

HRS 467, Real Estate Brokers and Salespersons

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Chapter 7

Real Estate Laws

- ▶ HRS 467, Real Estate Brokers and Salespersons
- ▶ HAR Title 16, Chapter 99
- ▶ HRS 436B, Professional Vocational Licensing Act

State Organizations That Protect the Consumer

- ▶ Office of Consumer Protection
- ▶ Regulated Industries Complaints Office
- ▶ Professional and Vocational Licensing division of Department of Commerce and Consumer Affairs (DCCA)

OCP - Office of Consumer Protection

- ▶ Investigates consumer complaints alleging unfair or deceptive trade practices.

RICO – Regulated Industries Complaints Office:

- ▶ Enforces the regulatory standards of professions by receiving, investigating, and prosecuting complaints against licensees.

PVL – Professional Vocational Licensing Branch

- ▶ Oversees regulatory activities of the boards and commissions within the department, as well as other licensing programs.

Hawaii Real Estate Commission

- ▶ Nine members appointed by the Governor.
 - ▶ They adopt, amend or repeal rules,
 - ▶ Grant licenses to salesperson and brokers,
 - ▶ Suspend, fine, terminate or revoke licenses for cause,
 - ▶ Carry out the purposes of the statutes addressing real estate brokers and salespersons and the Professional and Vocational Licensing Act

NAR – National Association of Realtors

- ▶ Voluntary organization of real estate professionals;
- ▶ It promotes certain codes of behavior that governs all its members;
- ▶ It has rules of ethics and standards that are considered;
- ▶ These are not legal standards, such as found in HRS 467;
- ▶ Rather ethical standards that are considered much higher;

Hawaii Real Estate Commission

- ▶ Nine members
- ▶ At least Four brokers who have been licensed in Hawaii for at least three years.
- ▶ US and Hawaii citizen for three years.
- ▶ One named as chairman
- ▶ At least four members from Oahu, at least one from each neighbor county.
- ▶ At least two members of the public.

Licensing Requirements

- Pass an examination;
- Residency not required;
- US citizen or resident alien work permit;
- 18 years of age;
- Salesperson = 60 hour approved course;
- Broker = 80 hour approved course;
 - Full time in real estate 3 of the last 5 years;
- Exceptions exist for out of state licensees;

Exemptions to Licensing:

- ▶ An owner or attorney in fact for the owner
- ▶ Receiver, trustee or personal representative
- ▶ Custodian or caretaker who rents or leases for one owner
- ▶ Hotel operation
- ▶ Operator or manager of homeless facility

Salesperson's License

- ▶ Must apply within two years of passing exam
- ▶ Activate license with a broker or place license on inactive “on ice”.
- ▶ Accept commissions only from his broker.
- ▶ Notify the REC:
 - ▶ of change of broker.
 - ▶ of licensee's mailing address.
- ▶ License expires, December 31st even years.

Broker's License

- ▶ Full time (40 hours week) within 3 of the last 5 years;
- ▶ Complete 80 hour broker course;
- ▶ Pass the broker exam;
- ▶ Apply for broker license within 2 years of passing the broker exam;
- ▶ Maintain a definite place of business in Hawaii or associate with another firm as a broker-salesperson

A Corporation:

- ▶ Selling or buying real estate for their own account, must have its own broker's license;
- ▶ Developer must have its own broker's license;
- ▶ Partnerships and LLC in the real estate brokerage business must have a broker's license;

Branch Office

- ▶ Must be registered;
- ▶ Brokers in charge of branch offices are registered to the main office and assigned to the branch offices as needed;
- ▶ Site offices do not require a broker in charge;

Terms of License

- Salesperson and broker licenses must be renewed on or before December 31st of each even numbered year.
- Renewal application submitted by November 30th
- Completion of continuing education requirements;
- Failure to renew results in automatic forfeiture;

Inactive License

- ▶ Upon passing the state exam, one can apply directly for an inactive license and the license is considered to be “on ice”;
- ▶ The inactive license remains in possession of the Real Estate Commission;
- ▶ It must be renewed in the same manner as are active license renewals;

