

CONDOMINIUM REVIEW COMMITTEE
Real Estate Commission
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.state.hi.us/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: December 13, 2001

Time: 11:00 a.m.

Place: Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Present: Mitchell Imanaka, Chair
Peter Rice, Vice Chair
Charles Aki, Member
Michael Ching, Member
John Ohama, Member
Alfredo Evangelista, Member
Iris Okawa, Member
Patricia Choi, Member

Calvin Kimura, Supervising Executive Officer
Alan Taniguchi, Executive Officer
Cynthia Yee, Senior Condominium Specialist
Gina Watumull, Condominium Specialist
Cheryl Leong, Condominium Specialist
Gordon Arakaki, Condominium Recodification Attorney
Diane Choy Fujimura, Senior Real Estate Specialist
Lorene Arata, Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Excused: Casey Choi, Member

Others: John Morris Esq., CAI Hawaii
Andrew Bunn, Esq., Chun, Kerr, Dodd, Beaman & Wong
Al Imamura, Shore to Shore Realty
Vern Yamanaka, Yamanaka Enterprises

Call to Order: Chair Imanaka called the meeting to order at 11:19 a.m., at which time quorum was established.

Chair's Report: Chair Imanaka acknowledged and welcomed past Real Estate Commission Chair, Al Imamura.

Condominium Specialist's Report: **Additional Distribution**

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

5.d. Hawaii Island Board of Realtors, Inc. Request for Opinion

Additions to the Agenda

Upon a motion by Commissioner Rice, seconded by Commissioner Ching, it was voted on and unanimously carried to recommend to accept the addition to the agenda as follows:

5.e. Request for Informal Non-Binding Opinion, §514A-39.5, HRS

Minutes:

Upon a motion by Commissioner Rice, seconded by Commissioner Ching, it was voted on and unanimously carried to accept the minutes of the November 14, 2001 Condominium Review Committee meeting as circulated.

Condominium
 Governance and
 Management:

AOAO & CMA Registrations

Upon a motion by Commissioner Evangelista, seconded by Commissioner Aki, it was voted on and unanimously carried to recommend approval to ratify issuance of effective registration dates for Association of Apartment Owners through November 30, 2001 for the 2001-2003 registration. The associations are as follows:

949 Prospect	11/07/2001	Diamond Head Landing	11/14/2001
Elima Lani Condo	11/16/2001	Hauula Estates	11/05/2001
Honoka'a Hale	11/05/2001	Kona Magic Sands	11/28/2001
Old Mill Camp	11/28/2001	Pacific Heights Park Place	11/29/2001
Piikoi Tower Inc.	11/06/2001	Uraku Tower Hawaii	11/6/2001

Case Law Review Program

The following articles were distributed for informational purposes: "Board Members Fail to Honor Obligation to Allocate Parking Spaces in a Uniform and Fair Manner" and "The Imperial Plaza's Construction Defect Odyssey" *Community Association Law Reporter* (November 2001)

Condominium Related Articles

The article entitled "How to Read Your Managing Agent's Financial Statements" from the *Hawaii Community Associations Newsletter*, November 2001 issue was distributed for informational purposes.

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

Upon a motion by Commissioner Ching, seconded by Commissioner Evangelista, it was voted on and unanimously carried to recommend approval to ratify issuance of effective dates for public reports for the month of November 2001 as follows:

Proj No	Project Name	Project Address	TMK #	Report	Date
4767	3802 & 3804 MARIPOSA DRIVE	3802 & 3804 MARIPOSA DR HONOLULU HI 96816	(1)3-03-025:034	Final	11/28/01
4756	59-777 & 59-777B KE IKI ROAD	59-777 & 59-777B KE IKI RD HALEIWA HI 96712	(1)5-09-03:009	Final	11/06/01
4761	6420 OPAEKAA	6420 OPAEKAA RD KAPAA HI 96746	(4)4-02-06:157	Final	11/16/01
4748	CANOE CLUB CONDOMINIUM	LOT 117 LC APPL 1160 HANALEI HI	(4)5-05-001:039	Final	11/23/01

