

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: January 6, 2004

Time: Upon adjournment of the Education Review Committee meeting which followed the Laws and Rules Review Committee meeting which convened at 9:00 a.m.

Place: REALTORS Association of Maui
Conference Rooms
441 Ala Makani Place
Kahului, Maui

Present: Peter Rice, Vice Chair
Louis Abrams, Member
Iris Okawa, Member
Vern Yamanaka, Member
Trudy Nishihara, Member

Calvin Kimura, Supervising Executive Officer
Cynthia Yee, Senior Condominium Specialist
Gordon Arakaki, Condominium Recodification Attorney
Diane Choy Fujimura, Senior Real Estate Specialist
Shari Wong, Deputy Attorney General
Irene Kotaka, Recording Secretary

Others: Thomas Douma
Scott A. Sherley, Hawaii Association of REALTORS
Harvey Janis
Lois Janis
Brian Thomas
Ralph Nagamine, County of Maui
Lorraine Gibo, IH&J
Nadine Gomes, IH&J
Faye Field, Polo Beach AOA
Charles Treuhold, Polo Beach AOA

Excused: Mitchell Imanaka, Chair
Marshall Chinen, Member
Kathleen Kagawa, Member
John Ohama, Member

Call to Order: Vice Chair Rice called the meeting to order at 10:57 a.m., at which time quorum was established.

Chair's Report: Vice Chair Rice thanked the REALTORS Association of Maui for allowing the meetings to be held in their office.

Condominium
Specialist's
Report:

Additional Distribution

The following materials were distributed prior to the start of the meeting:

4. Condominium Governance and Management
 - a. Mediation & Arbitration
 - 1) Mediation Quarterly Report (October – November 2003)
 - b. AOAO Registration 2003-2005 Biennium
 - 1) Registration Issued Effective Dates through December 31, 2003
5. CPR Registration and Developer's Public Reports
 - a. CPR Registration and Developer's Public Reports
 - 1) December 2003
 - 2) Project Statistics

Minutes:

Upon a motion by Commissioner Okawa, seconded by Commissioner Yamanaka, it was voted on and unanimously carried to accept the minutes of the December 11, 2003 Condominium Review Committee meeting as circulated.

Condominium
Project
Registration:

Condominium Projects and Developer's Public Reports

Department of Public Works and Environmental Management, County of Maui –
CPR Issues

Ralph Nagamine was present representing the County of Maui. He reported that a representative from the County's Planning Department was unable to attend the meeting. Mr. Nagamine reported that the County feels that it should be doing more regarding the enforcement of the subdivision ordinances and CPRs. He understands that the Commission views this as a county issue. He also reported that he understands that the County of Hawaii has adopted legislation addressing CPRs. He is not sure if the County of Maui will need to adopt new ordinances or if the current ordinances just need some tweaking. The County of Maui would like to be more involved in CPRs.

Mr. Nagamine asked if the Commission would accept a statement of non-compliance, if the Commission required that the developer state that there is full compliance, or if the Commission would accept the statement of non-compliance if disclosure was made.

Specialist Yee reported that the Commission has not rendered an official interpretation of the law on the matter. Staff reads the current law as requiring the developer to declare that the project is in compliance. If it is a new project, the developer's certification must be submitted. The counties must send a letter of compliance for condominium conversions. Developers are also required to make a declaration of compliance for conversion projects. Where information is received indicating that the project is not in compliance, the consultants work with the developer in addressing the situation. If the county determines that a project is not in compliance, it should send a copy of the non-compliance letter that was

sent to the developer to the Commission. The Commission would like to know this information as soon as possible prior to the units being sold to the consumer.

Mr. Nagamine reported that the County of Maui is looking at CPRs in general as it applies in all zoning districts. Dwellings may or may not be limited, depending on the zoning districts. The Planning Department approved an agricultural lot in which the owner had built two dwellings on the property. One property was restricted in size and the purchaser of the smaller unit did not find out until later that they could not enlarge the house. The person who did the CPR was required to get a letter, which he did. He did not disclose to the purchaser that the house could not be enlarged. The Planning Department feels that the zoning ordinances are being circumvented through the CPR process. The county realizes that it must study this issue further.

Commissioner Abrams stated that he would like to see more disclosures being done. He is not sure if the CPR law would solve all of the problems.

Mr. Nagamine said that they will be reviewing the county laws and will keep in touch with staff.

Condominium
Governance and
Management:

Mediation and Arbitration

Mediation quarterly report statistics were distributed for informational purposes.

