

REAL ESTATE COMMISSION  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Lieutenant Governor's Office as required by Section 92-7(b), Hawaii Revised Statutes.

Date: January 12, 1987

Time: 10:15 a.m.

Place: Exam/Conference Room, Second Floor  
Kamamalu Building  
1010 Richards Street  
Honolulu, Hawaii

Present: Gloria Damron, Chairman  
Joseph Blanco, Commissioner  
Yoshiko Kano, Kauai Member  
Michele Matsuo, Public Member (Late Arrival)  
Marcus Nishikawa, Member  
Constance Smales, Public Member  
Douglas Sodetani, Maui Member  
Yukio Takeya, Hawaii Member (Early Departure)  
Peter Yanagawa, Member

Calvin Kimura, Executive Secretary  
Cynthia Yee, Information Officer  
Russell Wong, Assistant Information Officer  
Linda Saito, Condominium Registration Clerk  
Irene Kotaka, Secretary  
Grant Tanimoto, Deputy Attorney General

Nicholas Ordway, Chairholder/Director  
Real Estate Research & Education Center  
Scott Bowman, Hawaii Association of Realtors  
Tom Bodden, HAR, President-Elect  
Yukio Naito, Consultant  
Stephen Tom, Consultant

Call to Order:

The meeting was called to order at 10:15 a.m. by Chairman Damron. Quorum was established.

Program of Work:

PERTINENT FACTS STUDY WITH RECOMMENDED LEGISLATION

Dr. Ordway stated that the State of California has imposed a law on the sellers requiring them to disclose pertinent facts. Dr. Ordway suggested that the Commission wait two years before deciding to suggest implementation of a similar law and then research the impact of the California law.

Commissioner Matsuo questioned if the Center was going to draft the proposed rules. Dr. Ordway stated that the Center is available as a resource.

Commissioner Matsuo thanked Dr. Ordway for preparing the addendum.

Commissioner Matsuo also stated that case law defines material fact but pertinent fact is not defined.

Commissioner Blanco moved to substitute material fact for pertinent fact. Commissioner Kano seconded the motion. The motion was voted on and carried. Commissioners Matsuo and Smales opposed the motion. Commissioner Takeya abstained from voting.

Commissioner Yanagawa stated that a material fact is defined as being material to the case decision. Whereas, a pertinent fact is related, but not totally material.

The information officer stated that a pertinent fact is more stringent than a material fact.

Mr. Bowman stated that the rules specify that a realtor is responsible for providing pertinent facts. HAR has suggested that the term "material facts" be used.

Commissioner Sodetani moved to adopt the report as amended. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

Commissioner Takeya moved to adopt the definition of material fact as being a fact known or readily discoverable through a reasonable investigation, consistent with normal professional practices of licensees in the community, and that materially affects the value or desirability to a reasonable person of a property offered for sale. A licensee shall not, however, be obligated to discover latent defects in the property or to advise on matters outside the scope of the license. Commissioner Smales seconded the motion. The motion was voted on and carried. Commissioners Matsuo and Yanagawa opposed the motion.

Dr. Ordway recommended that the general duty to ascertain and disclose pertinent facts be placed in the statutes and that the definition of pertinent facts be placed in the rules.

Upon a motion by Commissioner Sodetani, second by Commissioner Blanco, it was voted on and unanimously carried to recommend placing the general duty of ascertaining and disclosing pertinent facts in the statutes and defining pertinent facts in the rules.

Commissioner Yanagawa voiced concerns over changing the definition of material fact to define a pertinent fact.

Commissioner Sodetani moved to reconsider the previous motion made by Commissioner Takeya defining pertinent fact. Commissioner Nishikawa seconded the motion. The motion was voted on and unanimously carried.

Upon a motion by Commissioner Sodetani, second by Commissioner Nishikawa, it was voted on and unanimously carried to postpone defining material fact. The Legislature shall be informed that the Commission is developing the definition of "material fact".

Upon a motion by Commissioner Sodetani, second by Commissioner Yanagawa, it was voted on and unanimously carried to defer requiring non-licensees to ascertain and disclose pertinent facts until the results from the State of California could be examined; Dr. Ordway will be following up on the impact to non-licensees in the State of California; and the Executive Secretary shall draft a letter to the Legislature apprising them of the deferral of some matters discussed in the report.

