

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 99.2
Hawaii Administrative Rules

M DD, YYYY

1. Chapter 99.2, Hawaii Administrative Rules,
entitled "Real Estate Licensing", is adopted to read
as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 99.2

REAL ESTATE LICENSING

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-99.2-1 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)

§16-99.2-2 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 0000000000000000]
(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)

SUBCHAPTER 2

APPLICATIONS

§16-99.2-3 Forms and 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 pursuant to chapter 91, HRS. [Eff
°°°°°°°°°°°°°°°°] (Auth: HRS §467-4) (Imp: HRS
§§26-9(k), 467-9, 467-9.6, 467-11, 467-14)

§16-99.2-4 License applications. (a) All applications for a real estate salesperson or broker license shall be accompanied by:

- (1) The required fee; and
- (2) Supporting documents to satisfy the applicable education and experience requirements. Applications not accompanied by supporting documents shall be rejected. In the event an applicant has not satisfied the applicable education and experience requirements, the applicant's examination score shall be declared void and license application rejected.

(b) An application for a branch office registration shall be accompanied by the required branch office registration fee. [Eff °°°°°°°°°°°°°°°°] (Auth: HRS §467-4) (Imp: HRS §467-9)

§16-99.2-5 License name. (a) An individual may designate a license name different from the individual's legal name, provided that:

- (1) The license name of individual broker, broker-salesperson, or salesperson:
 - (A) Shall include the individual's full legal surname;
 - (B) May include the individual's initials, full legal first name, full legal middle name, full legal name, or nickname; and
 - (C) May retain the individual's former legal surname if the surname is legally changed subsequent to licensing, provided that the change is reported pursuant to section 16-99.1-6;

- (2) The license name of a sole proprietor broker:
 - (A) Shall comply with the provisions of paragraph (1); and
 - (B) May include a trade name currently registered by the broker with the business registration division and with the commission, provided that the trade name complies with section 467-9, HRS.
- (b) The license name of a corporation, limited liability company, or partnership:
 - (1) Shall be its legal name, provided that the name complies with section 467-9, HRS; and
 - (2) May include a trade name currently registered by the entity with the business registration division and with the commission, provided that the trade name complies with section 467-9, HRS.[Eff
 °°°°°°°°°°°°°°°°] (Auth: HRS §467-4) (Imp: HRS §467-9)

§16-99.2-6 Experience certificate application.

- (a) Candidates for the broker examination shall submit to the commission a completed experience certificate application together with:
 - (1) A nonrefundable application fee; and
 - (2) A certified statement by the principal broker or a broker in charge of each of applicant's brokerage firms that attests to the length of time that the applicant has been actively associated or employed full-time with the brokerage firm. Applicants shall have experience in this State as a full-time Hawaii-licensed real estate salesperson, associated as an employee or independent contractor with an active Hawaii-licensed brokerage firm, for at least three years within the five-year period immediately prior to the application for experience certificate.

(b) "Full-time" means averaging at least forty hours a week devoted to real estate salesperson activity. No pro rata credit shall be given to part-time real estate salesperson activity.

(c) The commission shall verify the applicant's dates of employment or association with each brokerage firm, and dates of release from the firm's employment or association, on the experience certification statements with the records of the commission. An applicant shall not receive credit for any experience for periods during which the applicant's license was inactive, forfeited, suspended, revoked, or terminated.

(d) The commission may grant an equivalency for the experience requirement based on real estate license experience in another state with similar education requirements; provided that an out-of-state applicant shall have experience as a full-time licensed real estate salesperson with an active out-of-state brokerage firm, for at least three years within the five-year period immediately prior to the application for experience certificate; or possess a current, unencumbered out-of-state real estate broker's license. All requests for equivalency to the experience requirement shall be submitted in writing together with all required documents of an official nature with the experience certification application.

(e) The commission may reject an application for experience certificate if the application is incomplete or if the applicant's real estate salesperson license is in forfeited, suspended, revoked, or terminated status.

(f) If the applicant has satisfied the three-year full-time experience requirement, the commission shall issue to the applicant an experience certificate that shall be valid for two years from the date of issuance. The experience certificate shall be produced at the applicant's examination appointment and submitted with the applicant's application for individual broker license. [Eff

(Auth: HRS §467-4) (Imp: HRS §467-9.5)

§16-99.2-7 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 therefor 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. [Eff 0000000000000000] (Auth: HRS §467-4) (Imp: HRS §467-15)

§16-99.2-8 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; and 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. [Eff 0000000000000000] (Auth: HRS §467-4) (Imp: HRS §467-15)

§16-99.2-9 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. [Eff 0000000000000000] (Imp: HRS §467-15)

§16-99.2-10 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. [Eff *****] (Auth: HRS §467-4) (Imp: HRS §467-14)

SUBCHAPTER 3

EXAMINATION

§16-99.2-11 Examination for broker and salesperson license. (a) No license shall be issued to any individual unless the individual takes and passes an examination as prescribed by the commission for the license applied for. The minimum passing score for the uniform and the State portions of the examination shall be seventy for salesperson applicants and seventy-five for broker applicants. Any individual who fails to obtain a passing score in any part of the examination shall repeat that part of the examination. Failure to obtain a passing score in all parts thereof within the two-year period after the first examination date, shall result in failure of the examination as a whole and the entire examination shall be repeated by the candidate.