Recovery Fund

- ▶ State regulated fund to protect consumers from a licensee's misrepresentations or fraudulent acts;
- ▶ Licensees pay one time fee of \$50.
- ▶ If fund falls below \$350,000 licensees are required to contribute an additional assessment;

Recovery Fund Procedures

- Aggrieved person must obtain a court judgment against licensee;
- Must attempt to collect on the judgment;
- May apply to the court for an order directing payment out of the fund;
- \$25,000. maximum award to claimant;
- \$50,000. maximum payment from fund for any one licensee

Penalty

- ▶ Any persons violating the licensing law shall be fined not more that \$5,000.
- ▶ Anyone who files a false statement or document with the Real Estate Commission is guilty of a misdemeanor.

Administrative Rules & Regulations

- ▶ Hawaii Administrative Rules – HAR (Chapter 99, Title 16) are designed to clarify and implement HRS 467;
- ▶ Many of the rules are based on NAR's Code of Ethics;
- ▶ Uniform Professional Vocational Act covers laws that regulate anyone in Hawaii who is required to hold a license in order to conduct business.

Client Trust Account

- Deposit client's money into escrow or client's trust account by the next business day;
- OK to hold uncashed check before acceptance of an offer, when directed to do so by the buyer;
- The broker must specifically notify the seller of the buyer's request not to cash the check until acceptance;

Reason for Client Trust Account

- ▶ Protect clients monies from the possibility of being “frozen” during legal actions against the broker; or probate of a deceased broker
- ▶ FDIC insurance of each client’s funds up to \$100,000.

Advertising

- Advertise in the legal name of the brokerage firm;
- Licensee must notify his broker of intent to sell his property and cannot advertise it as FSBO (For Sale By Owner)
- Licensee must disclose license status
 - Broker (B) or Realtor (R),
 - Salesperson (S) or Realtor Associate (RA)

§467-1.5 Employer-Employee

- ▶ Nothing in this chapter or in any of the rules adopted to implement this chapter shall be deemed to create an employer-employee relationship between a real estate broker and the broker's licensees;
- ▶ Provided that the commission shall have all power necessary to regulate the relationships, duties and liabilities among real estate brokers and real estate salesperson in order to protect the public.

§467-1.6 Principal Brokers

The principal broker shall be responsible for:

- ▶ Client trust account
- ▶ Firm's records, contracts and documents
- ▶ Proper handling of license applications
- ▶ Developing policy and procedures for firm
- ▶ Setting a policy on continuing education

Principal Brokers (Continued)

The principal broker shall be responsible for:

- Ensuring that all licenses are kept current and active;
- Establish and maintain a training program;
- Keep licensees informed of latest amendments to real estate license laws;
- The principal broker may delegate management and supervision duties to one or more brokers in charge;

§467-2 Exceptions

- ▶ An owner or attorney in fact for the owner
- ▶ Receiver, trustee or personal representative
- ▶ Custodian or caretaker who rents or leases for the owner
- ▶ Hotel operation
- ▶ Operator or manager of homeless facility

§467-3 Real Estate Commission

- Nine members
- At least Four brokers who have been licensed in Hawaii for at least three years.
- US and Hawaii citizen for three years.
- One named as chairman
- At least four members from Oahu, at least one from each neighbor county.
- At least two members of the public.

§467-4 Powers & Duties of REC

- ▶ Grant licenses;
- ▶ Adopt, amend or repeal rules;
- ▶ Enforce rules and regulations;
- ▶ Suspend, fine, terminate or revoke for cause;
- ▶ Report to governor and legislature;
- ▶ Publish educational material licensee/public;
- ▶ Contract with private parties;
- ▶ Establish committees & meet 10 times year;

§467-4.5 Continuing Education

The REC has the authority to:

- ▶ Set content for CE courses
- ▶ Specify a mandatory core course
- ▶ Determine how many hours qualify for CE
- ▶ Develop its own CE courses
- ▶ Allow CE courses taught by alternative delivery methods

CE Providers Shall:

- ▶ Ensure that instructors are competent in the subject matter of the course
- ▶ Ensure that the course is based on current information, laws and rules
- ▶ CE courses shall be designed to improve a licensee's competency or professional standards and practice

CE Courses Shall:

- Be offered by a provider approved by REC
- Course approved by REC and delivered by a qualified instructor
- A national course delivered by NAR certified instructor
- A national course delivered by BOMA, CAI
- A national course approved by ARELLO
- Be designed to allow students to exceed minimal entry level competency in the subject matter of the course;

§467-5 Board's Employees

- ▶ Subject to chapters 76 and 77, the department of commerce and consumer affairs may employ and remove such administrative and clerical assistants as the real estate commission requires and prescribe their powers and duties.

§467-6 Place of Meeting

- ▶ The director of commerce and consumer affairs shall provide suitable quarters for meetings of the real estate commission and for the transaction of its other business.

§467-7 License Required

- ▶ No person within the purview of this chapter shall act as real estate broker or real estate salesperson, or shall advertise, or assume to act as real estate broker or real estate salesperson without a license previously obtained under and in compliance with this chapter and the rules and regulations of the real estate commission.

§467-8 Prerequisites for License

No license issued to:

- One who does not pass the real estate exam
- One who does not possess a reputation for competency, honesty and financial integrity
- A partnership or corporation unless a PB
- A broker unless active as Hawaii agent
- Request for REC preliminary decision

§467-9 License, registration, certificate, and applications.

- ▶ Every applicant for issuance of a real estate license, registration, or certificate shall file an application with the commission in a form and setting forth the information as may be prescribed or required by the commission, and shall furnish any additional information bearing upon the issuance of the license, registration, and certificate as it requires.

No broker's license shall be issued to:

- ▶ An unlicensed person;
- ▶ A real estate salesperson;
- ▶ A real estate broker who is not associated with or employed by the real estate broker applicant;

§467-9.5 Prerequisites for Exam

- ▶ US citizen or authorized alien;
- ▶ At least eighteen years old;
- ▶ Completion of sixty hour REC approved prelicensing course for salesperson;

Applying for Broker Exam

- ▶ Currently licensed as salesperson;
- ▶ Completion of 80 hour broker's course;
- ▶ Experienced as a full-time salesperson in Hawaii for three of the last five years prior to licensing exam;
- ▶ A candidate may request a determination of equivalency based on experience obtained in another state;

§467-9.6 Examination

- ▶ Applicant must file with REC or the testing agency.
- ▶ Possible to get waiver for uniform portion
- ▶ Equivalency to CE requirements
- ▶ Restoration of forfeited license
- ▶ Reinstatement of license due to disciplinary action

§467-10 Form of licenses, registrations, and certificates.

- ▶ The form of every license, registration, and certificate shall be prescribed by the commission, and shall be issued in the name of the commission.

§467-11 Fees, Original / Renewal

- Fees for licensing are deposited to:
 - compliance resolution fund
 - real estate education fund
- Biennial renewal fees go to DCCA before the prescribed deadline;
- Real estate licenses expire Dec 31st even numbered years;
- If Education Fund exceeds \$1,200,000?

§467-11.5 Prerequisites for license renewal.

- ▶ Twenty hours of CE required prior to license renewal;
 - ▶ except for new licensees in even numbered years;
- ▶ Trade name must be registered properly with DCCA;
- ▶ Licensee may request equivalency for continuing education courses taken in another jurisdiction;

§467-12 Place of business and posting of license.

- (a) A licensed real estate broker shall have and maintain a definite place of business in the State, in compliance with this chapter and the rules of the commission, and shall display therein the real estate broker's license and upon request make available any associating real estate salesperson's license.
- (b) No real estate broker's branch office shall operate without a registration previously obtained under and in compliance with this chapter and the rules of the commission.

§467-13 Delivery of agreement.

- ▶ When a licensee prepares or has prepared an agreement authorizing the licensee to perform any of the acts for which the licensee is required to hold a license, or when such licensee secures the signature of any party or parties to any contract pertaining to such services or transaction, the licensee shall deliver a copy of the agreement or contract to the party or parties signing it, at the time the signature is obtained;
- ▶ Provided that only one copy need be delivered to parties signing as cotenants.

