

**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](http://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, November 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 / Hawaii Island 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  
Derrick Yamane, Broker / Interim Honolulu Commissioner

Neil Fujitani, Supervising Executive Officer  
Miles Ino, Executive Officer  
Diane Choy Fujimura, Senior Real Estate Specialist  
Amy Endo, Real Estate Specialist  
Carole Richelieu, Senior Condominium Specialist  
Dathan Choy, Condominium Specialist  
Shari Wong, Deputy Attorney General  
Tammy Norton, Recording Secretary

Others: Ethel Keyes, Hawaii Association of REALTORS®  
Chatney Higa-French, Hawaii Association of REALTORS®  
Andrew Nguyen, Hawaii Association of REALTORS®  
Kalama Kim, Honolulu Board of REALTORS®  
Stacey Wong, Abe Lee Seminars

Absent: None

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.

SEO's Report: **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 October 9, 2019, Laws and Rules Review Committee meeting.

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

Mandatory Disclosure for Residential Real Estate Property Management Contracts – Permitted Interaction Group

The committee acknowledged receipt of the written report of the permitted interaction group regarding mandatory disclosure for residential real property management contracts submitted by Executive Officer Ino.

The industry and trade representatives appreciated the Commission's intent but had concerns which included:

1. The language in the draft seemed overbearing and onerous;
2. The concern that consumers might resort to filing meritless complaints against licensees over each disagreement, which may be damaging to the licensee's reputation;
3. Non-licensees do purchase and use the Hawaii Association of REALTORS® (HAR) rental agreements and there is no regulatory recourse against them; and
4. An informational brochure may achieve the same results.

Consequently, the PIG did not reach consensus regarding the language of the Disclosure. However, the industry participants offered to work with HAR and THE Honolulu Board of REALTORS® (HBR) on suggestions which they will present to the Commission in the future.

Commissioner Klein expanded on the written report and commented that she drafted three different versions of the mandatory disclosure and provided them to the participants. She also commented that some were concerned if RICO could handle the high volume of phone calls that may occur, to which the committee was informed that RICO was in support of the inclusion of the disclosure and would be able to handle the intake.

Commissioner Kyono reiterated one of the concerns provided in the written report regarding the concern that consumers might resort to filing meritless complaints.

EO Ino responded that if the complaint is sent to an investigator, the investigator will contact the licensee and determine if an investigation is warranted. If an investigation is conducted and there is insufficient evidence, the case will be closed, but will be noted on the licensees record as closed due to insufficient evidence.

Commissioner Lee commented that in all industries, if a complaint is filed, it is noted, but the outcome should be reflected.

Chair Arakaki commented that procedurally for the permitted interaction group no action can be taken today, report can be reviewed, and action taken at the next Laws and Rules Review Committee meeting.

Commissioner Klein questioned if it would be helpful if she provided her drafts to all the Commissioners for their review.

Deputy AG Wong responded that if there is something she wants the full Commissioner to review, it should be agendaized and provided as a part of the packet for the next meeting.

SEO Fujitani asked what action was taken by the PIG in relation to the handouts reviewed.

Commissioner Klein responded that there was no resolution.

SEO Fujitani suggested that the committee await the suggestions that the industry participants offered to present to the Commission.

Commissioner Klein moved to submit her language changes to the Laws and Rules Review Committee for further consideration. Commissioner Love seconded the motion.

Commissioner Pang suggested that it would be better to await the stakeholders comments so that only 1 draft is presented to the LRRC for consideration.

After discussion, the motion was amended. Upon a motion by Commissioner Klein, seconded by Commissioner Love, it was voted on and unanimously carried that the LRRC await the comments from the stakeholder participants before making a decision.

Chair Arakaki thanked the members of HAR and HBR for working with the permitted interaction group.

#### Public Comments on Draft 1 Received 7/26/2019 to 9/27/2019

##### *Existing §16-99-3.1 – Disclosure of agency*

Commissioner Klein commented that there is a need to be careful in modifying existing language. Although she hears and understands HBRs comments, she believes the Commission should stick to the REB proposed language for "dual agency."

