

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 8, 2006

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: Stanley Kuriyama, Chair, Broker / Honolulu Commissioner
Michele Sunahara Loudermilk, Vice Chair, Public / Honolulu Commissioner
Louis Abrams, Broker / Kauai Commissioner
Kathleen Kagawa, Broker / Honolulu Commissioner
Carol Mae Ball, Broker / Maui Commissioner
Trudy Nishihara, Broker / Honolulu Commissioner
Iris Okawa, Public / Honolulu Commissioner
Vern Yamanaka, Broker / Hilo 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
Ryan Yamashiro, Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Richard S. Ekimoto, Ekimoto & Morris
Jeffrey S. Grad, Attorney at Law

Excused: none

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

Chair's Report: No report was presented.

Condominium Specialist's Report: **Additional Distribution**
The following material was distributed prior to the start of the meeting:

9. Budget and Finance Report

Minutes: Upon a motion by Commissioner Yamanaka, seconded by Commissioner Abrams, it was voted on and unanimously carried to accept the minutes of the January 11, 2006 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOAO Registrations

Specialist Grupen reported that as of January 31, 2006, 1,496 AOAOs have successfully registered.

Mediation and Arbitration

Specialist Yee reported that the contracts for mediation services were mailed to the selected vendors and staff is awaiting the return of the signed contracts for further processing.

Condominium Seminars and Symposium

Commissioner Loudermilk reported that she met with CAI Hawaii representatives who have agreed to move forward with the contract process. The Commission will again do an RFP for a new contract effective July 1, 2006 and look into a new fee schedule. To date the Commission has not received back a signed contract from CAI Hawaii.

Specialist Yee reported that HCAAO has informed her that they are waiting receipt of the required Federal tax clearance form which form must be returned with the contract.

Deputy Attorney General Wong reported that she spoke to Milton Motooka of CAI Hawaii and that CAI Hawaii indicated it will be following through with the current offered contract but they may have ran into the same delays as HCAAO with receiving their Federal tax clearance form.

Condominium Related Articles

The article entitled "what's yours is yours" from the January/February 2006 issue of *Common Ground* was distributed for informational purposes:

Request for Informal Non-Binding Opinion Concerning Depository of Funds of Hawaii Homeowners Associations, §514A-97(c)(1) and §514B-149(c)(1)

Specialist Yee reported that on July 29, 2005 the Commission issued an informal non-binding interpretation on a similar request involving one of the CAB members, First National Bank of Arizona and that based on the facts then presented and outlined, First National Bank of Arizona (FNBA) was not a financial institution located in the State as required by §514A-97(c)(1), HRS. Since that decision, CAB has decided to change its operations for the State of Hawaii.

Mr. Richard Ekimoto of Ekimoto and Morris was present representing their client First National Bank of Nevada, First National Bank of Arizona, First Heritage Bank, N.A. and their business division, Community Association Banc, collectively "CAB". Mr. Ekimoto stated that he is requesting on their behalf an informal non-binding opinion that CAB will be qualified as a financial institution located in the State whose deposits are insured by an agency of the U.S. government pursuant to HRS §514A-97(c)(1) and §514B-149(c)(1).

Mr. Ekimoto further reported that CAB will be located and will open a fully staffed office in the State of Hawaii. Customers will be able to review their account records and obtain personal assistance with their banking needs. CAB will also be a registered foreign corporation in the State of Hawaii. Each of its entities comprising CAB will be registering with DCCA as a foreign corporation authorized to do business and will be subject to suit and all relevant regulations of the State of Hawaii. As entities chartered by the federal government, they cannot be Hawaii corporations.

Vice Chair Loudermilk questioned the legal status of CAB.

Mr. Ekimoto replied that CAB is a division of the other banks and not a national bank of itself. FDIC insurance will be on the individual banks, not CAB. The accounts will be held by three different banks, each of which are nationally chartered banks.

Specialist Yee questioned how the banks will honor withdrawal of funds and whether there will be immediate access to the association's money.

