

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 99.1
Hawaii Administrative Rules

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1. Chapter 99.1, Hawaii Administrative Rules, entitled "Real Estate Brokers and Salespersons", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 99.1

REAL ESTATE BROKERS AND SALESPERSONS

Subchapter 1 General Provisions

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-99.1-1 Objective. This chapter, adopted by the real estate commission, hereafter referred to as "commission," is intended to clarify and implement chapter 467, Hawaii Revised Statutes, as amended, to the end that the provisions thereunder, for the protection of the general public in its real estate transactions, may be best effectuated and the public interest most effectively served. [Eff
] (Auth: HRS §467-4) (Imp: HRS §467-4)

§16-99.1-2 Definitions. As used in this chapter:

"Approved curriculum" means the curriculum or courses approved by the commission as satisfying the education requirements established for real estate broker and salesperson license examination applicants.

"Branch office" means a place of business other than the principal place of business from which real estate business is conducted. Branch offices located on an island different from the principal place of business shall be registered with the commission. Branch office registration shall not be required for places of business located on the same island as the principal place of business and registration shall not be required for any additional place of business from which real estate broker activities are engaged in exclusively relative to a condominium project, real estate subdivision, larger community development developed by a single developer, time share project, new or existing shopping center, or other commercial building.

"Brokerage firm" or "firm" means a sole proprietor broker licensee, or a partnership, corporation, or limited liability company licensed as a broker.

"Broker-in-charge" means an individual broker licensee designated by the principal broker as the broker directly in charge of and responsible to the principal broker for the real estate operations conducted at the principal place of business or a branch office. The principal broker may designate one or more brokers-in-charge of the principal place of business or branch office, provided that there shall be at least one broker-in-charge of each branch office. A broker-in-charge may be designated to more than one branch office.

"Broker-salesperson" means an individual broker licensee who associates that individual's own license with a brokerage firm as an employee or independent contractor.

"Commingling" means to mingle or mix, such as a deposit of client's funds in the broker's personal account.

"Inactive" means the status of a current license that is not forfeited, suspended, revoked, or terminated, the holder of which cannot transact any real estate business until the license status is changed to "active" status.

"Involuntary inactive" means the status of a current license resulting from the forfeiture, suspension, revocation, termination, or inactive status of a principal broker, broker-in-charge, branch office, or brokerage firm, as the case may be.

"Licensee" means the person in whose name the commission grants a license.

"Place of business" means the physical place where business is conducted other than a post office box, telephone, telephone answering service, letter or mail drop service, or motor vehicle within the State, and may include a home occupation office. The place of business shall conform with the permitted use under the zoning code of the county in which the place of business is situated and with any declarations, bylaws, house rules, recorded restrictions, or covenants that may govern the place of business. The commission may use as guidelines, but is not limited to, the following factors in finding that a brokerage firm is maintaining a place of business: physical presence of the broker during reasonable scheduled office hours; on-site maintenance of confidential clients' files which shall be immediately accessible to the commission upon request; the prominent display of the brokerage firm's name or trade name as licensed by the commission and the listing of the brokerage firm name where permissible in the building directory; the operation of the brokerage firm at a place of business directly accessible to the public; and the on-site maintenance of personnel and compensation records for all real estate salespersons and broker-salespersons employed by or associated with the brokerage firm. Client files as used in this definition include but is not limited to: real estate

contracts, escrow records, trust account records, and confidential client data. "Place of business" does not include the operation of a place of business designed to evade the requirements of the definition as set forth in this paragraph. Each brokerage firm shall have one, and only one, principal place of business.

"Supervision" means the act of directing, inspecting, and reviewing.

"Trust properties" includes funds in the form of cash or checks, and personal property other than cash or checks, received by the licensee to be held in trust for the benefit of the depositor of the property or for the benefit of third persons, or both.

"Wall certificate" means a certificate of license issued by the commission to a qualified person either as a salesperson or broker. [Eff 000000000000000000]
(Auth: HRS §§467-4, 467-25.5) (Imp: HRS §§467-1.5, 467-7, 467-8, 467-11, 467-12, 467-14, 467-25.5)

§16-99.1-3 Conduct. (a) To fully protect the general public in its real estate transactions, every licensee shall conduct business, including the licensee's own personal real estate transactions, in accordance with this section.