§467-14 Revocation, suspension, and fine.

- Misrepresentation
- Making false promises
- False advertising
- Non disclosure of agency
- Fraudulent dealings
- Splitting fees with others not licensed
- Failing to account for moneys
- Commingling money or other property
- Adjudicated insane or incompetent
- Failing to ascertain and disclose material facts
- Distributing exam questions to others
- Failure to maintain a reputation for honesty, truthfulness and financial integrity

§467-15 Hearings.

- In every case where it is proposed to revoke or suspend the exercise of any license, fine any person holding a license, registration, or certificate, terminate any registration or certificate, or take any other action authorized by law, for any of the causes enumerated in section 467-14, the person concerned shall be given notice and hearing in conformity with chapter 91.
- The commission shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts.

§467-15.5 License issued after a revocation or termination.

- ▶ A person whose license has been revoked, or automatically terminated, may apply for a license as a new applicant after the revocation or termination period and, if applicable, after repayment to the real estate recovery fund and compliance with all the terms of the commission's final order.
- ▶ Any person who was previously licensed as a real estate broker shall apply as a real estate salesperson.

§467-16 Real estate recovery fund; use of fund; fees.

- ▶ The commission shall establish and maintain a trust fund which shall be known as the real estate recovery fund from which any person aggrieved by an act, representation, transaction, or conduct of a duly licensed real estate broker, or real estate salesperson, upon the grounds of fraud, misrepresentation, or deceit, may recover upon the commission's settlement of a claim or by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$25,000 per transaction.

The REC May Expend Funds to:

- Retain private legal counsel;
- Retain a certified public accountant for accounting and auditing of the real estate recovery fund;
- Employ necessary personnel to assist the commission in exercising its powers and duties with respect to the real estate recovery fund;
- Retain a consultant to recover and collect any payments from the real estate recovery fund plus interest from the judgment debtor.

§467-17 Additional payments to fund.

- ▶ If the balance remaining in the real estate recovery fund is less than \$350,000, the DCCA shall assess every real estate licensee an additional payment to the recovery fund;
- ▶ Failure of the licensee to pay the assessment within sixty days from the date of assessment shall constitute a forfeiture of the license.

§467-18 Statute of limitation; recovery from fund.

- ▶ No action for a judgment that subsequently results in an order for collection from the real estate recovery fund shall be started later than two years from the accrual of the cause of action thereon.
- ▶ When any aggrieved person commences action for a judgment that may result in collection from the real estate recovery fund, they must notify the commission in writing.

The aggrieved person shall be required to show:

- The person is not a spouse of debtor, or the personal representative of such spouse;
- The person has obtained a judgment;
- The person has made all reasonable attempts to collect on the judgment;
- The person has discovered no other assets liable to be sold or applied, owned by the judgment debtor;
- The court shall make an order directed to the commission requiring payment from the real estate recovery fund.

§467-19 Management of fund.

- The sums received by the real estate commission for deposit in the real estate recovery fund shall be held by the commission in trust for carrying out the purpose of the real estate recovery fund.
- The real estate commission, shall be authorized to expend the funds to retain private legal counsel to represent the commission in any action involving the real estate recovery fund.
- These funds may be invested and reinvested in the same manner as funds of the state employees retirement system;
- Interest from these investments shall be deposited to the credit of the real estate education fund, and which shall be available to the commission for educational purposes.
- The commission for investment purposes, may combine the real estate education and recovery funds;
- The commission shall keep separate accounting records for the two funds.

§467-20 False statement.

- ▶ It shall be unlawful for any person or the person's agent to testify before or file with the commission, or the testing service, any notice, statement, or other document required under this chapter, that is false or untrue or contains any material misstatement of fact, or contains forgery.
- ▶ Violation of this section is a misdemeanor.

§467-21 The REC has standing in court.

