

**CONDOMINIUM REVIEW COMMITTEE**  
REAL ESTATE COMMISSION  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii  
[www.hawaii.gov/hirec](http://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: January 13, 2010

Time: Upon adjournment of 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: Michele Sunahara Loudermilk, Chair, Public / Honolulu Commissioner  
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  
Annette Aiona, Broker / Hilo Commissioner  
Frances Gendrano, Broker / Honolulu Commissioner

Neil Fujitani, Supervising Executive Officer  
Jon Ellis Pangilinan, Executive Officer  
Cynthia Yee, Senior Condominium Specialist  
Cheryl Leong, Condominium Specialist  
Benedyne Stone, Condominium Specialist  
Diane Choy Fujimura, Senior Real Estate Specialist  
Amy Endo, Real Estate Specialist  
David Grupen, Real Estate Specialist  
Shari Wong, Deputy Attorney General  
Tammy Norton, Recording Secretary

Others: Philip H. Wilia, Dower School of Real Estate  
Jonathan Chun, Belles, Graham Proudfoot Wilson & Chun LLP  
Myoung Oh, Hawaii Association of REALTORS®  
Abe Lee, Abe Lee Seminars  
Bryan Andaya, Eddie Flores CE  
M. Russell Goode, Russ Good Seminars  
Marsha Shimizu, Hawaii Association of REALTORS®

Absent: Walt Harvey, Broker / Honolulu Commissioner

Call to Order: Chair Loudermilk called the meeting to order at 9:21 a.m., at which time quorum was established.

Chair's Report: No report was presented.

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.

Commissioner Harvey was excused from the meeting. Prior notification of his non-attendance was received.

Condominium  
 Specialist's  
 Report:

Specialist Yee reported the passing of Condominium Consultant Galen Leong. Upon a motion by Commissioner Abrams, seconded by Commissioner Gendrano, it was voted on and unanimously carried to issue a Certificate of Appreciation to the family of the late Galen C. K. Leong in appreciation for Mr. Leong's many contributions as the Commission's condominium consultant for condominium project reviews from 1973 through 2009.

Minutes:

Upon a motion by Commissioner Ball, seconded by Commissioner Nishihara, it was voted on and unanimously carried to accept the minutes of the December 9, 2009 Condominium Review Committee meeting as circulated.

Condominium  
 Governance and  
 Management:

**AOUO Registrations**

Specialist Stone reported that as of December 31, 2009, 1,574 AOUOs have successfully registered.

**Mediation and Arbitration**

The following article was distributed for informational purposes: *Court Briefs – "Third Circuit Launches Foreclosure Mediation Project" Hawaii Bar Journal* (December 2009).

**Condominium Related Articles**

The following article was distributed for informational purposes: "FDIC Insurance and Hawaii IOLTA Accounts" *Hawaii Bar Journal* (December 2009).

Condominium  
 Project  
 Registration:

**Condominium Project Registration - Public Reports Issued**

A list of those condominium projects issued effective dates during the month of December 2009 were distributed for informational purposes.

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	UNIT	REPORT	DATE
5562	1448 AND 1450 HOOLI CIRCLE	1448 HOOLI CIR PEARL CITY HI 96782	151010016	2	SUPPL	12/21/2009
6904	17-19 HOOKANO PLACE CONDOMINIUM	17-19 HOOKANO PL KULA HI 96790	222003063	2	B REPT	12/30/2009
6880	2221 & 2223 BOOTH ROAD	2221 & 2223 BOOTH RD HONOLULU HI 96817	122011061	2	B REPT	12/1/2009
5987	2547-A LA'I ROAD	2547-A LA'I ROAD HONOLULU HI 96816	134012007	2	SUPPL	12/3/2009
6866	3158 & 3158-A OLU STREET	3158 & 3158-A OLU ST HONOLULU HI 96816	131001005	2	B AMEND	12/21/2009
6863	3465 AND 3467 HARDING AVENUE CONDO	3465 & 3467 HARDING AVE HONOLULU HI 96816	132013034	2	B REPT	12/1/2009
6783	51-378 KAMEHAMEHA HIGHWAY	51-378 KAMEHAMEHA HWY KAAAWA HI 96730	151010025	2	B AMEND	12/29/2009
5724	HALI'I KAI (PHASE IIB)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	369010001	16	SUPPL 6	12/14/2009
5892	HALI'I KAI (PHASE III)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	369010001	32	SUPPL 6	12/14/2009
5911	HALI'I KAI (PHASE IV)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	369010001	32	SUPPL 6	12/14/2009
5671	HALI'I KAI (PHASE V)	69-1029 NAWAHINE PL	369010001	41	SUPPL 6	12/14/2009