(b) The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate any practices in the community which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission in its efforts to regulate the practices of brokers and salespersons in this State.

(c) The licensee shall not be a party to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

(d) The licensee shall recommend that title be examined, survey be conducted, or legal counsel be

obtained when the interest of either party requires it.

(e) The broker shall keep in special bank accounts, separated from the broker's own funds, moneys coming into the broker's possession in trust for other persons, such as escrow funds, trust funds, client's moneys, rental deposits, rental receipts, and other like items.

(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.

(g) The licensee shall not acquire, rent, lease, or exchange an interest in or buy, rent, lease, or exchange for one's self, any member of the licensee's immediate family or brokerage firm, or any entity in which the licensee has any ownership interest, property listed with the licensee, licensee's brokerage firm, or listed with any other brokerage firm or licensee without making the true position known in writing to the listing owner or property owner. When offering for sale, lease, exchange, or rental, property which the licensee owns or has an interest in, the licensee shall fully inform the principal broker of the licensee's intention to sell, lease, exchange, or rent, and of the licensee's interest in the property. The licensee shall reveal the interest to the purchaser, lessee, or tenant in writing prior to accepting any offer.

(h) When acting as agent in the management of property, the licensee shall not accept any commission, rebate, or profit on expenditures for or

from an owner, without the owner's and principal broker's knowledge and consent.

(i) The brokerage firm shall not submit or advertise property without written authorization, and in any offering the price quoted shall not be other than that agreed upon with the owner as the offering price.

(j) A licensee shall transmit immediately all written offers in any real estate transaction as defined in section 16-99.1-4 to the listing broker who has a written unexpired exclusive listing contract covering the property. Each written offer, upon receipt by the listing broker, shall be transmitted to the seller immediately. In the event that more than one formal written offer on a specific property is made before the owner has accepted an offer, any other formal written offer presented to the broker, whether by a prospective purchaser or another broker, shall be immediately transmitted to the owner for decision. If an offer or counter offer is rejected, the rejection shall be noted on the offer or counter offer, or in the event of seller's or buyer's neglect or refusal to do so, the broker for the rejecting party shall note the rejection on the offer or counter offer and a copy shall be returned immediately to the originator of the offer or counter offer.

(k) The brokerage firm shall not compensate a licensee of another brokerage firm in connection with a real estate transaction without paying directly or causing the payment to be made directly to the other brokerage firm. This requirement shall not apply in cases where the licensee or the licensee's estate is receiving compensation from a former brokerage firm for commission earned while the licensee was affiliated with that former brokerage firm, regardless of whether the licensee is on inactive status or on forfeited status or deceased.

(l) A licensee shall not place any sign or advertisement indicating a property is for sale, rent, lease, or exchange without the written authorization of the owner or seller and approval of the principal broker or broker-in-charge.

(m) There shall be a principal broker or one or more brokers-in-charge, or both, at the principal place of business, and one or more brokers-in-charge at a branch office who shall be immediately responsible for the real estate operations conducted at that place of business.

(n) A brokerage firm shall maintain a principal place of business located in this State at a business address registered with the commission from which the brokerage firm conducts business and where the brokerage firm's books and records are maintained.

(o) Prior to the time the principal broker or the broker-in-charge is absent from the principal place of business for more than thirty calendar days, and no other broker-in-charge is registered for the principal place of business, the principal broker shall submit to the commission a signed, written notification of the absence designating a temporary principal broker or temporary broker-in-charge, who shall acknowledge the temporary designation by signing the notification. In case of prolonged illness or death where the principal broker or broker-in-charge is unable to act, another broker shall be designated as the temporary principal broker or broker-in-charge within thirty days of the illness or death with appropriate notification and statement of a licensed medical doctor certifying to the commission the inability of the broker to practice.

A temporary principal broker or broker-in-charge arrangement shall not exceed a period of six months unless, prior to expiration of the initial six-month period, the principal broker requests and obtains, upon a showing of good cause for such extension, approval of the commission to extend the temporary arrangement for up to an additional six months.

(p) No licensee shall act as a broker, broker-salesperson, or salesperson for more than one brokerage firm except that this subsection shall not apply to those situations as described in subsection (o).

