

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 99.3
Hawaii Administrative Rules

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1. Chapter 99.3, Hawaii Administrative Rules, entitled "Real Estate Schools and Continuing Education", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 99.3

REAL ESTATE SCHOOLS AND CONTINUING EDUCATION

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-99.3-1 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)

§16-99.3-2 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 *****]
(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

REGISTERED REAL ESTATE SCHOOLS

§16-99.3-3 Policy. (a) A registered school shall not offer courses which may be used to fulfill the educational requirements for a real estate license unless it first registers with the commission and complies with the requirements of this subchapter.

(b) "School" as used in this subchapter includes, but is not limited to, a private school, or an accredited college or university offering courses used to fulfill the educational requirements for initial licensing. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99.3-4 Registered school. (a) A registered school shall be a school which applies for a certificate of registration from the commission and which is found by the commission to have met the requirements imposed by chapter 467, HRS, and this chapter.

(b) A registered school shall have on file at the school's principal office, for commission inspection upon request, unit and daily lesson plans implementing the school's approved curriculum. Such plans should specify at minimum: the objectives of the unit and daily lesson plan stated in student performance terms; and an evaluative method to determine that the students have been taught the objectives of the unit and daily lesson. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §§467-9.5, 467-25.5)

§16-99.3-5 Independent study courses. (a) Independent study courses shall conform to commission-approved curricula and shall meet the specific standards of this section and all other applicable requirements of this chapter.

(b) An independent study course for satisfaction of the salesperson education requirement shall reasonably

require the student to expend a minimum of sixty hours in completing the course. An independent study course for satisfaction of the broker education requirement shall reasonably require the student to expend a minimum of eighty hours in completing the course.

(c) Every registered school offering an approved independent study course for satisfaction of the salesperson or broker education requirement shall:

- (1) Be available to answer students' questions or provide them assistance as necessary;
- (2) Provide reasonable oversight of students' work in order to ensure that the student who completes the work is the student who is enrolled in the course;
- (3) Obtain from each student the following certification statement:
"I certify that I have personally completed each assigned module of instruction.

- | | |
|------|----------------------|
| | |
| Date | Student's Signature" |
- (4) Certify students as successfully completing an independent study course only if the student has:
- (A) Completed all instructional modules required to demonstrate mastery of the material, and
 - (B) Passed the final examination. [Eff
°°°°°°°°°°°°°°°°] (Auth: HRS §§467-4,
467-5.5) (Imp: HRS §467-25.5)

§16-99.3-6 Application for registration. (a) A registration shall be granted to the owner for a specific school registered under a particular name to teach specific real estate courses.

(b) Application for the initial registration of a school shall be made to the commission not less than ninety days before the opening date of the school.

(c) The following shall accompany an application:

- (1) Current certificates of clearance from the county building department, the county fire department, and the state department of health for each classroom;
- (2) A description of the courses to be offered which contains the course title, curriculum, curriculum objectives in student performance terms, evaluative procedure to be used to demonstrate the accomplishment of the curriculum objectives and procedures for student evaluation of the instructor;
- (3) A copy of the student enrollment or student registration form;
- (4) A copy of the school catalogue or brochures and a statement of the content of advertising and the media to be used;
- (5) A schedule of all fees, tuition, and charges to be made, including the advance deposit charged per student and statement of refund procedures;
- (6) The name and qualifications of the school's principal;
- (7) The names of the school's instructors and the instructors' teaching qualifications and experience;
- (8) A surety bond to the commission conditioned for the protection of the contractual rights of real estate students in an amount equal to the sum of:
 - (A) The maximum number of students permitted in each broker classroom as determined by the county building department multiplied by the advance deposit charged per student for the broker course multiplied by the maximum number of broker courses to be held at any one time during the first year of the school's registration; and
 - (B) The maximum number of students permitted in each salesperson classroom

as determined by the county building department multiplied by the advance deposit charged per student for the salesperson course multiplied by the maximum number of salesperson courses to be held at any one time during the first year of the school's registration. In no event shall the amount of the bond be less than \$2,000. The bond shall be issued by a surety authorized to do business in the State. An accredited college or university shall not be required to submit to the commission a surety bond or license fee as required by this section;

(C) No bond shall be required to cover real estate students only enrolled in an independent study course delivered electronically or as approved by the commission;

(9) A license fee;

(10) A statement of ethical practices;

(11) If the applicant is a partnership, the names of the partners in the entity and a copy of the partnership agreement;

(12) If the applicant is a corporation, the names of any persons who own five per cent or more of the stock of the entity, and a copy of the articles of incorporation; and

(13) Other additional information as may be required by the commission.

(d) A school shall not begin operation until it has registered with the commission.

(e) A school shall not solicit students until it has registered with the commission. However, a school in the process of obtaining a license may advertise "subject to completion of all registration requirements" and the statement shall be a part of all representations.

(f) A school shall limit its course offerings to courses approved by the commission.

(g) The registration of a school shall expire at the end of every even-numbered year. Registrations shall be renewed biennially by the commission-prescribed deadline.

(h) A school ceasing to operate shall so inform the commission and shall surrender its registration within thirty days after cessation of operations. The registration of such a school shall be canceled automatically thirty days after cessation of operations unless a longer period of inactivity has been applied for in writing and approved by the commission. For the purposes of this subsection, "a school ceasing to operate" means a school which has not held any classes for a period of three months.

(i) A registered school shall not conduct classes when it has been notified by the appropriate county agency that the conditions existing at the school's facilities violate county building, fire, or health codes. The school may resume its operations when it has remedied the violation. [Eff
.....] (Auth: HRS §§467-4, 467-25.5)
(Imp: HRS §467-25.5)

§16-99.3-7 Alternative forms of school bond.

(a) Where a surety bond required by sections 16-99.3-6 and 16-99.3-18 cannot reasonably be secured and the school owner has received three letters rejecting the owner's application for a surety bond, the commission, after a review of the reasons for rejection, may accept other alternative forms of security including but not limited to:

- (1) Submission of an executed agreement between the school owner and two other commission-approved registered real estate school owners guaranteeing that they will honor all students' contracts that were signed or approved by the school owner should the owner be unable to complete the instructing of such courses because of the owner's death, disability, bankruptcy, or extended

absence from the State beyond four months;
and

- (2) Submission of one of the following: a certificate of deposit from a federally insured institution, in the amount equal to the required bond; a cashier's check from a federally insured institution, in the amount equal to the required bond; an irrevocable letter of credit on a form approved by the commission drawn upon a bank or savings and loan association, in the amount of the bond required; or any other alternative security approved by the commission for substitution of the bond.

