of a real estate license, but in order to protect the consumer. The examination must produce a "minimally competent" practitioner.

2. Continuing education.

40 years ago, there was no required continuing education. Although educational classes were offered by REALTOR® boards and advanced designations required further education, there was nothing required and entire real estate careers were carried out with just a pre-licence class education.

Today, the REC requires 20 hours of continuing education every two years for all licensees in order to renew licenses which includes two mandatory "Core" courses based on currently-important topics. REALTOR® boards continue to offer additional education for members, including a required course based on its Code of Ethics.

3. Rules and Laws.

40 years ago, there were few rules or laws that regulated real estate sales.

Today, numerous laws apply to all aspects of real estate and it has become one of the more regulated industries in Hawaii. While over-regulation is not good, necessary regulation has helped our real estate industry protect its clients.

4. Standard forms.

40 years ago, a sales contract was called a DROA (Deposit Receipt Offer and Acceptance) and the document took up one side of one 8½" x 11" page.

Today, the Purchase Contract has evolved into a lengthy, highly detailed document and there are numerous standard addenda that can be attached depending upon the situation. This has increased the attention to detail into each transaction, improved client interests and consumer protection. Kudos to the Hawaii Association of REALTORS® ("HAR") who creates and continuously improves these standard forms for its members.

Today's licensee has passed an exam for "minimally-competent candidates," is better educated on an ongoing basis, has better forms to use, and works in an industry with much improved rules and regulations. All of these factors have worked to increase the sophistication, legitimacy and public perception of real estate as a profession.



The Chair's Message (cont. from page 3)

Future

There is always more that can be done and sitting static on improvement usually means falling behind. The REC has asked the HAR about supporting legislation for:

1. **A high school diploma ("HSD") or General Equivalency Diploma ("GED")** as a condition of licensure. It is currently not required in Hawaii and many find this hard to believe for a state with some of the highest real property prices nationwide.

Many states and other jurisdictions require a HSD or GED for real estate licensure. Again, this is not to deprive anyone from a real estate job, but a "minimally-competent" standard of practitioner with a minimum degree of education is necessary to protect the consumer.

Professions that require HSDs or GEDs run the gamut from automobile technicians to interpreters to nurse aids to military branches which either require or prefer HSDs.


2. **Criminal background checks** as a condition of licensure. The advent of technology has made background checks readily available and inexpensive. As such, more professions now require background checks for licensure, including the insurance industry in Hawaii.

Currently, the REC relies on self-reporting of convictions to obtain and renew licenses. While it is believed that most comply and self-report their convictions, some do not and there is no way to know how many do not or what crime(s) (misdemeanor or felony) they were convicted of.

Today, we see more cases of prior convictions coming to light after licensure, typically found in RICO (Regulated Industries Complaints Office) investigations of misconduct. Mandating background checks would be a quick, easy and cost-efficient way to address this problem and support the professionalism of the real estate industry.

There has been improved professionalism and public perception of the real estate industry over the past 40 years, accomplished with a lot of dedicated work. However, we should remain vigilant to keep improving as a profession and not maintain the status quo in an ever evolving world.

Mahalo,



Michael Pang, Chair

Perfecting a Claim for Relief from the Real Estate Recovery Fund (cont. from page 2)

jurisdictions or from federal courts have had to be exemplified as Hawaii judgments in order to meet this requirement. A "valid judgment" must be based upon fraud, misrepresentation or deceit by the Licensee under HAW.REV.STAT. §§467-16(a) and 467-18(b).

In order to obtain such a judgment, the consumer is required by HAW.REV.STAT. §467-18(a) to commence a legal proceeding "for a judgment that may result in collection from the real estate recovery fund." Such proceedings would include arbitrations whose awards will have to be confirmed by a state court and entered as a judgment as prescribed by HAW.REV.STAT. §§658A-22 and 658A-25(a). HAW.REV.STAT. §467-18(a) requires that such proceedings must be commenced within two years of the accrual of the cause of action. A cause of action based upon a real estate transaction accrues at the time of the transaction that established the damages.⁷ The period of limitations begins to run when the consumer knows, or in the exercise of reasonable care should have discovered, that an actionable wrong has been committed against his or her property.⁸

Claim for Payment from the Recovery Fund:

At the time the legal proceeding is commenced, the consumer is required by HAW.REV.STAT. §467-18(a) to provide written notice

Perfecting a Claim for Relief from the Real Estate Recovery Fund (cont. from page 4)

to REC that the lawsuit or arbitration has been initiated and that the consumer intends to seek payment from the Recovery Fund. The claim against the Recovery Fund is then referred, pursuant to HAW.REV.STAT. §467-16(c)(1), to outside counsel representing the REC in matters relating to the Recovery Fund.

