

CONDOMINIUM REVIEW COMMITTEE
REAL ESTATE COMMISSION
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.hawaii.gov/hirec

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor as required by Section 92-7(b), Hawaii Revised Statutes.

Date: August 10, 2011

Time: Upon adjournment of the Laws and Rules Review Committee meeting scheduled to convene at 9:00 a.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Present: Michele Sunahara Loudermilk, Chair, Public / Honolulu Commissioner
Nikki Senter, Vice Chair, Public / Honolulu Commissioner
Stanley Kuriyama, Broker / Honolulu Commissioner
Scott Sherley, Broker / Hilo Commissioner
Rowena Cobb, Broker / Kauai Commissioner
Aileen Wada, Broker / Honolulu Commissioner

Neil Fujitani, Supervising Executive Officer
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
Benedyne Stone, Condominium Specialist
Diane Choy Fujimura, Senior Real Estate Specialist
Amy Endo, Real Estate Specialist
David Grupen, Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Ray Iwamoto, Esq., Schlack Ito
Myoung Oh, Hawaii Association of REALTORS®
Ginger Kolonick, Abe Lee Realty

Absent: Carol Ball, Broker / Maui Commissioner
Frances Gendrano, Broker / Honolulu Commissioner
Walt Harvey, Broker / Honolulu Commissioner

Call to Order: Chair Loudermilk called the meeting to order at 9:10 a.m., at which time quorum was established.

Chair's Report: No report was presented.

The Chair announced that the Commission may move into executive session to consider and evaluate personal information relating to individuals applying for licensure in accordance with Section 92-5(a)(1), HRS, and/or to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.

Commissioners Ball, Gendrano and Harvey were excused from the meeting. Prior notification of their non-attendance was received.

Condominium
Specialist's
Report:

Minutes

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Sherley, it was voted on and unanimously carried to accept the minutes of the July 13, 2011 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOUO Registrations

Specialist Stone reported that as of July 31, 2011 1,464 AOUOs have successfully registered.

Mediation and Arbitration

The following articles from the June 2011 issue of the *Hawaii Bar Journal* were distributed for informational purposes: "Mediation in Hawaii: A Brief History" by Lou Chang; "Practitioners' Guide to Mediation" by Gerald S. Clay and James K. Hoenig; and "Perils of Mediation" by Charles S. Lotsof.

Condominium Seminars and Symposium

Staff's evaluation of her attendance and monitoring of CAI Hawaii's July 14, 2011 seminar entitled "Legislative Update 2011" was distributed for informational purposes.

Case Law Review Program

The following articles from the June 2011 issue of *Community Association Management Insider* were distributed for informational purposes: "State Law Unconstitutionally Impaired Association's Governing Documents" and "Determining Whether a Requested Accommodation Is Necessary."

Condominium Related Articles

The following articles were distributed for informational purposes:

- 1) "Controlling Owner's Business Use of Their Units" *Community Association Management Insider* (July 2011)
- 2) "New Foreclosure Procedures Under Hawaii Law - Act 48 (SLH 2011)" by John Morris Esq. - *CAI Hawaii* (June 2011)
- 3) "Common Interests, Uncommon Communities" - *Common Ground* (CAI July August 2011)
- 4) "Plugged In" - *Common Ground* (CAI July August 2011)

Condominium
Project
Registration:

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of July 2011 were distributed for informational purposes.

| PROJ # | PROJECT NAME | PROJECT ADDRESS | TMK # | UNITS | REPORT DATE |
|--------|------------------------------------|---|-----------|-------|-------------------|
| 7126 | 1003 AND 1003A 5TH AVENUE | 1003 AND 1003A 5TH AVE HONOLULU HI 96816 | 132011022 | 2 | B REPT 7/28/2011 |
| 7129 | 54-067 WAIKULAMA STREET | 54-067 WAIKULAMA ST HAUULA HI 96717 | 154016010 | 2 | B REPT 7/12/2011 |
| 7109 | 625 UNIVERSITY AVENUE | 625 UNIVERSITY AVE HONOLULU HI 96826 | 127014046 | 11 | B REPT 7/1/2011 |
| 6357 | HALE PUA HONE | 5141 HOONA RD KOLOA HI 96756 | 426006010 | 2 | B AMD 7/22/2011 |
| 7105 | KAUKONAHUA | LOT 4-C KAUKONAHUA RD WAIALUA HI 96791 | 165001041 | 4 | B REPT 7/12/2011 |
| 7138 | LAULANI VIII PHASE 15 | 91-1001 KEAUNUI DR EWA BEACH HI 96706 | 191069037 | 10 | B REPT 7/22/2011 |
| 6694 | LOKELANI | 1611 A PAULA DR HONOLULU HI 96816 | 133020044 | 2 | B AMD 7/7/2011 |
| 7128 | MILILANI MAUKA PROFESSIONAL CTR | 95-1099 AINAMAKUA DR MILILANI HI 96789 | 195049082 | 3 | B REPT 7/14/2011 |
| 1247 | ROYAL SEA-CLIFF CLUB | 75-6040 ALII DR KAILUA-KONA HI 96740 | 375020014 | 155 | SUPPL 3 7/1/2011 |
| 7113 | ST. LOUIS HEIGHTS CONDO. RESIDENCE | 1478 STLOUIS DR & 2987 ROBERT PL HONOLULU HI 96816 | 133054013 | 2 | B REPT 7/27/2011 |
| 7120 | SUEOKA ESTATES | 2324 WAIOMAO RD HONOLULU HI 96816 | 134015022 | 2 | B REPT 7/7/2011 |
| 6305 | WAIPIO BUSINESS CENTER | 94-1388 MOANIANI ST WAIPAHU HI 96797 | 194128005 | 99 | B AMD 6 7/22/2011 |
| 0 | Preliminary Reports | | | | |
| 0 | Contingent Final Reports | | | | |
| 0 | Final Reports | | | | |
| 1 | Supplementary Reports | | | | |
| 8 | B Reports | | | | |
| 3 | B Amendment Reports | | | | |
| 12 | TOTAL REPORTS | | | | |

