

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: February 14, 2007

Time: 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.

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

Present: William Chee, Chair, Broker / Honolulu Commissioner – early departure
Mark Suiso, Vice Chair, Public / Honolulu Commissioner
Louis Abrams, Broker / Kauai Commissioner
Trudy Nishihara, Broker / Honolulu Commissioner
Carol Ball, Broker / Maui Commissioner
Stanley Kuriyama, Broker / Honolulu Commissioner – early departure
Michele Sunahara Loudermilk, Public / Honolulu Commissioner
Annette Aiona, Broker / Hilo Commissioner
Frances Gendrano, Salesperson / Honolulu Commissioner

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

Others: Austin Imamura, Pacific Rim Bank
Galen Leong, Ashford & Wriston
Todd Dickie

Call to Order: Chair Chee called the meeting to order at 10:07 a.m., at which time quorum was established.

Chair's Report: 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.

Condominium Specialist's Report: **Additional Distribution**
The following materials were distributed prior to the start of the meeting:
4. Condominium Governance and Management
j. Informal Non-Binding Interpretation Request – Pacific Rim Bank

– Request for Non-Binding Opinion Concerning Deposits of Funds of Hawaii Owners Associations, Pursuant to Sections 514A-7(c)(1) and 514B-149(c)(1), Hawaii Revised Statutes – Deferred from January 10, 2007 meeting.

5. CPR Registration and Developer's Public Reports
 - f. Informal Non-Binding Interpretation Requests §514B-23, HRS, Amendments to governing instruments, §514A-1.5, HRS, Act 93 §9 (SLH 2005) – Galen C.K. Leong, Esq.

Minutes: Upon a motion by Commissioner Abrams, seconded by Commissioner Ball, it was voted on and unanimously carried to accept the minutes of the January 10, 2007 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOAO Registrations

Specialist Grupen reported that as of January 31, 2007, 1,554 AOAOs have successfully registered.

Mediation and Arbitration

The committee acknowledged receipt of the Mediation Center of the Pacific's quarterly report of condominium mediations.

Condominium Seminars and Symposium

Specialist Leong reported that the CAI Hawaii seminar "Disaster Planning and Recovery" was well attended and very informative. There was not enough time for all the speakers. Scheduling of future seminars should include adequate time for each speaker.

CAI Hawaii Seminar Approval Request – March 31, 2007 Bids, Contracts, Funding; July 21, 2007 Zen & Art of Community Association Living.

Upon a motion by Commissioner Abrams, seconded by Commissioner Nishihara, it was voted on and unanimously carried to recommend approval for CEF subsidies the following CAI Hawaii seminars subject to the terms and conditions of the existing August 24, 2006 contract CAI Hawaii has with the Commission: "Bids, Contracts, Funding" Lee Yamashita, March 31, 2007 or thereabouts; and "Zen & Art of Community Association Living" Steve Elisha, July 21, 2007 or thereabouts.

Condominium Related Articles

The following articles from the January February 2007 issue of *Common Ground* were distributed for informational purposes: "Home Front – News Trends Ideas" and "Whatever Doesn't Kill You Makes You Strong."

The article "IT Convergence Creates New Revenue Sources" from the December 2006 issue of *Hawaii Community Associations* was also distributed for informational purposes.

Informal Non-Binding Interpretation Requests - Pacific Rim Bank Request for Non-Binding Interpretation Concerning Deposit of Funds of Hawaii Homeowners Associations, Pursuant to Sections 514A-7(c)(1) and 514B-149(c)(1), Hawaii Revised Statutes

Mr. Austin Imamura of Pacific Rim Bank (PRB) was present and distributed materials on the CDARS program. Mr. Imamura reported that Pacific Rim Bank is a state-chartered bank established in February 2006 and is insured by the Federal Deposit Insurance Corporation and provides a service to its depositors known as the Certificate of Deposit Account Registry Service (CDARS). CDARS is the easiest most convenient way to enjoy full FDIC insurance on deposit amounts larger than \$100,000. All of a depositor's transactions are handled through PRB. Once the Deposit Placement Agreement is executed, the depositor selects an interest rate and maturity based on current CD options that best matches the depositor's investment goals. The large deposit is broken into smaller amounts by CDARS and submitted for placement at FDIC insured banks that are members of the CDARS network and may be located on the mainland. These member banks then issue certificates of deposit in denominations not to exceed \$100,000, so that the depositor's entire investment is eligible for full FDIC insurance coverage. The depositor receives written confirmation of the deposits and a listing of all certificates of deposit in a monthly statement from CDARS. The certificate of deposit is issued by each member bank which may be located out of state. Subject to penalties for early withdrawal, etc., that are disclosed at account opening, the depositor is provided access to the deposits at PRB.