(b) Any certificate of deposit, cashier's check, irrevocable letter of credit, or other approved alternative security shall be issued from a federally insured institution located in this State, made payable to the commission or in the case of a letter of credit shall designate the commission as beneficiary for the benefit of any eligible person sustaining damage resulting from the school owner's failure to faithfully, promptly, and truly perform the instruction of any real estate courses contracted to teach. The commission shall retain possession of the security as prescribed by this section for a period of six years dating from the first day of the school's registration and dating subsequently each six years from the first day of the school's biennial registration renewal. In the event any of the alternatives to the surety bond earns interest while in the possession of the commission, the interest shall belong to the school's owner. At the expiration of the six-year holding period as calculated pursuant to this section, the commission shall release all alternative forms of school bonds in amounts remaining as security if no claims have been made against any amounts during the time the commission held the security and if the school owners, heirs, personal representatives, successors, or permitted assigns execute appropriate release forms indemnifying the commission and the State.

(c) Cancellation of surety bond. A registered school that has been notified that the school's surety bond required by this subchapter has been canceled, shall not schedule any course offerings until such time that the school submits to the commission proof of a valid surety bond. [Eff 000000000000] (Auth: HRS §§26-9(p), 467-4) (Imp: HRS §467-25.5)

§16-99.3-8 Changes in school's owners. (a) Any change in the ownership status of a school shall be approved by the commission.

(b) A change in partners shall be deemed a change in ownership. Any change in ownership of fifty per cent or more of a corporation's outstanding capital stock or any change in ownership of any number of shares of stock which results in the transferee thereof becoming the owner of fifty per cent or more of the outstanding capital stock, shall be deemed a change in ownership.

(c) The new owner shall submit written evidence to the commission that, as of the effective date of the change in ownership, the new owner shall:

- (1) Assume liability for all or substantially all of the school's outstanding debts incurred as a direct result of the school's educational activities; and
- (2) Honor all student contracts that were signed or approved by the school's authorities before the effective date of the change in ownership. [Eff 000000000000] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99.3-9 Display of certificate of registration and instructor's certificate. Each school granted a certificate of registration and each instructor granted an instructor's certificate shall prominently display it in its business office at all

times. [Eff °°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99.3-10 Classrooms. (a) Every school shall have and maintain classrooms which have adequate space, seating, equipment, and instructional material. Each classroom shall be approved by the commission and shall have current certificates of clearance from the county building department, the county fire department, and the state department of health. Classrooms shall be subject to inspection by the commission prior to approval or subsequent thereto during regular school hours.

(b) Classrooms shall conform to the zoning, building, electrical, plumbing, and fire codes of the county in which the facility is located and to State rules as may be applicable to the facility. [Eff °°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99.3-11 Courses. (a) The initial curriculum and any additional courses offered by a school shall be approved by the commission.

(b) Broker and salesperson classes shall not be held together unless approved by the commission. [Eff °°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99.3-12 Faculty. (a) Each school shall designate an individual as principal.

- (b) The principal shall be responsible for:
- (1) Complying with the commission's rules relating to real estate schools;
 - (2) Providing reports and information as may be required by the commission;

- (3) Informing the commission in writing five business days prior to any changes in school policies, programs, personnel, facilities, tuition, calendar, and all other matters changing the status of the school as originally licensed;
- (4) Advertising by the school; and
- (5) Directing and supervising the school staff and program.

(c) Every instructor shall be biennially certified by the commission. Certification shall be obtained by each instructor for each course the instructor desires to teach. The commission may, prior to the instructor's initial certification and prior to any recertification, require the instructor to do either or both of the following: to complete a commission sponsored or approved instructor's workshop, or to appear before the commission to demonstrate the instructor's command of and ability to communicate the prelicense course.

(d) Each instructor shall initially take and pass an examination with a minimum passing score of eighty-five per cent or as prescribed by the commission and shall:

- (1) Hold a current and unencumbered Hawaii real estate broker's license, have at least three years full-time experience in real estate in Hawaii, and fulfill the present experience requirement for a Hawaii broker's license;
- (2) Hold a degree in law and be an attorney licensed and in practice in the area of real estate for at least two years in this State;
- (3) Hold an appointment to the real estate faculty of an accredited college or university; or
- (4) Have graduated from an accredited college or university, have at least three years full-time experience in real estate in Hawaii, and fulfill the present experience requirements for a Hawaii broker's license.

(e) Each instructor shall have had one year prior teaching experience in real estate within three

years preceding the application for certification and possess in addition to the requirements in subsection (d):

- (1) A certificate of completion from a special real estate instructor institute issued within a year immediately preceding the request for certification;
- (2) A certificate of completion from a professional real estate course leading to a professional designation accepted by the commission;
- (3) An appointment to the real estate faculty of an accredited institution of higher education;
- (4) A certificate of completion from an accredited salesperson and broker course; or
- (5) Other as the commission may determine (including successfully passing a qualifying real estate license examination).

(f) School personnel shall comply with applicable state department of health requirements.

(g) An instructor may not be certified if the individual has been:

- (1) Disciplined by the commission or any state or by any licensing regulatory body for fraud, misrepresentation, or deceit in connection with the sale, purchase, exchange, or property management of any interest in real estate or for any other conduct substantially related to the practice or profession of real estate; or
- (2) Convicted of a crime which substantially relates to the profession of teaching or to the practice or profession of real estate.

(h) A registered school shall obtain the approval of the commission prior to scheduling the appearance of a guest lecturer or substitute teacher as an instructor for a specified topic of instruction included in its approved curriculum. A guest or substitute teacher shall not be used for more than fifty per cent of its scheduled classes. [Eff

°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-25.5)
(Imp: HRS §467-25.5)

§16-99.3-13 Tuition and other charges. (a)

Tuition rates and all other charges shall be published in the school catalogue. No school shall deviate from its published tuition rates and charges.

