

Real Estate Commission Bulletin



High School Diploma Is New Requirement for Licensure

Act 246 (SB 770, S.D. 1, H.D. 1 C.D. 1) requires a high school education or its equivalent as a condition for new applicants to obtain a license as a real estate broker or real estate salesperson, was given the green light by the 39th legislature 2019, and was signed into law by Governor Ige on July 2, 2019.

Act 246 states that no individual shall be eligible for the licensing examination unless the individual is a United States citizen, a United States national, or an alien authorized to work in the United States, is of the age of majority; has earned a high school diploma or its equivalent; and is applying for the real estate salesperson . . . and the real estate broker examination. . . . Act 246 is effective July 1, 2020.

Core A 2019 - 2020 Protect Your License

The 2019-2020 Core Course, Part A, "PROTECT YOUR LICENSE" was approved by the Commission's Education Review Committee at its monthly meeting on June 12, 2019, held in Kona, HI. The Train-the-Trainer was held on June 20, 2019, and the course may be offered as of Tuesday, July 2, 2019. "Protect Your License" will focus on the most common licensing laws and rules violations found by the Regulated Industries Complaints Office ("RICO") within past years. The majority of the case scenarios used in the Core A materials are actual cases investigated by RICO and approved by the Commission. These cases are published in the quarterly Real Estate Commission Bulletin. Names of the actual respondents have been omitted.

As always, the legislation from the 2019 session that is real estate-related will be included in the Core A materials. CE Providers offering Core A will be notified of any changes to the real estate legislation section when the information is available.

Interactivity throughout the course is a must. Breaking up into small-group discussions, using technology to engage the class, role-playing, etc. are all recommended techniques to create a better learning experience.

The core course materials are provided to the CE Provider and to the instructors who completed the Train-the-Trainer session. It is the responsibility of the CE Provider to see that the instructors used to teach their course offerings of the Core A have completed the Train-the-Trainer, or sat in a core course offering. For those Core A instructors completing the Train-the-Trainer session on their own by viewing the video of the session, a certification form is available from the Real Estate Branch, telephone 808-586-2643.

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2 New Proposed Rule Changes

The proposed rules addressing advertising and team names were approved by the Commission at its March 2019 monthly meeting. On June 14, 2019, the draft rules were distributed to the Hawaii Association of REALTORS® for further dissemination to the local Boards of REALTORS®. The rules now begin the laborious 18-step process to final approval by the Governor. Public comment is included in the process.

The proposed rules include the following:

| EXISTING | PROPOSED |
|---|---|
| | NOTE: Non-substantive changes, such as chapter or section citations, are omitted for brevity's sake. |
| §16-99-3.1 Disclosure of agency. (a) As used in this section: | §16-99.1-4 Disclosure of agency. (a) As used in this section: <u>"Dual agency" means a representation in which the real estate licensee acts as an agent for more than one buyer or seller in the same transaction, or both the buyer and seller in the same transaction.</u> |
| §16-99-5 Notification and filing of names, addresses, and changes. | §16-99.1-6 Notification and filing of names, addresses, and changes. <u>(5) In the case of a partnership, corporation, limited liability company, or sole proprietorship, any changes to team names registered with the commission pursuant with 16-99.1-16.</u> |
| <p>§16-99-11 Advertisement. (a) All real estate advertising and promotional materials shall include the legal name of the brokerage firm or a trade name previously registered by the brokerage firm with the business registration division and with the commission. For advertising and promotional purposes only, a brokerage firm may:</p> <p>(1) Abbreviate "Incorporated," "Corporation," "Limited," "General Partnership," "Limited Partnership," "Limited Liability Company," or "Limited Liability Partnership" from the licensed name; and</p> <p>(2) Use "dba" in conjunction with the licensed name and a trade name.</p> <p>(b) No licensee shall advertise "For Sale by Owner," "For Rent by Owner," "For Lease by Owner," or "For Exchange by Owner."</p> <p>(c) Current individual real estate licensees, whether active or inactive, shall disclose the licensee's status as a real estate licensee in all advertising and promotional material.</p> <p>(d) A leasehold property advertised for sale in any medium shall be identified by the word "leasehold."</p> <p>(e) All advertising and promotional materials that refer to the individual licensee's name, including but not limited to business cards, shall:</p> <p>(1) Include the licensee's legal name, name as licensed by the commission, or sole proprietor's trade name as licensed by the commission;</p> <p>(2) Identify the licensee with the licensee's associating or employing brokerage firm; and</p> <p>(3) Specify that the licensee is a broker (B), or salesperson (S), or if a current member of the Hawaii Association of Realtors, Realtor (R) or Realtor-Associate (RA).</p> <p>(f) If the address of any unregistered place of business is included in advertising materials, then the street address of the principal place of business or the branch office, as the case may be, shall be included and respectively identified as such.</p> | <p>§16-99.1-15 Advertisement. (a) All real estate advertising and promotional materials, including solicitation materials, shall <u>prominently and conspicuously</u> include the legal name of the brokerage firm or a trade name previously registered by the brokerage firm with the business registration division and with the commission, <u>and the license number of the brokerage except that this subsection shall not apply to real estate advertising or promotional materials described in subsection (i).</u> <u>Notwithstanding the requirements of subsection (i), the license number of the brokerage shall not be required for all advertising and promotional materials that comply with paragraph (e).</u> A brokerage firm may:</p> <p>(1) Abbreviate "Incorporated," "Corporation," "Limited," "General Partnership," "Limited Partnership," "Limited Liability Company," or "Limited Liability Partnership" from the licensed name; and</p> <p>(2) Use "dba" in conjunction with the licensed name and a trade name.</p> <p>(b) No licensee shall advertise "For Sale by Owner," "For Rent by Owner," "For Lease by Owner", or "For Exchange by Owner."</p> <p>(c) Current individual real estate licensees <u>on inactive status</u> shall disclose the licensee's inactive status shall disclose the licensee's <u>inactive</u> status in all advertising and promotional material.</p> <p>(d) A leasehold property advertised for sale in any medium shall be identified by the word "leasehold".</p> <p>(e) All advertising and promotional materials that refer to the individual licensee's name, including but not limited to business cards, shall:</p> <p>(1) Include the licensee's legal name, name as licensed by the commission, or sole proprietor's trade name as licensed by the commission;</p> <p>(2) Identify the licensee with the licensee's associating or employing brokerage firm; and</p> <p>(3) <u>Include the licensee's license number as issued by the commission.</u></p> <p>(f) If the address of any unregistered place of business is included in advertising materials, then the street address of the principal place of business or the branch office, as the case may be, shall be included and respectively identified as such.</p> <p>(g) <u>Solicitation materials mean electronic or print materials soliciting the creation of a professional relationship between the licensee and a consumer, or which incentivizes, induces, or entices a consumer to contact the licensee about a product or service for which a real estate license is required.</u></p> <p>(h) <u>All real estate solicitation materials shall include the brokerage's license number, provided that the license number of the brokerage is not required for solicitation materials which contain the legal name or license name of an individual real estate licensee and the licensee's license number. The license number of the brokerage or individual licensee shall not be required for office signage identifying the brokerage's place of business or branch office and promotional materials of nominal value including but not limited to hats, clothing, pins, pens, memo pads, and name badges.</u></p> |