PRB is requesting a non-binding opinion that its placement of large deposits in CDARS complies with the requirements of Sections 514A-97(c)(1) and 514B-149(c)(1), HRS. PRB notes that Section 38-3(9), HRS, authorizes the use of certificates of deposit issued through CDARS to secure public funds through the passage of a bill signed by the Governor in 2003.

Mr. Imamura further reported that CDARS has the participation of 14,000 banks nationwide. Depositors receive one deposit and one interest rate.

Specialist Yee questioned if there is a difference between "placing" money with PRB and "depositing" money with PRB.

Mr. Imamura responded that "placing" and "depositing" are the same. He further clarified that the statement will show a deposit of the money and a list of its participating member banks.

Specialist Yee further questioned if she were to provide PRB a check in the amount of \$500,000, would the entire amount be deposited with PRB.

Mr. Imamura responded in the affirmative.

Commissioner Loudermilk questioned whom the CD is issued to.

Mr. Imamura responded that the administrator is the Bank of New York and the account holder would be in the name of the depositor, i.e., the Association.

Commissioner Loudermilk questioned item number 4 on the brochure distributed by Mr. Imamura. Item number 4 reads "CDs are issued. Member banks issue CDs in denominations under \$100,000 so your entire investment is eligible for full FDIC insurance coverage."

Mr. Imamura responded that each bank separately holds less than \$100,000. PRB issues 1 CD in the total amount and lists all member banks participating. CDARS only participates in FDIC surety deposits.

Commissioner Loudermilk noted that the statute specifies that the all funds collected by an association, or by a managing agent for any association shall be "deposited" in a financial institution.

Mr. Imamura responded that PBR is a registered bank.

Chair Chee noted that he is a Director of Hawaii National Bank and is familiar with the CDARS program and its benefits.

Vice Chair Suiso disclosed that he is an employee of First Hawaiian Bank.

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

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of January 2007 were distributed for informational purposes.