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6425	HENRY COURT	WAIKOLOA HI 96738 2839 HENRY ST	122036013	3	B AMEND	12/1/2009
4747	KAI-HALULU CONDOMINIUM	HONOLULU HI 96817 3175 KALIHUWAI RD	45300306	2	SUPPL	12/8/2009
6896	KAMAMALU CONDOMINIUM	KALIHUWAI HI 96754 3920 HAOA ST	435001165	31	B REPT	12/10/2009
6763	KANAELE 77 ESTATES	LIHUE HI 96766 4477 KANAELE RD	446021005	2	B REPT	12/15/2009
6201	KELLY CONDOMINIUM	KAPAA HI 96746 44 LAU WAY	247010083	2	SUPPL	12/17/2009
6905	LAULANI II PHASE 5	LAHAINA HI 96761 91-1001 KEAUNUI DR	191149004	15	B REPT	12/1/2009
6914	LAULANI II PHASE 6	EWA BEACH HI 96706 91-1001 KEAUNUI DR	191149004	17	B REPT	12/10/2009
3039	MALUHIA KULA	EWA BEACH HI 96706 75-501 MAMALAHOA HWY	375013055	5	SUPPL 2	12/22/2009
6360	PIIKOI TERRACE	HOLUALOA HI 96725 1314 PIIKOI ST	124012008	36	B AMEND	12/1/2009
6898	POAMOHO CAMP	HONOLULU HI 96814 71-045 KAMEHAMEHA HWY	171001011	78	B REPT	12/10/2009
6184	ROYAL KAI LANI	WAHIAWA HI 96786 2452 KALAKAUA AVE	126023004	12	B AMEND	12/15/2009
6887	RS ESTATES II	HONOLULU HI 96815 4077-D KOLOA RD	425005014	2	B REPT	12/14/2009
6733	SUGAR MILL AT MAIKOIKO	KOLOA HI 96756 94-440 MAIKOIKO ST	194166004	8	B REPT	12/28/2009
6908	TOWN HOMES AT KA MAKANA AT HOAKALEI INCREMENT 5 THE	WAIPAHAU HI 96797 91-1403 & 91-1411 KEONEULA BLVD	191146122	10	B REPT	12/21/2009
0	<b>Preliminary Reports</b>					
0	<b>Contingent Final Reports</b>					
0	<b>Final Reports</b>					
9	<b>Supplementary Reports</b>					
11	<b>B Reports</b>					
5	<b>B Amendment Reports</b>					
25	<b>TOTAL REPORTS</b>					

**Consultants – Commission’s option to automatically renew the condominium consultants contract for up to two fiscal years**

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

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Abrams, it was voted on and unanimously carried to exercise the Commission's option to automatically renew the following condominium consultants' contracts for two fiscal years, July 30, 2010 through June 30, 2012:

- Glenn M. Adachi, Esq.
- Kenneth Chong
- Terry L. Day, Esq.
- Matthew G. Jewell, Esq. of Jewell & Krueger
- Richard J. Kiefer, Esq. of Kiefer & Garneau LLC
- Calvin Kimura
- Anders G. O Nervell, Esq. of Clay Chapman Crumpton Iwamura & Pulice
- Michael H. Sakai, Esq.
- Nikki T. Senter, Esq. of Imanaka Kudo & Fujimoto
- Lloyd K. Sodetani
- Grant Tanimoto, Esq.

The committee decided not to take action on the contract for Galen C. K. Leong, Esq. of Ashford & Wriston LLP.

**Request for Informal Non-Binding Interpretation, Jonathan J. Chun, Esq., Creation of CPR without joinder of lessee; HRS §§514B-31, 514B-52, 514B-51(b), 514B-54, 514B-83, 514B-84, 514B-112**

Specialist Yee summarized that Mr. Chun is inquiring whether the fee owner without the joinder and consent of the current lessee with a 35 year lease can create a condominium project and register the condominium project with the Commission.