- ▶ The commission may enter an appearance, file an answer, appear at the court hearing, defend the action, or 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.
- ▶ The commission or its legal representative shall be served with all pleadings in an action which may result in a recovery from the real estate recovery fund.
- ▶ Settlement of any claim against the real estate recovery fund may be made only with the agreement of a majority of the commission that settlement is in the best interest of the real estate recovery fund.

§467-22 Subrogation of rights.

- ▶ When, upon the order of the court, or upon the commission's settlement of a claim, the real estate commission has paid from the real estate recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor;
- ▶ The judgment creditor shall assign all the creditor's right, title, and interest in the judgment or settlement to the commission and any amount and interest so recovered by the commission on the judgment or settlement shall be deposited to the fund.

§467-23 Waiver of rights.

- The failure of an aggrieved person to comply with this chapter relating to the real estate recovery fund shall constitute a waiver of any rights hereunder.

§467-24 Maximum liability.

- ▶ Notwithstanding any other provision, the liability of the real estate recovery fund shall not exceed \$50,000 for any one licensee.

§467-25 Disciplinary action against licensee.

- ▶ Nothing contained herein shall limit the authority of the real estate commission to take disciplinary action against any licensee for a violation of this chapter, or the rules and regulations of the commission;
- ▶ Nor shall the repayment in full of all obligations to the real estate recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter.

§467-25.5 Registration of schools, instructors; fees.

- ▶ Any person may apply to the real estate commission for a certificate of registration as a real estate school upon the payment to DCCA of an initial registration fee and thereafter a biennial registration fee.
- ▶ The commission shall issue a certificate of registration as instructor to any person who meets its requirements and pays the proper fee.

§467-26 Penalty.

- ▶ Any person violating this chapter shall be fined not more than \$5,000 for each violation.

§467-30 Requirements for condo hotel operators.

- ▶ Transient lodging of less than 30 days;
- ▶ Condo hotel operators shall register with the commission;
- ▶ Fine for not registering equal to \$25 multiplied by the aggregate number of apartments;
- ▶ Fidelity bond in an amount equal to \$500 per apartment; but not less than \$20,000 nor more \$100,000

License Recognition

- ▶ The commission may enter into a recognition agreement with another jurisdiction recognized by the Association of Real Estate License Law Officials. (ARELLO)

Hawaii Administrative Rules Title 16, Chapter 99

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Subchapter 1 General Provisions

§ 16-99-1 Objective

- To clarify and implement chapter 467, Hawaii Revised Statutes, as amended, to the end that the provisions there under, for the protection of the general public in its real estate transactions, may be best effectuated and the public interest most effectively served.

§ 16-99-3 Conduct

- Protect the public in real estate transactions.
- Assist the REC in enforcement of rules.
- No naming of false considerations.
- Recommend legal advise, survey & title.
- Principal broker to maintain trust account.
- Get things in writing.

- Licensee must disclose to buy, sell or lease.
- No property management rebates.
- Get owners written permission to advertise and represent owner at listed price.
- Submit all written offers to owner and get acceptance or rejection signed by owner.
- No compensation from other brokers.
- Owners written permission to place signs.
- PB and BIC responsible to supervise agents.

- Office location, zoned properly.
- Broker absent for over 30 days.
- Temporary PB or BIC limited to 6 months.
- Work for only one broker at a time.
- Ten days to provide experience certification.
- Taking real estate exam if you're licensed.
- Must put termination dates of listings.
- Don't modify previously signed contracts.
- No commingling.

§ 16-99-3.1 Disclosure of Agency

- Broker discloses at the time of taking listing:
 - Whether owner authorizes sub-agency through the multiple listing service.
 - Whether owner authorizes sharing of commission with seller's subagents or buyer's agents.

Prior to preparing any contract between buyer and seller.

- ▶ If the licensee acting as the listing broker, is acting alone and providing services to the buyer; disclose who the licensee represents.
- ▶ If the licensee, acting as a co-op broker has found the buyer, disclose who the licensee represents.
- ▶ If there is no listing broker, each licensee providing services to the buyer shall disclose whether they represent the buyer or the seller.