Proj No.	Project Name	Project Address	TMK #	Report	Date
6209	1721 & 1725 MARQUES	1721 MARQUES ST HONOLULU HI 96822	(1)2-08-016:058	B Rpt	01/30/07
6197	1901 & 1903 PACIFIC HTS ROAD CONDO	1901 PACIFIC HTS RD HONOLULU HI 96813	(1)2-2-008:019	B Rpt	01/11/07
6113	2031/2033 PUNA STREET RESIDENCES	2031 PUNA ST HONOLULU HI 96817	(1)1-08-035:015	Final	01/30/07
6053	3101 PACIFIC HEIGHTS ROAD	3101 PACIFIC HEIGHTS RD HONOLULU HI 96813	(1)2-02-029:016	Final	01/17/07
6176	4172 HUANUI STREET	4172 AND 4172A HUANUI ST* HONOLULU HI 96816	(1)3-02-064:090	B Rpt	01/05/07
6125	ALII BANYAN CONDOMINIUMS	HOLUALOA 2ND KONA HI 96740	(3)7-06-014:026	Suppl 1	01/11/07
6170	C J CONDOMINIUM	LOT 24 KAI HELE KU ST LAHAINA HI 96761	(2)4-07-010:048	B Rpt	01/12/07
6159	HEHI CONDOMINIUM	4235 HEHI RD HANAMAULU HI 96766	(4)3-07-001:028	Final	01/31/07
6135	HOKULANI GOLF VILLAS	LIPOA PKWY KIHEI HI 96753	(2)2-02-024:035	B Amd 1	01/26/07
6178	KAPAKA MELE CONDOMINIUM	LOT 3 OF PRINCEVILLE AT HANALEI PRINCEVILLE HI 96722	(4)5-03-008:003	Final	01/04/07
5589	KULALANI AT MAUNA LANI	68-1118 N KANIKU DR KOHALA HI 96741	(3)6-08-022:007	Suppl 1	01/18/07
6052	KULALANI AT MAUNA LANI - PH II	68-1118 N KANIKU DR KOHALA HI 96741	(3)6-08-022:007	Suppl 1	01/10/07
6200	LORENZO CONDOMINIUM	331 W KUIAHA RD HAIKU HI 96708	(2)2-07-031:022	B Rpt	01/19/07
6217	MILO COURT AT KEHALANI	HONOAPIILANI HWY WAILUKU HI 96793	(2)3-05-001:081	Cont. Final	01/30/07
6187	MOKUOLA VISTA	94-333 MOKUOLA ST WAIPAHU HI 96797	(1)9-04-017:053	B Rpt	01/04/07
6203	MONTECITO/TUSCANY (TUSCANY 2 PH 2)	91-200 KEAUNUI DR EWA BEACH HI 96706	(1)9-01-010:007	B Rpt	01/30/07
6120	MONTECITO/TUSCANY III (TUSCANY 2 PH 1)	91-1200 KEAUNUI DR EWA BEACH HI 96706	(1)9-01-010:007	B Amd 1	01/04/07
6208	MONTECITO/TUSCANY III (TUSCANY 2 PH 3)	91-200 KEAUNUI DR EWA BEACH HI 96706	(1)9-01-010:007	B Rpt	01/30/07
6173	NOHONA II AT MILILANI MAUKA-PH II	UKUWAI ST MILILANI HI 96789	(1)9-05-049:078	B Rpt	01/29/07
4566	OHIA VIEW	73-1735 HAO ST KAILUA-KONA HI 96740	(3)7-03-025:034	Suppl 1	01/05/07
3865	PALI VISTA	LOT 26A KALIHIWAI RIDGEII HANALEI HI 96714	(4)5-02-022:024	Suppl 1	01/18/07
5996	PALMS AT WAIKIKI	1850 ALA MOANA BLVD HONOLULU HI 96815	(1)2-06-012:003	Final	01/26/07
5898	PARK PLAZA	590 LIPOA PKWY KIHEI HI 96753	(2)2-02-024:008	Cont. Final	01/29/07
4112	PINNACLE HONOLULU THE	1199 BISHOP ST HONOLULU HI 96813	(1)2-01-010:026	Final	01/26/07

6161	PONOI PALMS	736 PONOI PL MAKAWAO HI 96768	(2)2-04-029:026	B Rpt	01/11/07
6194	SOUTH SHORE PLAZA	411 HUKU LII PL KIHEI HI 96753	(2)3-09-045:019	B Rpt	01/29/07
5776	TAVARES CONDOMINIUM	3345 KII PL PUKALANI HI 96768	(2)2-03-044:008	Suppl 1	01/22/07
6207	THE TOWN HOMES AT FAIRWAY'S EDGE INCR 5	KEONEULA BLVD EWA BEACH HI 96706	(1)9-01-012:070	B Rpt	01/30/07
6199	VILLAS AT KEHALANI THE	KEHALANI PKWY WAILUKU HI 96793	(2)3-05-001:074	B Rpt	01/30/07
6175	WAIKO BASEYARD LOT 4 CONDO	325 PAKANA ST WAILUKU HI 96793	(2)3-05-027:004	B Rpt	01/17/07

Preliminary Reports:	0
Contingent Final Reports:	2
Final Reports:	6
Supplementary Reports:	6
B Reports:	14
B Amendment Reports	2

Total: 30

CPR Project – Chapter 514A, HRS, registration questionnaire - Deferred from January 10, 2007 meeting

Specialist Yee reported that the condominium consultants have found the questionnaire form submitted with the Chapter 514A condominium project registration application very useful in reviewing the reports and request that a similar form be used with the submission of Chapter 514B registrations.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Aiona, it was voted on and unanimously carried to recommend approval to include a "Questionnaire" as part of the Chapter 514B, HRS, condominium project registration application. The questionnaire shall include those items currently requested in the Chapter 514A, HRS, condominium project registration application, and shall exclude any items, areas, or information that are already included as part of the Chapter 514B, HRS, developer's public report form.