Request for Informal Non Binding Interpretation, Subchapter 5, Title 16, Ch. 201, HAR from Raymond Iwamoto, Esq. Schlack Ito A Limited Liability Law Company, dated July 25, 2011 Relating to "Inapplicability Of Registration Requirement To Nonresidential Units Sold For \$1,000,000 And More; And Use Of Purchaser's Deposits To Pay Project Costs"; §514B-51, HRS, "Registration required; exceptions"; §514B-81, HRS, "Applicability; exceptions"; §514B-92, HRS, "Use of purchaser deposits to pay project costs"; §514B-93, HRS, "Early conveyance to pay project costs" and other related sections of HRS

Mr. Raymond Iwamoto of Schlack Ito, A Limited Liability Law Company, was present. Mr. Iwamoto reported that his law firm is involved in a US Bankruptcy Court case involving a debtor's proposal to develop a condominium project. The project being proposed by the debtor is non residential, over \$1 million per unit, the developer will use the purchasers' deposits to pay for construction costs, but the developer believes they do not need to register with the Real Estate Commission.

Mr. Iwamoto stated that in his opinion, under the law, the proposal is wrong and that the debtor/developer must register with the Real Estate Commission because they will be using purchasers' deposits for construction.

Mr. Iwamoto further noted that in reviewing the Real Estate Commission's General Information packet, it notes six exceptions from registration and issuance of an effective date for a developer's public report, of which exception number 5 states: "Projects in which all units are restricted to nonresidential uses and all units are to be sold for \$1,000,000 or more". Mr. Iwamoto noted that the checklist for documents required for issuance of an effective date of a developer's public report requested the developer to answer the question, whether "Purchaser

Deposits to be used? Yes or No; If yes, submit the following..." Mr. Iwamoto stated that the law requires the protection of purchasers' deposits.

Chair Loudermilk questioned Mr. Iwamoto as to his client's stake in the request.

Mr. Iwamoto responded that he is representing a purchaser from the bank in a foreclosure case.

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Sherley, it was voted on and unanimously carried to take the matter under advisement.

Program of Work: **Condominium Laws and Education**

A request from the Deputy Director to draft FAQs on Act 48's impact on condominium associations was received and completed.

Neighbor Island Outreach

The September 7, 2011 committee meetings will be held in conjunction with the Specialists' Office for the Day in Kona at the West Hawaii Association of REALTORS® offices.

Rulemaking, Chapter 53 Fees

It was reported that the rough first draft has been completed.

Condominium
Organizations Forum:

No comments, recommendations or concerns were received from the following: Community Associations Institute Hawaii Chapter, Alakahi Foundation, Hawaii Council of Association of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners, Hawaii State Bar Association/Real Property & Financial Services Section, Land Use Research Foundation, Condominium Council of Maui, Hawaii Association of Realtors/Institute of Real Estate Management Hawaii Chapter/ Oahu Arm Committee, others.

CETF Budget &
Finance Report:

Typographical errors were noted on page 3, fiscal year ending date should read June 30 and the percent remaining for the Condominium Laws and Education program should read 100%.

Upon a motion by Commissioner Sherley, seconded by Commissioner Cobb, it was voted on and unanimously carried to accept the amended Condominium Education Trust Fund Financial Report for the period ending June 30, 2011

Executive Session:

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Sherley, it was voted on and unanimously carried to move into executive session pursuant to section 92-5(a)(4), HRS, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities."

Upon a motion by Commissioner Sherley, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to move out of executive session.

Request for Informal Non Binding Interpretation, Subchapter 5, Title 16, Ch. 201, HAR from Raymond Iwamoto, Esq. Schlack Ito A Limited Liability Law Company, dated July 25, 2011 Relating to "Inapplicability Of Registration Requirement To Nonresidential Units Sold For \$1,000,000 And More; And Use Of Purchaser's Deposits To Pay Project Costs"; §514B-51, HRS, "Registration required; exceptions"; §514B-81, HRS, "Applicability; exceptions"; §514B-92, HRS, "Use of purchaser deposits to pay project costs"; §514B-93, HRS, "Early conveyance to pay project costs" and other related sections of HRS

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Sherley, it was voted on and unanimously carried to issue an informal non-binding interpretation that Condominium projects in which all units are restricted to non-residential uses and the respective units are to be each sold for \$1,000,000 or more are pursuant to §514B-51(b)(2), HRS, exempt from the registration requirements of §514B-51(a), HRS; and condominium projects in which all units are restricted to non-residential uses and the respective units are to be each sold for \$1,000,000 or more are **not exempt** from Part V, HRS, "Protection of Condominium Purchasers" requirements when the developer intends to use purchasers' funds to pay project construction costs, including in the case of a conversion the repair costs, prior to closing. For these circumstances, the developer must register the condominium project with the Commission, obtain an effective date for a developer's prepared public report and comply with all other applicable requirements of Chapter 514B, HRS, including compliance with the requirements of Part V, HRS, "Protection of Condominium Purchasers."

Next Meeting: September 7, 2011
Upon adjournment of the Laws and Rules Review Committee meeting scheduled to convene at 9:30 a.m.
West Hawaii Association of REALTORS®
74-5620 Palani Court, Suite 106
Kailua-Kona

Adjournment: With no further business to discuss, Chair Loudermilk adjourned the meeting at 9:34 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

August 23, 2011

Date

Minutes approved as is.
 Minutes approved with changes; see minutes of _____