Prior to presenting a contract to the seller, disclose to seller:

- ▶ If the licensee is the listing broker, disclose who the selling broker represents.
- ▶ If there is no listing broker; disclose to the seller whether the licensee represents the buyer or the seller.

More Agency Disclosures

- Dual Agency requires informed consent of buyer and seller.
- Buyer Agents must disclose who they represent to seller and listing agents.
- Disclose any changes during transaction.
- Compensation does not determine agency.
- Validity of title, not subject to this chapter.

§ 16-99-4 Client Trust Account

- Deposit in federally insured account by next business day.
- Retain detailed records at least three years.
- Includes money and chattels.
- Review the rules on holding uncashed check.
- Who can deposit and withdraw funds?

§ 16-99-5 Filing of Names & Addresses

Each Broker shall file with the commission:

- Address of broker's place of business.
- License number of principal broker-in-charge.
- Name and license number of each licensee associated with the broker.
- Names and addresses of all partners or officers and directors.

§ 16-99-5 Filing of Changes

- ▶ Notify REC within ten days of office closure.
- ▶ Release licensee within ten days of request.
- ▶ Licensee must notify REC of change of broker within ten days or go inactive.
- ▶ Agent associates with neighbor island broker.
- ▶ Agent may live on mainland.
- ▶ Changes effective when approved by REC.

§ 16-99-5.1 Involuntary Inactive Status

A license shall be placed on inactive status if:

- ▶ The broker's license is forfeited, suspended or revoked.
- ▶ The corporation or partnership is no longer registered properly.
- ▶ The broker has prolonged illness or dies.
- ▶ The broker moves to another island or state.

§ 16-99-5.2 Statewide License

- Broker must still supervise
- Only advertise principal place of business.
- Off island ads must contain name, address & phone of principal place of business.
- Clients must be able to contact PB at no charge to client.

§ 16-99-6 Display of License

- ▶ The brokerage firm's certificate of license shall be conspicuously displayed in the principal place of business.

§ 16-99-7 Renewal of License

- The biennial renewal fee and completed renewal application shall be submitted on or before the commission prescribed deadline.
- Unless renewed, all real estate licenses expire at the end of every even numbered year.
- Failure to submit a completed renewal application and failure to pay the renewal fee when due, for whatever reason, shall constitute automatic forfeiture of license.
- The principal broker shall see to it that all licensees are currently licensed at all times during employment or association.

§ 16-99-9 Suspended License

- ▶ The commission may suspend the right of the licensee to use the license for a period not to exceed five years.
- ▶ Prior to conducting any real estate activity, a licensee with a suspended license shall reinstate the license.
- ▶ If the licensee fails to file for reinstatement within thirty days after the end of the suspension, the license shall be forfeited.

§16-99-10 Revoked License

- ▶ An individual whose license has been revoked shall apply for a new real estate salesperson license by filing an application and complying with all requirements for new applicants.
- ▶ The commission may waive the applicable education requirements.

§ 16-99-10.5 Other Requested Material

- ▶ The commission may require the person requesting reinstatement of a suspended license or applying for a new license following license revocation to submit other information and documents that may be helpful to the commission in evaluating the person's request.

§16-99-10.6 Surrender of Real Estate License

- ▶ A licensee who has no pending complaints, investigations, disciplinary petitions filed against the licensee, or disciplinary hearings before the commission may surrender the person's real estate license, and shall:
 - ▶ Return the licensee's pocket identification card and wall certificate to the commission; and
 - ▶ Cease conducting any real estate activities.
- ▶ Should an individual desire to engage in any real estate activities the individual shall obtain a new license.

§16-99-11 Advertisement

- ▶ Use company name in all advertising.
- ▶ Licensee can't advertise FSBO.
- ▶ Identify Leasehold property
- ▶ Identify status; R or B; RA or S.
- ▶ A leasehold property advertised for sale in any medium shall be identified by the word "leasehold."