Mr. Chun reported that the situation which his client faces is unique. The law allows for the creation of a condominium and to submit an application for a developers' public report. There is currently an ongoing litigation between the lessor and the lessee. A condominium would be subject to the lease until it is judicially determined if the lease is valid or not. The question being raised is can the developer file an application for a developers' public report without the lessee joining in the execution of the declaration?

Discussion followed on the scope of the disclosures to be made and that the developer will not be selling the units.

Mr. Chun responded that ideally they would want to sell, but it is not the intent at this time until the litigation is over. The litigation will be disclosed in the developers' public report. He further noted that it is prudent advice to place language in the declaration and developers' public report that all sales suspended until the litigation is complete. Mr. Chun also noted that the lessee does not use the entire parcel.

Commissioner Nishihara noted that regardless of disclosures, the purchaser may not be aware of all ramifications.

Specialist Yee informed Mr. Chun that a condominium can be created without registering with the Real Estate Commission and questioned why his client does not just create the CPR.

Mr. Chun responded that the county is proposing a new ordinance that would limit the maximum density for large parcels within the Open district to no more than five units. The fee owner desires to create a condominium project containing a total of 39 spatial and residential units. It is anticipated that the proposed ordinance will grandfather projects that have been approved by the Hawaii Real Estate Commission prior to the effective date.

Commissioner Nishihara questioned whether the trigger for the County of Kauai is the issuance of an effective date for a developers' public report from the Commission.

Mr. Chun responded in the affirmative.

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

Program of Work:

**Condominium Laws and Education**

Per the contract, the consultant has submitted the draft of a one page summary for each of the booklets, Condominium Property Regimes Owner Rights and

Responsibilities and the Condominium Property Regimes Board Member Powers and Duties. Staff reported that the summaries were being reviewed by a focus group. It was requested that Commissioner comments, if any, be provided to staff as soon as possible.

#### **Hawaii Condominium Bulletin – "Green" Movement**

Specialist Leong informed the Committee that the Commission's February 2009 Condominium Bulletin included an article that the Commission is attempting to take steps towards becoming environmentally friendly by eliminating printed copies of the Condominium Bulletin and having it strictly available on line. Staff noted that most states either provided publications electronically or are moving towards e-publication. One state noted its concerns with maintaining email addresses, etc. Real Estate Specialist Fujimura noted concerns specifically for the Real Estate Bulletin, such as maintaining an email database. Staff will research the maintenance of an email database of licensees further.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Abrams, it was voted on and unanimously carried to support and move forward with the green movement for Hawaii Real Estate Commission publications.

#### **Rulemaking, Chapter 107**

Specialist Stone reported that staff is awaiting the first draft of the rules from Lloyd Sodetani which will then be provided to the committee for their review.

Mr. Sodetani's initial intent was to take the draft to the legislature, but has since been informed by staff that the appropriate step would be to work with staff on the first draft and then provide the draft to the CRC for review.

Deputy Attorney General Wong questioned whether Chapter 107 is being amended or repealed.

Specialist Yee responded that Chapter 107 will be amended.

#### **Rulemaking, Chapter 53, Fees**

SEO Fujitani informed the committee that Licensing Administrator Noe Noe Tom retired at the end of the year and Program Specialist Celia Suzuki was designated as the Acting Licensing Administrator. As Ms. Suzuki was the lead on the rulemaking for Chapter 53 Fees, we are unsure of the current status during this interim period.

#### **Executive Session:**

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

Condominium Project Registration: **Request for Informal Non-Binding Interpretation, Jonathan J. Chun, Esq., Creation of CPR without joinder of lessee; HRS §§514B-31, 514B-52, 514B-51(b), 514B-54, 514B-83, 514B-84, 514B-112**

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Abrams, it was voted on and unanimously carried to issue an informal non-binding interpretation that specifically in this case, the developer may submit an application for developer's public report subject to the prohibition of sales of any units until the lease litigation has ended, the lease has terminated, or the lessee joins in the execution of the declaration. Further the developer is required to provide a disclosure statement and to update such disclosures as necessary.

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.

CETF Budget & Finance Report: No report presented.

Next Meeting: February 10, 2010  
Upon adjournment of 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 Loudermilk adjourned the meeting at 10:12 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

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Cynthia M. L. Yee  
Senior Condominium Specialist

January 26, 2010

\_\_\_\_\_  
Date

Minutes approved as is.

Minutes approved with changes; see minutes of \_\_\_\_\_