The Chair's Message

Dear Real Estate Licensees:

HIGH SCHOOL DIPLOMAS

On July 2, 2019, Governor Ige signed Senate Bill 770, SD1, HD1, CD1 into law and it became **Act 246** (2019). This means, as of July 1, 2020, having a high school diploma or its equivalent will be required in order to be eligible to take the licensing exam for real estate salesperson's and broker's licenses. Hawaii now joins most U.S. jurisdictions in this regard.

ARELLO

The Hawaii Real Estate Commission ("HIREC") actively participates in the **Association of Real Estate License Law Officials ("ARELLO")**, which is an organization of real estate licensing regulators from all U.S. states, Canada and Puerto Rico. The sharing of information is a valuable tool to assist jurisdictions in their licensing practices. There are many issues discussed at each ARELLO conference. Here are a few from the most recent conference in April 2019:

License portability. As the federal government pushes for deregulation, portability of licenses for all licensed professions from one state to another has become a significant issue. Hawaii, like most reporting jurisdictions, allows a licensee from another state to obtain a real estate license upon passing the state portion of the exam (also for Hawaii, meeting experience requirements for a broker's license); the federal portion is similar in all states. However, the federal push is for immediate and full portability, which could create risk to consumer protection as most states have some unique aspect(s) to their practice of real estate, which should be known by the licensee and examined before licensure.

Principal broker accountability. All ARELLO members, like Hawaii, hold principal brokers accountable for supervising the conduct of their licensees. This includes the timely renewal of licenses and any form of misconduct related to the practice of real estate. The accountability of principal brokers to supervise the licensees under them is absolute and, as with other jurisdictions, Hawaii's Regulated Industries Complaints Office (RICO) routinely charges principal brokers for the failures of licensees under their supervision.

Background checks. For the protection of consumers, all ARELLO members (except Hawaii and Wisconsin) conduct background checks as a condition of licensure which has become quick, easy and inexpensive to do. What jurisdictions do with the checks varies from automatic rejection of licensure for certain convictions (serious financial or violent crimes) to requiring interviews so as to gauge nexus (connection or link) of their conviction to the practice of real estate before deciding to grant a license or not.

CONDOMINIUMS - 1989 STUDY

In the 2019 Legislature, the Senate passed **Senate Resolution 41 SD1**, essentially for the HIREC to study the recommendations from its 1989 report to improve the operation of condominiums. The 1989 report was done by attorney John Morris (currently a senior partner with Ekimoto & Morris) for the HIREC.

Although this study is not required since it was only a Senate Resolution (not House as well), the HIREC believes: (1) recommendations from the 1989 report were mostly addressed via legislation since then; and (2) it may be time to study what else can be done to further improve the operation of condominiums. The HIREC asked Mr. Morris to provide an update on how the recommendations from the 1989 report have been addressed, which he agreed to do. The objective is to next work on a report to the Legislature on new recommendations to further improve the operation of condominiums.

Mahalo.



Michael Pang, Chair
Hawaii Real Estate Commission



New Proposed Rule Changes (cont. from page 2)

