

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: October 12, 2011

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
Nikki Senter, Vice Chair, Public / Honolulu Commissioner
Carol Ball, Broker / Maui Commissioner
Stanley Kuriyama, Broker / Honolulu Commissioner
Scott Sherley, Broker / Hilo Commissioner
Frances Gendrano, Broker / Honolulu Commissioner
Walt Harvey, Broker / Honolulu Commissioner
Aileen Wada, Broker / Honolulu Commissioner

Neil Fujitani, Supervising 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: Myoung Oh, Hawaii Association of REALTORS®
Trudy Nishihara, Hawaii Association of REALTORS®
Aron Espinueva, Hawaii Association of REALTORS®
Jadean DeCastro, Touchstone Properties
Keali'i Lopez, DCCA Director
Abe Lee, Abe Lee Seminars
Bryan Andaya, Eddie Flores School of Real Estate

Absent: Rowena Cobb, Broker / Kauai Commissioner

Call to Order: Chair Loudermilk called the meeting to order at 9:47 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 Cobb was excused from the meeting. Prior notification of her non-attendance was received.

Condominium
Governance and
Management:

Mortgage Foreclosure Dispute Resolution Program Department of Commerce and Consumer Affairs – Petition For Declaratory Relief - In the Matter of the Petition of Ekimoto & Morris, a Limited Liability Law Company, LLLC

DCCA Director Keali'i Lopez reported that the Department is in receipt of a Petition for Declaratory Relief filed by Ekimoto and Morris, LLLC regarding Act 48 (SLH 2011). The petition seeks clarification on the applicability of a requirement of the MFDR program to condominium associations conducting a non judicial foreclosure.

DCCA Administration would like to know whether the Commission wants to intervene on the declaratory relief. The Commission could provide information and insight to the Office of Administrative Hearings (OAH). The petition was filed because there seems to be some ambiguity as to whether condominium associations have to notify the DCCA when it forecloses on its liens on a unit for past due unpaid assessments for common expenses when Act 48 (SLH 2011) specifically excludes the association from the MFDR program. The Director's Office would like the Commission to intervene on the issue of notice and payment from the law firm of Ekimoto and Morris, LLLC.

Chair Loudermilk responded that she cannot find within the statute that the Commission has the power and duty to intervene. OAH is the agency that receives the notice and not the Commission. She further noted that the Commission deals with the governance and management of associations and not foreclosures.

Deputy Attorney General Wong noted that staff could be called upon as a witness.

Commissioner Kuriyama requested that the committee consult with its Deputy Attorney General on the legal aspects of the request.

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

Condominium
Specialist's
Report:

Minutes

Upon a motion by Commissioner Gendrano, seconded by Commissioner Ball, it was voted on and unanimously carried to accept the minutes of the September 7, 2011 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOUO Registrations

Specialist Stone reported that as of September 30, 2011, 1,556 AOUOs have successfully registered.

AOUO Registrations – Appeal of AOUO Registration Penalties

Ms. Jadean DeCastro of Touchstone Properties was present. Touchstone Properties is appealing the penalties assessed for late condominium association registration of 29 AOUOs managed by Touchstone Properties.

Chair Loudermilk stated that the statute is clear that there is a registration deadline and that the Commission has no statutory obligation to send reminders.

Staff reported that courtesy registration reminders were mailed and that a courtesy reminder article was also published in the Commission's Hawaii Condominium Bulletin.

Ms. DeCastro informed the committee that this is the first year that Touchstone has been late in turning in reregistration applications. Touchstone has been in business over 20 years. Ms. DeCastro noted that she did not receive the reminders and that in previous bienniums they would receive an entire reregistration packet which was their trigger to submit the reregistration for the associations they manage. Without receiving the entire packet as a trigger, the registrations fell through the cracks.

Chair Loudermilk informed Ms. DeCastro that the AOUO reregistration has been available online for the past two bienniums.

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

Condominium Seminars and Symposium – CAI Hawaii's request for approval of 2012 CAI Seminars"

The Committee acknowledged receipt of CAI Hawaii's request for approval for subsidy of 2012 CAI Hawaii seminars. Due to a prior committee delegation, the approval of the noted seminars was delegated to staff. Staff reminded the committee that only seminars offered through the end of the contract term, June 30, 2011, could be considered.

Case Law Review Program

The article entitled "Amendment Prohibiting Renters Was 'Reasonable'" from the September 2011 issue of *Community Association Management Insider* was distributed for informational purposes.

Condominium Related Articles

The following articles were distributed for informational purposes: "Clearly Define Rights and Terms in 'View Protection' Bylaw" - *Community Association*

Management Insider (September 2011); "The 2012 Crystal Ball Predictions, " "Will My Property Need Evstructure?" "The Waiting Game, "and "Tax Relief From Mortgage Forgiveness" CAI Hawaii (August 2011).

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of September 2011 were distributed for informational purposes.