Commissioner Pang suggested using the language from the standardized dual agency form.

Chair Arakaki remarked to define in one paragraph may be too difficult.

EO Ino commented that he understands that HAR is revising their form.

Ms. Ethel Keyes confirmed that HAR is currently working on revisions.

##### *Existing §16-99-5 Notification and filing of names, addresses, and changes*

Chair Arakaki noted that if team names are not registered with BREG/REC there could be multiple teams with the same name. The brokerage license number would need to be attached to the team name to differentiate who the team works for.

Chair Pang commented that similar names are not allowed for brokerages. If a team name is associated with a brokerage, the PB would be held responsible.

Mr. Kalama Kim of the HBR commented that registration of a team name would be a challenge. Licensees are individual contractors and determine for themselves who is on a team. The PB does not assign the team names. If a team were to leave the brokerage under this scenario, the team name would be retained by the brokerage rather than by the team. To differentiate what brokerage the team belongs to, the brokerage number should be attached to the team name.

Commissioner Pang commented that the principal broker is ultimately the responsible party and questioned how independent do you allow the team to be from the brokerage.

Commissioner Klein commented that she is in favor of registering teams. If teams are registered when the company signs on a team each company could specify what happens if you left.

Commissioner Faulkner suggested that brokerages spell out in their company policy what happens to a team should a member of the team leave the brokerage, does the brokerage retain the team, or not.

*Proposed §16-99.1-16 Team name*

HBR commented to delete (k) – "any other word the commission determines to be misleading" as being too broad.

Staff responded that rules normally include such language as a catch all.

*Proposed §16-99.1-15 Advertisement*

Mr. Kalama Kim commented that HBR came up with 3 suggestions relating to advertising of team names: 1) leave "prominent" and "conspicuous"; 2) brokerage name should be no smaller than the size of the team name; and 3) the size should be proportional with the brokerage firm name being no less than a percentage of the team name.

Commission members discussed the font size and type and the pros and cons of suggested items 1 and 2. It was noted that regulating a font type and size would be too regulatory and that a franchise may not allow a team name to mimic its font type of the brokerage name.

Commissioner Yamane commented when looking at protecting the public the team name should be equal to that of the brokerage name. The public needs to know to whom the team works for and who will be held responsible.

Mr. Kim commented that in suggestion #3, the brokerage firm name can be smaller than the team name, but still be prominent and conspicuous.

Commissioner Love commented that suggestions #1 and #2 are workable, but #3 is not.

Commissioners also noted when advertising with sidewalk signs, both names should be on the same side of the sign.

In relation to including the licensee's license number as issued by the Commission on advertising, HBR's comment is to use the brokerage firm's license number.

Commissioner Pang was in agreement that the brokerage firm license number be included rather than the licensee's license number.

HBR noted issues with (k) which prohibits a licensee from including the names and contact information of any unlicensed person, including employees, and contractors, in any advertising or promotional material. The language as drafted prohibits co-advertising such as with a lender or title company.

The Commission's concern with listing a non-licensee in advertising is that the consumer may contact the unlicensed individual if their information is included in the advertising.

Commissioner Love suggested amending the language to include "under the employ of the brokerage or team" to read as "(k) A brokerage firm shall be prohibited from including the names and contact information of any unlicensed person under the employ of the brokerage or team, including employees and contractors, in any advertising or promotional material.

Commissioner Pang noted that the public comments received were all similar to those comments received by HBR.

It was suggested that Commissioners continue to review the public comments received between July 26, 2019 and September 27, 2019 for further discussion at the next Laws and Rules Review Committee meeting.

Next Meeting: Wednesday, December 11, 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 10:22 a.m.

Reviewed and approved by:

/s/ Neil K. Fujitani

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Neil K. Fujitani  
Supervising Executive Officer

November 12, 2019

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Date

Approved as is.  
 Approved with amendments. See minutes of \_\_\_\_\_ meeting.