Thereafter, the consumer is required by HAW.REV.STAT. §§467-21 and 467-18(a) to provide counsel for the REC with pleadings and “prescribed documents” that will keep REC apprised of the progress of the lawsuit. The Legislature included this provision in the Statute in order to avoid defaults being entered against the Licensees that result in payment from the Recovery Fund without a hearing”.⁹ HAW.REV.STAT. §§467-18(a) and 467-21 authorize REC to intervene in the lawsuit and provide that REC has standing to appear in any action that may yield a judgment that may result in collection from the Recovery Fund.

It is important to notify counsel for the Recovery Fund if a default and/or default judgment will be taken against the Licensee in order to allow REC to exercise its statutory right to intervene and defend the lawsuit or to “take whatever other action it deems appropriate on behalf and in the name of the defendant, and take recourse through any appropriate method of review on behalf of and in the name of, the defendant,” as provided by HAW.REV.STAT. §§467-18(a) and 467-21.

Upon obtaining a “valid judgment” against the Licensee that is based upon fraud, misrepresentation, or deceit, the consumer must then take steps to enforce the judgment and must be prepared to satisfy the court that, as required by HAW.REV.STAT. §§ 467-18(c) (4) and (5), the “made all reasonable searches and inquiries to ascertain whether the [Licensee] is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment’ but “discovered no personal or real property or other assets liable to be sold or applied” or could only realize a recovery insufficient to satisfy the judgment. In addition, HAW.REV. STAT. § 467-18(c)(6) covers those situations in which the Licensee has filed for bankruptcy protection and requires the consumer to obtain an order from the bankruptcy court that declares that the judgment against the Licensee is non-dischargeable under the bankruptcy laws.

Order for Payment from the Recovery Fund

The Consumer is required by HAW.REV.STAT. §§ 46718(b) and (d) to obtain an Order by a court of competent jurisdiction that directs REC to make payment from the Recovery Fund in an amount the Court determines is payable pursuant to the provisions, conditions and requirements of the Statute and case law interpreting and applying the Statute. The Order must be sought in the manner prescribed by HAW.REV.STAT. § 467-18(a), which requires the filing by the consumer of a verified claim following completion of all proceedings in the action, including reviews and appeals in connection with the judgment. A verified claim is simply a pleading that is sworn to by the Claimant, in which he or she asserts the required elements under the Statute for recovery from the Recovery Fund.

Following ten day’s notice to REC of the verified claim, the consumer may file a motion with the court “for an order directing payment out of the real estate recovery fund of the amount unpaid upon the judgment” (HAW.REV.STAT. § 467-18(b)), subject, of course, to the maximum amount payable and the maximum liability of REC, as prescribed by HAW. REV.STAT. §§ 467-16(a) and 467-24.

Upon filing a motion for such an Order, the consumer bears the burden of proving satisfaction of the requirements and conditions precedent set forth in the Statute. The motion must meet all of the requirements stated in HAW.REV.STAT. §§467-18(c)(1) through (6) for pleading and proof that the consumer:

- 1) Is not the spouse of the judgment debtor or is not the personal representative of the spouse of the judgment debtor;
- 2) Has complied with all of the statute’s requirements;
- 3) Has obtained a judgment based upon fraud, misrepresentation, or deceit;
- 4) Has conducted all reasonable searches for assets of the judgment debtor that could satisfy the judgment;
- 5) Was unable to identify any personal or real property to satisfy the judgment, or has seized assets of the judgment debtor that are insufficient to satisfy the judgment; and
- 6) If applicable, has obtained an order from a bankruptcy court declaring that the judgment is not dischargeable in bankruptcy.