Condominium Project Related Articles

The article "Does that Coastal Home Comply with the NFIP Regs?" from the January 2007 issue of *Wai Halana Hawaii Flood News* was distributed for informational purposes.

Informal Non-Binding Interpretation Requests §514B-23, HRS, Amendments to governing instruments, §514A-1.5, HRS, Act 93 §9 (SLH 2005) – Galen C.K. Leong, Esq.

Mr. Leong informed the committee that on behalf of his client, he is requesting an interpretation of Section 514B-23, HRS. He reported that they are concerned with projects where the declaration, bylaws and condominium map were filed prior to July 1, 2006 creating the condominium project under 514A, but no registration was commenced or concluded with the Commission prior to July 1, 2006. Mr. Leong's plain reading of the Ch. 514B-23 is that in such a case if the declaration, bylaws and condominium map for a project created under Chapter 514A are amended and restated Chapter 514B could be made applicable to the project. The developer should then be allowed to register the project and obtain a developer's public report under Chapter 514B.

Commissioner Loudermilk questioned if the amended documents state that the entire project is governed under Chapter 514B.

Mr. Leong replied in the affirmative and further stated that they have amended and restated the declaration and bylaws that henceforth would be governed by Chapter 514B. The statute states that the documents can be amended to achieve the new result.

Specialist Yee questioned the permitted results. Act 93 section 9(b) talks about condominiums created prior to July 1, 2006, those registered have an option to sell under Chapter 514B.

Mr. Leong replied that UCAIO is the source section, and that the language in the statute is not specific enough.

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

Informal Non-Binding Interpretation Requests §514A-40(b), §514A-4, §514A-20, §514A-31, 514A-105, HRS - Galen C.K. Leong, Esq.

Mr. Leong reported he is seeking a clarification of the applicability of Section 514A-40(b) to a project, Iolani Regent, which was created in 1990 when the declaration, bylaws and condominium map were recorded, but not registered for sale until after July 1, 2006. The developer's position is that Section 514A-40(b) does not technically apply to this project and that it falls outside the law which was not properly drafted. The developer is unable to obtain the county letter in a timely manner.

Mr. Leong made reference to the language in 514A-40(b) which refers to "one or more existing structures being converted to condominium status" and "to apartments that may be occupied for residential use and have been in existence for five years or more". Mr. Leong noted that the statute appears to apply to buildings containing residential apartments in existence for five years or more which are being converted to condominium status. Under the new law, Chapter 514B, the definition of converted or conversion means the submission of a structure to a condominium property regime more than twelve months after the completion of construction.

Specialist Yee reported that the definition of unit/unit status means that they are able to sell or convey. The time period depends on when you are going to register.

Mr. Leong responded that the law itself does not say that, that is how staff has interpreted the law. Conversion is when you file the documents, not when you register the project with the Commission. The Iolani Regent was built in 1990, the documents were filed when the project was built and before the project was completed.

Deputy Attorney General Wong asked for clarification on Mr. Leong's two requests relating to the same project. It seems that in the previous request he is seeking to register under Chapter 514B, but in this request relating to the same project, he seems to want to register under Chapter 514A.

Mr. Leong replied that neither Chapter 514A nor 514B applies to this specific project.

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

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

It was reported that a discovery was made by the Reviser of Statutes that Parts I, V, and VII of Ch. 514A, HRS, were repealed. Recommend that staff research the possibility of the reenactment of Parts I, V, and VII of Ch. 514A, HRS.

SEO Kimura suggested that staff look into posting a notice in the next Hawaii Condominium Bulletin and re-amend and possibly re-distribute Ch. 514A with a cover letter informing of the discovery by the Reviser of Statute and to inform consumers to consult with an attorney. The missing sections will require legislative action and with about a month into the legislative session it is impossible to amend a bill to include a 100 page amendment, let alone relating to condominiums.

Hawaii Condominium Bulletin - Printing

Specialist Leong reported that informal solicitations were sent to six vendors for the printing and mailing services of up to 5 issues of the Hawaii Condominium Bulletin. Three of the six vendors responded with quotes. Quotes for both 8 page and 12 page issues were requested, although it is standard for the Commission to issue 8 page issues, a request for quote on 12 page issues were requested should there be a necessity to get more information out. Pursuant to the procurement code, Fisher Printing was selected as they provided the lowest bid for 8 page issues.