(b) Tuition and other charges collected from enrollees shall be refunded in full by the school if the course for which the tuition and charges were collected is not started on the date published by the school in its catalogue or advertisements.

(c) Tuition and other charges shall be specifically set forth in the school registration form. The registration form shall expressly state the school's policy regarding the return of tuition and other charges when a student is dismissed or withdraws voluntarily. Each student shall acknowledge acceptance of the school's tuition policies on the school's registration form. [Eff °°°°°°°°°°°°°°]
(Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99.3-14 Certificate of completion. A

certificate of completion shall be issued by the school in a form and size approved by the commission, and shall be awarded only to a student who attends eighty per cent of the scheduled classes and who completes with a passing grade the final examination of a course of study conforming to the approved curriculum or who completes an independent study course under section 16-99.3-5. The certificate shall be valid for a period of two years from the date of issuance. The date of issuance shall be the class completion date. [Eff °°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §§467-9.5, 467-25.5)

§16-99.3-15 Records. (a) Each school shall maintain records on the following:

- (1) Class attendance of each student;
- (2) Tuition and other charges collected from each student;
- (3) The names of the students to whom it issued a certificate of completion, the course for which the certificate of completion was issued, and the date when the certificate of completion was issued, which shall be submitted to the commission within ten days of the class completion date; and
- (4) The qualifying exams administered for purposes of issuing a school certificate of completion.

(b) Within ten days of issuance of a Hawaii school completion certificate, the school shall submit to the commission:

- (1) A listing of students who have completed the course with their course completion certificate number, curriculum instructor names and date when the certificate of completion was issued; and
- (2) Other information requested by the commission.

(c) These records shall be maintained for a three-year period, shall be kept current, and shall be available for inspection by the commission. [Eff
 °°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-25.5) (Imp:
 HRS §467-25.5)

§16-99.3-16 Reports. Each school may be required to submit reports to the commission and may be subject to review regarding its educational programs conducted in conformance with this chapter. [Eff
 °°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99.33-17 Inspections. Registered schools and schools that have applied for registration may be inspected by the commission. [Eff 000000000000000000]
(Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99.3-18 Renewals. (a) Applications for renewal of a school's registration shall be submitted by the commission prescribed deadline of every even-numbered year.

(b) The following shall accompany an application:

- (1) A renewal fee;
- (2) A statement as to the enrollment and advance deposit charged per student for each of the school's broker and salesperson courses offered during the preceding registration period;
- (3) The dates and locations of course of study to be offered if the registration is renewed; and
- (4) A surety bond to the commission conditioned for the protection of the contractual rights of real estate students in an amount equal to the sum of:
 - (A) The largest number of students enrolled in the school's broker course at any one time during the preceding registration period multiplied by the advance deposit charged per student for the broker course; and
 - (B) The largest number of students enrolled in the school's salesperson course at any one time during the preceding registration period multiplied by the advance deposit charged per student for the salesperson course.

In no event shall the amount of the bond be less than \$2,000. The bond shall be issued by a surety authorized to do business in the State.

(c) A registration shall be renewed if the school meets all of the then existing applicable requirements of the commission including but not limited to a reasonable student exam passing percentage, demonstrated evidence that the school curriculum objectives have been taught, certificates of completion issued within the past year, for each instructor, who completed successfully a commission sponsored or approved prelicense instructor's workshop, and an update of the information required for its original application for registration.

(d) An accredited college or university shall not be required to submit to the commission a surety bond or pay the renewal fee as required by this section. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-11, 467-25.5) (Imp: HRS §467-25.5)

§16-99.3-19 Advertising. (a) For purposes of this subchapter, "advertising" means an announcement by an accredited real estate school for the purpose of promoting the school or soliciting students and shall include, but not be limited to, all printed, audio, and visual communications, such as newspaper advertisements, direct public mailings, books and periodicals, television and radio commercials, current and future technology, and others.

(b) All advertisements soliciting students shall be of an announcement type listing, at the minimum, the place where a school catalogue or brochure may be obtained.

(c) Prior to publication and dissemination, all schools shall submit to the commission for review all copies or proofs of advertising, brochures, and promotional materials covering its real estate course.

(d) The commission, at any time may require that a school furnish proof of any of its advertising claims. Retractions of advertising claims may be ordered by the commission, with the retractions published in the same manner as the claims themselves.

(e) A school shall be held strictly responsible for the acts and promises of all its agents or persons engaged in soliciting students. [Eff 000000000000000000]
(Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99.3-20 School brochure or catalogue. (a)

Each school shall distribute to prospective students and other interested persons, a brochure or catalogue. Each brochure or catalogue shall include, at minimum, the following:

- (1) Name, address, and telephone number of the school;
- (2) Date of issue;
- (3) School's owner or owners and principal;
- (4) Any available locations, and if the class location is tentative, that fact shall be disclosed;
- (5) School's calendar;
- (6) Class hours;
- (7) Schedule of all charges;
- (8) A statement that the school's curriculum is available for any student's inspection upon request;
- (9) Course titles and objectives;
- (10) Course outlines or description;
- (11) Length of course;
- (12) School's policy on attendance, absences, and make-up;
- (13) School's policy on grading, reporting of grades, and standards required;
- (14) School's policy on student conduct;
- (15) School's policy on refund of tuition and other fees collected;
- (16) If a minimum number of students is necessary to operate a class, that fact shall be disclosed and a minimum number given; and
- (17) If the course or any portion of the services are advertised as being free, a complete disclosure of all conditions shall be stated.

(b) Each brochure or catalogue shall be updated periodically so that the information contained in it is current. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99.3-21 Prohibited advertising practices.

(a) No school shall provide any information to the public or to prospective students which is false, misleading, or deceptive. Information is "misleading" when there may be a possibility that it will deceive the class of persons whom it is intended to influence.

(b) No school shall use any name, other than the name under which it registered with the commission, for advertising or publicity purposes.

(c) No school shall advertise that it is "recommended," "endorsed," "approved," or "accredited" by the commission. A school may indicate that it is "registered" with the commission to conduct courses to qualify applicants for the real estate license examination.

