

Real Estate Commission Bulletin



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It's 2024 ... Happy Re"New"Al Year!

2024 is an even-numbered year and that means it is a renewal year. Please read the information below that will assist you through your ON-TIME renewal process.

- The real estate license renewal deadline for all salespersons, brokers, and entities is November 30, 2024. Online renewal will be done via your MyPVL account: mypvl.dcca.hawaii.gov, and will be available mid-October.
- Renewal notifications are scheduled to be mailed to each licensee in October.
- Licensees should familiarize themselves with their MyPVL accounts. In addition to license renewal, your MyPVL account is also where licensees will check CE history and that CE credits that have been completed are reported by the CE provider(s). See the "Checking CE History" article that appears in this publication for helpful information.
- 20 hours of CE should be completed by the November 30th renewal deadline. The 20 hours is comprised of the two core courses, 2023-2024 Parts A and B. BOTH Part A and B must be completed in order to receive core course credit of 6 credit hours. That leaves 14 hours of CE elective courses which must be completed by the November 30, 2024, renewal deadline. If CEs are not completed by this renewal deadline, licensees jeopardize their license status come January 1, 2025. The November 30th deadline provides enough time for processing of renewal applications.
- If a "YES" answer is included on the renewal application, the licensee MUST FILE A HARDCOPY license renewal application, and may not file an online renewal application.
- All real estate SALESPERSONS who received their license in the even-numbered year of the biennium, 2024, are NOT required to complete the 20 hours of continuing education (CE) to renew their license on a current and active status. THIS DOES NOT APPLY TO NEWLY LICENSED real estate BROKERS who received their license in 2024.
- Principal brokers and brokers-in-charge must complete their license renewal and continuing education requirements BEFORE ANY ASSOCIATED LICENSEE'S RENEWAL WILL BE PROCESSED. The real estate license for the brokerage and all branch offices must also be renewed BEFORE ANY ASSOCIATED LICENSEE'S RENEWAL WILL BE PROCESSED.
- DO NOT CONFUSE your REAL ESTATE LICENSE with your TRADE ORGANIZATION BOARD MEMBERSHIP DUES.
- Prelicense Schools, Prelicense Instructors, Guest Lecturers, Continuing Education Providers, Continuing Education courses must also re-register / re-certify by November 30, 2024, to remain current and in compliance.

MyPVL Glitch Affecting CE History

Our office has been made aware there are glitches occurring within the CE History component of MyPVL, and we are working hard to get it resolved as quickly as possible. So, what's the glitch? Well, there are 3 issues you should be aware of:

- 1) When you log into your MyPVL account and view your CE History using the "RECE" tab, there is conflicting information. You will see the line item "Credit Requirements for 2025-2026 biennium" but the column below it displays "2022." The column should read "2024."



- 2) On that same page, you will see the "EARNED" column. In this instance the Earned column reflects this licensee has already earned 6 Core credits and 14 Elective credits. However, this information is incorrect, because Core B has not yet been made available as of this publication.

Please do not rely solely on the information displayed on this screen as confirmation of CE credits earned for the 2025-2026 biennium.



- 3) Lastly, when you click on the blue "View CE History" at the bottom of the "RECE" tab, you are brought to the table shown on the right. For some, the table may reflect that you earned the necessary hours as highlighted below. Again this info may be incorrect:

To be active in the 2025 - 2026 biennium		
2024	Credit Hours Required	20.00
	Core	6.00
	Elective	0.00
2024	Credit Hours Earned	21.00
2024	Credit Hours Needed	0.00
	Core	0.00
	Elective	0.00

In our November 2022 Real Estate Bulletin, we included an article urging licensees to manually count the number of CE credits for the respective biennium versus relying on the aforementioned tables/ areas. For the credits to count for the upcoming 2025-2026 biennium, the "Biennium" column below must reflect "2024."

Count the number of electives, Core= 6 credits Electives= 14 credits			Biennium= 2024				
Course ID	Subject	No. Credits	Certificate No.	Year/Year	Course Type	Credit Earned Date	Make-up Credit
C42028	2023-2024 CORE A 3.0 RULES: DISCLOSE, DISCLOSE, DISCLOSE!	3	634034	2024	Core	11/09/2023	No
C42413	DISCLOSURE ISSUES IN RESIDENTIAL SALES	3	631723	2022	Elective	08/01/2021	No
C42401	THE AGENT/BROKER UNDERSTANDING THE PURCHASE CONTRACT	3	631825	2022	Elective	05/04/2021	No

The Chair's Message

Hau`oli Makahiki Hou! Welcome, 2024!