| EXISTING | PROPOSED |
|--|--|
| | <p><u>(i) All real estate advertising and promotional materials that include a team name registered by the brokerage firm pursuant with §16-99.1-16 shall prominently and conspicuously include the legal name or license name of the brokerage firm and license number of the brokerage as issued by the commission. Team names and logos shall not be larger in size than the brokerage name and logo in all advertisements.</u></p> <p><u>(j) All real estate advertising and promotional materials that include a team name and the name of any real estate licensee associated with the brokerage firm shall include the licensee's license number as issued by the commission.</u></p> <p><u>(k) A brokerage firm shall be prohibited from including the names and contact information of any unlicensed person, including employees and contractors, in any advertising or promotional material.</u></p> |
| No existing section | <p><u>§16-99.1-16 Team name. (a) As used in this section:</u></p> <p><u>"Team" means two or more real estate licensees associated with the brokerage firm who are assigned by the principal broker to work together in an informal group within the brokerage firm.</u></p> <p><u>"Team name" means a name that complies with this section and is assigned by the principal broker to a team.</u></p> <p><u>(b) Prior to using a team name, a brokerage shall register the team name with the commission, provided that:</u></p> <p><u>(1) The team name is currently registered by the brokerage as a trade name with the business registration division; and</u></p> <p><u>(2) The team name shall not include any term that would imply a separate entity from the brokerage firm with which the members of a team are associated, including but not limited to, the following terms:</u></p> <p><u>(A) Company or any abbreviation of the term;</u></p> <p><u>(B) Limited or any abbreviation of the term, including but not limited to, Ltd., LLC, LLLC, LLP, LLLP;</u></p> <p><u>(C) Corporation or any abbreviation of the term; (D) Incorporated or any abbreviation of the term;</u></p> <p><u>(E) Partners or partnership or any abbreviation of the terms;</u></p> <p><u>(F) Proprietor, proprietors, proprietorship, or any abbreviation of the term; or any abbreviation of the term;</u></p> <p><u>(G) Association or any abbreviation of the term; (H) Organization or any abbreviation of the term; (I) Realty;</u></p> <p><u>(J) Real estate;</u></p> <p><u>(K) Any other word the commission determines to be misleading.</u></p> <p><u>(c) The principal broker develops policies and procedures for the brokerage firm concerning the handling of real estate transactions and the conduct of each team member. The policies and procedures shall clearly set forth specific activities unlicensed, administrative personnel of the brokerage may and may not perform;</u></p> <p><u>(d) The principal broker or sole proprietor may designate a broker-in-charge to be directly responsible for the supervision and management of each team; and</u></p> <p><u>(e) The team name is advertised in addition to and shall not replace the legal name or license name of the brokerage in any advertising or promotional material pursuant with §16-99.1-15.</u></p> |
| <p>§16-99-19.2 Experience certificate application. (a) Candidates for the broker examination shall submit to the commission a completed experience certificate application together with:</p> <p>(1) A nonrefundable application fee; and</p> <p>(2) A certified statement by the principal broker or a broker in charge of each of applicant's brokerage firms during the three years immediately preceding the application for experience certificate, that attests to the length of time that the applicant has been actively associated or employed full-time with the brokerage firm. Applicants shall have experience in this State as a full-time Hawaii-licensed real estate salesperson, associated as an employee or independent contractor with an active Hawaii-licensed brokerage firm, for at least three years within the five-year period immediately prior to the application for experience certificate.</p> | <p>§16-99-2-6 Experience certificate application. (a) Candidates for the broker examination shall submit to the commission a completed experience certificate application together with:</p> <p>(1) A nonrefundable application fee; and</p> <p>(2) A certified statement by the principal broker or a broker in charge of each of applicant's brokerage firms during the three years immediately preceding the application for experience certificate, that attests to the length of time that the applicant has been actively associated or employed full-time with the brokerage firm. Applicants shall have experience in this State as a full-time Hawaii-licensed real estate salesperson, associated as an employee or independent contractor with an active Hawaii-licensed brokerage firm, for at least three years within the five-year period immediately prior to the application for experience certificate.</p> |

New Proposed Rule Changes (cont. from page 4)

| EXISTING | PROPOSED |
|---|---|
| §16-99-87 Definitions. As used in this subchapter: | <u>§16-99.3-24 Definitions. As used in this subchapter: “USDOE” means the United States Department of Education</u> |
| §16-99-101 Courses not acceptable for continuing education course certification. The commission may not certify a continuing education course, or any portion thereof, which: | <u>§16-99.3-37 Courses not acceptable for continuing education course certification. The commission may not certify a continuing education course, or any portion thereof, which: (7) Contains multiple typographical or grammatical errors, or errors in subject matter content; and (8) Does not meet the definition of continuing education as determined by the commission.</u> |

Interim Commissioner Appointed

On June 5, 2019, Governor Ige appointed Derrick Yamane as an interim real estate commissioner, to serve a term beginning July 1, 2019 and to expire on the last day of the 2020 Regular Session of the Legislature. If the Governor decides to submit Mr. Yamane’s name for confirmation by the Senate during the next 2020 legislative session, and he is confirmed by the Senate, his term will expire on June 30, 2023.

Commissioner Yamane is a real estate broker-in-charge and partner at Locations, LLC since 1991 to the present. Prior to 1991, he worked as a paralegal. He is a graduate of Iolani School, and attended Occidental College, Los Angeles, CA, and the University of Hawaii, where he received a B.A. in English.



Administrative Actions

April 2019

GERALD T. TAKASAKI
RB 13251

Case No. REC-2018-365-L

Dated 4/26/19

Uncontested Facts:

At all relevant times herein, Respondent was licensed by the Real Estate Commission (hereinafter the “Commission”) as a Real Estate Broker under License Number RB 13251 and was at all relevant times herein the principal broker for HORITA REALTY LLC. The license was issued on or about January 18, 1983. The license will expire or forfeit on or about December 31, 2020.

On or about December 31, 2016, the real estate salesperson’s license of Nancy Lam, then associated with Horita Realty LLC expired and/or was forfeited.

Ms. Lam will be the subject of a separate Settlement Agreement or proceeding.

Ms. Lam subsequently renewed her license on or about September 18, 2018.

Ms. Lam undertook activities requiring a license between approximately January 1, 2017 to September 17, 2018.

Respondent failed to ensure that Ms. Lam’s license was timely renewed.

Respondent fully cooperated with RICO in the investigation of this matter and any alleged error was due to an oversight.

Violations: HRS § 467 1.6(b)(7)

Sanctions:
Fine of \$1,000.00.

KIRA A. LONG
RS 75762

Case No. REC-2017-11-L

Dated 4/26/19

Uncontested Facts:

Respondent self-reported in December 2016 that she had been convicted of the offense of Operating a Vehicle Under the Influence of an Intoxicant (“OVUII”) in the District Court of the First Circuit, State of Hawaii. Respondent has complied with all court ordered terms of probation.

Violations: HRS § 436-19(14)

Sanctions:
Fine of \$500.00.