(q) Within ten days of receiving a written request, it shall be the responsibility of the

principal broker or broker-in-charge of the brokerage firm to provide broker applicants formerly or presently employed by or associated with them with an accurate experience certification statement in the form provided by the commission attesting to the length of time that the broker applicant has been actively associated with or employed full-time by the brokerage firm. Falsification of information contained in the certification form shall be cause for revocation or suspension of the broker's or brokerage firm's license and of the salesperson's license if that person is a party to the falsification.

(r) A broker licensee shall not sit for any Hawaii real estate broker or salesperson examination during the period in which the licensee has a real estate broker license unless specifically permitted by the commission.

(s) A salesperson licensee shall not sit for any Hawaii real estate salesperson examination during the period in which the licensee has a real estate salesperson license unless specifically permitted by the commission.

(t) An exclusive listing shall state a definite termination date.

(u) The licensee shall not add to or modify the terms of an instrument previously signed or initiated by a party to a transaction without written consent of all the parties.

(v) The licensee shall not convert other people's moneys to the licensee's own use.

(w) Violation of any part of this chapter may be cause for revocation or suspension of license. [Eff
.....] (Auth: HRS §467-4) (Imp: HRS
§467-14)

§16-99.1-4 Disclosure of agency. (a) As used in this section:

"Buyer" includes a vendee, lessee, party to an exchange, or grantee of an option.

"Buyer's agent" means a real estate broker who acts as the agent of the buyer.

"Contract between the buyer and seller" includes a purchase contract, an option, an offer to purchase, a sales contract, an offer to lease, or a lease.

"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.

"Listing brokerage firm" means the real estate brokerage firm that obtains a listing of real estate for sale, lease, exchange (residential, time share, industrial, or commercial) or for an interest in a residential cooperative housing corporation.

"Seller" includes a vendor, lessor, party to an exchange, or grantor of an option.

"Selling brokerage firm" means a real estate brokerage firm that acts in cooperation with a listing broker and finds and obtains a buyer in a transaction.

"Subagent" means a real estate brokerage firm or salesperson to whom an agent delegates agency powers.

"Transaction" means any sale, lease, rent, or exchange of real estate (residential, time share, industrial, or commercial) transaction or a sale or exchange of, or option involving, an interest in a residential cooperative housing corporation, but excluding leases for one year or less.

(b) At the time a listing brokerage firm obtains a listing, the listing brokerage firm shall disclose the following:

- (1) Whether the seller authorizes the listing brokerage firm to appoint seller's subagents through a multiple listing service or otherwise; and
- (2) Whether the seller authorizes the listing brokerage firm to share commissions with seller's subagents or buyer's agents.

The disclosure shall be in writing, dated, and signed by the seller and the listing brokerage firm.

(c) Prior to preparing any contract between the buyer and the seller, the following disclosure shall

be made at least once to the buyer, in writing or orally:

- (1) If the licensee acting as the listing brokerage firm is acting alone and providing services to the buyer, the licensee shall disclose who the licensee represents in the transaction;
- (2) If the licensee, acting in cooperation with a listing brokerage firm, has found the buyer in the transaction, the licensee shall disclose who the licensee represents in the transaction; or
- (3) If there is no listing brokerage firm, each licensee providing services to the buyer with respect to the transaction shall disclose whether the licensee represents the buyer or the seller in the transaction.

(d) Prior to presenting a contract between the buyer and the seller to the seller, the following disclosure shall be made at least once to the seller, in writing or orally

- (1) The licensee acting as the listing brokerage firm shall disclose to the seller who the selling brokerage firm represents in the transaction; or
- (2) If there is no listing brokerage firm, each licensee involved in the transaction shall disclose to the seller whether the licensee represents the buyer or the seller in the transaction.

(e) Any disclosure required by subsections (c) and (d) shall be confirmed in writing in a separate paragraph titled "AGENCY DISCLOSURE" in the contract between the buyer and the seller. The title shall be in no less than ten-point bold print. No particular disclosure language is required. To assist licensees, the commission approves the following language:

"AGENCY DISCLOSURE(S) :

_____, and all licensees

(Print name of Selling Brokerage Firm,
(or Listing Brokerage Firm if acting alone)
employed by or associated with the brokerage
firm,

represents the _____ . By
(Buyer or Seller)

initialing below, the Buyer and Seller confirm
that oral or written disclosure of such
representation was provided to them before the
signing of this contract.