Can you believe it? Another year has come and gone. I do not want to sound like a broken record, but it is amazing how quickly time passes. Time does not stop for anyone. Be grateful for each day and appreciate the blessings in your life. Sound familiar? For those of you who read The February 2023 Chair's Message, you know that was my previous New Year's resolution. I can proudly say I honored my resolution this past year and, moving forward, I will do my best to continue to honor it.

How did you do? Remember the resolution I suggested for those of you without one? **Be the best Hawaii real estate licensee that you can be.** I know many of you accepted that resolution and took ownership of it as evidenced by the declining number of violations this past year. If you turn to the Administrative Actions section of this Bulletin, you will notice that the section gets smaller and smaller with each passing Bulletin. You are being the best licensee that you can be. You are trying to be the consummate professional. I applaud you for your gallant effort. Keep up the good work.

Others reached out and honestly admitted that they did not adhere to this resolution last year but that they wanted to try it this year. 2024 is a license renewal year and it will be easier for you to stick to this New Year's resolution. Huh? Easier? For those of you scratching your heads, stop scratching and follow these three simple suggestions: (1) set a goal; (2) have a plan to reach your goal; and (3) execute the plan.

Let me announce again, 2024 is a license renewal year. All licensees need to renew their licenses before the deadline, with no exceptions, therefore, take the first step and set your goal - *Renew my State of Hawaii Real Estate License in 2024*. That wasn't so hard, was it?

Move on to Step 2 - *Have a Plan to Renew my License*. This will take a little more thought. Why? Well, how many of you know what is required for you to renew your license in 2024? Bravo to those who know, but for the mass majority of you who do not, conduct your due diligence and be the best licensee you can be. Know the deadline. Know the cost. Know the requirements. What core courses have you earned credits for? What elective courses have you taken that are applicable for 2024's renewal? (Remember, duplicative courses will not count.) Are there any court judgments that you need to explain? Are there any federal or state tax liens that you need to remedy? Familiarize yourself with your MyPVL account. Know how to get help, if need be, from the Real Estate Branch of the DCCA. See, I told you this would take more thought. It sounds overwhelming but, it isn't. The fact of the matter is there is no one-set plan for all. Each of you will have your unique plan. Obtain answers to your questions early so you can create a focused, highly efficient plan. Once you have a plan, move on to Step 3. What was Step 3, again?

Oh yeah, Step 3 - *Execute my Plan to Renew my License*. The key here is to EXECUTE. Many people have extravagant plans that are never put into action. Why? I don't know. Plans should be executed. Like Nike says, "Just Do It!" How simple?

If you follow these three simple steps you will be accountable to your resolution of being the best Hawaii real estate licensee that you can be. You will be off to a fresh start in the Year of the Dragon and growth and development should follow.

Before closing, may I make one suggestion? *Start early*. You can begin taking your 20 hours of continuing education courses now. Don't wait! Prepare early and get it out of the way. The sooner you take care of this, it is one less thing for you to worry about. That way when license renewals are available via your MyPVL account in October, you will be ready to renew, make lots of sales, and truly enjoy the holidays.

Thank you for being the best Hawaii real estate licensee that you can be. Let us continue to take our profession seriously in 2024. With the New Year's unprecedented opportunities, your passion for pursuing your dreams, and the Real Estate Commission's encouragement for you to perform to the best of your abilities, I do not doubt that 2024 will be a year filled with exceptional achievement.

Wishing all of you good health, continued success, and much happiness.

Mahalo Nui Loa,



Derrick T. Yamane, Chair
Hawaii Real Estate Commission



4 Administrative Actions

October 2023

CHARLOTTE K GRAHAM and GRAHAM PROPERTIES, INC.
RB-10706
RB-14902

Uncontested Facts:

At all times relevant herein, Respondent Graham was the designated principal broker of and for Respondent GPI.

Violations:

HRS §436B-19(6)

Sanctions:

Fine: \$4,000.00

REC 2019-580-L

RICO Allegations:

On or about March 2019, in the City and County of Honolulu, State of Hawaii, Respondents, CHARLOTTE K. GRAHAM and GRAHAM PROPERTIES, INC., hired an unlicensed contractor to perform renovation and remodeling work for an Ewa Beach apartment under Respondents' management. The value of such work exceeded \$1000.00, labor and materials inclusive. By the acts, omissions, and conduct alleged herein above, RICO alleges that Respondents did aid and abet an unlicensed person to perform activities requiring a license. Respondents have fully cooperated with RICO'S investigation into this matter. RICO has already resolved the licensing issues against the unlicensed contractor, through a separate legal action.

