

EDUCATION 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 Lieutenant Governor's Office as required by Section 92-7(b), Hawaii Revised Statutes.

Date: August 7, 2019

Time: Upon adjournment of the Condominium Review Committee meeting, which is upon adjournment of the Laws and Rules Review Committee meeting, which convened at 9:00 a.m.

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

Present: Bruce Faulkner, Chair / Broker / Maui Commissioner
Scott Arakaki, Public Member / Honolulu Commissioner – early departure
Michael Pang, Broker / Honolulu Commissioner
Aleta Klein, Broker / Honolulu Commissioner
Laurie A. Lee, Broker / Honolulu Commissioner
Sean Ginoza, Broker / Hawaii Island Commissioner
Russell Kyono, Broker / Kauai Commissioner
Derrick Yamane, Broker / Interim Honolulu Commissioner

Neil K. Fujitani, Supervising Executive Officer
Miles Ino, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Amy Endo, Real Estate Specialist
David J. Grupen, Real Estate Specialist
Carole Richelieu, Senior Condominium Specialist
Benedyne Stone, Condominium Specialist
Lorie Sides, Condominium Education Specialist
Dathan Choy, Condominium Specialist
Shari Wong, Deputy Attorney General
Dorothy Aquino, Recording Secretary

Others: Chatney Pacheco, Honolulu Board of Realtors®
Ethel Keyes, Honolulu Board of Realtors®
Suzanne Young, Honolulu Board of Realtors®
Daryl Nishizawa, Honolulu Board of Realtors®
Jenny Brady, Honolulu Board of Realtors
Lee Wang, Locations
Stacey Wong, Abe Lee Seminars
Harold D. Berman, The Berman Education Company LLC

Absent: John Love, Public Member / Honolulu Commissioner

Call to Order: The Chair called the meeting to order at 9:44 a.m., at which time quorum was established.

Chair's Report: No reports were presented.

The Chair stated the Committee 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 to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities in accordance with section 92-5(a)(4), HRS.

Commissioner Love was excused from the meeting. Prior notification of his non-attendance was received.

Real Estate
Specialist's Report: Minutes of Previous Meeting

Executive Session: Upon a motion by Commissioner Klein, seconded by Commissioner Lee, it was voted on and unanimously carried to enter into executive session pursuant to Section 92-5(a)(1), HRS, "To consider and evaluate personal information, relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;" and pursuant to Section 92-5(a)(4), HRS, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities."

Upon a motion by Commissioner Pang, seconded by Commissioner Ginoza, it was voted on and unanimously carried to move out of executive session.

Upon a motion by Commissioner Lee, seconded by Commissioner Pang, it was voted on and unanimously carried to approve the minutes of the July 10, 2019, Education Review Committee.

Continuing Education: Applications

Chair Faulkner announced he would be taking the agenda items out of order for efficiency purposes.

Course – "Succession & Exit Strategies for Private & Family Businesses; Author/Owner – Stacey Wong; Provider - Abe Lee Seminars; Course Categories - Contracts, Investment, Property Ownership and Development, Other – Business Strategy; Clock Hours – 3

Mr. Stacey Wong was present to answer any questions or concerns the ERC may have.

Mr. Wong stated Abe Lee encouraged him to create a course for the real estate profession to understand what goes on with their wealthy clients. Mr. Wong received feedback regarding agents not understanding or being exposed to the topic and created a course with deep and complex information.

Commissioner Klein commented she felt uncomfortable regarding the slide "Fun Family Dynamics" and did not understand the intent of the descriptions under the heading, for example, the "Definition of dysfunction is any family you know well". She also questioned the use of the phrase, "crazy people in our lives", in discussion point #7 of the course narrative.

Mr. Wong stated in each family there may be one or more members or extended members of a family that don't get along. Also, do not be surprised to learn the dynamics of the families that don't work well. Just listen and be supportive of the dynamics the families are going through.

Mr. Wong explained the course slides do not stand alone. He will introduce the concept before the slide. He wants to capture the audience's attention. The course information may be valuable for clients who own private or family businesses.

Commissioner Klein stated she did not understand the statement "Money is like alcohol. It makes you more of what you already are". She suggested "depersonalizing" these comments.

Mr. Wong explained the quote was shared with him by two, "very wise people" whom he respects. The intent of the quote was to elicit discussion on encountering a nasty drunk or nice drunk, and to emphasize that money and alcohol may bring out the nasty qualities of a person.

Commissioner Kyono commented the course needs further explanation and narrative.

Mr. Wong commented he submitted the course narrative that backs up the slides.

Mr. Wong is primarily a practitioner who lectures extemporaneously. He has not put a course together in 30 years.