PROJ	PROJECT NAME	PROJECT ADDRESS	TMK #	UNIT	REPORT DATE
7106	1290 & 1290A ALEWA DRIVE	1290 ALEWA DR HONOLULU HI 96817	118033014	2	B AMD 9/20/2011
7141	1394 AUPAPAHOE STREET	1394 AUPAPAHOE ST KAILUA HI 96734	142030004	2	B REPT 9/7/2011
7148	2318 WAIOMAO HOMESTEAD ROAD	2318 WAIOMAO HOMESTEAD RD HONOLULU HI 96816	134015010	5	B REPT 9/28/2011
7149	59-740 KANALANI PLACE	59-740 KANALANI PL HALEIWA HI 96712	159031022	2	B REPT 9/15/2011
6216	66-419 PAALAA ROAD	66-419 PAALAA RD HALEIWA HI 96712	166017018	2	B AMD 9/16/2011
7150	941 KOKO HEAD AVENUE	941 KOKO HEAD AVENUE HONOLULU HI 96816	132036005	3	B REPT 9/29/2011
7146	945 FOURTH STREET	945 FOURTH ST PEARL CITY HI 96782	197021055	2	B REPT 9/8/2011
7122	AWAIKU CONDOMINIUM	57 AWAIKU ST LAHAINA HI 96761	247009052	2	B REPT 9/22/2011
7151	BROWN/KARLEN CONDOMINIUM	15245 & 15247 HALEAKALA HWY KULA HI 96790	223019004	2	B REPT 9/30/2011
7096	GRAHAM CONDOMINIUM	2330 C HULEMALU RD LIHUE HI 96766	432002026	2	B REPT 9/28/2011
5199	HALI'A HALE AT KAUNA'OA	LOT 12 AT OULI WAIMEA HI	362002018	14	SUPPL 9/22/2011
5977	HALI'A HALE AT KAUNA'OA PHASE II	62-3969 KAUNOAO IKI RD KAMUELA HI 96743	362019029	6	SUPPL 9/22/2011
6551	HALI'IPUA VILLAS	HALIIPUA PL KONA HI 96740	372029028	12	B AMD 4 9/13/2011
6903	HO'OLE'A TERRACE AT KEHALANI	KEHALANI MAUKA PKWY WAILUKU HI 96793	235001067	174	B AMD 3 9/8/2011
6896	KAMAMALU CONDOMINIUM	3920 HAOA ST LIHUE HI 96766	435001165	31	B AMD 2 9/27/2011
5900	KAPALUA BAY CONDOMINIUM	1 BAY DR LAHAINA HI 96761	242004028	151	SUPPL 5 9/21/2011
7124	KAWELA RIDGE	377 ULAINO RD HANA HI 96713	213003054	2	B REPT 9/8/2011
6068	KEAAHALA VILLAS	45-598 KEAAHALA RD KANEHOE HI 96744	145022031	7	SUPPL 9/7/2011
6398	KILAUEA RIVER FARMS CONDOMINIUM	4685 KUAVA RD KILAUEA HI 96754	452013005	5	B AMD 2 9/29/2011
6921	PACIFICA HONOLULU	1009 KAPIOLANI BLVD HONOLULU HI 96814	123003105	494	B AMD 3 9/2/2011
6838	RAGON CONDOMINIUM	80 KALAI PL LAHAINA HI 96761	248003089	2	B AMD 2 9/16/2011
7095	TALVI CONDOMINIUM	2850 KAPENA ST LIHUE HI 96766	432008093	2	B REPT 9/1/2011
7123	THE VILLAS AT POIPU KAI	2373 HOOHU RD KOLOA HI 96756	428027034	28	B REPT 9/1/2011
6535	WAIKALUA BAYSIDE	45-079 W WAIKALUA RD KANEHOE HI 96744	145005029	20	B AMD 9/7/2011
0	Preliminary Reports				
0	Contingent Final Reports				
0	Final Reports				
4	Supplementary Reports				
11	B Reports				
9	B Amendment Reports				
24	TOTAL REPORTS				

Program of Work: **Condominium Laws and Education**

A copy of the department's Condominium FAQs relating to the Mortgage Foreclosure Dispute Resolution (MFDR) Program was distributed for informational purposes. Staff drafted the condominium FAQs in response to the DCCA deputy director's request.

Rulemaking, Chapter 53, Fees – Proposed Condominium Education Trust Fund Fee Increase

Specialist Yee reported that staff appeared before the Small Business Regulatory Review Board (SBRRB) regarding its proposed condominium education trust fund fee increase. The staff memo to the SBRRB considered associations as non-business entities, but the SBRRB characterized AOUs as business entities, for profit. Some members of the SBRRB indicated that it could not decide from the information provided the impact on small businesses because information on the Commission's operations were not provided. One committee member questioned if the economy got better, would the Commission return money to the associations and developers. Staff informed the SBRRB that the fund has been audited multiple times and the auditor has found that the fund continues to serve the purpose for which it was created and its intended beneficiaries. The SBRRB has recommended that the proposed amendments proceed to public hearing. They also determined that the increase in fees would have an impact on small business and requested that the agency return back to the SBRRB with a "small business statement after public hearing".

Neighbor Island Outreach

The Specialists' report is included with the report provided to the Education Review Committee.

Records Management

It was reported that the Condo Developer Public Report On-line Filing and Search project is in the development stages.

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

Condominium
Governance and
Management:

AOUO Registrations – Appeal of AOUO Registration Penalties

Upon a motion by Commissioner Gendrano, seconded by Commissioner Harvey, it was voted on and unanimously carried to deny the request for appeal by Touchstone Properties, Ltd. of the AOUO late fees and penalties.

**Mortgage Foreclosure Dispute Resolution Program Department of
Commerce and Consumer Affairs – Petition For Declaratory Relief - In the
Matter of the Petition of Ekimoto & Morris, a Limited Liability Law Company,
LLLC**

Upon a motion by Commissioner Gendrano, seconded by Commissioner Sherley, it was voted on and unanimously carried not to request to intervene in the Petition for Declaratory Relief regarding the Mortgage Foreclosure Dispute Resolution Program.

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.

CETF Budget & Finance Report: No report presented.

Next Meeting: November 9, 2011
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 10:17 a.m.

Respectfully submitted:

/s/ Neil K. Fujitani for

Cynthia M. L. Yee
Senior Condominium Specialist

October 18, 2011

Date

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