(d) No school shall make any warranties or guarantees that a student will pass the real estate license examination by taking its course.

(e) No school shall advertise that it is endorsed by business establishments, organizations, or individuals engaged in the kind of work for which training is given until written evidence of this fact is filed with the commission.

(f) No school shall solicit students in "help wanted" or other employment columns in newspapers or other publications or in any other form of advertising other than that which shows itself clearly to be that of a school seeking to enroll students.

(g) No school shall make or imply any guarantee of employment or income to any student or prospective student unless the school can in fact guarantee employment or income and the school does so in writing.

(h) No school shall advertise a course of instruction which has not been approved by the

commission unless the advertisement clearly states that it is a "proposed" or "tentative" offering, subject to the approval of the commission. No money shall be collected from any prospective student for enrollment in such a course until it has been approved by the commission. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99.3-22 Revocation or suspension of school registration, course approval, and instructor certification.

The commission may revoke or suspend the registration of any real estate school, the approval of any real estate course, or the certification of any instructor for any of the following causes:

- (1) The school, instructor, or course falls below the minimum requirements established by the commission including a student exam passing percentage;
- (2) The school or instructor violates any ordinances, codes, statutes, or rules relating to real estate schools or instructors;
- (3) The school or instructor solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future examinations;
- (4) The school or instructor distributes to any person copies of examination questions or otherwise communicates to any person examination questions, without the prior written approval of the copyright owner of the examination questions so distributed or communicated; or
- (5) The instructor sits for a Hawaii real estate license examination during the period the instructor is certified by the commission. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99.3-23 Hearings. (a) When the commission denies an application for registration or renewal of a school, or deems it proper to revoke or suspend the registration of any school, the approval of any course, or the certification of any instructor, the commission shall notify in writing the person or school involved of the commission's action. The notification shall include a concise statement of the reasons for the commission's action and a statement that the person or school involved may request a hearing.

(b) Requests for a hearing shall be filed with the commission within sixty days of the date of the letter informing the school or instructor of the commission's action.

(c) 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 00000000000000] (Auth: HRS §§467-4, 467-25.5)
(Imp: HRS §467-25.5)

SUBCHAPTER 3

CONTINUING EDUCATION

§16-99.3-24 Definitions. As used in this subchapter:

"Beyond professional entry" means the course objectives involve learning outcomes which help the licensee develop more than minimal entry level competency in the subject matter of the course including consumer protection in real estate transactions.

"Certified" means that the commission has made a determination that the course or course offering satisfies all requirements prescribed by statutes and rules.

"Clock hours" means sixty minutes of classroom instructions excluding time for registration and other non-instructional matters.

"Consumer protection" means course content relating to section 467-14, HRS, or section 16-99.1-3.

"Continuing education" means clock hours of core courses and elective courses that involve areas designed to improve a licensee's competency or professional standards and practice, and which courses are determined by the commission to exceed minimum entry level competency in the subject matter of the course, including consumer protection in real estate transactions.

"Continuing education hours" means the mandatory hours as required in section 467-11.5, HRS.

"Core" course means a mandatory continuing education course or course offering certified and designated as a "core" course by the commission that each individual licensee must complete to satisfy the continuing education hours requirement.

"Completion of course" means licensee's orderly attendance throughout the entire course.

"Course and course offering" means a continuing education module of instruction certified by the commission, consisting of a minimum of three clock hours and a maximum as the commission may determine.

"Disciplined by the real estate commission" means the commission's issuance of a final order in which a licensee is found in violation of a specific real estate law or rule; or means a commission approved settlement agreement in which a licensee admits to violating a specific real estate law or rule.

"Elective" course means a continuing education course or course offering certified by the commission that an individual licensee may choose to complete to satisfy the continuing education hours requirement.

"Instructor" means an individual who teaches continuing education courses.

"Material change" means a significant deviation, in one or more aspects from the course as originally certified by the commission including a change in course length or clock hours, but not including changes designed to reflect recent changes in statutes, regulations, or case law.

"Professional standards and practice courses" means course content relating to real estate professional development that improves real estate competency of the licensee or for the benefit of the real estate consumer, or both.

"Provider" means any person, partnership, association, corporation, limited liability company, educational organization, school, or other entity which sponsors, offers, organizes, develops, delivers, or provides for the instruction of a real estate continuing education course.

"Registered" means a person, partnership, association, corporation, limited liability company, educational organization, school, or other entity has submitted all required documentation for registration as a provider and that the documentation satisfactorily supports the provider's administrative ability for delivering continuing education courses.

"USDOE" means the United States Department of Education [Eff *****] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-25 Equivalent continuing education.

(a) In reviewing a request for an equivalency of the required continuing education hours as specified in sections 467-4.5 and 467-11.5, HRS, the commission may be guided but may not be limited by all of the following:

- (1) The request is for a course completed, within the current biennium prior to license renewal, on or before the license expiration date;

- (2) The request is for a course not specifically excluded by the provisions specified in section 16-99.3-37; and
- (3) The course objectives for the requested course equivalency must satisfy the requirements of section 16-99.3-36, or the request is for a course offered and completed outside the State and is:
 - (A) Certified by the Association of Real Estate License Law Officials; or
 - (B) A national course that is delivered by an instructor certified by the National Association of Realtors or its affiliates, the Building Owners and Managers Association, the Community Associations Institute, or any other national organization approved by the commission.

(b) The licensee has the burden of presenting the commission with sufficient information and documentation in support of the request for an equivalency.