Dr. Ordway requested that Commissioner Nishikawa speak with the Advisory Council to inform them that the Commissioner has requested that the follow up of the California laws requiring ascertaining and disclosing of pertinent facts be done by the Real Estate Research and Education Center. The follow up will be incorporated into the Center's program of work, subject to cost.

#### CONDOMINIUM AND COOPERATIVE STUDY WITH RECOMMENDED LEGISLATION

Consultant Yukio Naito presented the findings of the Condominium and Cooperative Study Group.

Mr. Naito stated that there are three options open to the Commission in relation to condominiums and cooperatives: 1. Do nothing. 2. Limit modifications. 3. Establish a new chapter in the Hawaii Revised Statutes. He also presented the draft of the report, appendices not included. He stated that the Cooperative Study Group has agreed to come up with more information.

The following are the recommendations of the report and the Commission's comments:

#### 1. Parking Stalls

The report recommended §514A-14.5, HRS, which requires that apartment owners have the right to own or have

designated one parking stall appurtenant to their respective unit, be amended to apply only to residential units.

Commissioner Blanco did not agree with this recommendation and felt that the commercial units should also be required to comply with this requirement. Chapter 514A, HRS, should not impede the county laws.

2. Sale of out-of-state condominiums

The report stated that the statutes presently do not provide for the regulation of the sales of condominiums located outside of the State. The report recommended that such sales be regulated. The report suggested making these sales a part of Chapter 514A, HRS.

3. Fees

The report suggested that the filing fees for the public reports should not be refundable and that the money should be deposited into the education fund. The changes can be statutorily amended.

4. Protection of Purchasers: Disclosure on Resale

The report recommended adoption of statutes to govern the protection of purchasers.

5. Condominium Management

The statutes have no provisions for mail balloting in the election of board members. Statutory provisions can be made.

6. Maintenance Fees - Reserve

Commissioner Sodetani expressed concern over condominiums nationwide having problems because no funds were reserved to take care of maintenance problems.

Commissioner Sodetani requested that a mandatory reserve be required to prevent such a problem from happening in Hawaii.

7. Bulk Sales

The report suggested creating an exemption for bulk sales or redefine "developer". Mr. Naito stated that he will be working on the legislation.

Questions were raised as to what would be considered a bulk sale.

8. Definition and Use of "Apartment"

The Condominium Registration Clerk requested that the word "apartment" either be redefined or substituted with another word, e.g. unit.

Stephen Tom stated that some condominiums today do not conform to the traditional view point of apartments. Some units are detached and looks like single family dwelling units.

The Hawaii Bar Association will be recommending that the word "apartment" be changed to "unit".

9. Disclosure for subsequent buyers

The Hawaii Association of Realtors has developed a disclosure form. Chairman Damron has recommended that the Commission develop a disclosure form.

Commissioner Yanagawa will work with the consultant to finalize the report and the proposed legislation. The Commissioners and staff were asked to submit their comments to Commissioner Yanagawa or Consultant Naito by Friday, January 15, 1988.

FIDELITY BOND STUDY ON CONDOMINIUM MANAGING  
AGENTS AND SELF-MANAGED CONDOMINIUM  
ASSOCIATIONS

Consultant Tom recommended that \$200 be deposited into the recovery fund by each and every condominium association and managing agent prior to renewal.

§514A-84(b)

The report and proposed legislation also recommends that the amount of coverage required by the managing agents be increased by the number of aggregate units being managed. For those managing less than 2,000 units, the maximum amount of bonding required would be \$500,000.

The report and proposed legislation recommends exempting condominiums with five or less units from registering and having to provide a fidelity bond.

§514A-84(c) requires that all associations register biennially with the Commission. The proposed legislation would require the associations to deposit \$200 into the recovery fund at the time of each registration.

§514A-95 requires that managing agents register with the Commission and that the managing agent show proof of bonding pursuant to §514A-84.

The proposed legislation would allow managing agents to request an exemption to the fidelity bond requirement should they be unable to acquire bonding. An exemption could be granted if a managing agent can provide evidence of rejections from three bonding companies.