Dated 10/27/2023

(Commission approved settlement agreement)

EARL THACKER LIMITED, PETER E. THACKER, and LINDA M. ROHR
RB-49070
RB-14629
RS-56322

Uncontested Facts:

RICO received a complaint alleging that Respondent ROHR engaged in possible misconduct while acting as a property manager for Complainant's condominium unit, that Respondent ROHR failed to obtain Complainant's written authorization to lease complainant's condominium unit for more than two (2) years in violation of the Agency Agreement between Respondent ETL and Complainant, and that Respondent ROHR failed to protect Complainant's furnishings from damage caused by the tenant.

Violations:

HRS §§467-14(20); 467-14(13); HAR §16-99-3(f)

Sanctions:

Fine: \$2,000.00

REC 2022-341-L

Dated: 10/27/2023

(Commission approved settlement agreement)

RICO Allegations:

RICO alleges that Respondent ETL, through its real estate salesperson, Respondent ROHR, and as supervised by Respondent ETL's principal broker, Respondent THACKER: (a) entered into an oral agreement with Complainant to vary the terms of the Agency Agreement to permit rental of Complainant's condominium unit for up to three (3) years (the "Oral Agency Agreement Variance"); (b) that the Complainant later disavowed the Oral Agency Agreement Variance; and (c) Respondent ETL failed document the Oral Agency Agreement Variance in a writing expressing the exact agreement of the parties and setting forth the essential terms and conditions of the Oral Agency Agreement Variance. RICO further alleges that the Rental Agreement dated March 15, 2021, between Respondent ETL and the tenant contained, in paragraph 10 of the Rental Agreement, "SPECIAL TERMS", the clause "Tenant has the option to continue this lease up to 3 years without notice," in apparent violation of the Agency Agreement between Respondent ETL and Complainant, and that said Rental Agreement was signed as reviewed by Respondent THACKER as principal broker of the Respondent ETL.

Administrative Actions (cont. from page 4)

October 2023

IVIII LLC and
WAYNE RICHARDSON III
RB-21975
RB-17434

REC 2023-55-L

Dated: 10/27/2023

(Commission approved
settlement agreement)

Uncontested Facts:

RICO received a complaint alleging that Respondent IVIII LLC, acting as property manager for the Association of Apartment Owners of Lihue Townhouse (“AOAO Lihue Townhouse”), received a written request from a AOAO Lihue Townhouse unit owner for documents, records and information required to be provided within thirty days pursuant to HRS §514B-154.5, on or about December 6, 2022, and substantially provided said documents, records and information on or after February 3, 2023.

RICO Allegation:

RICO alleges that Respondents untimely provided the documents, records and information subject to the request later than thirty days after receipt of the written request by the unit owner.

Violations:

HRS §§514B-154.5(c); 467-14(13)

Sanctions:

Fine: \$1,000.00

Statutory/Rule Violations

Settlement Agreement (Allegations/Sanction): A Settlement Agreement may or may not include an admission that the Respondent violated licensing laws and/or rules on a case-by-case basis.

Disciplinary Action (Factual Findings/Order): The respondent is found to have violated the specific laws and rules cited, and the Commission approves the recommended order of the Hearings Officer.

HRS §436B-19(6)	Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license.
HRS §467-14(13)	Violating this chapter, chapters 484, 514B, 514E, or 515, or section 516-71, or the rules adopted pursuant thereto.16-
HRS §467-14(20)	Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.
HRS §514B-154.5(c)	Notwithstanding any provision in the declaration, bylaws, or house rules providing for another period of time, all documents, records, and information listed under subsection (a), whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be provided no later than thirty days after receipt of a unit owner’s or owner’s authorized agent’s written request.
HAR §16-99-3(f)	The licensee, for the protection of all parties with whom the licensee deals, shall see that financial obligations and commitments regarding real estate transactions, including real property rental management agreements, are in writing, express the exact agreements of the parties, and set forth essential terms and conditions, and that copies of those agreements, at the time they are executed, are placed in the hands of all parties involved. When working with a seller in a “For Sale By Owner” or a “Courtesy to Broker” situation, the licensee shall disclose who, if anyone, the licensee represents and who will pay a commission, if any.

CONDO HAWAII

Are These Maintenance Fees Reasonable?

What Are Maintenance Fees?

Condominium maintenance fees are the fees owners pay monthly to cover operating costs such as managing agents, common area electricity, security, insurance, window washing, and landscaping. They also consist of money for regular scheduled maintenance such as elevator and pool servicing and to contribute to the reserve fund for future major repairs such as concrete spalling, painting, road, and pipe replacement.

How Are These Fees Calculated?