Chair Faulkner commented he was excited about the course. He posed a question about real estate licensees who are sole proprietors. Who will be responsible when the business closes and what will happen to the consumers?

Mr. Wong agreed the sole proprietorship dies with the person. The sole proprietorship is not part of the course outline. He has never dealt with the situation and will add the sole proprietorship as part of the discussion with the class.

Chair Faulkner added that properties managed by a sole proprietor can cause a lot of problems if a succession plan is not in place.

Upon a motion by Commissioner Lee, seconded by Commissioner Arakaki, it was voted on and unanimously carried to take this matter under advisement.

**Course – "Mediation, Arbitration & Litigation: The Good, The Bad & The Ugly";
Author/Owner: Stacey Wong; Provider: Abe Lee Seminars; Course Categories:
Contracts, Real Estate Law, Dispute Resolution, Risk Management; Clock
Hours: 3**

Mr. Stacey Wong was present to answer any questions or concerns the ERC may have.

Mr. Wong commented the course was prompted by Abe Lee who stated licensees don't understand the litigation process and how dangerous it can be.

Mr. Wong stated he is not an attorney. He has litigation experience as a principal, and has experience as an arbitrator, a mediator and as a personal representative. Mr. Wong dealt with real life situations to resolve disputes and preferably prevent disputes. Mr. Wong stated he wants people to understand that rarely does anyone

win in a dispute. Rather the two sides get into deeper conflict which, then becomes a losing situation. This course will walk through the process of conflict prevention and resolution. Mr. Wong commented litigation is caused by emotional engagement. Mr. Wong suggests the agents carefully write and explain their contracts to their clients to avoid future litigation.

Commissioner Arakaki commented he doesn't agree that mediation, arbitration and litigation should be labeled as "The Good, The Bad & The Ugly", as these labels may not be an accurate representation of the process. He suggested including the client should seek legal counsel.

Commissioner Pang suggested an amended course title of "The Practical Realities of Mediation, Arbitration & Litigation".

Commissioner Klein suggested distinguishing the types of mediation available with a description of facilitative and evaluative mediation.

Mr. Wong said his first title choice was "Peace on earth and good will to all men" but realized the statement didn't tie in with the slide, "The Good, The Bad & The Ugly". Mr. Wong suggested he'd introduce "The Good, The Bad & The Ugly" and then include "Peace on earth and good will to all men" so the attendees may make a difference in their world every day.

Ms. Suzanne Young asked if there is any reference to the standard forms for listing agreement and the purchase contract as both forms include meditation as an alternative dispute resolution.

Senior Condominium Specialist Richelieu mentioned the legislature has passed an additional binding arbitration rule regarding condominium disputes. There are subsidized mediation and arbitration programs available for disputes.

Mr. Wong commented he's hesitant referring to the statutes because he's not an attorney. He will make a reference to the listing agreement and purchase contract in the course.

Upon a motion by Commissioner Pang, seconded by Commissioner Klein, it was voted on and unanimously carried to take this matter under advisement.

**Course – "A New World of Taxation and Real Estate: The 2017 Tax Law;"
Author/Owner: Creative Solution Enterprises Inc.; Provider: The Berman
Education Company LLC; Course Category: Finance; Clock Hours: 3**

Mr. Harold Berman was present to answer any questions or concerns the ERC may have.

Mr. Berman stated he will expand the appendix with more materials including case law, Schedules E and K1, and depreciation rules.

Commissioner Arakaki suggested presenting the course to real estate licensees as the audience. Rather than asking the licensees to give tax advice to their clients, encourage the licensees to tell their clients to seek professional advice through a tax preparer.

Mr. Berman stated in his previous courses approved by the Commission regarding tax law, he taught the licensees to recognize red flags. In the introduction and objective of the course it is his intent for the licensee to lead their client to a tax preparer. Mr. Berman again explains in Chapter 7, page 20, his idea is for the licensee to get their client to a tax preparer to quantify the ramification of a sale. This course deals with complex issues for the real estate professional to recognize the types of errors their clients make before seeing their CPA or tax preparer.

Commissioner Klein stated it is not the real estate licensee's responsibility to review and verify the information on the client's tax forms for common errors. Real estate licensees are not trained in the tax law and should not be giving advice. The accuracy of tax forms should be the responsibility of the client and the tax professional, and clients should seek professional advice.

Mr. Berman agreed real estate licensees are not in the position to prepare taxes or give tax advice. The majority of people who took his course have understood the basic issues to prepare their own tax filings. Mr. Berman stated he will look at the language and will stay consistent with the Commission's constructive advice.

Mr. Berman stated he writes from different types of camera angles, his own experience as a tax attorney, his clients, and the tax payer or real estate licensee. The camera angles for this course are the author's and client's angles.