Perfecting a Claim for Relief from the Real Estate Recovery Fund (cont. from page 5)

Settlement: Although the Statute refers at § 467-16(a) to settlement of claims, settlement is governed by the Hawaii Administrative Rules (“HAW.ADMIN.R”) § 16-99-79, which provides in subsections (1) and (2), that settlement is available only when the following circumstances exist and the following conditions have been met. First, the Licensee must have been previously named in an Order that required RECF to make payments out of the Recovery Fund, and the consumer seeking to settle his or her claims must be asserting claims against the same Licensee under situations similar to those that required REC to make payment from the Recovery Fund. The consumer must comply with the requirement in HRS § 467-18(a) for written notice to REC that an action has been commenced and must file a verified claim with REC that, per HAW.ADMIN.R. §§ 16-99-79(3) and (4), states the reasons, grounds and evidence supporting the request for settlement. HAW. ADMIN.R. §§ 16-99-79(5) and (6) calls for reasonable notice to the Licensee of the attempt to settle with REC and reasonable opportunity for the Licensee to respond to the verified claim.

As with a fully-litigated claim against the Recovery Fund, per HAW.ADMIN. R. § 16-99-79(7) and (8), the consumer cannot be a spouse of the Licensee or the personal representative of the Licensee’s spouse and must have made all reasonable searches and inquiries to identify assets of the Licensee that may be used to satisfy the claim, but could not find any such assets or located assets insufficient to satisfy the claim.

If these circumstances and conditions have been met, HAW. ADMIN. R. § 16-99-79(9) and (10) allows REC to determine, to its satisfaction, that sufficient evidence exists to support a settlement and that settlement is in the best interest of the Recovery Fund. Under HAW. REV. Stat. § 467-21, REC must approve the settlement by a majority of its commissioners who agree that the settlement is in the best interest of the Recovery Fund.

Payment from the Recovery Fund: If payment is made from the Recovery Fund, HAW. REV. STAT. §578=18(e) directs that the real estate license of the Licensee is automatically terminated. Furthermore, a new license cannot be issued before five years have passed from the date of termination and the former Licensee repays REC the amount paid from the Recovery Fund plus interest at the statutory rate of ten percent (10%) per annum.

In addition, HAW.REV.STAT. § 467-22 subrogates REC to all of the rights of the consumer upon payment from the Recovery Fund, and the consumer must then assign to REC all of his or her rights, title and interest in the judgment or settlement. In practice, the consumer will be asked to sign and notarize an Assignment of Judgment that REC will record with the Bureau of Conveyances to perfect its rights as against the Licensee. REC thereafter bears the risk and burden of attempting to enforce the judgment against a Licensee who has already been shown to be incapable of satisfying the judgment.

Waiver of Rights: Should the consumer fail to comply with any of the requirements and conditions set forth in the Statute, HAW. REV. STAT. § 467-23 provides that he or she will be deemed to have waived all of his or her rights under the Statute.

Conclusion: The requirements and conditions to qualify for payment from the Real Estate Recovery Fund are fully set forth in HAW. REV. STAT. Chapter 467, and HAW. ADMIN R. Title 16, Chapter 99, both of which are readily available online (see Note 4, *infra*). Any consumer or counsel for an aggrieved consumer seeking payment from the Recovery Fund may perfect the claim by following the Statute and the Rules in the manner set forth in this article. The process imposes requirements that are inherent to the litigation process with relatively few additional burdens to the claimants. In other words, the aggrieved consumer is not required to undertake any processes that he or she would not undertake to seek relief directly from a Licensee through the judicial process, with the exception of the filing of a verified claim and a motion for an order directing payment from the Recovery Fund. Again, the relief available may not suffice to make the consumer whole, but it will allow the consumer to recover something under circumstances that might not otherwise yield any degree of relief. The Real Estate Recovery Fund is the embodiment of the adage, “a bird in the hand is worth two in the bush,” which translates to the notion that it is preferable to have a small but certain advantage than a mere potential of a greater one.

1 *House Stand. Comm. Rep. No. 352*, 1967 HOUSE JOURNAL, at 673; *Senate Stand. Comm. Rep. No. 647*, 1967 SENATE JOURNAL, at 1146.

2 HAW. REV. STAT § 467-16(a). *See also, Educators Ventures, Inc. v. Bundy*; 3 Haw. App. 435; 652 P.2d 637 (Ct. App. 1982).

Perfecting a Claim for Relief from the Real Estate Recovery Fund (cont. from page 6)

3 *Kuhnert v. Allison*, 76 Haw. 39, 44-45, 868 P.2d 457, 462-63 (S.Ct. 1994).

4 HAW. REV. STAT. Chapter 467 is available online at http://cca.hawaii.gov/pvl/files/2013/08/hrs_pvl_467-1115.pdf. Hawaii Administrative Rules, Title 16, Chapter 99 is available at https://cc.hawaii.gov/pvl/files/2013/08/har_99-c1.pdf.