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4647	CORTEBELLA, PHASE 8	91-1952 KOMOAINA ST EWA BEACH HI 96706	(1)9-01-010:048	Final	11/16/01
4691	CORTEBELLA, PHASE 9	91-1052 KOMO'AINA ST EWA BEACH HI 96706	(1)9-01-010:048	Final	11/16/01
4609	DESTINY AT MILILANI MAUKA PH I	KUAOA ST MILILANI HI 96789	(1)9-05-002:034	Final	11/01/01
1223	EXECUTIVE CENTRE	1088 BISHOP ST HONOLULU HI 96813	(1)2-01-021:004	Suppl 5	11/28/01
4762	EXPRESSION III AT ROYAL KUNIA PH I	POLINA PL WAIPAHU HI 96797	(1)9-04-146:005	Prelim	11/05/01
4699	GODBEHERE CONDOMINIUM	LOT 110-E KAPAA HMSTDS WAIPOULI HI	(4)4-04-003:114	Final	11/09/01
4727	HALE KIAPOKO	67-333 KIAPOKO PL WAIALUA HI 96791	(1)6-07-014:013	Final	11/01/01
4739	HONU NANI MAKAI CONDOMINIUM	2215 KUAI RD KOLOA HI 96756	(4)2-08-018:036	Final	11/23/01
4631	KAHALELA'IPU	P'UU PANE RD KILAUEA HI 96754	(4)5-01-051:052	Final	11/01/01
4747	KAI-HALULU CONDOMINIUM	3175 KALIHIIWAI RD KALIHIIWAI HI 96754	(4)5-03-003:006	Final	11/01/01
4758	KIPAPA ESTATES	6631 KIPAPA RD KAPAA HI 96746	(4)4-04-002:094	Final	11/13/01
4714	LOT 1 SLEEPING GIANT ACRES	LOT 1 SLEEPING GIANT ACRES SUB KAPAA HI	(4)4-04-011:001	Suppl 1	11/28/01
2125	MOANA IKENA CONDOMINIUM	LOT 7 SEACLIFF PLANTATION KILAUEA HI 96754	(4)5-02-004:080	Suppl 1	11/29/01
4676	NIULANI BEACHFRONT CONDO	960 NIULANI ST WAIPOULI HI 96766	(4)4-03-009:003	Final	11/01/01
4765	PAHIA ROAD CPR	45-535, 45-537D E & F PAHIA RD KANE'OLE HI 96744	(1)4-05-021:029	Cont. Final	11/13/01
4768	PERRYDISE	59-499 KE WAENA ST HALEIWA HI 96712	(1)5-09-003:004	Final	11/20/01
4757	SILVER FALLS ESTATES II	2818 N KAMOOKOA RD HANA'LEI HI 96714	(4)5-02-022:025	Final	11/09/01
4674	TERRAZZA PHASE 9	91-1042 KOMO'AINA ST EWA BEACH HI 96706	(1)9-01-010:049	Final	11/13/01
4692	TERRAZZA, PHASE 10	91-1042 KOMO'AINA ST EWA BEACH HI 96706	(1)9-01-010:049	Final	11/26/01
4733	WALE KATOA	1396 NANI'ALII ST KAILUA HI 96734	(1)4-02-034:155	Final	11/08/01
4734	WALE MA TAI	1397 NANI'ALII ST KAILUA HI 96734	(1)4-02-034:156	Final	11/02/01

Preliminary Reports: 1
 Contingent Final Reports: 1
 Final Reports: 20
 Supplementary Reports: 3

Total: 25

Irrevocable Letter of Credit §514A-40(a)(5), HRS; §16-107-9, HAR

Specialist Yee informed the committee that §514A-40(a)(5), HRS, requires the developer to file with the Commission together with other requirements as a condition for Commission's issuance of an effective date for a developers final public report evidence of a performance bond issued by a surety licensed in this State of not less than one hundred percent of the cost of construction, or such other substantially equivalent or similar instrument or security approved by the Commission. Commission rule §16-107-9, HAR, allows the Commission to accept in lieu of a performance bond, an irrevocable letter of credit issued by a federally insured lending institution authorized by the bank examination division, department of regulatory agencies, committing funds for 100 percent of the construction costs.

Specialist Yee further reported that most of the irrevocable letters of credit on file have been issued by banks located in this State. The apparent intent of requiring a Hawaii surety is based on the ability to have ready access to monies to complete the construction of the condominium project should the contractor fail to perform. The current language of §16-107-9, HAR, is not clear and could be read to allow a letter

of credit issued by any federally insured institution located anywhere in the United States. In the past the Commission has approved reductions of the performance bond subject to certain consumer protection conditions. It now appears from the letters of credit on file that the developers can freely draw upon their letters of credit without regard to any consumer protection conditions.

Vice Chair Rice noted that the letter of credit amount is based on the actual contract costs and that should the project run over, additional amounts should be included in the letter of credit. He further noted that if a developer is drawing down on its letter of credit, the developer must inform the Real Estate Commission.

Chair Imanaka reported that the contract amount for the units sold is always covered in the letter of credit or performance bond.

Deputy Attorney General Wong suggested that the Committee include proposed rules to require the developer to increase the amount of a performance bond or letter of credit to cover any additional costs of construction.