Mr. Berman commented the wording in the course may have led the Commissioners to understand that it is the responsibility of the real estate licensee to review the clients tax forms for common errors. Mr. Berman stated he is not saying the real estate agent should get involved with their client's tax forms. Mr. Berman will make the correction in the course clarifying that the real estate licensees should not be involved in advising their clients on their tax returns.

Commissioner Pang clarified that the camera angle for the course should be for the real estate licensee. He also stated the disclaimer on page 5 should be the Commission's disclosure.

Upon a motion by Commissioner Pang, seconded by Commissioner Lee, it was voted on and unanimously carried to take this matter under advisement.

Course – "HOPE: Navigating Affordable Housing Options;" Author/Owner: Honolulu Board of REALTORS®; Provider: Honolulu Board of REALTORS®; Course Category: Other – Affordable Housing; Clock Hours: 3

Mr. Lee Wang was present to answer any questions or concerns the ERC may have.

Mr. Wang stated there will be a slide added to the course, and some minor edits regarding qualifying for affordable housing with updated materials to the course from HCDA and HHFDC.

Commissioner Lee stated she did not understand the answer to item #8 on the application, "Explain why the course is beyond professional entry."

Mr. Darryl Nishizawa explained affordable housing is complicated because different agencies, and different rules for different properties come into play. Real estate licensees may understand pieces of the transaction, but not as a "whole". It is a layered and confusing process.

Commissioner Klein asked Mr. Wang if the course can be done in 3 hours, as there is a lot of information.

Mr. Wang commented he can go further into depth on rules for the agents. The course covers a basic surface level of topics for purchasing and selling affordable housing. A more comprehensive topic is for another course.

Chair Faulkner commented that affordable housing is available for single-family dwellings but may also include multi-unit buildings.

Mr. Wang stated slide 6 shows a decline in household size since 2018. He added extended families have created dynamic changes in household sizes.

Commissioner Lee commented on slide #48. Shouldn't the buyer know the fair market price of the unit up front when signing the purchase contract, and not just prior to closing?

Mr. Wang responded it is done prior to closing. Under both HCDA and HHFDC programs, the developer has the appraisal done 3 to 6 months prior to closing. The shared equity needs to be noted on the deed before you move in, but not at the time of signing the contract. For most contracts he's seen in the past 10 years, the appraisal will be done within 6 months of closing and that will determine the percentage.

Commissioner Lee commented the buyer is going into contract not knowing the percentage of shared equity and asked if the buyer could cancel the contract upon finding out the percentage? This doesn't appear to be a full disclosure.

Mr. Wang agreed and would inquire with HCDA and HHFDC. He stated they don't require the developer to tell them up front and the shared equity will be based on the prior 30 months for a new project to be developed. It's out of our hands, it is determined by the state, he said.

Commissioner Lee requested clarification on this point, and additionally expressed concern about the difference between the terms equity and appreciation in the class materials. Based on the terminology in the course, the words appear to be interchangeable but in fact, they are not. Please explain and clarify the difference.

Mr. Wang stated the HHFDC shared equity is called "Shared Appreciation Equity".

Upon a motion by Commissioner Pang, seconded by Commissioner Arakaki, it was voted on and unanimously carried to take this matter under advisement.

Prelicense Education: Applications

Guest Lecturer – Jeannie Wenger; School – Maui Real Estate Academy LLC dba Hawaii Real Estate Academy

Senior Real Estate Specialist Fujimura informed the ERC Ms. Wenger will be teaching specific topics including escrow, evidence of title, settlement statements, wills, and deeds.

Upon a motion by Commissioner Klein, seconded by Commissioner Pang, it was voted on and unanimously carried to approve Jeannie Wenger as a Guest Lecturer at Maui Real Estate Academy, LLC dba Hawaii Real Estate Academy.

Administration of Examinations:

PSI

Licensing Examination Statistics – July 2019

Examination statistics for July 2019 were distributed to the Commissioners for their information.

School Pass/Fail Rates – July 2019

School pass/fail rate statistics for July 2019 were distributed to the Commissioners for their information.

School Summary by Test Category – July 2019

Copies of the July 2019 test category summary reports, by school, were distributed to the Commissioners for their information.

Program of Work: Annual Report, Quarterly Bulletin, and School Files

Senior Real Estate Specialist Fujimura reported that the August 2019 Bulletin will be distributed and a copy is available on the Commission's website: www.hawaii.gov/hirec.

Neighbor Island Outreach and Real Estate Specialists' Office for the day

Neighbor Island Outreach and Real Estate Specialists' Office for the day will be held at Grove Farm Building Conference Room, Lihue, Kauai, HI, September 11, 2019

Chair Faulkner called a 5-minute recess at 10:58 a.m. The meeting reconvened at 11:03 a.m.