Commissioner Yanagawa moved to accept the proposed legislation subject to staff changes. Commissioner Sodetani seconded the motion. The motion was voted on and unanimously carried.

Adjournment:

The meeting was adjourned for lunch at 12:20 p.m.

Reconvened:

Chairman Damron reconvened the meeting at 3:10 p.m.

Those present were:

Gloria Damron  
Peter Yanagawa (left at 3:12 p.m.)  
Yukio Takeya (left at 3:16 p.m.)  
Marcus Nishikawa  
Constance Smales  
Michele Matsuo  
Joseph Blanco  
Calvin Kimura  
Cynthia Yee  
Russell Wong  
Irene Kotaka  
Susumu Ono

CONDOMINIUM HOTEL OPERATOR REPORT AND  
PROPOSED LEGISLATION

Consultant, Susumu Ono, presented the findings of the Condominium Hotel Operators Report and proposed legislation.

Mr. Ono stated that the Commission must decide whether or not to implement the current laws relating to Condominium Hotel Operators or to impose a moratorium on the bonding requirement. He also stated that the condominium hotel operators are a bigger problem than what was initially anticipated.

The Executive Secretary stated that the apartment owners will have no protection and it would be contrary to the regulatory policy to impose a moratorium on both the broker requirement and the bonding requirement. Presently, the apartment owner has no recourse to the recovery fund or disciplinary process due to the moratorium on the broker requirement.



Issues that need to be addressed during the moratorium period are issues relating to partnerships, bonding availability, registration fees, and the recovery fund.

Commissioner Blanco moved to accept the following recommendations in the Condominium Hotel Operators Report:

1. Continue the moratorium until June 30, 1989, on requiring a real estate broker license for operators of condominium hotels.
2. Request the Department of Commerce and Consumer Affairs (DCCA) to give priority to implementing the proposed recommendations of this report during the recommended moratorium with the intent to submit a more definitive report to the 1989 Legislature.
3. Require all operators of condominium hotels to register biennially with the Real Estate Commission through the Licensing and Records Branch of the DCCA, and initially within three months should the proposed bill be signed into law; and allow for assessment of a registration fee.
4. Impose a fine on operators who do not comply with the registration requirement. The recommended fine is not to exceed \$25 multiplied by the aggregate number of units being utilized for hotel purposes. The continued non-compliance by any condominium hotel operator should result in the fine being assessed on a continued basis. Each month or fraction of a month of non-compliance should be considered a new and separate violation.

5. Request the DCCA to make strong efforts to assure timely registering of all condominium hotels; assure maintenance of the registration file on a current basis; and provide capability for rapid retrieval of pertinent information.
6. Request the DCCA to develop a registration and reporting format that produces data compatible with those of other governmental agencies such as the State Department of Taxation and the county real property tax divisions.
7. Seek a legal opinion from the Attorney General on whether the Real Estate Commission has the authority under the current laws to establish rules on licensure requirements of partnerships engaged in condominium hotel operations. Any action on the partnership issue should follow the final decisions on the licensure and bonding question.
8. Adopt rules on partnerships should the Attorney General's opinion indicate the Real Estate Commission does have the legal authority to do so. Due to the prevailing uncertainty on this issue, the Commission should assure all affected parties a full hearing as part of its rule making process.
9. Explore amending appropriate statutes should the Attorney General rule that the Real Estate Commission lacks the legal authority to adopt rules on partnerships.

Commissioner Matsuo seconded the motion. The motion was voted on and unanimously carried.

NARELLO TRAVEL

Upon a motion by Commissioner Matsuo, second by Commissioner Smales, it was voted on and unanimously carried to approve Commissioner Blanco's and Commissioner Yanagawa's travel to San Antonio, Texas, to attend the NARELLO Special Meetings on February 4 - 8, 1988.

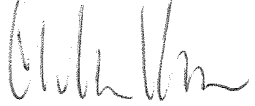
Adjournment:

With no further business to discuss, the meeting was adjourned at 4:00 p.m.

Taken and recorded by:

  
Irene S. Kotaka

Reviewed and approved by:

  
\_\_\_\_\_  
Calvin Kimura  
Executive Secretary

2/24/88