

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: March 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 – early departure
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: Tom Berg
John Morris
Richard Kiefer
Gordon Arakaki
Bernice Littman
Arnold Morgado

Excused: None

Call to Order: Chair Kuriyama called the meeting to order at 11:20 a.m., at which time quorum was established.

Chair's Report: No report was presented.

Condominium
Specialist's
Report:

Additional Distribution

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

- 5.a.3) CPR Project – Islander on the Beach, CPR #5420
- 6.a. Recodification of Chapter 514A and Education
- 6.g.2) Richard Kiefer, Esq., Request on House Bill No. 3225

Additions to the Agenda

Upon a motion by Commissioner Okawa, seconded by Commissioner Kagawa, it was voted on and unanimously carried to recommend accepting the additions to the agenda as follows:

- 5.a.5) Informal Non-Binding Interpretation Request §514A-107(b)(1) and (4), HRS "no action letter" – Lehualani K. Conception

At this time Chair Kuriyama took the agenda out of order.

Open Forum:

Mr. Tom Berg was present to request the Commission to support Senate Bill 2545, SD2 to extend the condominium dispute resolution pilot program for an additional two years and if the Commission is unable to provide testimony in support of the bill, Mr. Berg requested that the Commission recommend to the Director of DCCA to support the extension of the CDR bill.

Condominium
Project
Registration:

CPR Project – Islander on the Beach, CPR #5420

Commissioner Loudermilk recused herself due to a conflict of interest.

Specialist Leong reported that Mr. Lee is requesting confirmation that his client's plan to sell 1/6th undivided fee simple interest in 1 or 2 condos under a non-time share plan does not require a public report. Time share is defined to be less than 60 days per year. The main issue to be determined is whether this is a "re-sale." Mr. Lee's client purchased 12 units and is initially marketing 1 to 2 units to test the market. The final public report for Islander on the Beach amended the declaration in January 2005, to prohibit time share.

Mr. Lee stated that he has an almost exclusive condominium practice. Mr. Lee reported that his client's units are re-sales and that the final public report does state that time share would not be allowed. All the undivided interest comes with 60 days or longer.

Chair Kuriyama questioned whether Mr. Lee's client is the original buyer of the 12 units.

Mr. Lee responded in the affirmative.

Specialist Yee questioned whether his client at the time of initial purchase had thought of marketing the units.

Mr. Lee responded that his client had contemplated the idea.

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

Informal Non-Binding Interpretation Request §514A-107(b)(1) and (4), HRS "no action letter" – Arnold Morgado

Commissioner Loudermilk noted that the Owner-Occupant Affidavit was signed in November 2003 and questioned Mr. Morgado if the apartment was received at a later date.

Mr. Morgado replied that the apartment was received in December 2005. At the time the affidavit was signed the intent was that his daughter would reside in the apartment. Since then, Mr. Morgado's daughter who is senior at the University of Colorado Boulder, had received an injury which requires surgery and rehab and has informed her parents that she will not be moving back to Hawaii after graduation, rather she will have her surgery/rehab in Boulder and become a resident of that State.

Chair Kuriyama noted that §514A-107(b)(1) reads "Serious illness of any of the owner-occupants who executed the affidavit or any other person who was to or has occupied the residential apartment;"

Upon a motion by Commissioner Abrams, seconded by Commissioner Nishihara, 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 of a person (daughter) who was to occupy the residential apartment.

Program of Work:

Government and Legislative Participation and Report – Richard Kiefer, Esq. Request on House Bill No. 3225

John Morris, Esq. representing CAI Hawaii's Legislative Action Committee was present and requested that the Commission, to an extent, support House Bill No. 3225 which is the bill intended to clean up the recodification act. Mr. Morris noted that there are two major problems with the act as is. Currently the recodification proposes to repeal chapter 514A and provides 514B not apply to existing condominiums. If the recodification goes through with repealing chapter 514A, many projects cannot use chapter 514B. The applicability clause is questionable.

Mr. Morris further reported that House Bill No. 3225 is the only vehicle left to correct the problems with the recodified law.

Rick Kiefer, Esq. informed the committee that he was a member of the Blue Ribbon Recodification Advisory Committee who worked on the initial drafting of the recodification. As we near implementation of the recodification, there are areas that need to be cleaned up. The Commission has recognized some of those areas. Two major areas which will present problems are the repeal of chapter 514A and sales of projects under current registration. Mr. Kiefer noted that he does support the provision in HB 3225 HD1 preserving the existing reserve rules until the Real Estate Commission can adopt new reserve rules. Mr. Kiefer is requesting the Commission's support on the chapter 484 amendments.

SEO Kimura informed Mr. Kiefer that the Commission would be open to receiving an advance copy of the proposed SD1 in a standard ramseyer format in advance of a scheduled hearing for its review.