Buyer's initials

Seller's initials

(f) Unless specifically restricted by the real estate brokerage firm in writing, any real estate salesperson, employed by or associated with a real estate brokerage firm, shall be authorized to make the required disclosures on behalf of the real estate brokerage firm. Failure to make the disclosure required by subsections (b), (c), and (d) or to obtain the written confirmation thereof shall subject the real estate brokerage firm and the real estate salesperson to disciplinary action by the commission.

(g) A licensee may not be the agent for both the buyer and the seller without obtaining the written consent of both the buyer and the seller. The written consent shall state that the licensee made a full disclosure of the type of representation the licensee will provide and shall briefly describe the type of representation the licensee will provide to the buyer and to the seller. A general statement in the consent signed by the buyer and seller that the licensee represents both buyer and the seller is not sufficient.

(h) A licensee representing a buyer shall disclose, orally or in writing, such agency to the seller, or the listing brokerage firm if there is a listing brokerage firm, before negotiations are initiated. The licensee shall disclose, orally or in

writing, to the seller, or the listing brokerage firm if there is a listing brokerage firm, whether the licensee is, or intends to be, the buyer, before negotiations are initiated.

(i) If any change occurs in a transaction which makes a prior written or oral disclosure required by this section incomplete, misleading, or inaccurate, the licensee shall promptly make a revised written disclosure if the prior disclosure was in writing, or a revised oral disclosure if the prior disclosure was made orally, to the buyer or seller, or both, as the case may be. Any revised written disclosure shall include the date of the revised disclosure and be acknowledged separately by the signature of the buyer or seller, or both, as the case may be.

(j) The obligation of either the seller or buyer to pay compensation to a brokerage firm is not determinative of the agency relationship.

(k) Nothing in this chapter shall affect the validity of title to real property transferred, based solely on the reason that any licensee failed to conform to the provisions of this chapter. [Eff
°°°°°°°°°°°°°°°°] (Auth: HRS §467-4) (Imp: HRS §467-14(12))

§16-99.1-5 Client's account; trust funds; properties other than funds. (a) Every brokerage firm that does not immediately place all funds entrusted to the brokerage firm in a neutral escrow depository, shall maintain a trust fund account in this State with some bank or recognized depository, which is federally insured, and place all entrusted funds therein. The trust fund account shall designate the principal broker as trustee and all trust fund accounts, including interest bearing accounts, shall provide for payment of the funds upon demand.

(b) Every brokerage firm shall retain for at least three years records of all trust funds which the brokerage firm has received. All records and funds shall be subject to inspection by the commission or

its representative. The three-year requirement shall be for real estate license law purposes only. The brokerage firm may be required to keep records for a longer period of time for other purposes. The records shall be kept in Hawaii in accordance with standard accounting principles and shall clearly indicate the following:

- (1) Names of the persons from whom funds are received, for whom deposited, and to whom disbursed;
- (2) Dates of receipt, deposit, withdrawal, and disbursements, and amounts received, deposited, withdrawn, and disbursed;
- (3) Description of the trust fund and the purpose for its establishment;
- (4) Purposes for the money; and
- (5) Other pertinent information concerning the trust fund transactions.

(c) Trust fund accounts shall be either interest bearing or non-interest bearing, as agreed to in writing between the owner of funds and the principal broker or broker-in-charge receiving the funds and all other individuals who are parties to the real estate agreement. For interest bearing accounts, these same parties to the real estate agreement shall also agree in writing as to who shall pay for any early withdrawal penalty. The principal broker or broker-in-charge shall keep any interest belonging to others in the trust fund account and shall not commingle the accrued interest with the brokerage firm's, principal broker's, or broker-in-charge's general operating account or with the brokerage firm's, principal broker's, or broker-in-charge's own funds. All agreements relating to disbursements of the accrued interest from the client trust account shall be in writing, signed by the owner of the trust fund, the principal broker or broker-in-charge receiving the funds, and all other individuals who are parties to the real estate agreement. The interest accrued on any trust account deposit shall be disbursed in strict compliance with the written disbursement agreement.