Administrative Actions (cont. from page 5)

May 2019

VIHEART L. SMITH
also known as **VICKY SMITH**
RB 20259

Case No. REC-2018-264-L

Dated 5/17/19

Uncontested Facts:

RICO alleges that on or about December 31, 2016, the license of real estate salesperson Grace M. Bunao, then associated with Properties of Oahu, LLC expired and/or was forfeited.

Ms. Bunao restored her license on or about April 10, 2018.

Ms. Bunao undertook activities requiring a license between approximately January 1, 2017 and March 20, 2018. Ms. Bunao will be the subject of a separate Settlement Agreement or proceeding.

Respondent failed to ensure that Ms. Bunao's license was timely renewed.

Violations: HRS § 4-7-1.6(b)(7)

Sanctions:
Fine of \$1,000.00.

CHRISTINE TERESE AJIROGI
RB 72714

Case No. REC-2019-23-L

Dated 5/17/19

Uncontested Facts:

Respondent self-reported in December 2018 that she had been convicted of the offense of Operating a Vehicle Under the Influence of an Intoxicant ("OVUII") in the District Court of the First Circuit, State of Hawaii.

Respondent has complied with all court ordered terms and conditions of her sentence.

Violations: HRS § 436B-19(12)

Sanctions:
Fine of 500.00

ART BALMACEDA
aka **ARTHUR G. BALMACEDA**
dba **A F PROPERTIES**
RB 16886

Case No. REC-2018-237-L

Dated 5/17/19

Uncontested Facts:

RICO received a complaint alleging that Respondent misrepresented to the Commission his ability to work in the United States of America.

RICO alleges the following:
On or about March 9, 1996, Respondent answered "No" to the following question on the day of his real estate broker's license examination: "Are you a citizen of the United States or an alien authorized to work in the United States?" His response was recorded in the Candidate Screening Responses, signed and dated March 9, 2019.

Respondent signed and certified the Candidate Screening Responses that included the following statement, reproduced in relevant

parts: "I understand that Hawaii law requires, prior to taking the examination that I must be a citizen of the United States or an alien authorized to work in the United States."

Respondent submitted an "Application for License - Real Estate" (hereinafter "Application") on or about March 13, 1996. The Application included an Affidavit of Applicant certifying that all statements and answers were true and correct.

Respondent signed and dated the Affidavit and Application on or about March 16, 1996.

Respondent answered "No" to Section C, Question 5, which asked, "Are you an alien without authorization to work in the United States?"

Respondent was not a citizen of the United States or an alien authorized to work in the United States in or after 1996.

If Respondent did not misrepresent his legal status as a citizen of the United States or an alien authorized to work in the United States he would not have been permitted to take the real estate broker's license examination and therefore could not have been able to act as a licensed real estate broker from 1996 to the current expiration.

On or about July 18, 2018, Respondent was deported from the United States to the Philippines. Pursuant to the Immigration and Nationality Act, Respondent is barred from returning to the United

States for a period of ten years without a waiver by the Attorney General of the United States.

Representations by Respondent:

He arrived in the United States legally as a worker in the diplomatic service of the Philippine's government. Respondent left the Philippine's diplomatic service in 1986 and stayed in Hawaii.

He attempted to become a permanent resident of the United States but was unable complete the process.

He self-deported himself pursuant to an agreement with the United States Immigration and Customs Enforcement Agency in July of 2018.

He is in the process of appealing his deportation and desires to return to the United States in the future.

In the event he legally returns to the United States prior to the expiration of five years from the date of the revocation, he will request an opportunity to appear before the Commission to request the opportunity to reapply for either a real estate salesperson or real estate broker license.

Violations: HRS § 467-9.5 and HRS § 467-20

Sanctions:
Voluntary revocation of Respondent's license.

(cont. page 7)

Administrative Actions (cont. from page 6)

May 2019

GRACE M. BUNAO
RS 68802

Case No. REC-2018-172-L

Dated 5/17/19

Uncontested Facts:

RICO alleges that on or about December 31, 2016, the Respondent's real estate salesperson license, then associated with Properties of Oahu, LLC expired and/or was forfeited.

Respondent undertook activities requiring a real estate salesperson license between approximately January 1, 2017 and March 20, 2018.

Respondent restored her real estate salesperson license on or about April 10, 2018 and completed all requisite continuing education requirements.

Respondent fully cooperated with RICO's investigation into this matter and the failure to timely

renew her real estate salesperson license was based on a mistaken belief that her principal broker at the time had timely renewed her license.

Respondent's principal broker during the time her license was inactive will be the subject of a separate Settlement Agreement or proceeding.

Violations: HRS § 467-7

Sanctions:

Fine of \$500.00

DONOVAN L. BAILEY
RS 74414

Case No. REC-2019-28-L

Dated 5/17/19

Uncontested Facts:

Respondent self-reported in December 2018 that he had been convicted of the offense of Operating a Vehicle Under the Influence of an Intoxicant ("OVUII") in the District Court of the First Circuit, State of Hawaii.

Respondent has complied with all court ordered terms and conditions of his sentence.

Violations: HRS § 436B-19(12)

Sanctions:

Fine of \$500.00

JILL Y. IZUNO
RS 80419

Case No. REC-2019-43-L

Dated 5/17/19

Uncontested Facts:

Respondent self-reported in December 2018 that she had been convicted of the offense of Operating a Vehicle Under the Influence of an Intoxicant ("OVUII") in the District Court of the Third Circuit, South Kohala Division, State of Hawaii.

Respondent has complied with all court ordered terms and conditions of her sentence.

Violations: HRS § 436B-19(12)

Sanctions:

Fine of \$500.00

NANCY LAM, also known as
NANCY AU LAM
RS 70073

Case No. REC-2018-364-L

Dated 5/17/19

Uncontested Facts:

On or about December 31, 2016, Respondent's real estate salesperson license expired and/or was forfeited. Respondent undertook activities requiring a license between approximately January 1, 2017 and September 17, 2018.