These fees include the total monthly fixed costs, plus the reserve fund contribution and then usually multiplied by each unit's common interest. Thus, if the total monthly budget is \$16,000 and you own 1/16th of the common interest, your maintenance fee is \$1,000 a month. Management, labor, and security can contribute sizable expenses based on the level of service that is contracted for.

The reserve fund contribution is calculated on the reserve study, which reviews the costs for common area repairs and replacements over a thirty-year period. Each condominium will differ for this based on their age, amenities, elevators, and size. These studies must be reviewed at least every three years by an independent reserve study preparer.

Are These Fees Reasonable?

While every condominium will be different, a simple method of determining if the maintenance fee is reasonable is to compare similar sized and aged condominiums.

A condominium that has a pool, many elevators, a gym, tennis courts, full-service management, multipurpose rooms, theater, and other amenities should have substantially higher maintenance fees than a similar sized condominium that has little more than a lobby and a few elevators. With more to maintain, repair, and replace over time, both the fixed costs and the reserve fund contributions for these amenities will result in substantially higher expenses.

If a condominium with many amenities has an average maintenance fee that is similar or less than a similar sized condominium with no amenities, it can be cause for concern that not enough money is being put away for long term repairs and replacement. These maintenance fees can regularly be found on various real estate listings of condominiums. It is prudent to ask, "if that condominium with few to no amenities is paying the same as we are, are we undercharging despite our many luxury features?"

Sometimes maintenance fees will be low because the condominium project has other sources of revenue, such as parking rentals or hosting telecommunication equipment on the building's roof.

Boards that fail to account for future expenses of many amenities will find themselves with no choice but to special assess owners. Unfortunately as the cost of everything rises, you should expect to have your maintenance fees rise also.

What Should I Do?

As an owner, you are entitled to copies of various contracts, bills, ledgers, financials, and other aspects of how the budget is compiled as well as the approved annual budget. Review these documents and the reserve study and compare to other condominiums to get a better feel if your maintenance fees are too low, too high, or just right.

Perfecting a Claim for Relief from the Real Estate Recovery Fund

by Ronald T. Michioka

Core B 2023-2024 is currently being developed, and the projected course availability is mid-July 2024. Core B will cover, among other things, the topic of the Real Estate Recovery Fund. The following article by Ronald T. Michioka, is a great resource that explains the background of, and how a consumer may perfect a claim from the Real Estate Recovery Fund.

This article was first published in the February 2018 issue of the Hawaii Bar Journal, an official publication of the Hawaii State Bar Association.

A consumer suffers losses because of the acts of a licensed real estate broker or real estate salesperson (“Licensee”), then finds that he or she is unable to recover those losses from the licensee who caused them. Litigation may produce a judgment that proves to be of little or no value because the Licensee is either missing or has no assets that can be attached to enforce the judgment. This results in the consumer being unable to satisfy the judgment. Is this the end of the search for relief? Not necessarily.

When all else fails, there is a measure of relief available from the Real Estate Recovery Fund (“Recovery Fund”). The Recovery Fund, for a variety of reasons, should be considered a last resort for the consumer, after having exhausted other legal remedies available through the judicial system. The amount recoverable is limited, and the consumer must relinquish all of his or her rights against the licensee in exchange for a limited payment that may not be sufficient to make the consumer whole. Nevertheless, the Recovery Fund at least offers a measure of relief that the consumer would not otherwise have. This article discusses what the consumer must do in order to demonstrate his or her entitlement to payment from the Recovery Fund.

The Recovery Fund was created in 1967 by Hawaii Revised Statutes (“HAW. REV. STAT.”) Chapter 467 (“Statute”) to provide relief to consumers “aggrieved” by the acts or omissions of duly-licensed real estate brokers and/or real estate salespersons. The Recovery Fund statutes established the Recovery Fund “[t]o furnish financial protection to the consumer public . . . by providing a fund which, under certain circumstances, will satisfy unpaid judgments” in favor of the consumer and against a Licensee.¹

The Recovery Fund is administered by the Real Estate Commission (“REC”), which is administratively attached to the Department of Commerce and Consumer Affairs (“DCCA”) through the Professional and Vocational Licensing Division (“PVL”). Complaints against Licensees may also be filed with the enforcement arm of DCCA, the Regulated Industries Complaints Office (“RICO”), but the filing of such complaints will not entitle the consumer to relief from the Recovery Fund, which relief requires the commencement of a civil lawsuit or arbitration proceedings described below.