In the absence of a written agreement, any interest accrued shall be paid to the owner of the funds.

(d) Every brokerage firm shall deposit or place trust funds received into a neutral escrow depository or in a trust fund account with some bank or recognized depository, which is federally insured, by the next business day following their receipts. The neutral escrow depository shall be located in the same state where the property is located.

(e) Each principal broker or broker-in-charge who receives personal property, other than funds, in trust for other people, shall safeguard the property by placing the property by the next business day in a secure place located in the State.

(f) The principal broker or broker-in-charge shall retain for at least three years records of all personal property other than trust funds coming into the possession of the principal broker or broker-in-charge as trustee. All records of the personal property held in trust shall be subject to inspection by the commission or its representative and kept in the State at the place of business. The records shall clearly indicate the following:

- (1) Date of receipt of the personal property to be held in trust;
- (2) A description of and the type of trust property received;
- (3) From whom the personal property held in trust was received;
- (4) For whose benefit the personal property is being held in trust; and
- (5) The date and to whom the personal property is to be delivered.

(g) Property of others coming initially into the possession, custody, or control of a salesperson or broker-salesperson, to be held in trust for the benefit of the depositor or third persons, shall be received on behalf of the salesperson's or broker-salesperson's principal broker or broker-in-charge, and shall be delivered immediately by the next business day after receipt to the salesperson's or broker-salesperson's principal broker or broker-in-

charge, unless the salesperson or broker-salesperson is instructed as to another time in writing by the depositor. The received property shall include but not be limited to: cash or checks as down payments, earnest money deposits, security deposits, and rental income; other checks payable to third persons or trust accounts; and personal property other than cash or checks.

(h) The principal broker or broker-in-charge shall not commingle client's funds with other moneys; provided, however, it shall not constitute commingling to:

- (1) Hold an uncashed check until acceptance of an offer when directed to do so by the buyer or offeror;
- (2) Hold an uncashed check after acceptance of an offer when directed to do so by the seller or offeree; or
- (3) Maintain a minimum amount in the client's account to keep the account open.

The fact that a check is being held in an uncashed form in paragraph (2) shall be specifically disclosed in writing to the seller or offeree before acceptance of the offer. Commingling of the client's funds with other moneys shall include, but not be limited to, keeping undisputed commissions, management fees, and other fees in the brokerage firm's client trust account beyond a reasonable time after those commissions, management fees, and other fees have been earned.

(i) A salesperson, broker-salesperson, or employee shall not handle trust properties in any way without the express written authorization of the person's principal broker or broker-in-charge. A principal broker or broker-in-charge may authorize a salesperson, broker-salesperson, or employee, in writing, to place trust properties on behalf of the brokerage firm anywhere the principal broker or broker-in-charge could place them, but shall not authorize any other disposition. A principal broker or broker-in-charge shall be held responsible for any trust properties the principal broker or broker-in-

charge authorizes a salesperson, broker-salesperson, or employee to handle.

(j) A principal broker or broker-in-charge shall not allow any person to have custody or control of trust properties held by the principal broker or broker-in-charge except as provided in chapter 467, HRS, and this chapter.

(k) A principal broker may allow a broker-in-charge to have custody and control of trust properties on behalf of the principal broker. The principal broker and broker-in-charge shall be jointly responsible for any trust properties the principal broker authorizes the broker-in-charge to handle.

(l) Information about escrow accounts and records for real estate transactions under the real estate brokerage firm shall be retained for at least three years, subject to inspection by the commission or its representative at the place of business. [Eff 0000000000000000] (Auth: HRS §467-4) (Imp: HRS §§467-1.6, 467-14)

§16-99.1-6 Notification and filing of names, addresses, and changes. (a) Each individual licensee shall file with the commission and shall notify the commission of any change in writing, within ten days of the change, on a form provided by the commission:

- (1) The licensee's legal name, residence address, and mailing address; and
- (2) The name and license number of the brokerage firm with whom the licensee is employed or associated.