Continuing Education: Applications

Executive Session: Upon a motion by Commissioner Pang, seconded by Commissioner Arakaki, it was voted on and unanimously carried to enter into executive session pursuant to Section 92-5(a)(1), HRS, "To consider and evaluate personal information, relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;" and pursuant to Section 92-5(a)(4), HRS, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities."

Upon a motion by Commissioner Pang, seconded by Commissioner Lee, it was voted on and unanimously carried to move out of executive session.

Commissioner Arakaki departed the meeting at 11:10 a.m.

Course – "Succession & Exit Strategies for Private & Family Businesses; Author/Owner – Stacey Wong; Provider - Abe Lee Seminars; Course Categories - Contracts, Investment, Property Ownership and Development, Other – Business Strategy; Clock Hours – 3

Commissioner Pang moved to approve "Succession & Exit Strategies for Private & Family Businesses" as a 3-credit hour continuing education elective course, under the course categories Contracts, Investment, Property Ownership and Development, Other – Business Strategy, subject to including the Real Estate Commission disclaimer, and staff to work with author on minor revisions to content. Commissioner Kyono seconded the motion. The motion was voted on and unanimously carried.

Course – "Mediation, Arbitration & Litigation: The Good, The Bad & The Ugly"; Author/Owner: Stacey Wong; Provider: Abe Lee Seminars; Course Categories: Contracts, Real Estate Law, Dispute Resolution, Risk Management; Clock Hours: 3

Commissioner Kyono moved to approve "Mediation, Arbitration & Litigation: The Good, The Bad & The Ugly" as a 3-credit hour continuing education elective course, under the course categories Contracts, Real Estate Law, Dispute Resolution, Risk Management, subject to including the Real Estate Commission disclosure, and staff to work with author on minor revisions. Commissioner Yamane seconded the motion. The motion was voted on and unanimously carried.

Course – "A New World of Taxation and Real Estate: The 2017 Tax Law;" Author/Owner: Creative Solution Enterprises Inc.; Provider: The Berman Education Company LLC; Course Category: Finance; Clock Hours: 3

Commissioner Pang moved to approve "A New World of Taxation and Real Estate: The 2017 Tax Law" as a 3-credit hour continuing education elective course, under the course category Finance, subject to including the Real Estate Commission disclaimer, and staff to work with author on minor revisions. Commissioner Klein seconded the motion. The motion was voted on and unanimously carried.

Course – "HOPE: Navigating Affordable Housing Options;" Author/Owner: Honolulu Board of REALTORS®; Provider: Honolulu Board of REALTORS®; Course Category: Other – Affordable Housing; Clock Hours: 3

Commissioner Lee commented on paragraph 39 #3, which states "submitting a complete application early or late does not increase or hurt your chances and everyone has an equal or fair shot." Commissioner Lee suggested rewording the sentence, as deadlines are important, and if missed it will cost your client their opportunity to apply for affordable housing.

Mr. Wang commented he will emphasize the importance of the deadline.

Commissioner Lee asked if "HOPE" is an acronym.

Ms. Young commented HOPE stands for "Housing Opportunity is Possible for Everyone". This course is the first of a series of courses working with HCDA, and a second course on rental options will follow this course.

Commissioner Lee suggested adding a reference to the acronym in the slides to tie the acronym in with the course title.

Ms. Young commented with this course being the first one in a series, it'll be more identifiable with additional courses using the HOPE acronym.

Commissioner Lee stated her understanding is the buyer knows the market price for the project prior to closing. Commissioner Lee suggested verifying when the market price is provided to the buyer.

Ms. Young commented they will verify the information.

Commissioner Lee moved to approve "HOPE: Navigating Affordable Housing Options" as a 3-credit hour continuing education elective course, under the course category Other – Affordable Housing, subject to including the Real Estate Commission disclosure and staff to work with author on minor revisions. Commissioner Klein seconded the motion. The motion was voted on and unanimously carried.

Next Meeting: Wednesday, September 11, 2019
Upon adjournment of the Condominium Review Committee Meeting, which is upon adjournment of the Laws and Rules Review Committee meeting, which convenes at 9:30 a.m.
Grove Farm Building Conference Room
3-1850 Kaunualii Highway
Lihue, Kauai

Adjournment: With no further business to discuss, Chair Faulkner adjourned the meeting at 11:27 a.m.

Reviewed and approved by:

/s/ Diane Choy Fujimura

Diane Choy Fujimura
Senior Real Estate Specialist

August 14, 2019

Date

[x] Minutes approved as is.
[] Minutes approved with changes, see minutes of _____