Respondent fully cooperated with RICO's investigation into this matter and has assured RICO it was an oversight.

Respondent restored her license on or about September 18, 2018.

Respondent's principal broker during this time her license was expired will be the subject of a separate Settlement Agreement or proceeding.

Violations: HRS § 467-7

Sanctions:

Fine of \$500.00

Administrative Actions (cont. from page 7)

June 2019

**ANTOINETTE M. DEMELLO
TONI DEMELLO dba T&C
REALTY
RB 15032**

Case No. REC-2018-144-L

Dated 6/28/19

Uncontested Facts:

RICO received a complaint alleging that Respondent failed to comply with the laws governing professional conduct of real estate brokers in the management of a property.

RICO Allegations:

Respondent entered into a contract to manage a property located at 13-3540 Kumakahi Street, Pahoa, Hawaii, Hawaii 96778 (hereinafter the "Property") for the Property's owners; Brian Lee Frederickson and Beth Frederickson (hereinafter "Complainants") from in or about January of 2016 to July of 2017.

The Respondent failed to deliver a copy of the property management after all parties signed.

The Respondent failed to comply to two separate terms in the property management contract: 1) notification of the Complainants when the tenants intended to vacate the property and 2) return of the Property's keys upon termination of the contract.

Violations: HRS § 467-13, HAR § 16-99-3(f) and HAR § 16-99-3(b),

Sanctions:
Fine of \$1,000.00.

**KENT M. NAKASHIMA
RB 7514**

Case No. REC-2018-315-L

Dated 6/28/19

RICO Allegations:

Respondent was licensed as a real estate broker, he was hired to manage a property located at 77-354 Sunset Drive, Kailua-Kona, Hawaii.

Respondent failed to return the security deposit to the property owners or to transfer the security deposit to the new property management company.

Violations: HRS § 467-14(18), (20)

Sanctions:
Voluntary revocation of Respondent's license.

**IVY N. KUMAI
RB 9277**

Case No. REC-2018-377-L

Dated 6/28/19

RICO Allegations:

The real estate broker license of Dean M. Gushi, Jr. expired on December 31, 2016 and was not restored until August 14, 2018. During this time period, Mr. Gushi was affiliated with Ivy K Realty LLC and engaged in real estate transactions.

Violations: HRS § 467-1.6(b)(7)

Sanctions:
Fine of \$1,000.00

**DEAN M. GUSHI, JR.
RB 21444**

Case No. REC-2018-333-L

Dated 6/28/19

RICO Allegations:

Respondent's real estate broker license expired on or about December 30, 2016 and was restored on or about August 14, 2018.

During the time period the Respondent's real estate broker license was expired, Respondent engaged in various real estate transactions.

His license status issues were due to inadvertence and not to avoid licensure responsibilities. Respondent further represents that he declined the commissions from the real estate transactions until after his license was restored.

Respondent's principal broker during this time his license was expired will be the subject of a separate Settlement Agreement or proceeding.

Violations: HRS § 467-7

Sanctions:
Fine of \$500.00

Administrative Actions (cont. from page 8)

June 2019

RACHELLE E. LABELLA
RB 78506

Case No. REC-2017-395-L

Dated 6/28/19

Findings of Fact:

On June 9, 2016, Respondent Rachel E. LaBella was licensed by the State of Hawaii, Real Estate Commission ("Commission") as a real estate salesperson, License No. RS 78506. Said license is currently due to expire on December 31, 2020.

According to DCCA Professional and Vocational Licensing Division records, Respondent's broker affiliation was with West Oahu Realty, Inc.

In or around May 2017, Respondent offered to act as property manager for Marife Maganis by renting out her condominium unit at 1178 Kukulu Street, #906 in Kapolei. On May 17, 2017, using a Rental Management Agreement form of Ivy K. Realty, LLC, Ms. Maganis and Respondent signed the contract calling for Respondent to act as property manager for Ms. Maganis for the rental of the condominium at 1178 Kukulu Street #906 in Kapolei.

However, Ivy K. Realty, LLC had not issued or approved the Rental Management Agreement used by Respondent. Further, Respondent did not provide Ms. Maganis with a copy of the Rental Management Agreement.

Respondent informed Ms. Maganis that she would advertise the rental on Craigslist as well as hold private open house showings.

Respondent told Ms. Maganis that she had found a tenant to start renting the unit on July 20, 2017. Respondent provided Ms. Maganis with an itemized expense report for July 2017 which showed a pro-rated income of \$423.18 after deducting the \$70.40 management fee and \$386.42 for pest control and pet deodorizer services supposedly provided by Kamaaina Termite and Pest Control.

Respondent deposited \$423.18 into Ms. Maganis' checking account.

In August 2017, Respondent informed Ms. Maganis that the tenant had told her that the washer and dryer needed repair. After deducting \$387.56 for these repairs, Respondent deposited \$1,652.44 into Ms. Maganis' checking account.

Respondent informed Ms. Maganis that the tenant was complaining that the air conditioning was not cooling properly, that the tenant had paid \$202.42 to fix this, and that this amount would be deducted from the September 2017 rental income. When Ms. Maganis questioned Respondent why

the tenants had fixed the air conditioner themselves, without approval from Respondent, Respondent stated that the air conditioning technician had sent her a duplicate receipt and not to worry about it.

During her testimony, Respondent also admitted that she had deducted a property management fee from each monthly deposit of the rental proceeds put in Ms. Maganis' checking account. Respondent did not remit any property management fee to Ivy K. Realty, LLC.

Respondent admitted at the hearing that because Ms. Maganis trusted her, Respondent was able to deceive Ms. Maganis. However, Respondent also testified that she had apologized to Ms. Maganis for her untruthfulness; and at the hearing appeared to be sincere in her apology.