(c) A licensee who is issued a Hawaii real estate salesperson license during an even-numbered year shall be deemed to have completed equivalent to the continuing education hours as required by section 467-11.5, HRS, and section 16-99.3-26. [Eff
 °°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-26 License renewal procedure. In renewing an individual license on an active status, the licensee shall provide the commission evidence of completing the continuing education hours as required in section 467-11.5 HRS, including a mandatory core course if specified by the commission, which have been completed on or before the commission-prescribed deadline of an even-numbered year and within the current license biennium. Such evidence shall include but not be limited to submission by the provider,

using a commission-prescribed electronic method, of the licensee's name, license number, license status, course and instructor names, and other information the commission may require. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-27 Activating an inactive real estate license. Prior to making a written request to activate an inactive status individual license, an applicant who has been inactive for one or more renewal periods, shall first satisfy the prescribed continuing education hours of one prior renewal period. The commission shall credit the applicant with continuing education hours for any certified continuing education core or elective courses completed during the immediate prior renewal period. As an equivalent, where the commission deems appropriate, the inactive licensee may retake and pass the applicable salesperson or broker prelicense examination. The requirements of this section are in addition to other requirements of this subchapter and chapter 467, HRS, for activating an inactive status license. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-28 Continuing education hours in license restoration and reinstatement cases. Prior to applying to the commission for restoration or reinstatement of a license to active status, an applicant shall satisfy the prescribed continuing education hours or the equivalent as determined by the commission for one prior renewal period. The commission shall credit the applicant with continuing education hours for any certified continuing education core or elective courses completed during the immediate prior renewal period. As an equivalent, where the commission deems appropriate, the applicant

may either take and pass the applicable salesperson or broker prelicense examination, or complete such other courses as prescribed by the commission, or both. The requirements of this section are in addition to other conditions stated in the order of suspension, and other applicable requirements of this chapter and chapter 467, HRS. [Eff                 ] (Auth: HRS   467-4, 467-4.5, 467-11, 467-11.5) (Imp: HRS   467-4.5, 467-11.5)

 16-99-29 Excess continuing education hours.

Except as permitted by sections 16-99.3-27 and 16-99.3-28, continuing education clock hours obtained in excess of the continuing education hours required by section 467-11.5, HRS, cannot be carried forward to satisfy the continuing education requirements for any subsequent license renewal. [Eff                 ] (Auth: HRS   467-4, 467-4.5, 467-11.5) (Imp: HRS   467-4.5, 467-11.5)

 16-99.3-30 Continuing education certificates of completion. The form of a continuing education certificate of completion of course shall be as prescribed by the commission. The number of continuing education hours appearing on each certificate shall be the number of hours previously approved by the commission. A continuing education provider may offer a class for more hours than previously approved by the commission. But the number of course hours appearing on the continuing education course completion certificate shall be only for the amount as previously approved by the commission. [Eff                 ] (Auth: HRS   467-4, 467-4.5, 467-11.5) (Imp: HRS   467-4.5, 467-11.5)

§16-99.3-31 Duplicate continuing education hours. Except as provided by the commission or by this subchapter, a licensee shall not take a continuing education course for which the licensee has already received a certificate within two consecutive biennia. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-32 An instructor who is a licensee. In satisfying the continuing education hours of a license period, an instructor who is a real estate licensee, may use once in any two consecutive biennium, the clock hours for each course taught except the core course which may be recognized for clock hours each biennium. The one time use applies even when the instructor has taught the course more than once. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-33 Extensions. Upon application, on a form provided by the commission, and for good cause shown as determined by the commission, the commission may extend the time for completing the continuing education hours. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-34 Prior to offering a continuing education course. An individual or organization may solicit students for, advertise for, or take reservations for a continuing education course offering, when the proposed continuing education course is:

- (1) Certified by the commission;
- (2) Identified by a specified commission assigned course number; and

- (3) Sponsored by a registered continuing education provider. [Eff 0000000000000000]
(Auth: HRS §§467-4, 467-4.5, 467-11.5)
(Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-35 Application for registration as a continuing education provider. (a) A continuing education provider shall be responsible for the administration of the course offering. An application for registration as a continuing education provider shall be made to the commission on a form prescribed by the commission. The application shall be submitted with a nonrefundable application fee in an amount as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS, and include at least the following:

- (1) The complete legal name of the provider, telephone number, current mailing address, and the provider's administrative office address;
- (2) The form of ownership of the provider, whether sole proprietorship, partnership, corporation, or limited liability company, and the name, telephone number, and current address of the provider's owner. When the owner of the continuing education provider is not an individual, the names, titles, and addresses of the directors, officers, members, managers, or partners of the entity together with a stamped filed copy of the articles of incorporation or partnership agreement on file with the State business registration division must be submitted to the commission;
- (3) The name, address, and telephone number of the provider's administrator;
- (4) A statement that all classroom facilities comply with the county building department, county fire department, and the State department of health requirements;

- (5) A statement certifying that the provider has a student attendance policy and procedures for monitoring attendance and record keeping for a minimum of four years;
- (6) A statement certifying that the provider has a policy for a refund, issuance of a certificate of completion of course, and the means by which the statement of policies shall be provided to a student prior to registering for the course;
- (7) A surety bond conditioned for the protection of the contractual rights of real estate students in an amount not less than \$2,000 issued by a surety authorized to do business in the State; provided that no bond shall be required if the course is delivered electronically or as approved by the commission; and
- (8) Other additional information as may be required by the commission.

(b) A nonrefundable application fee and the posting of a bond pursuant to this section shall not be required of a provider that is a college or university accredited by an accrediting organization approved by the Council of Post Secondary Accreditation or the United States Department of Education (USDOE) as an institution of higher learning. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-36 Criteria for approving and certifying continuing education courses. (a) The commission may approve and certify a continuing education course when the course satisfies all of the following:

- (1) Is for a core or elective course designed for any one of the following purposes:
 - (A) Protecting the general public in its real estate transactions;

- (B) Enabling the licensee to serve the objectives of the consumer in a real estate transaction; or
 - (C) Enabling the licensee to develop and improve a licensee's competency and professionalism in a changing marketplace;
- (2) Qualifies as either a consumer protection or professional standards and practice course as defined in this subchapter;
 - (3) Is developed for a knowledge and abilities level "beyond professional entry";
 - (4) Includes in the course clearly defined course objectives;
 - (5) Specifies course objectives in terms of student performance; for example, when the student completes the course the student can analyze, summarize, identify, and provide resolutions to ethical issues for a specific real estate transaction;
 - (6) Consists of a minimum of three clock hours;
 - (7) Issues upon the completion of the course offering a certificate of course completion;
 - (8) Requires the completion of the course within the license biennium;
 - (9) Is offered by a registered continuing education provider;
 - (10) Is delivered live, or by other means of communication as approved by the commission;
 - (11) Has a course outline detailing the sequence of topics, amount of time allotted to each topic, and reading assignments; and
 - (12) Meets such other conditions as requested by the commission.