AOAO Registrations

Specialist Yee reported that as of December 31, 2003, 1,439 AOAOs have successfully registered.

Upon a motion by Commissioner Okawa, seconded by Commissioner Yamanaka, it was voted on and unanimously carried to recommend approval to ratify issuance of effective registration dates for Association of Apartment Owners through December 31, 2003 for the 2003-2005 registration. The associations are as follows:

Hauula Beach Homes	11/19/2003	Hauula Estates	11/17/2003
Kailua Bay Resort	12/11/2003	Kalama Gardens	10/31/2003
Luana-Paleka Cottages	11/24/2003	Makalanile'a	11/06/2003
Puuwai Pines	11/05/2003	Sunset Paradise	11/17/2003

Case Law Review Program

The 2001-2003 index from the December 2003 issue of *Community Association Law reporter* was distributed for informational purposes.

The following articles were distributed for informational purposes: "Board Members Held in Contempt of Court, Ordered to Give Access To Records," and "Accounting Firm might Be Liable to Community Association for Malpractice" (December 2003 issue of *Community Association Manager Insider*); "The Florida Flagpole" (November/December 2003 issue of *Common Ground*).

Senator Willie C. Espero's Bill Relating to Condominium Management Disputes Resolution

Specialist Yee reported that the proposed bill requires among other provisions that:

- any person with a dispute concerning or involving one or more apartment owners, its board of directors, managing agent, or one or more other apartment owners, relating to the interpretation, application, or enforcement of part V (condo management of condo law), any rules adopted by the commission pursuant to part V, or the association's declaration, bylaws, or house rules... may file a complaint with the commission naming one or more apartment owners, an association of apartment owners, a director or the board of directors of an association of apartment owners, or a managing agent as an adverse party.
- the commission shall appoint a hearings officer who shall hold a hearing on the complaint not more than 45 days following service of the complaint and submit the hearing officer's findings and recommendations to the commission at the close of the hearing.
- the hearing officer shall be an attorney knowledgeable in condominium law.
- within 30 days of the close of the hearing, the commission shall make a ruling on the findings and recommendations of the hearing officer in writing, and issue an appropriate order pursuant to sections 514A-47, 514A-48, and 514A-49, and any rules adopted by the commission.
- allows appeal through circuit court and confined to record of the commission proceedings and not subject to trial de novo.
- any cost incurred by the commission to administer this process shall be paid out of the condominium management education fund and not the compliance resolution fund.
- within 9 months (offered to 12 months) of Act, the commission shall adopt rules for this part.

The Director's office had asked staff and the commission to review the proposed bill, its feasibility, and to make recommendations. Staff has completed a draft preliminary feasibility study, which has been circulated to the committee for comments. In doing the study, staff looked at past studies relating to condominium disputes, as well as current studies and reports relating to arbitration, mediation, and litigation. Current and past studies indicate a low usage of litigation, mediation or arbitration. Costs involved with these procedures were also high. The Legislative Reference Bureau conducted a study in 1996 and also reported the low utilization of mediation, arbitration and litigation (over a ten-year period).

Specialist Yee reported that this fiscal year is the first time since the Condominium Management Education Fund's subsidized mediation program started in 1988 that it appears to be utilized by the condominium community on all

islands. It is uncertain as to what percentage of the condominium community would utilize the Condo Court if it were available.

It was suggested that perhaps the Legislative Reference Bureau ("LRB") could be asked to conduct a study to update its 1996 findings on condominium dispute resolution vehicles.

Commissioner Okawa thanked Specialist Yee and staff for being thorough in preparing the memo. She also noted that the Recodification Attorney is facing a lot of these issues. There are cost concerns and also concerns on whether or not there are appropriate mechanisms to enforce this. This may increase the responsibilities placed upon the associations and may essentially raise maintenance fee issues. She stated that she would prefer that the recodification process work its way through.

Commissioner Abrams noted his support of the recommendations; however, he would like to ask the LRB to study this issue further.

SEO noted the most significant proposal of the bill is the dramatic change in policy in condominium management/governance, from a self-governance, self-managed, mandatory arbitration and mediation, and minimal government involvement to government involvement in all aspects of condominium management and governance. This includes enforcement and interpretation of condominium law, each association declaration, bylaws, and house rules, plus includes the filing of a complaint by any person, including non-apartment owners and others outside of an AOA, including apartment owner versus apartment owner. The condominium law and each AOA will be under Commission's enforcement. This will increase the workload tremendously and affects the Commission's program of work. Case in point, it will be less costly and less stressful for an AOA to file a complaint under this bill against an apartment owner for violating the house rule versus handling within the AOA and possibly utilizing an attorney.