Ms. Maganis became suspicious of Respondent's management of her unit as there were so many repairs to her rental unit which was only about 4 years old. Ms. Maganis testified that in September 2017, she drove to the rental unit and observed Respondent's black Hyundai parked in the unit's assigned stall.

When she learned in September 2017 that Respondent was living in her apartment unit, Ms. Maganis testified that she was livid, as she had trusted Respondent. Ms. Maganis called another realtor who later informed Ms. Maganis that rentals were not allowed for her unit.

Ms. Maganis checked with Ivy K. Realty, LLC, and was informed that the firm was unaware of Respondent's rental agreement with Ms. Maganis,

In September 2017, Ivy K. Realty, LLC re-funded Ms. Maganis \$1,618.80 for Respondent's alleged repairs of the unit, as well as the management and marketing fees that were incurred for the rental to the alleged tenant.

Respondent represented that she had paid Ivy K. Realty, LLC the money that was used to reimburse Ms. Maganis.

Respondent admitted that she had resided in Ms. Maganis' unit, even though she had told Ms. Maganis that she had found a tenant for the unit, starting in July 2017. Respondent

(cont. page 10)

Administrative Actions (cont. from page 9)

June 2019

testified that she vacated the unit at the end of September 2017.

Ms. Maganis testified that she had checked with Kamaaina Termite and Pest Control and was informed that there was no record of the company doing any work at her rental unit.

Respondent clarified that although she had contacted Kamaaina Termite and Pest Control for an estimate to do the work, it was admitted that no work was done by Kamaaina Termite and Pest Control, even though Respondent had deducted \$386.42 for pest control and pet deodorizer services from the rental income remitted to Ms. Maganis.

On March 8, 2019, Respondent filed a written response to the allegations in the Petition. In this letter, Respondent admits to the following:

- That she resided at Ms. Maganis' rental unit between July 2017 and September 2017 without informing Ms. Maganis that Respondent was occupying the unit;
- That she did not have Kamaaina Termite treat the unit as Respondent had represented it did;
- That she failed to provide Ms. Maganis with any documentation or receipts for services of the dryer and appliances, and further admits to failure to schedule a treatment with Kamaaina Termite and Pest Control, contrary to what she had represented to Ms. Maganis; and
- That "I should have not been dishonest and at the time when I look back all I had to do was communicate and instead was very dishonest about it."

Respondent's letter also states that she had a family friend service the dryer and the appliances at the time but failed to provide Ms. Maganis any documentation or receipts.

Respondent further wrote that after Ms. Maganis found out that Respondent was residing in her rental unit, Ivy K Realty had Respondent sign a tenant rental agreement, but Ms. Maganis requested that Respondent vacate the unit at the end of September.

Ms. Maganis explained that she did not sign the rental agreement drafted by Ivy K Realty, and instead had Respondent vacate the rental unit.

In her March 18, 2019 letter, it is noted that Respondent had apologized for her actions several times to Ms. Maganis. Respondent expressed a desire to resolve this matter without having her license revoked.

Violations: HRS § 467-14(1), (2), (3), (6), (8), (16) (20); HRS § 436B-19(2), (8),(17); HAR § 16-99-3(b)

Sanctions:

Respondent's real estate salesperson's license, License No. RS 78506, is revoked.

Resort Fees and Proposed Administrative Rules

By Department of Taxation

The Department of Taxation (Department) would like to call to your attention Act 20, Session Laws of Hawaii 2019 (Act 20). Act 20 became law on April 23, 2019 and became effective on July 1, 2019. Act 20 states that resort fees are subject to the Transient Accommodations Tax (TAT) and defines resort fees as “any mandatory charge or surcharge imposed by an operator, owner, or representative thereof to a transient for the use of the transient accommodation’s property, services, or amenities.”

This imposition and definition match the Department’s current position regarding resort fees. Therefore, mandatory resort fees charged in exchange for furnishing transient accommodations have always been subject to TAT. Act 20 clarifies and codifies this position. The Department has also proposed amended Hawaii Administrative Rules that discuss the imposition of TAT on resort fees and the circumstances in which TAT as well as General Excise Tax are considered to be visibly passed on to customers. To view the proposed administrative rules as well as further discussion on Act 20 and resort fees, please see Tax Information Release 2019-02, which can be found on the Department’s website at: <http://tax.hawaii.gov/legal/tir/>.

The Department intends to hold a public hearing on the proposed rules in the fall and will be welcoming public testimony and comment at that time. To be kept apprised of developments on these administrative rules as well as other newsworthy items from the Department, please subscribe to the Department’s email notification list, found on the homepage at: <http://tax.hawaii.gov/>.

Condo Safe - Harbor Provision Extended

Of special note this past legislative session for condominium developers, attorneys, and certain unit owners was the passage of Act 223, SLH 2019.

Act 223 temporarily resurrects certain development sections of chapter 514A, Hawaii Revised Statutes (“HRS”), until July 1, 2020. This Act extends the safe harbor provision to allow developers who still retain developer units or units which did not undergo a bonafide first sale, the option of transferring into chapter 514B, HRS, via extension, supplement, or supplementary developer’s public report, as well as re-registration under chapter 514B, HRS. The Act also clarifies when a project’s report is considered a non-expiring chapter 514B, HRS, developer’s public report.