(b) In making a determination pursuant to this section, the commission may consult with an advisory committee of real estate educators and practitioners having specialized knowledge and practical experience with the subject matter of the proposed course. Where the commission deems necessary, the commission may also retain a consultant to assist the commission in making a determination pursuant to this section. The

consultant shall be compensated by moneys provided from the real estate education fund. [Eff
°°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-37 Courses not acceptable for continuing education course certification. The commission may not certify a continuing education course, or any portion thereof, which:

- (1) Does not directly relate to real estate law or real estate practice;
- (2) Is related to passing a prelicense real estate salesperson or broker exam;
- (3) Teaches general office skills, such as word processing, basic internet skills, computer software or other technology, personal motivation, and time management;
- (4) Includes sales or promotions of a product or service or other meetings held in conjunction with general real estate brokerage activity;
- (5) Is devoted to meals or refreshments;
- (6) Is less than three clock hours in duration;
- (7) Contains multiple typographical or grammatical errors, or errors in subject matter content; and
- (8) Does not meet the definition of continuing education as determined by the commission. [Eff °°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-38 Application for certification of a continuing education course. (a) An application for certification of a continuing education course shall be made on a form prescribed by the commission. Applications for course certification shall be made for all courses except those courses which have been

developed by the commission. The certification shall be valid for the duration of the biennium license period for which certification is sought, unless sooner terminated as provided by rules of this subchapter.

(b) An application for certification of a continuing education course shall be accompanied by a nonrefundable application fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS. [Eff *****] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-39 Offerings of a certified continuing education course.

(a) A provider shall not solicit students for registration for any offering of a certified continuing education course without first notifying the commission on a form prescribed by the commission at least three calendar days prior to the course offering date. In notifying the commission, the provider shall do all of the following:

- (1) Notify the commission of the provider's intention to solicit students. The notification shall contain at least the course offering date, time, location, fees and charges, and the instructor's name; and
- (2) Certify to the commission that the instructor meets the requirements pursuant to section 16-99.3-40.

(b) The commission may, after a review of the information submitted pursuant to (a)(1) and (2) of this section, confirm the course offering, assign a course offering number, and issue a course offering certificate that shall be prominently displayed at the course site. [Eff *****] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-40 Criteria for certification of a continuing education instructor. (a) Every continuing education provider shall determine that each instructor evidences an ability to teach and command knowledge of the subject matter of the course and shall certify to the commission on a form prescribed by the commission that each instructor has met the commission requirements.

(b) A continuing education instructor evidences an ability to teach by possessing:

- (1) A bachelor's degree or higher in education;
- (2) A current teaching designation from an organization recognized by the commission;
- (3) A current teaching credential;
- (4) A full-time current appointment to the faculty of an accredited institution of higher education;
- (5) Three years of full-time teaching in any field. "Three years of full-time teaching" may have been accumulated over a period exceeding three years;
- (6) A certificate of completion from a special real estate instructor institute approved by the commission; or
- (7) Other experience or credentials as the commission may approve.

(c) A continuing education instructor evidences a command knowledge of the subject matter of the course by:

- (1) Possessing a bachelor's degree or higher from an institution of higher education accredited by the USDOE with a major in a field of study directly related to the subject matter of the continuing education course;
- (2) Possessing a bachelor's degree or higher from an institution of higher education accredited by the USDOE and five years of real estate experience directly related to the subject matter of the continuing education course;

- (3) Practicing as a licensed attorney for at least three years in an area directly related to the subject matter of the continuing education course;
 - (4) Serving an appointment to the real estate or any other faculty of an institution accredited by the USD OE in an area directly related to the subject matter of the continuing education course;
 - (5) Possessing a documented combination of:
three years of experience directly related to the subject matter of the continuing education course; substantial participation in the development of real estate curriculum or courses at a knowledge and skill level beyond professional entry; substantial participation in the teaching of real estate courses directly related to the subject matter of the continuing education course at a knowledge and skill level beyond professional entry, including but not limited to substantial participation in teaching or development of seminars, workshops, educational training courses offered at any state accredited institution of learning, or at any college or university accredited by the USD OE, or at any real estate office; or
 - (6) Possessing other experience or credentials as the commission may approve.
- (d) Any individual meeting the criteria for approval as a continuing education instructor, may not be certified by the provider if the individual has been:
- (1) Disciplined by the commission of any state or by any licensing regulatory body for fraud, misrepresentation, or deceit in connection with the sale, purchase, exchange, or property management of any interest in real estate or for any other conduct substantially related to the practice or profession of real estate;

- (2) Convicted of a crime which substantially relates to the profession of teaching or to the practice or profession of real estate; or
 - (3) Determined to have scored below the minimum requirements as established by the commission, which may include a standardized student evaluation rating.
- (e) The commission may require that each instructor complete an instructor's workshop as approved by the commission prior to teaching in each biennium.
- (f) "Command knowledge" as used in this section means an understanding, application, evaluation, and synthesis of the body of knowledge in connection with the continuing education course at a level past professional entry. [Eff *****] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-41 Biennial provider registration and course certification. (a) A continuing education provider shall be biennially registered with the commission. The biennial registration renewal fee shall be paid to the department of commerce and consumer affairs by the commission-prescribed deadline of every even-numbered year.

(b) A continuing education course shall be biennially certified by the commission. The biennial certification renewal fee shall be paid to the department of commerce and consumer affairs by the commission-prescribed deadline of every even-numbered year.

(c) The registration of a continuing education provider and the certification of a continuing education course shall expire at the end of every even-numbered year. To renew a provider registration or course certification, each provider and each course owner shall, respectively, satisfy all of the following:

- (1) Submit a new application for registration as a provider or course certification;
- (2) Satisfy, respectively, the initial registration and certification requirements of this subchapter;
- (3) Pay all required fees as set forth in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS; and
- (4) Meet all other applicable requirements of this subchapter. [Eff 0000000000000000]
(Auth: HRS §§467-4, 467-4.5, 467-11, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-42 Forfeited registration, certification; restoration. (a) Failure, neglect, or refusal by any person to pay the respective biennial renewal provider registration fee or course certification fee shall constitute a forfeiture of the certificate of registration or certification.