Vice Chair Rice noted that all governing documents are different, so each case will have to be evaluated individually.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Abrams, it was voted on and unanimously carried to accept the report, "Preliminary Report on the Feasibility of a Proposed Condominium Court with Real Estate Commission Appointing a Hearings Officer to Hear the Condominium Disputes," dated December 29, 2003, prepared by Commission staff; find that there are a sufficient number of questions unanswered in the proposed legislation that further study is needed and the Committee recommends approval to reiterate its position taken in the Commission's separate Report to the 2004 Legislature on Recodifying Chapter 514A, HRS, that the LRB should conduct a study of any proposed condominium court; subject to the consideration of any condominium court on the outcome of the study; and request as part of the LRB study an update of its 1996 study and report, "Fighting Battles in Modern American Castles: Condominium Dispute Resolution."

Condominium Project Registration - Public Reports Issued

Condominium Project Registration: Upon a motion by Commissioner Abrams, seconded by Commissioner Nishihara, it was voted on and unanimously carried to recommend approval to ratify issuance of effective dates for public reports for the month of December 2003 as follows:

Proj No	Project Name	Project Address	TMK #	Report	Date
5222	1823 LIME	1823 LIME ST HONOLULU HI	(1)2-03-033:052 96826	Final	12/05/03
4163	3351 KALUA MOA	LOT D HAMAMURA TRACT LAWAI HI	(4)2-06-009:068	Suppl 1	12/02/03
5232	738 & 740 MAUI STREET	738 & 740 MAUI ST HONOLULU HI	(1)1-08-014:066 96817	Final	12/18/03
5163	739 KINALAU	739 KINALAU PL HONOLULU HI	(1)2-01-040:031 96813	Suppl 1	12/16/03
5234	ALEXANDER CONDOMINIUM	DOOR OF FAITH CHURCH RD HUELO HI	(2)2-09-007:067 96708	Final	12/24/03
4607	HOEKSTRA OHANA	729 ALAE RD KULA HI	(2)2-02-009:002 96790	Suppl 1	12/02/03
5185	HU'ELANI PHASE 13	91-725 TO 91-738 LAUNAHELE ST EWA BEACH HI	(1)9-01-116:005 96706	Final	12/02/03
5233	HU'ELANI PHASE 14	91-744 TO 91-810 LAUNAHELE ST EWA BEACH HI 96706	(1)9-01-116:001	Prlim	12/11/03
5235	HU'ELANI PHASE 15	91-748 TO 91-817 LAUNAHELE ST EWA BEACH HI 96706	(1)9-01-116:001 96706	Prelim	12/11/03
5214	KAILUA CONDOMINIUM	6701 PUU PILO PL WAILUA HI	(4)4-02-022:047 96746	Final	12/04/03
2300	KALIIHWAI RIVER FARMS	KALIIHWAI KILAUEA HI	(4)5-03-003:005 96754	Suppl 1	12/15/03
5215	KALUANA CONDOMINIUM	PUU PILO PL WAILUA HI	(4)4-02-022:051 96746	Final	12/09/03
5226	KAMAAINA II	75-5298 MAMALAHOA HWY KAILUA-KONA HI	(3)7-05-002:055 96740	Final	12/29/03
5218	KEALAKAHA ESTATES	99-126A & B KEALAKAHA DR ** AIEA HI	(1)9-09-021:010 96701	Final	12/22/03
5176	KEALIA KAI 12	KEALIA KEALIA HI	(4)4-07-007:012	Final	12/15/03
5177	KEALIA KAI 13	KEALIA KEALIA HI	(4)4-07-007:013	Final	12/15/03
4638	KILAUEA BAY VISTAS CONDO	LOT 12-C WAILAPA SUBDIV KILAUEA HI	(4)5-01-005:016	Suppl 1	12/24/03
5238	KOLEA CONDO VILLAS BLDG NO 10	69-289 WAIKOLOA BEACH DR WAIKOLOA HI	(3)6-09-011:019 96738	Cont.	12/23/03
5239	Final KOLEA CONDO VILLAS BLDG NO 11	69-289 WAIKOLOA BEACH DR WAIKOLOA HI	(3)6-09-011:019 96738	Cont.	12/23/03
5240	Final KOLEA CONDO VILLAS BLDG NO 12	69-289 WAIKOLOA BEACH DR WAIKOLOA HI	(3)6-9-011:019 96738	Cont.	12/23/03
5241	Final KOLEA CONDO VILLAS BLDG NO 13	69-289 WAIKOLOA BEACH DR WAIKOLOA HI	(3)6-09-011:019 96738	Cont.	12/23/03
5236	Final KOLEA CONDO VILLAS BLDG NO 8	69-289 WAIKOLOA BEACH DR WAIKOLOA HI	(3)6-09-011:019 96738	Cont	12/23/03
5237	Final KOLEA CONDO VILLAS BLDG NO 9	69-289 WAIKOLOA BEACH DR WAIKOLOA HI	(3)6-09-011:019 96738	Cont.	12/23/03
5183	Final KT CONDOMINIUM	2005 KALIA ROAD HONOLULU HI	(1)2-06-009:013 96815	Final	12/31/03
5211	LANAKILA ESTATES	1747B & 1747B-1 LANAKILA ST HONOLULU HI	(1)1-07-041:030 96817	Final	12/15/03
5254	LAS BRISAS PHASE 13	91-532 TO 91-552 MAKALE'A ST EWA BEACH HI	(1)9-01-010:110 96706	Prelim	12/23/03
5108	PAAUHAU SUBDIVISION LOT 7	LOT 7 PAAUHAU SUBDIV HAMAKUA HI	(3)4-04-005:021	Final	12/04/03
4849	PENINSULA AT HAWAII KAI PROJ III	520 LUNALILO HOME ROAD	(1)3-09-008:016	Final	12/09/03