Legislative Acts and Resolutions

SEO Kimura reported that the House would not hear the bill on a Condominium Commission. A bill on a Condominium Commission was heard by the Senate. The Commission provided testimony in opposition of a condominium commission as an Auditor's sunrise review is required.

Consumer Education

Vice Chair Suiso reported that condominium consumer educational materials provided by other states and organizations were distributed for informational purposes. The committee will be reviewing the material and deciding on what direction the Commission wants to take to enhance its educational materials.

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.

Open Forum: No discussion presented.

CEF Budget & Finance Report: Upon a motion by Commissioner Abrams, seconded by Commissioner Nishihara, it was voted on and unanimously carried to accept the Condominium Education Fund Financial Report for the period ending December 31, 2006.

Chair Chee appointed Vice Chair Suiso Chair Pro Tem. Chair Chee was excused from the meeting

Executive Session: Upon a motion by Commissioner Aiona, seconded by Commissioner Abrams, it was voted on and unanimously carried to enter 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;".

Commissioner Kuriyama was excused from the meeting.

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

Informal Non-Binding Interpretation Requests - Pacific Rim Bank Request for Non-Binding Interpretation Concerning Deposit of Funds of Hawaii Homeowners Associations, Pursuant to Sections 514A-7(c)(1) and 514B-149(c)(1), Hawaii Revised Statutes

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Abrams, it was voted on and unanimously carried to recommend approval to decline to issue an informal non-binding interpretation and recommend that Pacific Rim consult with the DCCA's Division of Financial Institutions and or revisit and resubmit its written request to address the language of section 514B-149(c) (1) (A), Hawaii Revised Statutes.

Informal Non-Binding Interpretation Requests §514B-23, HRS, Amendments to governing instruments, §514A-1.5, HRS, Act 93 §9 (SLH 2005) – Galen C.K. Leong, Esq.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Abrams, it was voted on and unanimously carried that with concerns about the age of the condominium itself (Iolani Regent) and with concerns about consumer protection, recommend approval to issue an informal non-binding interpretation that a condominium created in 1990 where the declaration, bylaws, and condominium map were recorded in 1990 and where the project was never registered with the Commission and the developer remains the owner of all of the units in the condominium project, allow the developer the option to register the condominium project and sell in accordance with Chapter 514B, HRS, provided the developer pursuant to section 514B-84(a) (3), HRS, does the following:

- 1) Disclose in the developer's public report that the developer has not received a letter from the appropriate county officer verifying the structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built; and update the developer's public report should the letter later be received;
- 2) Secure a verified statement signed by a licensed architect and or engineer that the structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built and specifically disclosing the information in the developer's public report including the disclosure of any violations and non-compliance with a date certain as to when the violations and non-compliance shall be cured as provided in §514B-32 (a) (13), HRS, and §514B-89, HRS. The verified statement shall provide the same level of assurances and information as a county officer's verification required by §514B-84(a) (2), HRS.
- 3) Specifically amend the condominium project's 514A, HRS declaration to include provisions that the condominium project shall be governed by Chapter 514B, HRS, including the requirements relating to registration and sale of the condominium apartments/units and protection of condominium purchasers.

- 4) Restate the declarations, bylaws, condominium map and other constituent documents as a Chapter 514B, HRS condominium property regime.
- 5) The assigned condominium consultant shall monitor the developer's compliance with the stated conditions and disclosures as set forth above and verify to the Commission, the developer's compliance with the stated conditions and disclosures.

Informal Non-Binding Interpretation Requests §514A-40(b), §514A-4, §514A-20, §514A-31, 514A-105, HRS - Galen C.K. Leong, Esq.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Abrams, it was voted on and unanimously carried to recommend approval to decline to issue an informal non-binding interpretation since the issue has been made moot because of the recommendation made in response to Mr. Leong's previous request for an informal non-binding interpretation to §514B-23, HRS, amendments to governing instruments, §514A-1.5, HRS, Act 93 §9 (SLH 2005).

Next Meeting: March 14, 2007
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, Chair Chee adjourned the meeting at 11:50 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

March 14, 2007

Date

Minutes approved as is.

Minutes approved with changes; see minutes of _____