(b) Any forfeited certificate of registration or certification may be restored upon satisfaction of all of the following:

- (1) Written application;
- (2) Continued satisfaction of the respective requirements of sections 16-99.3-35 and 16-99.3-36; and
- (3) Payment of the applicable fees specified in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-43 Fees. All fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS.

[Eff                 ] (Auth: HRS   467-4, 467-4.5, 467-11.5) (Imp: HRS   467-4.5, 467-11.5)

 16-99.3-44 Revocation or suspension of a continuing education course certification. The commission may revoke or suspend the certification of a continuing education course for any of the following causes:

- (1) The course no longer satisfies the requirements of section 16-99.3-36;
- (2) The course contains outdated or incorrect information; and
- (3) Such other cause as may be determined by the commission. [Eff                 ] (Auth: HRS   467-4, 467-4.5, 467-11.5) (Imp: HRS   467-4.5, 467-11.5)

 16-99.3-45 Revocation or suspension of a continuing education provider registration. The commission may revoke or suspend a continuing education provider's registration for any of the following causes:

- (1) The provider allows its instructors to use outdated course information and material in the teaching of any continuing education course;
- (2) The provider permits a course to be taught by an instructor who is not qualified to teach the continuing education course pursuant to guidelines of section 16-99.3-40;
- (3) The provider permits an individual who has been disciplined by the commission or by any other licensing regulatory body of this State or of any other state to have direct supervision of the continuing education provider's staff or instructors, or to occupy a position from which the individual

can set policy and direct the operations of the provider's continuing education business. The disciplinary action of any other licensing regulatory body must have been for fraud, misrepresentation, or deceit in connection with the purchase, sale, exchange, management of any interest in real estate, or for any other conduct substantially related to the practice or profession of real estate;

- (4) The provider permits an individual who has been convicted of a crime in connection with operating a business relating to the delivery of educational courses to have direct supervision of the continuing education provider's staff or instructors, or to occupy a position from which the individual can set policy and direct the operations of the provider's continuing education business;
- (5) The provider violates any statutes or rules relating to continuing education providers;
- (6) The provider falsifies or misrepresents any information or document submitted to the commission;
- (7) The provider fails to correct any noted defect pursuant to section 16-99.3-53;
- (8) The provider fails to satisfy the record keeping requirements of sections 16-99.3-46 and 16-99.3-47; or
- (9) Such other causes as may be determined by the commission. [Eff 000000000000000000]
(Auth: HRS §§467-4, 467-4.5, 467-11.5)
(Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-46 Record keeping responsibilities of a continuing education provider. (a) A continuing education provider shall submit all required reports and records by the deadline prescribed by this subchapter and by other designated administrative

deadlines as from time to time may be imposed by the commission.

(b) When a provider fails to keep, produce, or timely submit any report or record as required by this section, the commission may do any or all of the following:

- (1) Suspend, after written notice, without a hearing, the issuance of blank forms of certificates of course completion;
- (2) Suspend the issuance of a course number for any subsequent course offering until the provider complies with the record keeping and submittal requirements of this subchapter; or
- (3) Revoke or suspend the registration of the provider. [Eff 00000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-47 Record keeping information and retention period. (a) A real estate continuing education provider shall maintain for a period of at least four years records of course offerings (including names of instructors, dates of and locations of course offerings), student attendance, student registration, course completions, student evaluations, and personal information and resumes of its instructors and administrators. Each student record shall include, at a minimum, the following:

- (1) The student's name, address, real estate license number, license status, continuing education course completion information including course and instructor names, course offering number and date, and whether the student completed the course, course completion certificate number, and amount of approved clock hours of continuing education credits earned; and
- (2) Proof of actual course attendance including a verified sign-in and sign-out attendance

sheet or a student certification statement in the case of a continuing education course offered by alternative delivery methods with interactive instructional techniques. The sign-in and sign-out sheet may be kept in another location other than the student's record, provided that reference to such location shall be made in each student's record. The name, address, and phone number of the individual who verified the student's attendance shall also be noted in the student's record.

(b) Within ten days of the end of any continuing education course or completion of course offered by alternative delivery methods, the continuing education provider shall issue to each student having completed the course a certificate of completion of course as prescribed by the commission. Except as provided in sections 16-99.3-27 and 16-99.3-28, the continuing education certificate of completion of course is valid only for the biennium license period in which the course was completed.

(c) Within ten days of the end of the course or completion of course offered by alternative delivery methods, the continuing education provider shall submit to the commission:

- (1) A listing of licensees who have completed the course with their issued course completion certificate numbers, course and instructor names, and course offering number and date, using a commission-prescribed electronic method, together with the prescribed number of copies as requested by the commission;
- (2) When applicable, completed student evaluations of instructors for each course offering; and
- (3) Other information requested by the commission.

(d) A real estate continuing education provider shall issue a student a duplicate certificate of

completion of course upon receipt of a student's written request for such a certificate.

(e) For any course attended by more than fifty students, the provider shall provide at least one additional individual other than the instructor to administer the course offering, including but not limited to keeping records of attendance, preparing and distributing certificates, and assuring that physical facilities meet the requirements of this subchapter. [Eff 00000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-48 Advertising. (a) For purposes of this subchapter, "advertising" means an announcement by a continuing education provider for the purpose of promoting itself as a provider or for soliciting students and includes, but is not limited to, all printed and visual communications, such as newspaper advertisements, direct public mailings, books and periodicals, television and radio commercials, and others.

(b) All advertisements soliciting students shall be of an announcement type listing, and minimally, include the name and address of the continuing education provider, the place where a catalogue or brochure may be obtained, a brief description of the course, a statement that the course can be used for satisfying continuing education requirements, and the number of course hours approved for continuing education.

(c) A continuing education provider shall keep on file at its place of business all advertising materials, subject to inspection and review by the commission upon written request.

(d) A continuing education provider shall not be advertised or be represented as having been "registered" with the commission until the provider has received written notification of its registration from the commission.

(e) All advertising materials and claims shall be free from misrepresentation and fraud.