5245	STEVENSON CONDOMINIUM	HONOLULU HI 55-552A HUALUA ROAD	96825 (3)5-05-011:057	Final	12/22/03
5231	TAMANAHA CONDOMINIUM	HAWI HI 157 CHURCH ST	96719 (2)3-04-008:037	Final	12/24/03
5225	THE VILLAS AT KENOLIO PH II	WAILUKU HI KA 'ONO 'ULU ST	96793 (2)3-09-001:160	Final	12/15/03
5162	TIBURON PHASE 10	KIHEI HI 91-642 TO 91-664 MAKALE'A ST	96753 (1)9-01-010:082	Final	12/18/03
5089	WAIKOLOA COLONY VILLAS	EWA BEACH HI 69-555 WAIKOLOA BEACH DRIVE	96706 (3)6-09-007:035	Final	12/26/03
5246	WEST PARK CENTER	WAIKOLOA HI 91-238 KALAELOA BLVD	96738 (1)9-01-032:034	Final	12/26/03
5004	WINSOR THE (FKA HALENOHONA)	KAPOLEI HI 343 HOBRON LANE HONOLULU HI	96707 (1)2-06-012:047 96815	Cont. Final	12/15/03

Preliminary Reports: 3
 Contingent Final Reports: 7
 Final Reports: 20
 Supplementary Reports: 5

Total: 35

Project Statistics

The project statistics report was provided to the Commissioners for their information.

Condominium Related Articles

The article entitled "Pass Completion" from the November/December 2003 issue *Common Ground* was distributed for informational purposes.

Program of Work: Recodification of Chapter 514A

The Recodification Attorney reported that the report has been finalized and is awaiting transmittal to the Senate President and to the Speaker of the House. He thanked the Commissioners and those who participated in the process.

He also stated that the recommendation regarding the condo court is that the LRB look at the issue. He reported that the State of California took three years to look at the Common Interest Ownership Act.

Once the report has been formally transmitted, it will be placed on the Commission's website.

Legislative Acts and Resolutions

Staff has not received a copy of the final report on Act 185 from the Department of Health. Once it is received, staff will bring it to the Commission to acknowledge receipt of the report. Sections in the Recodification Report and proposed legislation relate to assisted living.

Upon a motion by Commissioner Okawa, seconded by Commissioner Nishihara, it was voted on and unanimously carried to acknowledge receipt of a preliminary report on Act 185 (SLH 2003) Relating to Assisted Living Facilities, dated

December 16, 2003, transmitted by the Director of Health, State Department of Health, noting that the committee's final report is being completed, and will be ready for submittal to the 2004 Legislature no later than December 24, 2003.

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, Hawaii Association of Realtors/Institute of Real Estate Management Hawaii Chapter/ Oahu Arm Committee, others.

Open Forum:

Harvey and Lois Janis of the Condominium Council of Maui were present at the meeting and shared information on the services being offered by the Condominium Council of Maui.

A condo forum is held every third Thursday of the month for condominium owners only. The forum brings owners together to talk about problems that they are experiencing and to discuss solutions. Ms. Janis informed the Commissioners that her purpose was to provide condominium owners with information and referrals.