Upon a motion by Commissioner Evangelista, seconded by Commissioner Okawa, it was voted on and unanimously carried to:

- 1) recommend approval to issue an informal non-binding opinion that §16-107-9, HAR, requires a letter of credit be issued by a federally insured institution located in this State and elsewhere in the United States; provided for those letters issued by a non Hawaii federally insured institution that the institution be either:
 - A nationally federally chartered bank and that a State of Hawaii federally insured financial institution confirm the letter of credit; or
 - An out-of-state federally insured financial institution and that a State of Hawaii federally insured financial institution confirm the letter.
- 2) Require developers requesting to reduce their letters of credit to satisfy the same conditions for reducing a performance bond as previously approved by the Commission in the recorded minutes of July 24, 1997 at pages 9 and 10 and minutes of December 14, 1995 at page 3.
- 3) Require the letter of credit be issued in the amount required by statute and that the only entity which can draw down on the letter be the Real Estate Commission.
- 4) Notify projects with active developer's public reports with letters of credit of Commission's decisions on this matter and to condition any grants of extensions of and request for supplementary developer's public reports to comply with Commission's decisions on letters of credit. Delegate to staff to issue stop sales letters for non-compliance with Commission's decisions on letters of credit where construction has not been completed or where construction has been completed but the mechanic's lien period has not expired.
- 5) Include proposed rules consistent with the above in the current draft 5 of the proposed rules; including a proposed rule to require the developer to increase the amount of a performance bond or letter of credit to cover any additional costs of construction.

Vice Chair Rice noted that this decision should be effective for all current letters of credit and that staff should notify those with letters of credit in existence that if they draw down on their letter of credit, they must inform the Commission.

Act 237 (SLH 2001) and Chapter 514A

Specialist Yee reported that she provided the Time Share Administrator, for inclusion in the time share disclosure statement, certain disclosures specific to CPRs that may be overlooked when only one time share report is provided to prospective purchasers pursuant to Act 237 (SLH 2001).

Request for Informal Non-Binding Opinion, §514A-39.5, HRS

Andy Bunn, Esq. of Chun, Kerr, Dodd, Beaman & Wong was present representing an entity with an option to purchase the Prince Tower at Queen Emma Gardens; to request an informal non-binding opinion from the Real Estate Commission concerning the application of Section 514A-39.5, HRS.

Mr. Bunn reported that his client has an option to purchase a building which is a single commercial apartment in a condominium property regime and is requesting whether his client can obtain an effective date for a contingent final public report prior to closing on the purchase of the building and the filing of an amendment to the declaration.

Upon a motion by Commissioner Evangelista, seconded by Commissioner Rice, it was voted on and unanimously carried to recommend approval to issue an informal non-binding opinion that §514A-39.5, HRS, does allow the Commission to issue an effective date for a developer's contingent final public report with a separate registration number where:

- 1) the proposed developer, Prince Tower at Queen Emma Gardens, LLC, will at the time of filing for a developer's contingent final public report, be the holder of a recorded option to purchase the Prince Tower Apartment in the Queen Emma Gardens Condominium Property Regime;
- 2) the present owner of the Prince Tower, Pacific Century Trust, as trustee for the Robert E. Black Memorial Trust, holds an option to subdivide the only apartment in the Prince Tower into 235 individual apartments; for charitable trust and IRS regulations it cannot exercise the option to subdivide;
- 3) the declaration, floor plans, condominium map for the condominium property regime, which includes the Prince Tower, has already been recorded and the 235 individual apartments already specifically described.

Further, recommend that the approval be subject to the developer:

- a) satisfying the statutory requirements for the issuance of an effective date for a developer's contingent final public report;
- b) including adequate disclosures of all material facts pertaining to the project; including disclosures relating to Prince Tower's interrelationship with the condominium property regime as a whole;
- c) consider characterizing the apartments to be offered for sale as the sale of undivided common interests in the one commercial apartment comprising the Prince Tower which later shall be converted to the apartments described in the declaration

Hawaii Island Board of Realtors, Inc. Request for Opinion

The committee acknowledged the request by Joel LaPinta, President, Hawaii Island Board of Realtors, to withdraw its request for an informal non-binding opinion.

Program of Work: **Recodification of Chapter 514A**

Recodification Attorney Arakaki presented a short oral report on the status of the recodification project and informed the Committee that he has met with the Mortgage Brokers Association.

CMEF Budget & Finance Report: No report presented.

Condominium Organizations Forum: There were no comments, recommendations or concerns received from the following: 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: Based on the request of the Condominium Review Committee for comments from the condominium community, John Morris, Esq. representing the CAI Hawaii presented comments on proposed legislation presented to the Condominium Review Committee at its November 2001 meeting. Mr. Morris, referencing the mediation bill, noted that each party is wholly responsible for their costs in mediation. The Commission encourages and partly subsidizes mediation. In regards to the bill requiring prior written notice, Mr. Morris sees no problem. On the last proposed bill relating to bylaws amendments, Mr. Morris has seen the process go beyond 365 days. He would be in favor of giving the board a deadline. Mr. Morris reported that he will submit written comments on the matter for the committee's consideration.

Next Meeting: January 4, 2002; 11:00 a.m.
Conference Room
Maui Board of REALTORS
441 Ala Makani Place
Kahului, Maui

Adjournment: With no further business to discuss, Chair Imanaka adjourned the meeting at 11:58 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee
Cynthia M. L. Yee
Senior Condominium Specialist

January 4, 2002
Date

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