5 HAW. REV. STAT. §§ 467-8 through 467-11.5.

6 HAW. REV. STAT. § 467-14.

7 *Kuhnert v. Allison*, 76 Haw. 39; 868 P.2d 457 (1994).

8 *Basque v. Yuk Lin Liao* 50 Haw. 397, 399; 441 P.2d 636, 637-38 (1968).

9 *House Stand. Comm. Rep. No. 393-72*, 1972 HOUSE JOURNAL, at 813; *Senate Stand. Comm. Rep. No. 647*, 1967 SENATE JOURNAL, at 1146.

Ronald T. Michioka has represented the Real Estate Commission on matters relating to the Real Estate Recovery Fund since 2005 while a partner with the firm Ayabe, Chong, Nishimoto, Sia & Nakamura, now known as Chong, Nishimoto, Sia, Nakamura & Goya.

NOTE: When an initial real estate license is processed, \$84.00 of the total licensing fee goes to the Real Estate Recovery Fund. Additional assessments may be requested if the total balance in the Recovery Fund is under \$350,000.00. Currently, there is a healthy balance in the Recovery Fund. Recovery Fund payouts are not common. The last payouts were made in 2013 for a total of \$14,669.00.

Administrative Actions November 2018

AMANDA L. DONALDSON

RB 21684

Case No. REC 2016-263-L

Dated 11/21/18

Findings of Fact:

Respondent was originally licensed by the Real Estate Commission ("Commission") as a real estate broker on January 1, 2015. Respondent's real estate broker's license, License No. RB 21684, is set to expire on December 31, 2018.

On or about February 15, 2016, Respondent entered into a property management agreement ("agreement") for 5 properties owned by Norman Suzuki through the Norman Suzuki Trust, effective April 1, 2016.

Notwithstanding the agreement, Respondent failed to pick up the keys to the properties and did not respond to Suzuki's emails and telephone calls regarding Respondent's management of the properties.

As a result of Respondent's nonresponsiveness, Suzuki notified Respondent that he was terminating the agreement effective May 6, 2016, and requested that Respondent provide him with an accounting of any monies she received on account for the 5 properties.

Despite his repeated requests, Respondent failed to provide Suzuki with an accounting of the properties.

Despite repeated requests by Petitioner's investigator for the records pertaining to the management of the 5 properties, Respondent failed, refused or neglected to respond.

Violations:

HRS § 467-14(7), HRS § 467-20(20), HRS § 436B-19(7), HAR § 16-99-3(b) and HAR § 16-99-4(b).

Order:

Revocation of License

Administrative Actions (cont. from page 7)

November 2018

HARRY S. NEWHART

RB 21425

Case No. REC 2018-115-L

Dated 11/21/18

RICO Allegations:

In or around March 2018, the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant ("OVUII"), (hereafter "Conviction").

See HRS § 291E-61. 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).

Administrative Fine:

Fine of \$500.00.

RACHEL K.H. LE and REAL ESTATE EMPORIUM, LLC

RB 17375

RB 17376

Case No. REC 2017-412-L

Dated 11/21/18

RICO Allegations:

RICO alleges that Respondents failed to timely return a security deposit to tenants after the tenants vacated a property managed by Respondents.

Violations:

HRS § 467-14(7) and HRS § 467-14(20).

Sanctions:

Fine of \$1,000.00.

December 2018

MARK D. SKEELE

RS 77005

Case No. REC-2018-149-L

Dated 12/21/18

RICO Allegations:

On April 16, 2018, 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"). See HRS § 291 E-61.

Respondent fulfilled all Court-imposed terms and conditions of the Conviction.

Violations:

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

Administrative Fine:

Fine of \$500.00.

CHERRYLLE K. ROLDAN-CADIZ

RS 77835

Case No. REC-2018-67-L

Dated 12/21/18

RICO Allegations:

On or about November 29, 2010, Respondent was convicted of Operating a Vehicle Under the Influence of an Intoxicant (hereinafter "OVUII").

On Respondent's initial application for her Real Estate Salesperson's license which was dated on or about October 12, 2015, Respondent answered "no" to question 2 which 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(12), HRS § 436B-19(14), HRS § 436B-19(17) and HRS § 467-20.