(b) Any eligible individual shall forfeit the examination fee if the individual does not sit for the examination.

(c) Unsuccessful candidates, rejected applicants, and individuals granted withdrawal who wish to sit for subsequent examinations shall file a new application and comply with all requirements each time.

(d) The examinations shall be given on dates and at locations as determined by an agreement between the commission and a professional testing service, and may include examination locations outside the State.

(e) Examinations shall be conducted in accordance with procedures formulated by the testing agency authorized by the commission to administer examinations. Failure to follow such procedures shall result in immediate disqualification from the examination and may bar candidates from being examined in any future examinations.

(f) Any individual who passes the salesperson or broker examination shall be required to apply for the individual's active or inactive license within two years of the individual's last examination date. Failure to apply for a license within two years of the last examination date shall cause the examination and license application to be abandoned pursuant to section 436B-9, HRS, and the individual shall be required to pass the examination again.

(g) At the location for examination, all candidates for salesperson or broker examination shall present a current real estate school completion certificate or current education equivalency certificate. Candidates for broker examination also shall present a current experience certificate at the examination location. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-9) (Imp: HRS §§467-8, 467-9, 467-9.5)

§16-99.2-12 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. [Eff 0000000000000000] (Auth: HRS §467-4) (Imp: HRS §467-8)

SUBCHAPTER 4

EDUCATION AND EXPERIENCE

§16-99.2-13 Education requirement. The education requirement for the salesperson license examination shall be satisfied by successful completion of a curriculum in real estate at an accredited institution, consisting of a minimum of sixty class hours and conforming to the approved curriculum for salesperson adopted by the commission or such equivalent education or experience as shall be determined by the commission. The education requirement for the broker license examination shall be satisfied by successful completion of a curriculum in real estate at an accredited institution, consisting of a minimum of eighty class hours and conforming to the approved curriculum for brokers adopted by the commission or equivalent education or experience as shall be determined by the commission. A "class hour" as used in this section means sixty minutes of classroom instruction. [Eff
*****] (Auth: HRS §467-4) (Imp: HRS §§467-8, 467-9.5)

§16-99.2-14 Education equivalency. (a) The commission may grant an equivalency to the respective education requirements for applicants for the salesperson license examinations for:

- (1) Those who hold a current license that was active within one year immediately prior to the date of application as a salesperson or broker in another state with similar or superior education requirements as determined by the commission;
- (2) Graduates of an accredited law school in the United States; or

- (3) Bachelor of arts or bachelor of science degree graduates of accredited colleges and universities in the United States who have majored in real estate or business.
- (b) The commission may grant an equivalency to the respective education requirements for applicants for the broker license examinations for:
 - (1) Those who hold a current license that was active within one year immediately prior to the date of application as a broker in another state with similar or superior education requirements as determined by the commission; and
 - (2) Graduates of an accredited law school in the United States.
- (c) All requests for equivalency to the educational requirements shall be submitted in writing, together with all supporting documents of an official nature to the commission for its review, prior to filing the application for examination.
- (d) An approved education equivalency shall be valid for two years from the date of issuance. [Eff °°°°°°°°°°°°°°°°] (Auth: HRS §467-4) (Imp: HRS §467-9.5)

§16-99.2-15 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. [Eff °°°°°°°°°°°°°°°°] (Auth: HRS §467-4) (Imp: HRS §467-19)

SUBCHAPTER 5

CONDOMINIUM HOTEL OPERATORS

§16-99.2-16 Registration. (a) Registrations made pursuant to section 467-30, HRS, shall expire on December 31 of each even-numbered year.

(b) All business entities registered pursuant to section 467-30(b), HRS, with the exception of sole proprietors, shall be currently registered, duly authorized, and in good standing with the business registration division.

(c) Trade names used by condominium hotel operators shall be currently registered with the commission and also currently registered, authorized by, and in good standing with the business registration division.

(d) On or before the commission prescribed deadline of each even-numbered year, condominium hotel operators shall submit a complete reregistration application form, pay appropriate fees, submit evidence of a fidelity bond policy, and submit any other additional information substantiating compliance with the registration requirements of section 467-30, HRS, or be deemed by the commission as unregistered and subject to new registration application requirements.

(e) Within ten days of any changes, the condominium hotel operator shall notify the commission, in writing, of any changes in the information contained on the registration or reregistration application, exemption, or exclusion forms.