Mr. Ekimoto replied that withdrawals will be done via wire transfers or the issuance of cashier's checks. Penalties for early withdrawals may occur and depending on the amount of the withdrawal, there may be a held time for large withdrawals.

Mr. Ekimoto also informed the committee that the Hawaii office will have full time employees and that CAB has started the search process. The three banks will be sharing the same office and staff. The banks are very similar with more than a business relationship and a common financial interest.

Commissioner Okawa questioned when the AOA brings a check to the Hawaii office, is it then sent to a bank located somewhere else and deposited there?

Mr. Ekimoto answered in the affirmative.

Upon a motion by Commissioner Okawa, seconded by Commissioner Kagawa, 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 2006 were distributed for informational purposes.

86-912A and 86-912B Pukui Place, CPR #5649

Mr. Grad is responding to a letter he and his clients received regarding the Commission's intent to treat their filings as "abandoned" under section 436B-9(b), under which an agency can consider an application abandoned if materials are not submitted within two years from the last date of request by the Commission.

Mr. Grad, representing the developers of 86-912A and 86-912B Pukui Place, requested that the committee defer the issue to a future meeting if necessary as the developer has received a preliminary subdivision approval and is working on

that process. Should that avenue not be viable, they will go forward with the CPR request.

Deputy Attorney General Wong stated that according to statute, an application shall be considered to be abandoned if an applicant fails to provide evidence of continued efforts to complete the process for two consecutive years.

Commission to retain the project registration application for the period and procedures prescribed in section 436B-9, HRS; start the calculation of the statutory "abandoned application period" of two consecutive years from the date of developer's letter dated December 20, 2005.

900 Alewa Drive Lot C

Mr. Grad is again responding to a letter he and his clients received regarding the Commission's intent to treat their filings as "abandoned" under section 436B-9(b), under which an agency can consider an application abandoned if materials are not submitted within two years from the last date of request by the Commission.

Specialist Leong informed the committee that this project consists of a shed, a structure housing a dwelling unit and an abandoned structure. The County letter states that the abandoned dwelling is illegal and must be removed from the setback and adjoining property or be demolished. The Commission will not issue an effective date until the structure has been removed and meets with County ordinance.

Mr. Grad informed the committee that the abandoned structure has just been removed and once the County letter is obtained it will be submitted to the Commission.

Commission to retain the project registration application for the period and procedures prescribed in section 436B-9, HRS; start the calculation of the statutory "abandoned application period" of two consecutive years from the date of developer's letter dated December 19, 2005.

Request for Informal Non-Binding Interpretation - Owner-Occupant No Action Request §514A-107, HRS – William C. Huyck

Specialist Yee reported that Mr. William C. Huyck has submitted a request to the committee for a waiver to the owner occupant affidavit due to an extenuating medical condition. Mr. Huyck has also provided the committee with verification letters from his physicians.

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Abrams, it was voted on and unanimously carried to recommend approval to issue an informal non-binding interpretation and issue a "no action" letter based on a verified extenuating medical condition.

Program of Work:

Recodification of Chapter 514A

The committee discussed section 514B-86 as set forth in SB 2962 and HB 3225. Vice Chair Loudermilk reported that the recodification changed the multiple public report system to a single public report and separate filing period for which the sales contract is then binding.

The Commission's testimony on Senate Bill No. 2962 supported the changes proposed in section 9 which makes it clear that when the developer desires to enter into binding sales contracts, the developer shall deliver to a prospective purchaser, or purchaser, a true copy of the developer's public report together with two copies of the notice of the prospective purchaser's or purchaser's thirty-day cancellation right; one of the copies of the notice may be used by the purchaser to cancel the transaction or waive the purchaser's right to cancel the transaction.

Objection was received by members of the Commission's Blue Ribbon Recodification Advisory Committee who worked on the recodification efforts.

Commissioner Abrams suggested when providing the 30-day notice also provide another copy of the developer's public report. He further questioned if there is language in the law specific to when the 30-day notice is to be given.