If qualified, an aggrieved consumer may recover up to \$25,000.00 per transaction for “damages sustained” as a result of fraud, misrepresentation, or deceit by the Licensee. “Damages sustained” include fees, costs and reasonable attorneys’ fees.² The phrase “damages sustained” refers to “compensatory damages” that compensate the injured party “for the injury sustained, and nothing more.” “Damages sustained” does not include punitive or trebled damages designed to punish the wrongdoer as an example and deterrent to others and not to compensate the aggrieved consumer.³ The maximum liability of the Recovery Fund for any one Licensee is fixed at \$50,000.00 by HAW. REV. STAT. §467-24.

The Recovery Fund is not funded by taxes paid by the general public. Instead, by the authority of HAW. REV. STAT. §467-16(b), Licensees fund the Recovery Fund by paying a “real estate recovery fund fee” at the time they apply for an original real estate license in Hawaii. If the license is not issued, the applicant is refunded the Recovery Fund fee. Additional assessments are provided by HAW. REV. STAT. §467-17(a) whenever the balance in the Recovery Fund is less than \$350,000.00.

The path to proving entitlement to and receiving payment from the Recovery Fund is set out in the Statute and the Hawaii Administrative Rules (“HAR”) Title 16, Chapter 99,⁴ as follows.

Conditions Precedent: First, the Licensee involved must have been “duly licensed” at the time of the acts or omissions that caused the consumer’s losses. The term, “duly licensed,” is not defined in the Statute, and the licensure status of the Licensee will have to be determined on a case-by-case basis. For example, a Licensee whose license has been suspended may still be considered “duly licensed” for purposes of a claim for payment from the Recovery Fund. The statute defines

Perfecting a Claim for Relief from the Real Estate Recovery Fund (cont. from page 7)

what is necessary in order to obtain and maintain a real estate license⁵ and provides a list of bases for revocation of a license.⁶ Arguably, if the Licensee has not been compliant with these sections of the Statute, there may be a question of whether he or she continues to be “duly licensed” for purposes of a claim for payment from the Recovery Fund.

In addition, in order for the consumer to be entitled to payment from the Recovery Fund, HAW. REV. STAT. §467-18(b) required that he or she first obtain a “valid judgment” from “any circuit or district court where the violation occurred.” Judgments from other jurisdictions or from federal courts have had to be exemplified as Hawaii judgments in order to meet this requirement. A “valid judgment” must be based upon fraud, misrepresentation or deceit by the Licensee under HAW. REV. STAT. §§467-16(a) and 467-18(b).

In order to obtain such a judgment, the consumer is required by HAW. REV. STAT. §467-18(a) to commence a legal proceeding “for a judgment that may result in collection from the real estate recovery fund.” Such proceedings would include arbitrations whose awards will have to be confirmed by a state court and entered as a judgment as prescribed by HAW. REV. STAT. §§658A-22 and 658A-25(a). HAW. REV. STAT. §467-18(a) requires that such proceedings must be commenced within two years of the accrual of the cause of action. A cause of action based upon a real estate transaction accrues at the time of the transaction that established the damages.⁷ The period of limitations begins to run when the consumer knows, or in the exercise of reasonable care should have discovered, that an actionable wrong has been committed against his or her property.⁸

Claim for Payment from the Recovery Fund:

At the time the legal proceeding is commenced, the consumer is required by HAW. REV. STAT. §467-18(a) to provide written notice to REC that the lawsuit or arbitration has been initiated and that the consumer intends to seek payment from the Recovery Fund. The claim against the Recovery Fund is then referred, pursuant to HAW. REV. STAT. §467-16(c)(1), to outside counsel representing the REC in matters relating to the Recovery Fund.

Thereafter, the consumer is required by HAW. REV. STAT. §§467-21 and 467-18(a) to provide counsel for the REC with pleadings and “prescribed documents” that will keep REC apprised of the progress of the lawsuit. The Legislature included this provision in the Statute in order to avoid defaults being entered against the Licensees that result in payment from the Recovery Fund without a hearing.⁹ HAW. REV. STAT. §§467-18(a) and 467-21 authorize REC to intervene in the lawsuit and provide that REC has standing to appear in any action that may yield a judgment that may result in collection from the Recovery Fund.

It is important to notify counsel for the Recovery Fund if a default and/or default judgment will be taken against the Licensee in order to allow REC to exercise its statutory right to intervene and defend the lawsuit or to “take whatever other action it deems appropriate on behalf and in the name of the defendant, and take recourse through any appropriate method of review on behalf of and in the name of, the defendant,” as provided by HAW. REV. STAT. §§467-18(a) and 467-21.