This legislative action follows the repeal of chapter 514A, HRS, on January 1, 2019, by Act 181, SLH 2017. The purpose of the repeal was to end the confusion of having two condominium chapters in the HRS. While the governance of chapter 514A, HRS, was superseded by chapter 514B, HRS, the development sections were still in effect. Accordingly, a safe harbor provision for chapter 514A, HRS, projects was included in Act 181. Condominiums created prior to July 1, 2006, that were issued an effective date could be sold on or after January 1, 2019, without revising any of the governing documents provided that the developer’s public report was active on January 1, 2019, and was accurate and not misleading. Basically, chapter 514A projects would have become chapter 514B (condominium) projects through this safe harbor provision. If any pertinent or material changes, or both, have occurred to the project, the developer had to file an amended public report superseding all prior reports prior to January 1, 2019. Act 181 did not invalidate any condominium property regime that was validly created under chapter 514A, HRS, prior to July 1, 2006.

Act 181, SLH 2017, however, did not allow for extensions, and there was concern that many projects may have missed the January 1, 2019 deadline due to circumstances beyond their control or inadvertence. Thus, Act 223, SLH 2019, grants a temporary reprieve to those projects which should be promptly taken advantage of. Please visit <http://www.hawaii.gov/hirec> for details.

The Commission reiterates that developers who did not and do not meet the safe harbor for never sold developer owned units are legally prohibited from selling chapter 514A, HRS, units until reactivated. Chapter 514B, HRS, units, however, are not impacted.

2019 Condominium Governance Legislation

On January 16, 2019, the 30th legislature convened its regular session which adjourned on May 2, 2019. Over 39 bills were introduced (plus resolutions) regarding some aspect of condominiums, and the Real Estate Branch was actively engaged in tracking, monitoring, and testifying on various proposed measures.

Most of the new laws enacted related to condominium governance.

Act 7 amended section 514B-154(c) (association records), Hawaii Revised Statutes (“HRS”), to provide that condominium association proxies and ballots may be destroyed 90 days, rather than 30 days, after an association meeting, unless the election is contested. In that case, the documents must be retained until the contested election is resolved.

Act 14 amended section 514B-121(b) (association meetings), HRS, thereby also amending sections 514B-106(f) (board; powers and duties) and 514b-110(e) (bylaws amendment permitted), HRS, to permit the board of a condominium association to direct the use of a non-internet, non-external network connected electronic voting device regardless of whether a secret ballot is used or required. The board must establish reasonable procedures for the secrecy and integrity of votes, including a printed audit trail which shall be available to owners after the meeting.

Act 27 added the definition of “government money market fund” to section 514B-3 (definitions), HRS, and amended section 514B-149(c) (2)(C) (association fiscal matters; handling and disbursements of funds), HRS, by clarifying that funds collected by a condominium association may be invested in government money market funds or shares or units of another appropriate mutual fund.

Act 111 amended section 514B-143(e) (insurance), HRS, to update the name of the National Flood Insurance Program and the Federal Insurance and Mitigation Administration.

Act 192 amended section 514B-105(c) (association; limitation on powers), HRS, to clarify the allocation of payments made by or on behalf of a condominium unit owner which were in excess of any owed common expenses; for example, in the absence of owner designation of a specific charge including unpaid common expenses, payments may be applied to ground lease rent, utility sub-metering, storage lockers, parking stalls, boar slips, insurance deductibles, and cable. Thereafter, other charges may be assessed in accordance with a policy adopted by the board, including unpaid late fees, legal fees, fines, and interest.

Act 223 amended Act 181, SLH 2017, and revives for one year only specified sections of chapter 514A, HRS, which was originally repealed on January 1, 2019. Developers with unsold condominium unit developed under chapter 514A, HRS, may be able to take advantage of Act 181’s safe harbor transferring the projects to non-expiring reports under chapter 514B, HRS, without revising any of the governing documents provided that the developer’s public report was active, non-expired, and accurate on any date between January 1, 2019, and July 1, 2020. This transfer or a completely new chapter 514B, HRS, registration is necessary for developers to legally offer these units for sale. Act 223 also clarified applicability to registered time share projects. Act 223 does not affect governance of condominiums which has been under chapter 514B, HRS, since July 1, 2006.

Act 243 amended section 514B-140(c) (additions to and alterations of condominiums), HRS, to provide that the installation of solar energy devices by unit owners shall be allowed via written consent of the board and adds definitions for “build-applied photovoltaic,” “building-integrated photovoltaic,” and “passive solar skylights or windows.” It also amended the definition of “solar energy device” to include both building-applied and building-integrated photovoltaics but excluding passive solar skylights or windows. This amendment is limited to single family residential dwellings and townhouses in condominium projects.

Act 278 directs the office of planning, in consultation with the land use commission, the real estate commission, and the City and County of Honolulu’s department of planning and permitting to study land subdivision and condominium property regime laws as they relate to agricultural land on Oahu and how these laws interact with the county zoning ordinances. The office must conduct a public hearing, propose legislation to remedy any deficiencies found, and submit a report of findings and recommendations to the next legislature. This Act also amended section 514B-6 (conformance with county land use laws), HRS, to require that by July 1, 2022, the counties adopt supplemental rules governing condominium property regimes, including condominium agricultural lands.

Finally, Act 282 (which was previously on the governor’s veto list) confirmed the legislature’s intent that condominium associations should be able to use nonjudicial foreclosure to collect delinquencies regardless of the presence or absence of power of sale language

2019 Condominium Governance Legislation

in an association's governing documents. To provide additional consumer protection, a new section was added to section 514B, HRS, requiring the foreclosing association to offer mediation with any notice of default and intention to foreclose and the procedures when mediation is chosen by the consumer. The Act also amended section 514B-146(a) (association fiscal matters; lien for assessments), HRS, to codify the import of the power of sale language, as well as the foreclosure statute (chapter 667, HRS).

Of relevance to condominium associations and owners, Act 283 raised the threshold under the contractor licensing law's handyman exemption from \$1,000 to \$1,500 and made it applicable only to the cost of labor and materials.

Thinking of Buying a Condominium

Thinking of Buying a Condo?