Vice Chair Loudermilk reported that the single public report is a very large document and to provide the documentation again may be burdensome as it includes the declaration, bylaws and map.

Specialist Yee reported that staff has never received any problems with this issue in the past.

Chair Kuriyama stated that there is a need to control when the reports are binding and the need to send out the 30 day notice.

Vice Chair Loudermilk reported that the consumer harm would be addressed by making another copy of the public report available to the purchaser.

SEO Kimura reported that better disclosures are needed up front about the binding contract. Need comments on HB 3225 and SB 2962 which are the CAI introduced bills on 514B.

Commissioner Ball suggested that reference be made on the public report form itself to reread the documents or look at the web for a copy of the documents. The 30 day notice gives them an urgency to review the information.

Commissioner Abrams questioned whether the one public report will still be effective for 13 months?

Specialist Yee replied that the public report will be non-expiring and should there be any changes, the developer would be required to do an amendment, but need not stop sales.

Chair Kuriyama suggested that 1) the public report have a disclosure that any sales contract is non binding until 30 day notice is received and that it clearly state the right of rescission in the public report; 2) if the notice is sent out 6 months after the effective date of the public report, the developer shall provide another copy or have the full report available online for inspection and 3) include a checkbox for receipt of public report and amendments.

Commissioner Okawa suggested further that brokers handling sales need to work with potential clients and should be provided with educational awareness.

Commissioner Yamanaka noted that disclosures are lacking from an education prospective and that brokers should be made more responsible.

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Okawa, it was voted on and unanimously carried to recommend approval to withdraw the Commission's requested revision to section 514B-86(a)(1), HRS, as set forth in SB 2962 and HB 3225, and to implement section 514B-86(1), HRS, administratively as follows:

- 1) Include in the Commission's prescribed form for a developer's public report a disclosure that the sales contract is not binding until the 30 day notice has been given;
- 2) Require that the developer shall either (a) resend the developer's public report and any amendments; or (b) make it available on a publicly accessible website, if the 30-day notice is sent more than 6 months after the date of the developer's public report;
- 3) Include in the receipt for the 30-day notice check-boxes for buyers to choose 2(a) or (b).

Further recommend approval to include broker educational awareness program regarding the recodification.

Government and Legislative Participation & Report

SEO Kimura briefed the committee on the status of bills relating to condominiums being heard at the Legislature this session. Review the bills assigned for testimony or monitoring, especially bills affecting Chapters 467, 514A, and 514B, and email comments and recommendations immediately. Housekeeping concerns and recommendations can be handled in the testimony but substantive concerns and recommendations can only be handled at Commission meetings, unless there is delegation of authority. Commissioners are reminded that some individuals may attempt ex-parte communications.

Neighbor Island Outreach & Specialists Office of the Day

The May 10, 2006 committee meetings and Specialists Office of the Day are scheduled to be held in Hilo on the island of Hawaii.

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 recommend approval to accept the pro forma report for period ending December 31, 2005 subject to audit.

Executive Session:

Upon a motion by Commissioner Nishihara, 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;".

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

Request for Informal Non-Binding Opinion Concerning Depository of Funds of Hawaii Homeowners Associations, §514A-97(c)(1) and §514B-149(c)(1)

Upon a motion by Commissioner Abrams, seconded by Commissioner Okawa, it was voted on and unanimously carried that based on the representations made by the Community Association Banc's (CAB) in its letter of January 11, 2006 to the Commission and the representations made to the Commission's Condominium Review Committee at its February 8, 2006 meeting, recommend approval to issue an informal non-binding interpretation that once CAB has satisfied the conditions as represented in its letter and presentation CAB will be deemed to be a financial institution located in the State whose deposits are insured by an agency of the United States government pursuant to Hawaii Revised Statutes (HRS) Sections 514A-97(c)(1) and 514B-149(c)(1), HRS.

Next Meeting: March 8, 2006
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 Kuriyama adjourned the meeting at 11:11 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

March 8, 2006

Date

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