(f) A registration application made pursuant to section 467-30(g)(2), HRS, shall be submitted to the commission. The applicant shall certify for each condominium project, unless otherwise approved by the commission, zoning information that the condominium hotel is in a hotel or transient lodging zone; together with submitting true copies of the condominium project declaration and bylaws certified

by the bureau of conveyances or land court containing specific language permitting transient lodgings for periods of less than thirty days. [Eff °°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-11, 467-30) (Imp: HRS §467-30)

§16-99.2-17 Condominium hotel operations. The condominium hotel operator shall operate only in areas specifically authorized by county zoning codes. The condominium project declaration and bylaws shall specifically permit transient lodging of less than thirty days. [Eff °°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§16-99.2-18 Who may register as a condominium hotel operator. (a) Only those persons who do not hold a real estate license, either salesperson or broker, may register as a condominium hotel operator.

(b) Where an entity includes the following persons holding a real estate salesperson or broker's license, that entity may not register as a condominium hotel operator:

- (1) General partner or employee of a partnership condominium hotel operator;
- (2) An officer or employee of a corporation condominium hotel operator;
- (3) A member of a member-managed limited liability company condominium hotel operator; or
- (4) A principal having direct management and responsibility over condominium hotel operations, including performing or facilitating the delivery of customary hotel services. [Eff °°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§16-99.2-19 Fidelity bond. (a) The fidelity bond shall be issued by a company currently authorized by the insurance commissioner of Hawaii to issue insurance in this State.

(b) Unless otherwise approved by the commission, the fidelity bond shall:

- (1) Name the department of commerce and consumer affairs as the certificate holder;
- (2) Provide the department of commerce and consumer affairs with written notification at least thirty calendar days prior to its cancellation or termination;
- (3) Provide coverage for condominium hotel operator activity only;
- (4) Name the condominium hotel operator registrant only as the insured and exclude any other person, trade name, or business entity as the named insured;
- (5) Specify that it is a fidelity bond and whether it is a blanket or name schedule type, and if a name schedule type, lists all persons covered;
- (6) Specify an expiration date or that it is continuous;
- (7) Specify if the bond contains a deductible provision or a nondeductible provision; and
- (8) Provide other information as requested by the commission.

(c) The amount of the deductible shall not exceed the greater of \$2,000 or five per cent of the face amount of the fidelity bond. In no case shall the amount of the deductible exceed the maximum deductible amount of \$5,000.

(d) When the fidelity bond is a name schedule bond, the condominium hotel operator shall:

- (1) Provide a certified statement listing the names of all persons handling or having control of the funds received by the condominium hotel operator; and
- (2) Provide any changes in the listing of names submitted pursuant to subsection (d)(1), on an amended certified statement within ten

calendar days of the change and an original of the amended fidelity bond policy.

(e) Unless otherwise approved by the commission, the fidelity bond shall not contain a criminal conviction endorsement or rider which requires the prosecution or conviction of the employee as a condition precedent to recovery on the bond.

(f) The commission shall terminate the registration of a condominium hotel operator for failure to maintain a fidelity bond in compliance with section 467-30, HRS, and this chapter.

(g) The fidelity bond shall not be required of an individual owner providing apartments or units for transient lodging; provided that ownership of the apartment or unit is in the individual owner's name and not in an entity's name; and provided further that the owner has no employees. Where the individual owner has an employee, the individual owner shall obtain and maintain a fidelity bond. [Eff *****]
(Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§16-99.2-20 Client's trust funds, accounting, and records.

(a) Condominium hotel operators, including condominium hotel operators who are precluded from holding a license as a real estate broker or real estate salesperson pursuant to 467-30(g)(2), HRS shall comply with section 16-99.1-5. For purposes of compliance, when the condominium hotel operator is not a real estate broker, references to broker or principal broker in section 16-99.1-5 shall also mean "condominium hotel operator."

(b) The condominium hotel operator shall not commingle the client's trust funds with funds of other activities such as the association of apartment owners, lease rent, condominium managing agent, or the condominium hotel operator's own funds.

(c) The records of the client's trust funds shall not be commingled with the records of other activities such as association of apartment owners, condominium managing agents, or the condominium hotel

operator's own funds. Upon demand, the records of the client's trust funds shall be subject to inspection by the commission or its representative. [Eff
°°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-30) (Imp:
HRS §467-30)

§16-99.2-21 Conduct. (a) The condominium hotel operator shall ensure that the terms and conditions agreed upon between the apartment or unit owner and the condominium hotel operator for operating a condominium hotel are in writing, and that a copy is given to each apartment or unit owner. The terms and conditions shall include but are not limited to financial obligations, responsibilities, and duties of the condominium hotel operator.

(b) The condominium hotel operator shall not accept any compensation, commission, rebate, or profit on any expenditure for or from an apartment or unit owner, without the apartment or unit owner's knowledge and written consent.

(c) The condominium hotel operator shall provide a monthly written accounting of the apartment or unit owner's funds or a periodic written accounting based on the contractual agreement.

(d) The condominium hotel operator and its employees shall not violate any provisions of chapter 514A, HRS, 514B, HRS, or the rules adopted pursuant thereto, and where the condominium hotel operator or its employees possess a real estate license, the licensees shall also not violate any provisions of chapter 467, HRS, and the rules relating thereto." [Eff
°°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-30)
(Imp: HRS §467-30)

2. The adoption of chapter 99.2, 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