Ms. Janis provided her comments and recommendations on what owners need. She asked that assistance be given to provide owners with guidelines to follow. She noted that everyone needs to have communication and problem solving skills. Owners need a basic education in common interest philosophy and self governance.

Ms. Janis noted that Mediation Services of Maui has a great opportunity for educating owners. Ms. Janis reported that she was trying to encourage Sue Kang, former head of the Mediation Services of Maui, to apply for funding from the Commission to help in educating the owners.

Specialist Yee reported that in a survey conducted for the Commission, 89% of those polled were not aware of the services that the Commission offers and 84% were not aware of the subsidy for mediation and arbitration.

Commissioner Okawa stated that she thought the format was good because it was in "people speak" rather than "legal speak." The forum appears to provide a safe haven for the owners to speak out and she commended the Janis' for their efforts.

Mr. Janis reported that there are 21,114 units on the island of Maui in 396 complexes. Mr. Janis asked if all of those units contributed to the Condominium Management Education Fund. Specialist Yee informed Mr. Janis that not all of the condo projects are registered.

Mr. Janis reported that a lot of problems have been resolved through the exchanging of information at the forums. He recommended that the Commission consider using that approach in all of the islands if it can get people who are

willing to participate. He also noted that it was important to have a peer lead the group.

Copies of the Condominium Council of Maui's newsletter were distributed to the Commissioners and staff.

The Janis' were asked if staff would be able to attend and participate at their condo forums. The Janis' stated that it was an informal forum that was open to anyone who was interested and they would welcome staff's attendance and participation. Ms. Janis stated that when they had a program-type forum with a panel, 56 people attended.

Thomas Douma commended the Recodification Attorney for maintaining his cheerful disposition during the recodification process.

Mr. Douma reported that he was concerned about the financial status of the associations in the State of Hawaii. His company does reserve studies and home inspections throughout the State. He is also an officer in the State Society of Home Inspectors.

He noted that over the last five years he has seen a consistent decline in the financial status of the AOAOs. He is also seeing skyrocketing prices in condos. The buyers' expectations are not being met in the financial reporting when buying a condo. When the maintenance budget is three to four times greater, it means that the AOAO is using funds to patch things up instead of using the funds to address the infrastructure. They are finding this problem in Hawaii. The lack of inclusion of increased regulatory financial oversight in the recodification effort is alarming. The requirement that each board certify that they are meeting the reserves requirement annually is not being done. Litigation is an expensive remedy and the owners rarely have the resources or knowledge to pursue the matter. Mr. Douma suggested that the Commission develop recommendations that would minimize intrusion to the board and not increase the cost of government. The State of Nevada requires that a report be submitted and is randomly reviewed. He would like to urge the Commission to forward a statement of concern to the Legislature that these conditions exist and explore minimum certification requirements from the boards. The boards could be asked to pay a minimal fee to cover the costs. Mr. Douma asked that the Commission request AOAOs to submit copies of their reserve studies and determine if the Commission could interpret it. Mr. Douma stated that the financial status of the AOAOs is deteriorating and condo prices are getting higher.

Commissioner Okawa noted that there are many different levels of management for condominium associations. She noted that there is a constant "tug and push" because of the market conditions. The bill would require owners to take on homeowners insurance. There are a lot of issues that people can be pushed into.

Mr. Janis asked if the Commission was involved in leasehold issues. Mr. Janis was informed that the Commission did not get involved in leasehold issues.

The Commissioners were informed that Mr. Douma's comments were included in the packet of information that the Commissioners received regarding the recodification of Chapter 514A, HRS.

Discussion followed noting that the original reserve bill was introduced to the Consumer Protection Committee, through its Chair, Mazie Hirono. The bill recommended that the reserves be funded 100%, however, people complained and the requirement was lowered to 50%. The Commission's position was that it would not provide a remedy to the situation.

Mr. Douma stated that if an association funded the reserves at 50% long enough, it would eventually run out of money. The SEO reported that the Commission has tried in the past to raise the amount, but the lobbyists have made it difficult to pass the law.

Vice Chair Rice noted that a lack of requirement for cash accounting is probably a part of the problem.

CMEF Budget & Finance Report: No report presented.

Next Meeting: February 11, 2004
Upon adjournment of the Education Review Committee meeting which follows the Laws and Rules Review Committee meeting scheduled to convene at 9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Adjournment: With no further business to discuss, Vice Chair Rice adjourned the meeting at 12 noon.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

February 11, 2004

Date

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