Upon obtaining a “valid judgment” against the Licensee that is based upon fraud, misrepresentation, or deceit, the consumer must then take steps to enforce the judgment and must be prepared to satisfy the court that, as required by HAW. REV. STAT. §§467-18(c)(4) and (5), the “made all reasonable searches and inquiries to ascertain whether the [Licensee] is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment’ but “discovered no personal or real property or other assets liable to be sold or applied” or could only realize a recovery insufficient to satisfy the judgment. In addition, HAW. REV. STAT. §467-18(c)(6) covers those situations in which the Licensee has filed for bankruptcy protection and requires the consumer to obtain an order from the bankruptcy court that declares that the judgment against the Licensee is non-dischargeable under the bankruptcy laws.

Order for Payment from the Recovery Fund

The Consumer is required by HAW. REV. STAT. §§467-18(b) and (d) to obtain an Order by a court of competent jurisdiction that directs REC to make payment from the Recovery Fund in an amount the Court determines is payable pursuant to the provisions, conditions and requirements of the Statute and case law interpreting and applying the Statute. The Order must be sought in the manner prescribed by HAW. REV. STAT. §467-18(a), which requires the filing by the consumer of a verified claim following completion of all proceedings in the action, including reviews and appeals in connection with the judgment. A verified claim is simply a pleading that is sworn to by the Claimant, in which he or she asserts the required elements under the Statute for recovery from the Recovery Fund.

Perfecting a Claim for Relief from the Real Estate Recovery Fund (cont. from page 8)

Following ten day's notice to REC of the verified claim, the consumer may file a motion with the court "for an order directing payment out of the real estate recovery fund of the amount unpaid upon the judgment" (HAW. REV. STAT. §467-18(b)), subject, of course, to the maximum amount payable and the maximum liability of REC, as prescribed by HAW. REV. STAT. §§467-16(a) and 467-24.

Upon filing a motion for such an Order, the consumer bears the burden of proving satisfaction of the requirements and conditions precedent set forth in the Statute. The motion must meet all of the requirements stated in HAW. REV. STAT. §§467-18(c)(1) through (6) for pleading and proof that the consumer:

- 1) Is not the spouse of the judgment debtor or is not the personal representative of the spouse of the judgment debtor;
- 2) Has complied with all of the statute's requirements;
- 3) Has obtained a judgment based upon fraud, misrepresentation, or deceit;
- 4) Has conducted all reasonable searches for assets of the judgment debtor that could satisfy the judgment;
- 5) Was unable to identify any personal or real property to satisfy the judgment, or has seized assets of the judgment debtor that are insufficient to satisfy the judgment; and
- 6) If applicable, has obtained an order from a bankruptcy court declaring that the judgment is not dischargeable in bankruptcy.

Settlement: Although the Statute refers at §467-16(a) to settlement of claims, settlement is governed by the Hawaii Administrative Rules ("HAW. ADMIN. R.") §16-99-79, which provides in subsections (1) and (2), that settlement is available only when the following circumstances exist and the following conditions have been met. First, the Licensee must have been previously named in an Order that required REC to make payments out of the Recovery Fund, and the consumer seeking to settle his or her claims must be asserting claims against the same Licensee under situations similar to those that required REC to make payment from the Recovery Fund. The consumer must comply with the requirement in HRS §467-18(a) for written notice to REC that an action has been commenced and must file a verified claim with REC that, per HAW. ADMIN. R. §§16-99-79(3) and (4), states the reasons, grounds and evidence supporting the request for settlement. HAW. ADMIN. R. §§16-99-79(5) and (6) calls for reasonable notice to the Licensee of the attempt to settle with REC and reasonable opportunity for the Licensee to respond to the verified claim.

As with a fully-litigated claim against the Recovery Fund, per HAW. ADMIN. R. §16-99-79(7) and (8), the consumer cannot be a spouse of the Licensee or the personal representative of the Licensee's spouse and must have made all reasonable searches and inquiries to identify assets of the Licensee that may be used to satisfy the claim, but could not find any such assets or located assets insufficient to satisfy the claim.

If these circumstances and conditions have been met, HAW. ADMIN. R. §16-99-79(9) and (10) allows REC to determine, to its satisfaction, that sufficient evidence exists to support a settlement and that settlement is in the best interest of the Recovery Fund. Under HAW. REV. STAT. §467-21, REC must approve the settlement by a majority of its commissioners who agree that the settlement is in the best interest of the Recovery Fund.

Payment from the Recovery Fund: If payment is made from the Recovery Fund, HAW. REV. STAT. §467-18(e) directs that the real estate license of the Licensee is automatically terminated. Furthermore, a new license cannot be issued before five years have passed from the date of termination and the former Licensee repays REC the amount paid from the Recovery Fund plus interest at the statutory rate of ten percent (10%) per annum.