Ads that refer to the Agent's Name Shall:

- ▶ Include the licensee's legal name, name as licensed by the commission, or sole proprietor's trade name as licensed by the commission;
- ▶ Identify the licensee with the licensee's brokerage firm;
- ▶ Specify that the licensee status as a broker (B), or salesperson (S), or Realtor (R) or Realtor-Associate (RA).
- ▶ 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, shall be included and respectively identified as such.

§ 16-99-12 Exam Site Solicitation

- ▶ On the day of a real estate licensing examination, a licensee shall not at the exam site or at any place on the property where the exam site is located, directly or indirectly, recruit, solicit, offer to employ, discuss employment with, or distribute literature promoting the licensee to any individual who sits for that examination.

Subchapter 2, Applications

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§ 16-99-17 Forms & Instructions

- ▶ An application filed with the commission shall be prepared in accordance with and contain the information and documentation called for in the application form and the accompanying instructions provided by the commission.
- ▶ All applications shall be accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs.

§16-99-19 License Application

All applications for license shall:

- ▶ Be accompanied by required fees.
- ▶ Provide supporting documents to satisfy educational & experience requirements.

§16-99-19.1 License Name

- ▶ Shall include full legal surname;
- ▶ May include individual's initials, legal first name, middle name or nickname;
- ▶ Sole proprietor
 - ▶ may include a trade name;
- ▶ Corporation, LLC or partnership
 - ▶ shall be its legal name; may include a trade name

§ 16-99-19.2 Experience Certificate

- Application with appropriate fees & certified statement of their broker.
- Three years full time experience.
- May apply for equivalency.
- No credit for time when license is forfeited, inactive, suspended, revoked.
- Certificate of experience valid 2 years.

§ 16-99-21 Denial

- ▶ In the event an application for admission to the examination, for issuance, reinstatement, or restoration of a license is denied, the commission shall notify the applicant by letter of the commission's action which shall include a concise statement of the reasons therefore and if the applicant is entitled to a hearing, a statement informing the applicant of the right to a hearing if the applicant so desires.

§ 16-99-22 Demand for a Hearing

- ▶ Any person whose application for admission to the examination, for the issuance, reinstatement, or restoration of a license has been denied by the commission, shall be entitled to a hearing;
- ▶ Provided that a demand for a hearing is filed with the commission within sixty days of the date of the letter informing the applicant of the denial of application;
- ▶ Provided further that this section shall not apply to a denial based on the failure to file an application within the period provided by this chapter.

§ 16-99-23 Proceedings Upon Demand for Hearing

- ▶ If a demand for a hearing is filed within the time prescribed, the commission shall order a hearing pursuant to chapters 91 and 92, HRS, and chapter 16-201, Administrative Practice and Procedure.

§ 16-99-25 Falsification of Application

- ▶ The commission may deny an applicant admission to the examination, or issuance of license, void applicant's examination score, or revoke a license on the ground of falsification of any information supplied in the application for examination, application for experience certificate, application for license, or supporting documents.

Subchapter 3, Examination

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§ 16-99-29 Examination

- ▶ No waivers for state portion of exam.
- ▶ Passing score: 70% Sales; 75% Broker.
- ▶ Can retake portion that is failed.
- ▶ “No Shows” forfeit exam fee.
- ▶ Exam may be take outside Hawaii.
- ▶ Apply for license within 2 years of exam.
- ▶ Take the original course completion certificate to exam site.

§ 16-99-30 Examination Subject Matter

- ▶ Candidates shall demonstrate, by passing with a grade satisfactory to the commission an examination given by it and appropriate to the license sought, that they have a reasonable knowledge of general principles and practices of real estate transactions and the law and rules pertaining to or relating to real estate, and such other subjects and matters which the commission or its designated examining agency determines to be essential to the protection of the general public in its real estate transactions.

SUBCHAPTER 4, EDUCATION AND EXPERIENCE

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§ 16-99-36 Education & Experience

- ▶ The education requirement for the license examination shall be satisfied by successful completion of a curriculum in real estate at an accredited institution, consisting of:
 - ▶ Salesperson = Sixty hour course
 - ▶ Broker = Eighty hour course

§ 16-99-37 Education Equivalency

- ▶ Active license in another state within last year;
- ▶ Graduates of law school;
- ▶ College graduate with major in real estate or business;
- ▶ Completed six credits in real estate or GRI;
- ▶ An approved education equivalency shall be valid for two years from the date of issuance.