(b) Each brokerage firm shall file with the commission:

- (1) The address of the brokerage firm's principal place of business and the name and license number of the principal broker and each broker-in-charge;
- (2) The address of each branch office;

- (3) The name and license number of each licensee employed by or associated with the brokerage firm; and
- (4) In the case of a partnership, corporation, or limited liability company, the names and addresses of the partners, officers and directors, or members and managers as the case may be.
- (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

(c) Upon closing the principal place of business or a branch office, the principal broker or broker-in-charge shall immediately notify the affected licensees. Within ten days of the date of closing the principal place of business, the principal broker shall provide the commission in writing on a form provided by the commission, the names and license numbers of the affected licensees.

(d) A principal broker or broker-in-charge shall release a licensee from employment or association within ten days upon written request. Any individual licensee who changes employing or associating brokerage firm shall notify the commission in writing, on a form provided by the commission, within ten days of the change, or immediately place the individual's license on inactive status.

(e) Any licensee whose license has been forfeited, suspended, revoked, or terminated shall immediately cease employment and shall return the licensee's wall certificate and identification card to the commission.

(f) A licensee who resides in another state or country shall be subject to receipt of service of process by the principal broker or broker-in-charge on the licensee's behalf.

(g) All changes submitted to the commission pursuant to this section shall be effective as of the dates indicated on a form provided by the commission.

(h) The principal broker or any broker-in-charge of the brokerage firm may sign the form submitted to the commission to report changes pursuant to this section.

(i) A licensee shall be subject to disciplinary action for failure to submit notifications required by this section within ten days of the change. [Eff
°°°°°°°°°°°°°°°°] (Auth: HRS §467-4) (Imp: HRS
§§467-1.5, 467-8, 467-11, 467-12)

§16-99.1-7 Involuntary inactive license status.

(a) An individual's license shall be placed on an involuntary inactive status upon the occurrence of one or more of the following:

- (1) The principal broker's license is placed on an inactive, forfeited, suspended, revoked, or terminated status;
- (2) The brokerage firm, whether a corporation, limited liability company, or partnership, with which the licensee is affiliated or employed, is no longer registered with the business registration division;
- (3) The license of the licensee's brokerage firm is placed on an inactive, terminated, revoked, forfeited, or suspended status;
- (4) The principal broker is unable to act in the case of prolonged illness or death and no temporary principal broker has been designated pursuant to section 16-99.1-3(o);
- (5) The brokerage firm has no approved place of business; and
- (6) The principal broker is absent from the place of business for more than thirty calendar days, or moves out-of-state, and no commission approved temporary principal broker or broker-in-charge has been designated pursuant to section 16-99.1-3(o).

(b) A branch office license shall be placed on an involuntary inactive status upon the occurrence of one or more of the following:

- (1) The license of the brokerage firm or the principal broker is placed on an inactive, forfeited, suspended, revoked, or terminated status; and
- (2) The principal broker is unable to act in the case of prolonged illness or death and no commission approved temporary principal broker or broker-in-charge has been designated pursuant to section 16-99.1-3(o).

(c) A principal broker or broker-in-charge may place an individual licensee associated with or employed by the brokerage firm on an involuntary inactive status after written notification to the affected individual licensee.

(d) A brokerage firm's license, whether a corporation, limited liability company or partnership, shall be placed on an involuntary inactive status upon the occurrence of one or more of the following:

- (1) The principal broker's license is placed on an inactive, forfeited, suspended, revoked, or terminated status;
- (2) The brokerage firm is no longer registered with the business registration division;
- (3) The principal broker is unable to act in the case of prolonged illness or death and no temporary principal broker has been designated pursuant to section 16-99.1-3(o);
- (4) The brokerage firm has no approved place of business; and
- (5) The principal broker is absent from the place of business for more than thirty days, or moves out-of-state, and no commission approved temporary principal broker or broker-in-charge has been designated pursuant to section 16-99.1-3(o). [Eff
 °°°°°°°°°°°°°°°°] (Auth: HRS §467-4)(Imp:
 HRS §§467-7, 467-11, 467-12)

§16-99.1-8 Statewide license. A brokerage firm may associate or employ a salesperson or broker-

salesperson who resides on an island different from that of the principal place of business, provided that:

- (1) The principal broker shall maintain compliance with section 467-1.6, HRS, and all other requirements for supervision;
- (2) The salesperson or broker-salesperson shall not maintain or advertise a place of business other than the principal place of business;
- (3) Any advertisements on an island different from that of the principal place of business shall disclose the name of the brokerage firm and the address and phone number of the principal place of business;
- (4) All agency disclosures required by section 16-99.1-4 shall include that the principal place of business is located on a different island; and
- (5) The salesperson or broker-salesperson shall provide clients with an effective means of communication with the principal broker, at no cost to the client. [Eff
.....] (Auth: HRS §467-4) (Imp:
HRS §§467-1.6, 467-12)

§16-99.1-9 Display of license. The brokerage firm's certificate of license shall be conspicuously displayed in the principal place of business. [Eff
.....] (Auth: HRS §467-14) (Imp: HRS
§§467-8, 467-12)

§16-99.1-10 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. When the renewal deadline falls on a non-working day,

renewal fees paid by mail shall be considered as paid when due if the envelope bears a postmark of no later than the first working day thereafter. Failure to submit a completed renewal application and failure to pay the renewal fee when due, or if the check is not honored by the bank for whatever reason, shall constitute automatic forfeiture of license. The principal broker shall ensure that all licensees are currently licensed at all times during employment or association. [Eff *****] (Auth: HRS §467-4) (Imp: HRS §§467-1.6, 467-11, 467-14)

§16-99.1-11 Suspended license. The commission, as a form of disciplinary action against a licensee, 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 pursuant to section 92-17(c)(3), HRS. If the licensee fails to file for reinstatement within thirty days after the end of the suspension, the license shall be forfeited. [Eff *****] (Auth: HRS §467-4) (Imp: HRS §§92-17(c)(3), 436B-20, 467-8, 467-9, 467-9.6, 467-14)

§16-99.1-12 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 of section 467-9.5, HRS, pursuant to section 16-99.2-14. [Eff *****] (Auth: HRS §467-4) (Imp: HRS §§467-8, 467-9, 467-14)

§16-99.1-13 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. [Eff 0000000000000000] (Auth: HRS §467-4) (Imp: HRS §§92-17(c) (3), 467-9)

§16-99.1-14 Surrender of real estate license.

(a) 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 cease conducting any real estate activities.

(b) Should an individual desire to engage in any real estate activities the individual shall obtain a new license as a new applicant for a salesperson license. [Eff 0000000000000000] (Auth: HRS §467-4) (Imp: HRS §§467-7, 467-10)

§16-99.1-15 Advertisement.

(a) All real estate advertising and promotional materials, including solicitation materials, shall prominently and conspicuously 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, 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). 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). A brokerage firm may:

- (1) Abbreviate "Incorporated", "Corporation", "Limited", "General Partnership", "Limited

Partnership", "Limited Liability Company", or "Limited Liability Partnership" from the licensed name; and

(2) Use "dba" in conjunction with the licensed name and a trade name.

(b) No licensee shall advertise "For Sale by Owner", "For Rent by Owner", "For Lease by Owner", or "For Exchange by Owner."

(c) Current individual real estate licensees on inactive status shall disclose the licensee's inactive status in all advertising and promotional material.

(d) A leasehold property advertised for sale in any medium shall be identified by the word "leasehold".

(e) All advertising and promotional materials that refer to the individual licensee's name, including but not limited to business cards, shall:

(1) Include the licensee's legal name, name as licensed by the commission, or sole proprietor's trade name as licensed by the commission;

(2) Identify the licensee with the licensee's associating or employing brokerage firm; and

(3) Include the licensee's license number as issued by the commission.

(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.

(g) 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.

(h) 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.

(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.

(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.

(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. [Eff °°°°°°°°°°°°°°°°] (Auth: HRS §467-4)
(Imp: HRS §467-7)

§16-99.1-16 Team name. (a) As used in this section:

"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.

"Team name" means a name that complies with this section and is assigned by the principal broker to a team.

