

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 6, 2019

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
Sean Ginoza, Vice Chair, Broker / Hilo Commissioner
Bruce Faulkner, Broker / Maui Commissioner
Aleta Klein, Broker / Honolulu Commissioner
Russell Kyono, Broker / Kauai Commissioner
Laurie Lee, Broker / Honolulu Commissioner
John Love, Public / Honolulu Commissioner
Michael Pang, Broker / Honolulu 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
Lorie Sides, Condominium Education Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Suzanne Young, Honolulu Board of REATORS®
Ethel Keyes, Hawaii Association of REALTORS®
Chatney Pacheco, Hawaii Association of REALTORS®

Absent: Aileen Wada, 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.

Commissioner Wada was excused from today's meeting. Prior notice of her non-attendance was received.

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

Upon a motion by Commissioner Lee, seconded by Commissioner Klein, it was voted on and unanimously carried to accept the minutes of the January 9, 2019, Laws and Rules Review Committee meeting as circulated.

Program of Work: **Rulemaking, Chapter 99, HAR, Real Estate Brokers and Salespersons – Preliminary Rough Draft of Proposed Language for Advertising and Team Names**

Commissioners were provided a spreadsheet with the current version, proposed revisions 1 and comments received of the advertising and team name rules for consideration. EO Ino also commented that a bigger revision will be the use of "brokerage firm" throughout the three chapters to retain consistency.

Commissioner Klein questioned §16-99.1-15(i) as it relates to the font size in advertising.

Commissioner Pang responded that the biggest complaint received from HAR and licensees was in regard to the use of "font size" as it would pertain to all types of advertising. Commissioner Pang commented that he could go either way and that his concern was that the brokerage name should be larger than the team name.

Chair Arakaki commented that the font size will always change depending on the advertising. Language to the effect that the team name shall be no larger than the brokerage name would be appropriate.

Commissioner Pang suggestion using the language in proposed revision 1 with the deletion of the word "font" and inclusion of "shall" to read "Team names and logos shall not be larger in size than the brokerage name and logo in all advertisements."

Commissioner Love commented that the word "font" should be retained in revision 1.

The agreed language for the next draft should read "Team names and logos shall not appear in a font size larger than that of the brokerage name in all advertisements."

EO Ino was asked to incorporate language suggested and provide a revised draft at the next Laws and Rules Review Committee meeting for review.

Discussion continued to §16-99.1-16(a).

Commissioner Klein raised the issue whether one or two agents would form a team. She was concerned that if a team consisted of one agent, it would place the public at risk of being misled into believing there are a larger group of people working on the transaction.

Commissioner Pang commented that a team of one or more would be one licensee and administrative staff.

Chair Arakaki commented to avoid confusion, a team could be defined as two or more licensees, although he has not seen any harm in teams of one. In non-real estate practices, there have been teams of one and groups of one.

Deputy AG Wong responded that when the proposed rules go to the Small Business Regulatory Review Board (SBRRB), they may question if there is no consumer harm to a team consisting of one licensee, how is this rule not restrictive to private business.

Commissioner Pang responded that there is always consumer risk.

Commissioners discussed whether a team of one could be viewed as deceptive. It was commented that almost anything a licensee does is a team effort. Proposed language 1,

where a team means one or more real estate licensees follows California's current regulation of teams.

Commissioner Love stated that he is agnostic to both sides and anticipates we will need to justify how this is not unduly restrictive to small business if teams must consist of two or more licensees.

Specialist Richelieu commented that as a matter of legal ethics for attorneys, should the name include "and associate" it must include 2 individuals, and if it states "and associates" it must include more than two.

Commissioner Ginoza commented that Teams are mainly for larger companies wanting to brand themselves within the company. It could also be sole proprietors trying to make themselves bigger than the one person.

Commissioners took an informal count with 4 commissioners opting that a team should consist of two or more, 3 commissioners opted on one or more, and one commissioner was uncertain.

Commissioners discussed proposed §16-99.1-16(b), team name includes the surname of at least one of the real estate licensees of the team or group in conjunction with the term "group" or "team."

Commissioners commented that the proposed language is restrictive to brokers only.

EO Iino responded that if the name of a person is used in the team name, the person must be associated with the brokerage and team.

Chair Arakaki stated that again, he modeled the language after California's regulations. We could either remove the surname requirement or include language if a name is used, it must be associated with both the brokerage and the team.

SEO Fujitani suggested that staff incorporate the committee's comments from today's meeting and have the subcommittee go through the proposed revisions and provide a draft to the next REC meeting for review.

Legislative and Government Participation Report

The bills currently being monitored by the Commission fall into four general areas, real estate, condominium, planned community associations (PCA), and transient vacation rentals (TVR). SEO Fujitani informed the Commissioners that if there are other bills they would like to discuss at the next meeting, to please let him know ahead of the agenda filing deadline to include on the next meeting agenda.

Senate Bill No. 204 Relating to Real Estate – Exempts persons who are employees of real estate management divisions within companies or corporations incorporated, organized, or formed outside the State from the State's real estate license requirement provided that the employees may negotiate only up to five commercial leases and are duly licensed in their state of domicile.

SEO Fujitani questioned how the department is to be made aware if these individuals are licensed in another jurisdiction, if they have negotiated beyond the five commercial leases, and how will we be protecting the consumer. The bill has not yet been scheduled for hearing.

Commissioner Klein commented that the bill does not include a timeframe.

Senate Bill No. 306 Relating to Condominiums – Requires the real estate commission to receive any complaints regarding disputes between a condominium association and a

unit owner or any complaints referred to mandatory mediation, mandatory arbitration, or voluntary binding arbitration.

The Commission will provide testimony upon the scheduling of a hearing.

Senate Bill No. 722 Relating to Planned Community Associations – On or before June 30, 2021, requires planned community associations to register with the real estate commission. Requires the real estate commission to administer and enforce planned community association laws. Establishes the planned community association trust fund for specific purposes related to planned community associations, including the use of mediation and arbitration of association related disputes.

The committee discussed its opposition of PCAs and HOAs being regulated by the Real Estate Commission as regulating an unregulated area requires a sunrise review by the Legislative Auditor. RICO also opposes the measure. Interestingly in the hearing, the legislative auditor stated that it is not the appropriate agency to study the area.

Senate Bill No. 960 Relating to Transient Vacation Rentals – Requires registration of transient vacation rentals with the director of commerce and consumer affairs prior to operating or doing business in the State. Permits certain nonconforming uses of transient vacation rentals. Establishes penalties for noncompliance with registration requirements and allocates associated fines to the compliance resolution fund. Authorizes the counties to impose additional regulations. Creates searchable database. Registration requirements effective January 1, 2020.

Commission to monitor the bill.

ARELLO, Other
Organizations And
Jurisdictions:

ARELLO Boundaries

The following articles from the December 2018 issue of ARELLO Boundaries were distributed for informational purposes: "Tennessee Affiliate Broker Can't Sue for a Commission, Whatever It's Called," and "Fair Housing Update: Recent Charges Highlight Discrimination Issues."

Next Meeting: Wednesday, March 6, 2019
9:00 a.m.
Queen Liliuokalani Conference Room
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Honolulu, Hawaii'

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 9:55 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

Neil K. Fujitani
Supervising Executive Officer

March 6, 2019

Date

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