Respondent Representations:

Respondent admits that she answered "no" to question 2 on her initial application, however, she asserts that she wasn't aware that a conviction for OVUII was a crime.

Administrative Fine:

Fine of \$1,000.00.

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.
- HRS §436B-19(7) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation.
- 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(17) Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.
- HRS §467-14(7) Failing to account for moneys belonging to others.
- 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.
- 16-99-4(b) Every brokerage firm shall retain for at least three years records of all trust funds which the brokerage firm has received. All records and funds shall be subject to inspection by the commission or its representative. The three-year requirement shall be for real estate license law purposes only. The brokerage firm may be required to keep records for a longer period of time for other purposes.

Developer Sale of Units by Carole Richelieu, Senior Condominium Specialist

Real estate licensees should be aware that section 514B-85, Hawaii Revised Statutes (“HRS”), allows developers to solicit prospective purchasers and enter into non-binding preregistration agreements with prospective purchasers for project units prior to the project registration, the issuance of an effective date for the developers’ public report (“DPR”), and the delivery of the DPR to prospective purchasers. “Solicit” is defined in §514B-85(a), HRS, and “. . . means to advertise, induce, or attempt in whatever manner to encourage a person to acquire a unit.” Permitted solicitation under this section, however, is subject to several limitations.

Developer preregistration solicitations would be permissible if the strictures of §514B-85, HRS, are followed by the developer (and agent, if any), as well as §514B-94(a)(2), HRS (no person may issue, circulate, publish, or distribute any advertisement, pamphlet, prospectus, or letter concerning a project that contains any false written statement or is misleading due to the omission of a material fact).

“Material fact” is also defined in §514B-3, HRS, and means “. . . any fact, defect, or condition, past or present, that, to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale.”

Material facts that must be disclosed in any solicitation, including private databases that are created, maintained, and paid for by real estate professionals to help their clients buy and sell property such as a multiple listing service, include the facts that the developer cannot collect any money from prospective purchasers or their agents and cannot require or request that a prospective purchaser execute any document other than a non-binding preregistration agreement.

Other than §514B-85, HRS, pursuant to §514B-82, HRS, no sale or offer of sale of units in a project by a developer shall be made prior to the registration of the project by the developer, the issuance of an effective date for the DPR, and delivery of the DPR to prospective purchasers (except time share units which are subject to different requirements).

Short-Term Vacation Rentals

Legal? Illegal? As a real estate licensee, part of any due-diligence work you perform should include verifying whether or not that vacation rental property (on Oahu) is located within a resort area, or located within 3,500 feet of a resort district. Based on Hawaii Revised Statutes (“HRS”) § 436B-19(12), the licensee’s license may be in jeopardy for “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; . . .” If the real estate licensee assists in the promotion, engagement, or encouragement of illegal activity, the possible violation will be determined by the Regulated Industries Complaints Office (“RICO”). There is an “aiding and abetting” statute in HRS §436B-19(6), “Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license; . . .” which may apply to the real estate licensee who transacts real estate activity with an illegal short-term vacation rental and owner, or even a client-tenant of an illegal short-term vacation rental.

In Maui County, short-term vacation rentals are authorized in areas zoned for hotel use. On Kauai, short-term vacation rentals are okay in tourist destination areas such as Poipu, Lihue, Kapaa, Waimea, Princeville, and Wailua. In Hawaii County, these operations are allowed in residential-commercial mixed use areas, double-family residential, multi-family residential districts, resort-hotel districts; neighborhood commercial, general commercial and village commercial districts; and Downtown Hilo commercial district. (source: “Policing Hawaii’s Illegal Vacation Rentals”, by Noelle Fujii, Hawaii Business Magazine, 12/3/18)

Not easy to determine, and very difficult to enforce. When dealing with a client that owns vacation rental property, or a client searching for a rental, real estate licensees should be aware if the property is in an acceptably zoned area/district, and not be a conscious or unconscious party to illegal activity.

Post TAT License Number in Advertisements

by Department of Taxation

The Department of Taxation would like to remind all owners, operators, and plan managers of transient accommodations such as hotel rooms, timeshares and other rooms let on a transient basis that they are required to conspicuously provide their Transient Accommodations Tax (TAT) license number in all advertisements for that transient accommodation, in print or online, either directly in the ad itself or by electronic link. Failure to provide the number in this manner for an ad for a transient accommodation means that transient accommodation and its operator are in violation of Section 237D-4, Hawaii Revised Statutes.