(b) Prior to using a team name, a brokerage shall register the team name with the commission, provided that:

- (1) The team name is currently registered by the brokerage as a trade name with the business registration division; and
- (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:
 - (A) Company or any abbreviation of the term;
 - (B) Limited or any abbreviation of the term, including but not limited to, Ltd., LLC, LLLC, LLP, LLLP;
 - (C) Corporation or any abbreviation of the term;
 - (D) Incorporated or any abbreviation of the term;
 - (E) Partners or partnership or any abbreviation of the terms;
 - (F) Proprietor, proprietors, proprietorship, or any abbreviation of the term;
 - (G) Association or any abbreviation of the term;
 - (H) Organization or any abbreviation of the term;
 - (I) Realty;
 - (J) Real estate;
 - (K) Any other word the commission determines to be misleading.

(c) The principal broker shall develop 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;

(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

(e) The team name shall be 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. [Eff 0000000000000000] (Auth: HRS §467 4) (Imp: HRS §467 7)

§16-99.1-17 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. [Eff 0000000000000000] (Auth: HRS §467-4) (Imp: HRS §467-25)

SUBCHAPTER 2

PRACTICE AND PROCEDURE

§16-99-18 Administrative practice and procedure. The rules of practice and procedure for real estate shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff 0000000000000000] (Auth: HRS §§91-2, 442-5) (Imp: HRS §§91-2, 442-5)

SUBCHAPTER 3

RECOVERY FUND

§16-99.1-19 Recovery fund settlement procedures.

Upon the occurrence of all of the following, the commission may settle any subsequent claim against the real estate recovery fund involving a licensee that was previously named in an order and on whose behalf the commission had been required to make payments out from the recovery fund:

- (1) The claimant is seeking recovery against the same licensee as named in an order for which the commission had been required to make a payment from the recovery fund;
- (2) The claimant is similarly situated as the claimant named in an order for which the commission has been required to make a payment from the recovery fund;
- (3) The claimant notifies the commission in writing within the same time period specified in section 467-18, HRS, that it has commenced an action for a judgment which may result in collection from the real estate recovery fund;
- (4) The claimant files a verified claim with the commission stating with particularity the reasons, grounds, and evidence in support of claimant's request for settlement directly with the commission;
- (5) The claimant gives reasonable notice to the licensee at the licensee's last known address by registered or certified mail, restricted delivery to addressee only, return receipt requested that claimant intends to settle the claim directly with the commission together with a copy of the verified claim. Where it is impossible to give licensee notice by mail, claimant shall give notice to licensee by publication once in a newspaper of general circulation in the State, that the claimant intends to settle the claim directly with the commission, a summary of the reasons, grounds, and

evidence supporting claimant's relief from the recovery fund. Any notice given shall also contain a statement to the effect that any payment from the recovery fund shall result in an automatic termination of the licensee's license;

- (6) The licensee has had an opportunity to respond within a reasonable time, in writing, to claimant's verified claim;
- (7) That claimant is not a spouse of the licensee, or the personal representative of such spouse;
- (8) The claimant has made all reasonable searches and inquiries to ascertain whether the licensee is possessed of real or personal property or other assets, which may be used to satisfy the claim and that by such search the claimant has discovered no such assets;
- (9) The commission is satisfied, that there is sufficient evidence to support a settlement of the claim; and
- (10) The settlement is in the best interest of the real estate recovery fund. [Eff
.....] (Auth: HRS §467-4) (Imp:
HRS §467-16)

SUBCHAPTER 4

ORAL TESTIMONY

§16-99.1-20 Oral testimony. (a) The commission shall accept oral testimony on any item which is on the commission's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall so notify the commission no later than forty-eight hours prior to the

- meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The commission may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the commission;
 - (3) The commission may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
 - (4) Persons presenting oral testimony, at the beginning of the testimony, shall identify themselves and the organization, if any, that they represent;
 - (5) The commission may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
 - (6) The commission may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this chapter shall require the commission to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another pending proceeding subject to the hearing relief, declaratory relief, or rule relief provisions of chapter 16-201.

(c) Nothing in this chapter shall prevent the commission from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the commission on any particular matter on the commission's agenda." [Eff

.....] (Auth: HRS §467-4) (Imp: HRS §92-3)

2. The adoption of chapter 99.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on M DD, YYYY, and filed with the Office of the Lieutenant Governor.

CATHERINE P. AWAKUNI-COLÓN
Director, Department of
Commerce and Consumer Affairs

APPROVED AS TO FORM

Deputy Attorney General