§ 16-99-46 Real Estate Education Fund

- ▶ The commission may authorize the use of funds deposited in the real estate education fund for the benefit of and improvement of services to:
 - ▶ the consuming public, licensees, commissioners, and staff.
- ▶ The education fund may be used for:
 - ▶ classes, media exposure, participation in national associations, publications, research, seminars, studies, and any other educational purpose as the commission may determine.

Registered Real Estate Schools, Subchapter 5

- ▶ § 16-99-50 A school must be registered with the REC in order to offer courses;
- ▶ § 16-99-52.1 Independent study courses authorized;
- ▶ § 16-99-53 Registration requirements for real estate schools;
- ▶ § 16-99-69 REC may revoke school registration for cause.

Chapter 436B

Uniform Professional & Vocational Licensing Act

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§436B-3 Applicability; prevailing provisions; construction.

- Provisions of this chapter shall only be applicable to the professions and vocations required by law to be regulated by the licensing authority.
- Unless otherwise stated in this chapter, the licensing laws or rules for the respective profession or vocation shall prevail. This chapter shall apply whenever the licensing laws or rules for the respective profession or vocation are silent.
- This chapter shall be liberally construed to protect the health, safety, and welfare of consumers of services provided by a profession or vocation regulated by the licensing authority.

§436B-10 Application and Requirements for Licensure

- An applicant shall provide the following information on the application form:
 - The applicant's legal name; affirmation that the applicant is beyond the age of majority;
 - The applicant's current residence, business and mailing addresses, and phone numbers;
 - The applicant's social security number if the licensing authority is authorized by federal law to require the disclosure;
 - The date and place of any conviction of a penal crime directly related to the profession or vocation in which the applicant is applying for licensure,
 - Proof that the applicant is a United States citizen, or an alien authorized to work in the United States;
 - Disclosure of similar license in any state or territory;

§436B-19 Grounds for Loss of License

Failure to meet licensing requirements

- ▶ False or fraudulent advertising
- ▶ Drug addiction or alcohol abuse
- ▶ Procuring a license by fraud or deceit
- ▶ Aiding and abetting an unlicensed person
- ▶ Failure to maintain a history of competence, fair dealing and financial integrity.

§436B-19.5 Noncompliance with Child Support Order.

- ▶ The licensing authority shall refuse to renew, reinstate, or restore, or shall deny or suspend any license if the authority has received certification from the child support enforcement agency:
 - ▶ That the licensee or applicant is not in compliance with an order of support;
 - ▶ Or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding.

§436B-20 Suspended license.

§436B-21 Revoked license.

- ▶ No license shall be suspended by the licensing authority for a period exceeding five years.
- ▶ A person may apply for a new license after five years from the effective date of the revocation of the license.

§436B-26 No compensation for unlicensed activity; civil action.

- ▶ The failure of any person to maintain a current and a valid license prior to engaging in any activity requiring licensure by the licensing authority shall prevent such person from recovering in a civil action for work or services performed or materials or supplies furnished, or both, on a contract or on any legal basis to recover the reasonable value thereof.

§436B-27 Civil and criminal sanctions for unlicensed activity;

- ▶ Any licensee aiding or abetting an unlicensed person to directly or indirectly evade this chapter or the applicable licensing laws, may be fined up to:
 - ▶ \$1,000 for the first offense;
 - ▶ \$2,000 or, if applicable, forty per cent of the total contract price, whichever is greater, for the second offense;
 - ▶ \$5,000 or, if applicable, forty per cent of the total contract price, whichever is greater, for any subsequent offense.

§436B- Extension of Licenses for Members of the Armed Forces

- ▶ Any license held by a member of the armed forces that:
 - ▶ expires,
 - ▶ is forfeited,
 - ▶ or deemed delinquent while the member is on active duty and deployed during a state of national crisis shall be restored.