(f) The commission, at any time, may require that a continuing education provider furnish proof of any of its advertising claims. Retractions of advertising claims may be ordered by the commission, with the retractions published in the same manner as the claims themselves.

(g) A continuing education provider shall be held strictly responsible for the acts and promises of its agents who solicit students. [Eff
°°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-49 Prohibited advertising practices. A continuing education provider shall not engage in any of the following acts:

- (1) Provide any information to the public or to a prospective student, which is false, misleading, or deceptive. Information is "misleading" when there may be a possibility that it will deceive the class of persons whom it intended to influence;
- (2) Use any name, other than the full name or the trade name registered with the commission, for advertising or publicity purposes;
- (3) Advertise that it is "recommended," "endorsed," "approved," or "accredited" by the commission. A continuing education provider may indicate that it is "registered" with the commission to conduct courses to assist the licensee in obtaining the necessary continuing education hours for license renewal;
- (4) Advertise that it is endorsed by business establishments, organizations, or individuals engaged in the kind of work for which training is given until written

- evidence of this fact is filed with the commission;
- (5) Make or imply any guarantee of employment or income to any student or prospective student unless the continuing education provider can in fact guarantee employment or income and the continuing education provider does so in writing;
 - (6) Advertise a course which has not been certified by the commission, unless the advertisement clearly states that it is a "proposed" or "tentative" offering, subject to the certification by the commission; or
 - (7) Collect from any prospective student any tuition or advance deposits unless the continuing education course is certified by the commission. [Eff *****]
 (Auth: HRS §§467-4, 467-4.5, 467-11.5)
 (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-50 Continuing education course entrance requirements. Prior to allowing any licensee into a continuing education course, a continuing education provider shall verify the identification of that licensee. At minimum, the continuing education provider shall require a picture identification and a current real estate pocket card or notification of licensed status from the commission. In limited circumstances, for reasons beyond the licensee's control, by way of example, but not limited to the example where a licensee is in the process of restoring a forfeited license, a provider may admit with a picture identification an individual, but shall not issue a certificate of completion of the course until the licensee produces a duly issued real estate license pocket card or commission issued real estate license restoration application. [Eff *****] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-51 Discontinuing course offerings. Ten days prior to the cancellation of provider registration, a provider shall in writing inform the commission of its intent to cancel its registration and discontinue the offering of courses. Within a reasonable time, after informing the commission of its intention to cancel its registration, the provider shall refund any course tuition and other fees collected in advance.
[Eff 0000000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-52 Material change. Any anticipated material change to a commission certified continuing education course shall be submitted by the course owner to the commission for approval thirty days prior to making the changes. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-53 Review, evaluation, and investigation. With or without the giving of any prior notice, the commission may conduct a review, evaluation, or investigation of an application for continuing education course certification or continuing education provider registration. With or without any prior notice, the commission may conduct a review, evaluation, or investigation of a course offering or a registered continuing education provider's operations and performance. A review, evaluation, or investigation may be conducted by any means including but not limited to surveys, observations, physical inspections, and on-site monitoring, as well as interviews with providers, owners, administrators, instructors, and students. When the commission has reason to believe that a

continuing education provider may be in violation of this subchapter or is otherwise failing to maintain reasonable operating standards, the commission may give appropriate written notice to the provider specifying the grounds for the violation and requiring that corrective action be taken by the provider within thirty days of the receipt of the notice. The provider may request a hearing of the alleged violations and requested corrective acts pursuant to chapter 91, HRS, and chapter 16-201. [Eff
°°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-54 Faculty. (a) Each continuing education provider shall designate an individual as administrator.

- (b) The administrator shall be responsible for:
 - (1) Complying with the commission's rules relating to continuing education providers as set forth in this subchapter;
 - (2) Providing reports and information as may be required by the commission;
 - (3) Informing the commission in writing ten business days prior to any changes in the information on the application for registration as a provider;
 - (4) Directing and supervising the continuing education provider's faculty, staff, and program;
 - (5) Administering and maintaining the student evaluations; and
 - (6) Ensuring that instructors do not fall below minimum rating standards. [Eff
°°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-55 Instructor evaluation. (a) Course providers shall implement a standardized student evaluation process as determined by the commission.

(b) Course providers shall ensure that student evaluations of instructors do not fall below the minimum rating standards as determined by the commission. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-4.5) (Imp: HRS §467-4.5)

§16-99.3-56 Display of certificate of registration and instructor's certificate. A continuing education provider shall prominently display its certificate of provider registration in its business office at all times. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-57 Classrooms. (a) A continuing education provider shall have and maintain classrooms that have adequate space, seating, equipment, and instructional material.

(b) A provider shall provide written certification to the commission that each classroom conforms to the zoning, building, electrical, plumbing, and fire codes of the county in which the facility is located and to State rules as may be applicable to the facility. [Eff 0000000000000000] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-58 Classroom compliance. A continuing education provider shall not conduct classes when it has been notified by the appropriate county agency that the conditions existing at the continuing education provider's facilities violate county building, fire, or health codes. The continuing

education provider may resume its operations when it has remedied the violation. [Eff °°°°°°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-59 Denial, revocation, and suspension.

(a) In the event an application for provider registration, renewal of registration, course certification, or renewal of certification is denied, the commission shall notify the applicant of the commission's decision, state specifically the reason for denying the application, and inform the applicant of the right to a hearing under chapter 91, HRS.

(b) In the event the commission deems it proper to revoke or suspend a provider registration or course certification, the commission shall notify the provider or course owner by mail of the commission's intent to revoke or suspend the registration or certification, state specifically the reason for revocation or suspension, and inform the provider or course owner of the right to a hearing under chapter 91, HRS. [Eff °°°°°°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99.3-60 Request for a contested case

hearing. Any person whose application for registration or certification has been denied, or whose registration or certification has been revoked or suspended by the commission shall be entitled to a hearing pursuant to chapter 91, HRS, and chapter 16-201; provided that a request for a contested case hearing is filed with the commission in accordance with chapter 91, HRS, and chapter 16-201." [Eff °°°°°°°°°°°°°°°°°°°°] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

2. The adoption of chapter 99.3, 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