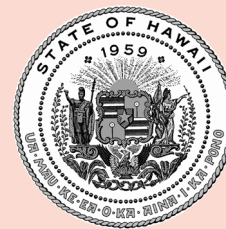
Any operator of a transient accommodation who fails to provide their TAT license number in this manner will be issued a written warning by the Department of Taxation for a first offense. However, if the failure to provide the number is not corrected by amending the ad or taking it down, the operator of the transient accommodation will be fined \$500 per day per transient accommodation in violation. For second violations, the fine increases to \$1,000 per day per transient accommodation in violation. For third and subsequent violations, the fine can be \$5,000 or higher per day per transient accommodation in violation.

The Department strongly encourages all operators of transient accommodations, as well as real estate and rental managers who may be conducting the day-to-day letting of units on behalf of the operator, to make sure that TAT license numbers or electronic links to those numbers are conspicuously provided in all ads for transient accommodations. The fines for violations can quickly escalate in severity for you or your clients if you are not compliant. The Department has staff checking publications and websites on a daily basis and issuing warnings and fines to violators. Please avoid incurring these heavy fines by ensuring all advertisements you post conspicuously provide the transient accommodation’s TAT license number or an electronic link to it.

For more information, please see Section 237D-4, Hawaii Revised Statutes and Sections 18-237D-4-01 through 18-237D-4-35, Hawaii Administrative Rules. To report a violation please call the Special Enforcement Section at (808) 587-1456 or email us at Special.Enforcement.Tax.Section@hawaii.gov.

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
Scott Alan Bly School of Real Estate, LLC dba Bly School of Real Estate	808-738-8818
Carol Ball School of Real Estate	808-871-8807
The CE Shop, Inc.	888-827-0777
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
Excellence in Education dba Maui Real Estate School	808-262-4861
Inet Realty	808-955-7653 ext.102
OnCourse Learning Corporation dba OnCourse Learning Real Estate	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	Hawaii First Realty, LLC	808-282-8051
All Islands Real Estate School	808-564-5170	Hawaii Island REALTORS®	808-935-0827
American Dream Real Estate School, LLC	720-322-5470	Honolulu Board of REALTORS®	808-732-3000
At Your Pace Online, LLC	877-724-6150	International Association of Certified Home Inspectors (InterNACHI)	303-225-9149
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 Industries Association of Hawaii	808-629-7505	Shari S. Motoooka-Higa	808-492-7820
Carol Ball School of Real Estate	808-871-8807	OnCourse Learning Corporation dba OnCourse Learning Real Estate	800-532-7649
The CE Shop, Inc.	888-827-0777	Ralph Foulger's School of Real Estate	808-239-8881
Coldwell Banker Pacific Properties Real Estate School	808-551-6961	The Real Estate Cafe	808-728-0223
Continuing Ed Express, LLC	866-415-8521	REALTORS® Association of Maui, Inc.	808-873-8585
The Council of Residential Specialists nka Residential Real Estate Council	808-462-8841	REMI School of Real Estate	808-230-8200
Dexterity CE, LLC	800-462-8841	Russ Goode Seminars	808-597-1111
Eddie Flores Real Estate Continuing Education	808-951-9888	Servpro Industries Inc.	615-451-0200
ExceedCE	415-885-0307	USA Homeownership Foundation, Inc., dba Veterans Association of Real Estate Professionals (VAREP)	951-444-7363
Hawaii Association of REALTORS®	808-733-7060	Vitousek Real Estate Schools, Inc.	808-946-0505
Hawaii Business Training	808-250-2384		
Hawaii CCIM Chapter	808-528-2246		

State of Hawaii
Real Estate Commission
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2019 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, February 6, 2019

Wednesday, March 6, 2019

Wednesday, April 17, 2019

Wednesday, May 8, 2019

Wednesday, June 12, 2019

Wednesday, July 10, 2019

Wednesday, August 7, 2019

Wednesday, September 11, 2019

Wednesday, October 9, 2019

Wednesday, November 6, 2019

Wednesday, December 11, 2019

Real Estate Commission – 9:00 a.m.

Friday, February 22, 2019

Friday, March 22, 2019

Friday, April 26, 2019

Friday, May 17, 2019

Friday, June 28, 2019

Friday, July 26, 2019

Friday, August 23, 2019

Friday, September 27, 2019

Friday, October 25, 2019

Friday, November 22, 2019

Friday, December 20, 2019

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.