Excited about buying a new place? Amazed by the amenities, interior, location and view, and ready to make an offer? You may want to take a step back to consider a few issues that you may have overlooked while you were checking out the pool. Here are some of the major things to consider before buying a condominium unit.

Declaration, Bylaws & House Rules

The Declaration, Bylaws and House Rules govern how a condominium is run and will cover issues such as how the gym is to be used, fines are assessed and voting on key management issues is done.

Request a copy of all three documents with any and all amendments to make sure there aren't any deal breakers, such as a complete ban on pets or smoking. While it is possible to change documents, it is a difficult process.



Budget, Reserves & Audits

The budget of a condominium will show the planned spending for the year. Ask for the budget to see if management is wisely spending and saving.

A reserve study shows when important parts of the building(s) will need to be replaced and how much the condominium has saved up to pay for those replacements.



Request a copy of the reserve study. If the reserve study is very old or has never been done, the condominium may have large repairs coming due with little to no existing money to pay for it, resulting in large special assessments for all owners. Recently updated reserve studies are often signs of competent and responsive management. A well-run condominium will often have a sizable, growing reserve fund, which should buffer owners from huge special assessments. Newly built condominiums will generally not have a sizable reserve fund as they have not had the time to build reserves.

Inquire as to when the last audit occurred. Regularly scheduled audits help keep finances transparent and clean, where infrequent or no audits for lengthy periods may raise concerns and red flags.

Board Minutes & Board Cooperation

The Board of Directors is the elected leadership of an Association that manages a condominium. They hire managing companies, decide repairs and improvements, and enforce the rules. Boards are required by law to meet regularly and keep track of what was discussed via the minutes.

Request the recent minutes to see what the major issues are that the board is discussing. If the seller refuses to give you a copy or if no minutes are taken, that may suggest instability, hidden issues and other major concerns. Some condominiums freely post their minutes publicly online.

If possible, via a limited power of attorney or proxy, request to attend a board or association meeting to see how the meetings are run and how many owners attend. Well-run Boards allow members to voice their concerns, address those concerns and generally treat everyone with respect.



Thinking of Buying a Condominium (cont. from page 13)

Management Company

Find out who the managing company and agent/account executive are and how long they've been managing the condominium. A long time company and agent/account executive may suggest stability whereas rapid turnover of both may suggest instability. Also an agent who has managed the condominium for years may be more knowledgeable and responsive about the issues than constantly changing staff. Be aware that some condominiums self-manage and thus do not have a managing company.

Litigation

Is the association being sued or suing? About what? Pending litigation may cause special assessments, as well as suggest bigger problems with the project, inhabitants or management.



Learn more about the Real Estate Branch (REB) of the Department of Commerce and Consumer Affairs

Check out the REB website www.hawaii.gov/hirec for more information and some frequently asked questions.

- What services does the REB provide to the condominium community?
- Where do I file a complaint against my association?
- What laws apply to my condominium associate?
- How do I get a copy of my association documents?

Real Estate Branch

About Us

The Real Estate Branch, as part of the Professional and Vocational Licensing Division, assists the Real Estate Commission in carrying out its responsibility for the education, licensure and discipline of real estate licensees; registration of condominium projects, condominium associations, condominium managing agents, and condominium hotel operators; and intervening in court cases involving the real estate recovery fund.

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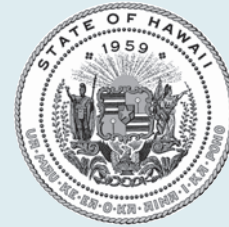
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Contact Us

Condominium Hotline: 808-586-2644. Hours: 9:00 AM - 3:00 PM Email: hirec@dcca.hawaii.gov Web: www.hawaii.gov/hirec

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| | |
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| 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 |
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| Excellence in Education dba Maui Real Estate School | 808-212-4861 |
| Inet Realty | 808-955-7653 |
| Maui Real Estate Academy, LLC dba Hawaii Real Estate Academy | 808-633-5737 |
| OCL Real Estate, LLC dba OnCourse Learning Real Estate | 800-532-7649 |
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| Real Estate School Hawaii | 808-551-6961 |
| REMI School of Real Estate | 808-230-8200 |
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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 | Honolulu Board of Realtors | 808-732-3000 |
| All Islands Real Estate School | 808-564-5170 | International Association of Certified Home Inspectors (InterNACHI) | 303-225-9149 |
| American Dream Real Estate School, LLC | 720-322-5470 | Kauai Board of Realtors | 808-245-4049 |
| Asentiv Hawaii | 808-960-9630 | McKissock, LLC | 800-328-2008 |
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| Scott Alan Bly School of Real Estate, LLC dba Bly School of Real Estate | 808-738-8818 | Preferred Systems, Inc. | 888-455-7437 |
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| The CE Shop, Inc. | 888-827-0777 | Realtors' Association of Maui, Inc. | 808-873-8585 |
| CMPs Institute, LLC | 888-608-9800 | REMI School of Real Estate | 808-230-8200 |
| Coldwell Banker Pacific Properties Real Estate School | 808-551-6961 | Residential Real Estate Council | 800-462-8841 |
| Continuing Ed Express, LLC | 866-415-8521 | Russ Goode Seminars | 808-597-1111 |
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| Hawaii Association of Realtors | 808-733-7060 | West Hawaii Association of Realtors | 808-329-4874 |
| Hawaii Business Training | 808-250-2384 | | |
| Hawaii CCIM Chapter | 808-528-2246 | | |
| Hawaii First Realty, LLC | 808-282-8051 | | |
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State of Hawaii
Real Estate Commission
King Kalakaua Building
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2018 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, 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, August 23, 2019

Friday, September 27, 2019

Friday, October 25, 2019

Friday, November 22, 2019

Friday, December 20, 2019

* Meetings to be held on Kauai at a location to be determined.

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 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 586-2643 to submit your request.