

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, October 9, 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 / Hawaii Island Commissioner
Aleta Klein, Broker / Honolulu Commissioner
Russell Kyono, Broker / Kauai Commissioner
Laurie Lee, Broker / Honolulu Commissioner
John Love, Public / Honolulu Commissioner
Derrick Yamane, Broker / Interim Honolulu Commissioner

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: Ethel Keyes, Hawaii Association of REALTORS®
Chatney Higa-French, Hawaii Association of REALTORS®
Dale Head
Lila Mower, Hui 'Oia'i'o
Lourdes Scheibert

Absent: Michael Pang, Broker / Honolulu Commissioner
Bruce Faulkner, Broker / Maui 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 Faulkner were excused from today's meeting. Prior notice of their non-attendance was received.

SEO's Report:

Announcements

Executive Officer Ino announced that Real Estate Specialist Grupen will be leaving his position with the Real Estate Branch. He has accepted a permanent position as the Licensing Examination Program Specialist with the Professional and Vocational Licensing Division, a position which he has been TA for the past couple of years.

Specialist Grupen has been with the Real Estate Branch for 17 years, 5 of which he served as a condominium specialist, and 12 as a real estate specialist. Many people outside of the branch are unaware of everything that Specialist Grupen has done for the branch and the commission. He was instrumental in the creation and maintenance of the online renewal system, the online CE system, electronic form-fillable applications and forms, and databases which the branch uses to track applications, recovery fund claims and RICO referrals. He was responsible for the commission's annual report, ARELLO annual report, fiscal budget and periodic financial reports to the commission. He has also been the branch's in-house IT person who interacted with ISCO and HIC about the branch's IT issues.

Chair Arakaki thanked Specialist Grupen for his contributions to Real Estate and presented him with a Certificate of Appreciation from the Real Estate Commission.

Deputy Attorney General Wong commented that it has been a pleasure working with Specialist Grupen in his capacity as both a real estate specialist and TA for the licensing examination program specialist position. She commended him for his work in restoring the examination branch.

Minutes of Previous Meetings

Upon a motion by Commissioner Ginoza, seconded by Commissioner Kyono, it was voted on and unanimously carried to accept the minutes of the September 11, 2019, Laws and Rules Review Committee meeting as circulated.

Program of Work:

Rulemaking, Chapter 99, HAR, Real Estate Brokers and Salespersons Relating to Property Management Agreements and Prelicense School Completion Certificates

Two proposed rule amendments were brought before the Commission for their consideration. The first relating to property management agreements and the second relating to prelicense school completion certificates.

EO Ino reported that the proposals are to codify informal non-binding interpretations by the Commission and address problems incurred by the Real Estate Branch and the real estate industry.

Rulemaking, Chapter 99, HAR, Real Estate Brokers and Salespersons Relating to Property Management Agreements

There have been instances in the recent past where licensees have been found in violation of client trust account management. Failure of brokerages and losses to their clients and tenants have amounted to huge financial losses. In some

cases, brokerages are not returning the security deposits timely and the clients are unsure who to contact. Discussions with RICO to address these violations produced the proposed mandatory disclosure in order to protect the consumers which would identify RICO as the agency to contact when encountering problems with the broker.

Proposed draft language to include the following mandatory disclosure was discussed.

All real property rental management agreements and the like shall contain a separate paragraph titled "Consumer Warning". The title shall be no-less than ten-point bold print and shall contain the following language:

"CONSUMER WARNING:

Any failure to account for monies owed to you or any failure to remit monies owed to you on a timely basis, per the terms of this agreement, could constitute a potential licensing law violation that should be promptly reported to the Regulated Industries Complaints Office
Phone (808) 587-4272; Email rico@dcca.hawaii.gov

Broker's Initials

Property Owner's Initials"

Commissioner Klein questioned if the Commission, in order to include non licensees, would need to submit legislation to require them to use the consumer warning language.

EO Ino responded that the request is to be done through rulemaking.

Commissioner Klein questioned how staff will get the word out and how will the information be disseminated?

EO Ino responded that outreach will be done through the Real Estate Bulletin, the Commission's website, and through public hearings. The trade industry will be made aware of the proposed amendment and will be able to weigh in and revise their forms.

Commissioner Klein questioned whether the language in the draft consumer warning should be changed from "could constitute" to "may constitute."

Deputy Attorney General Wong responded to use "may constitute" and to remove the word "potential" from the draft consumer warning.

Chair Arakaki commented that with intentional theft of security deposits the Commission may want to consider proposed legislation to allow restitution from the real estate recovery fund to speed up the process.

Commissioner Kyono commented that he feels it is a good rule to include as he has heard from owners and tenants who want to know who to contact when they run into these types of problems.

Commissioner Klein commented that with the suggested changes to the proposed draft language, the committee should revisit the request in executive session.

Deputy Attorney General Wong responded if the request to enter executive session was to consult with the Deputy Attorney General?

Chair Arakaki suggested to table the issue and review the proposed draft language in a small group to include industry members.

Commissioner Klein responded that she is not opposed to the amendments, but if a committee reviewed the proposal and then submitted it for approval she would be ok with it.

Deputy Attorney General Wong provided the committee with information on permitted interaction groups (PIG).

Upon a motion by Commissioner Klein, seconded by Commissioner Lee, it was voted on and unanimously carried to form a permitted interaction group (PIG) for the purposes of reviewing proposed draft language in the mandatory disclosure and discussing any changes or revisions to the draft language. Members to include Commissioners Klein, Kyono and Ginoza, an industry representative and a trade association representative.

Commissioner Klein questioned if it is acceptable for other Commissioners not on the PIG to email in their thoughts.

Deputy Attorney General Wong responded in the negative and responded that other Commission members will have an opportunity to discuss the proposed draft language at a committee or Commission meeting to which the item is agendaized.

Rulemaking, Chapter 99, HAR, Real Estate Brokers and Salespersons Relating to Prelicense School Completion Certificates

The suggested rule revision to HAR §16-99-29 is to clarify the intent of the rule that the candidate pass both portions of the real estate licensing exam before the 2-year expiration date of the prelicense school completion certificate.

Commissioner Love questioned if the minimum passing score in the rules is a set score, or a percentage.

EO Ino responded that it is a percentage.

Commissioner Love recommended to also amend the language to include "per cent".

Upon a motion by Commissioner Yamane, seconded by Commission Kyono, it was voted on and unanimously carried to approve the proposed amendments to HAR §16-99-29 to be revised as follows:

§16-99-29 Examination for broker and salesperson license. (a) No license shall be issued to any individual unless the individual takes and passes an examination as prescribed by the commission for the license applied for. The minimum passing score for the uniform and the State portions of the examination shall be seventy per cent for salesperson applicants and seventy-five per cent for broker applicants. Any individual who fails to obtain a passing score in any part of the examination shall repeat that part of the examination. Failure to obtain a passing score in

all parts thereof [~~within the two-year period after the first examination date~~] before the expiration date of the prelicense school completion certificate, shall result in failure of the examination as a whole and the entire examination shall be repeated by the candidate.

ARELLO

ARELLO Boundaries, September 2019

The following articles from the September 2019 issue of ARELLO Boundaries were distributed for informational purposes: "Business Models: Realogy/Amazon Partnership Draws Industry Speculation" and "FHA (Finally) Issues Final Condo Rules."

Next Meeting: Wednesday, November 6, 2019
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 9:36 a.m.

Reviewed and approved by:

/s/ Miles Ino

Miles Ino
Executive Officer

October 18, 2019

Date

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

MI:tn