Mr. Kiefer replied that should they draft a proposed SD1, if able, they will provide an advance copy to the Commission.

It was recommended to defer this issue until such time a review of the proposed amendments may be conducted.

Minutes: Upon a motion by Commissioner Okawa, seconded by Commissioner Kagawa, it was voted on and unanimously carried to accept the minutes of the February 8, 2006 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOAO Registrations

Specialist Gruppen reported that as of February 29, 2006, 1,512 AOAOs have successfully registered.

Mediation and Arbitration

It was reported that staff has received back 4 of the 5 contracts from the selected vendors and will continue to process those contracts.

Condominium Seminars and Symposium

One of the contracts is nearing completion of the procurement process. Commissioner Loudermilk reported that staff should start drafting the paperwork for next fiscal year's procurement of educational seminars.

Office of Administrative Hearings Condominium Dispute Resolution Pilot Program – Michael Riordan vs. Edean Hayashida and Marc Udoff

Administrative Hearings Officer Sheryl Nagata was present. Chair Kuriyama questioned the number of cases received by OAH.

Ms. Nagata responded that 3 cases have been received by OAH. The first case initially received by OAH did not qualify, the Riordan vs. Hayashida and Udoff case which was heard and dismissed, one case is pending settlement and another was received this week for a condominium project located on the island of Maui.

Commissioner Okawa questioned whether the condominium parties always have to engage legal counsel and bear their own costs including attorney's fees.

Ms. Nagata remarked that in this particular case which was heard and dismissed, the parties did ask to be reimbursed for fees and costs but the statute does not allow it. The parties are also not required to be represented by legal counsel.

Case Law Review Program

The following articles from the February 2006 issue of *Community Association Management Insider* were distributed for informational purposes: "Allow Only Licensed Electricians to Work at Your Community," "Association's Behavior Not Bad Enough to Violate Fair Housing Law," "Vacancy on Board Didn't Invalidate Annual Budget;" and "Association Had Duty to Warn Members of Faulty Dishwasher Hoses" from the March 2006 issue.

Condominium Related Articles

The following articles were distributed for informational purposes: "Send Members Notice Announcing Revival of Previously Overlooked Rules" - *Community Association Management Insider* (February 2006) and from the February 2006 issue of *Hawaii Community Associations*, "Mediation, the human way to resolve Community Association/Owner Dispute" and "Budget for Educational Programs."

Condominium
Project
Registration:

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of February 2006 were distributed for informational purposes.

CPR Project – Islander on the Beach, CPR #5420

Commissioner Loudermilk recused herself due to a conflict of interest.

Commissioner Abrams questioned that if the project is not considered a time share and the units of the condo are within a registered condominium, are there other regulatory issues.

Chair Kuriyama commented that maybe it is an unreasonable requirement to require them to get their own public report for 12 units, should the committee consider the units re-sales.

Upon a motion by Commissioner Okawa, seconded by Commissioner Nishihara, it was voted on and carried that based on the letters and or faxes of February 27, 2006, March 3, 2006, and March 7, 2006 submitted by Steven R. Lee, attorney for Nick Michaels, and representations made by Steven Lee during his presentation, recommend approval to issue an informal non-binding interpretation that the described sale of one-sixth undivided fee simple interests in apartments currently owned are re-sales and do not require Mr. Michaels to obtain an effective date for a developer's public report. The recommendation does not include an informal non-binding interpretation of the time share law, Chapter 514E, HRS, which the Commission has no jurisdiction over.

**Informal Non-Binding Interpretation Request §514A-107(b)(1) and (4), HRS
"no action letter" – Lehualani K. Concepcion**

Upon a motion by Commissioner Yamanaka, 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**

Upon a motion by Commissioner Okawa, seconded by Commissioner Ball, it was voted on and unanimously carried to recommend approval to establish a Recodification Education Ad Hoc Committee to assist with the delivery of educational products and seminars; members to be appointed by the CRC Chair, Vice Chair, and staff, and be reimbursed for expenses including travel and per diem.

Interactive Participation with Organizations – CAI Law Seminar Report

The committee acknowledged the written report of Deputy Attorney General Wong's attendance at the Community Association Institute's Law Seminar in January 2006.

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.

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.

Commissioner Nishihara was excused from the meeting.

Open Forum: **Tom Berg Request on Senate Bill No. 2545, SD 2**

Upon a motion by Commissioner Abrams, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to make a recommendation to the Director of DCCA to support the extension of the CDR program for one year; and further recommend that the Commission take no position on legislation relating to planned communities.

CEF Budget &
Finance Report:

No report presented.

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Next Meeting: April 12, 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
12:33 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

April 12, 2006

Date

Minutes approved as is.

Minutes approved with changes; see minutes of _____

CY/tn/060328