In addition, HAW. REV. STAT. §467-22 subrogates REC to all of the rights of the consumer upon payment from the Recovery Fund, and the consumer must then assign to REC all of his or her rights, title and interest in the judgment or settlement. In practice, the consumer will be asked to sign and notarize an Assignment of Judgment that REC will record with the Bureau of Conveyances to perfect its rights as against the Licensee. REC thereafter bears the risk and burden of attempting to enforce the judgment against a Licensee who has already been shown to be incapable of satisfying the judgment.

Waiver of Rights: Should the consumer fail to comply with any of the requirements and conditions set forth in the Statute, HAW. REV. STAT. §467-23 provides that he or she will be deemed to have waived all of his or her rights under the Statute.

Conclusion: The requirements and conditions to qualify for payment from the Real Estate Recovery Fund are fully set forth in HAW. REV. STAT. Chapter 467, and HAW. ADMIN. R. Title 16, Chapter 99, both of which are readily available

Perfecting a Claim for Relief from the Real Estate Recovery Fund (cont. from page 9)

online (see Note 4, *infra*). Any consumer or counsel for an aggrieved consumer seeking payment from the Recovery Fund may perfect the claim by following the Statute and the Rules in the manner set forth in this article. The process imposes requirements that are inherent to the litigation process with relatively few additional burdens to the claimants. In other words, the aggrieved consumer is not required to undertake any processes that he or she would not undertake to seek relief directly from a Licensee through the judicial process, with the exception of the filing of a verified claim and a motion for an order directing payment from the Recovery Fund. Again, the relief available may not suffice to make the consumer whole, but it will allow the consumer to recover something under circumstances that might not otherwise yield any degree of relief. The Real Estate Recovery Fund is the embodiment of the adage, “a bird in the hand is worth two in the bush,” which translates to the notion that it is preferable to have a small but certain advantage than a mere potential of a greater one.

¹ *House Stand. Comm. Rep. No. 352, 1967 HOUSE JOURNAL*, at 673; *Senate Stand. Comm. Rep. No. 647, 1967 SENATE JOURNAL*, at 1146.

² HAW. REV. STAT §467-16(a). *See also, Educators Ventures, Inc. v. Bundy*; 3 Haw. App. 435; 652 P.2d 637 (Ct. App. 1982).

³ *Kuhnert v. Allison*, 76 Haw. 39, 44-45, 868 P.2d 457, 462-63 (S.Ct. 1994).

⁴ HAW. REV. STAT. Chapter 467. Hawaii Administrative Rules, Title 16, Chapter 99.

⁵ HAW. REV. STAT. §§467-8 through 467-11.5.

⁶ HAW. REV. STAT. §467-14.

⁷ *Kuhnert v. Allison*, 76 Haw. 39; 868 P.2d 457 (1994).

⁸ *Basque v. Yuk Lin Liao* 50 Haw. 397, 399; 441 P.2d 636, 637-38 (1968).

⁹ *House Stand. Comm. Rep. No. 393-72, 1972 HOUSE JOURNAL*, at 813; *Senate Stand. Comm. Rep. No. 647, 1967 SENATE JOURNAL*, at 1146.

Ronald T. Michioka has represented the Real Estate Commission on matters relating to the Real Estate Recovery Fund since 2005 while a partner with the firm Ayabe, Chong, Nishimoto, Sia & Nakamura, now known as Chong, Nishimoto, Sia, Nakamura & Goya.

NOTE: When an initial real estate license is processed, \$84.00 of the total licensing fee goes to the Real Estate Recovery Fund. Additional assessments may be requested if the total balance in the Recovery Fund is under \$350,000.00. Currently, there is a healthy balance in the Recovery Fund. Recovery Fund payouts are not common.

Hawaii Issues Licenses Pursuant with the Servicemembers Civil Relief Act

On January 5, 2023, a new provision to the Servicemembers Civil Relief Act (“SCRA”) went into effect. The new part of SCRA, “Portability of Professional Licenses of Servicemembers and their Spouses”, allows servicemembers and their spouses to use their professional licenses and certificates when they relocate due to military orders. This action was taken in response to military spouses who have reported difficulty transferring their professional licenses from one jurisdiction to another when they relocate due to military orders. These difficulties hinder their ability to find jobs and the new SCRA provision helps servicemembers and their spouses to obtain their licenses and certificates in the new jurisdiction expeditiously. More importantly, the new law applies to licensees relocating to Hawaii, which is not covered by any interstate compact for real estate licensure.

To qualify for professional license portability under the SCRA, servicemembers or their spouses must meet certain criteria. If these criteria are met, the servicemember or their spouse need not satisfy prelicense education and examination requirements and shall be issued a license at a similar level of practice as in their domicile licensing jurisdiction.

View the Department of Justice fact sheet here: <https://www.justice.gov/media/1305521/dl?inline>

Principal brokers and brokers-in-charge may view the new law here: <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title50-section4025a&num=0&edition=prelim>

Prelicensure Schools

Abe Lee Seminars	808-942-4472
American Dream Real Estate School, LLC	844-223-7326
American School of Real Estate Express LLC	866-739-7277
Carol Ball School of Real Estate	808-280-0470
The CE Shop, LLC	888-827-0777
Coldwell Banker Pacific Properties Real Estate School	808-748-3410
Continuing Ed Express, LLC	866-415-8521
Excellence in Education dba Maui Real Estate School	808-212-4861
Hawaii Institute of Real Estate	808-342-4061
Inet Realty	808-955-7653
Maui Real Estate Academy, LLC dba Hawaii Real Estate Academy	808-633-5737
Mayfield Real Estate, Inc., dba Global Real Estate School	573-756-0077
Mbition Learn Real Estate	800-532-7649
Premier Real Estate LLC, dba Premier Real Estate Academy	808-556-3135
Ralph Foulger's School of Real Estate	808-239-8881
Real Estate School Hawaii	808-551-6961
REMI School of Real Estate	808-230-8200
Scott Alan Bly School of Real Estate, LLC dba Bly School of Real Estate	808-738-8818
Seiler School of Real Estate	808-874-3100
Vitousek Real Estate Schools, Inc.	808-946-0505

Continuing Education Providers

Abe Lee Seminars	808-942-4472	Honolulu Board of Realtors	808-732-3000
American Dream Real Estate School, LLC	844-223-7326	International Association of Certified Home Inspectors (InterNACHI)	720-735-7125
At Your Pace Online, LLC	877-724-6150	Kauai Board of Realtors	808-245-4049
The Berman Education Company, LLC	808-572-0853	Luxury Home Council, Inc.	541-530-0484
Building Industry Association of Hawaii	808-629-7505	Mbition Learn Real Estate	800-532-7649
Carol Ball School of Real Estate	808-280-0470	McKissock, LLC	800-328-2008
The CE Shop, LLC.	888-827-0777	Preferred Systems, Inc.	814-456-0406
CMPS Institute, LLC	888-608-9800	Ralph Foulger's School of Real Estate	808-239-8881
Coldwell Banker Pacific Properties Real Estate School	808-748-3410	Real Estate School Hawaii	808-551-6961
Continuing Ed Express, LLC	866-415-8521	Real Estate Success Series LLC	310-259-5776
Dexterity CE, LLC	512-893-6679	Realtors' Association of Maui, Inc.	808-873-8585
Eddie Flores Real Estate Continuing Education	808-223-6301	REMI School of Real Estate	808-230-8200
ExceedCE	415-885-0307	Residential Real Estate Council	800-462-8841, ext. 4440
Finance of America Reverse	330-807-8948	Scott Alan Bly School of Real Estate, LLC dba Bly School of Real Estate	808-738-8818
Franklin Energy Services, LLC	866-735-1432	Servpro Industries, LLC	615-451-0200
Hawaii Association of Realtors	808-733-7060	Shari Motooka-Higa	808-492-7820
Hawaii Business Training	808-250-2384	Systems Effect LLC, dba Training Cove	480-517-1000
Hawaii CCIM Chapter	808-528-2246	WebCE Inc.	877-488-9308
Hawaii First Realty, LLC	808-282-8051	West Hawaii Association of Realtors	808-329-4874
Hawaii Island Realtors	808-935-0827		



State of Hawaii Real Estate Commission

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State of Hawaii
Real Estate Commission
King Kalakaua Building
335 Merchant Street, Room 333
Honolulu, HI 96813

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2024 Real Estate Commission Meeting Schedule

Real Estate Commission – 9:00 a.m.

Friday, January 26, 2024	Until further notice, Laws & Rules Review Committee, Condominium Review Committee, and Education Review Committee meeting items will be discussed at Real Estate Commission meetings.
Friday, February 23, 2024	
Friday, March 22, 2024	
Friday, April 26, 2024	Real Estate Commission Meetings will be held online via the Zoom platform. Physical location will be in the King Kalakaua Building, 335 Merchant Street, Room 333.
Friday, May 24, 2024	
Friday, June 28, 2024	
Friday, July 26, 2024	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 (808) 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 (808) 586- 2643 to submit your request.
Friday, August 23, 2024	
Friday, September 27, 2024	
Friday, October 25, 2024	
Friday, November 22, 2024	
Friday, December 20, 2024	