

**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: March 12, 2008

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: William Chee, Chair, Broker / Honolulu Commissioner  
Louis Abrams, Broker / Kauai Commissioner  
Trudy Nishihara, Broker / Honolulu Commissioner  
Carol Ball, Broker / Maui Commissioner  
Stanley Kuriyama, Broker / Honolulu Commissioner  
Michele Sunahara Loudermilk, Public / Honolulu Commissioner  
Frances Gendrano, Broker / Honolulu Commissioner

Neil Fujitani, Acting 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: Steven Lee, Esq.  
Ginger Matsukawa, Vice President, Interval Ownership Division, Old Republic  
Title and Escrow of Hawaii  
Esther Han, Case Lombardi & Pettit  
S. D. Lee  
Traci Rambo

Absent: Mark Suiso, Vice Chair, Public / Honolulu Commissioner  
Annette Aiona, Broker / Hilo Commissioner

Call to Order: Chair Chee called the meeting to order at 9:52 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.

Commissioners Suiso and Aiona were excused from the meeting. Prior notification of their non-attendance was received.

Condominium  
Specialist's  
Report:

#### **Additional Distribution**

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

5. CPR Registration and Developer's Public Reports
  - a. Condominium Projects and Developer's Public Reports
    - 3) CPR Project – Registration of Condominium Projects with Fractionalized Interval Ownership Interests

Minutes:

Upon a motion by Commissioner Nishihara, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to accept the minutes of the February 13, 2008 Condominium Review Committee meeting as circulated.

Condominium  
Governance and  
Management:

#### **AOAO Registrations**

Specialist Stone reported that as of February 29, 2008, 1,570 AOAOs have successfully registered.

#### **Case Law Review Program**

The following articles from the March 2008 issue of *Community Association Management Insider* were distributed for informational purposes: *Fourth La Costa Condo, Owners Assn. v. Seith*, (January 2008) and *Lake v. Woodcreek Homeowners Assn.*, (December 2007).

#### **Condominium Related Articles**

The following articles were distributed for informational purposes: "Management Challenges of Aging-In-Place Communities" *Community Association Management Insider* (March 2008), "Some Facts about Trespassing and How to Handle It" *Hawaii Community Associations* (February 2008), and "Benefits of Opting In to Chapter 514B & Insurance Options" *Hawaii Community Associations* (February 2008).

#### **CDR Pilot Program**

The following were distributed for informational purposes:

- 1) *Tad Jimura vs. Board of Directors, One Kalakaua Senior Living Association and Metropolitan Management, Inc.* - CDR-2005-3

- 2) *John Wong, Norman Duncan, Richard Sparks and Jeannie Phillips, Who Are Owners of Units At the Waikiki Banyan Condominium vs. Karl Springman, Bob Carbone, Shigeo Minamoto, Kanja Iwasa and Shraga Dachner, Who are Members of the Board of Directors of the Waikiki Banyan Condominium - CDR-2007-13*
- 3) *Steve Gilbert vs. Clarence Lopez, president/Owner, Professional Island Management Ltd. – CDR-2006-9*

Condominium  
 Project  
 Registration:

**Condominium Project Registration - Public Reports Issued**

A list of those condominium projects issued effective dates during the month of February 2008 were distributed for informational purposes.

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	TOTAL	REPORT DATE
6437	1723 KALAKAUA	1723 KALAKAUA AVE HONOLULU	123022009 HI 96826	121	B REPT 2/20/2008
6190	2846 MAKAU STREET	2846 MAKAU ST LIHUE	432008068 HI 96766	2	B AMD 2/13/2008
5932	84-1054 LAHAINA STREET	94-1054 LAHAINA ST WAIANAEE	184021070 HI 96792	2	SUPPL 2/12/2008
5578	AWAPUHI ESTATES	6355 OPAKEEA RD KAPAA	442006151 HI 96746	2	SUPPL 2/13/2008
6495	BROOKS CONDOMINIUM	102 KUMU NIU PL LAHAINA	247010034 HI 96761	2	B REPT 2/25/2008
6501	C.A.T. WAIHEHU CONDOMINIUM	788 MALAIHI RD WAILUKU	232013042 HI 96793	2	B REPT 2/4/2008
6527	CASA DE NOMBRE CONDOMINIUM	23 & 25 HAAHEO PL MAKAWAO	223010076 HI 96768	2	B REPT 2/25/2008
6503	D.B. HOOPALUA DRIVE CONDOMINIUM	111 & 113 HOOPALUA DR PUKALANI	223058006 HI 96768	2	B REPT 2/25/2008
6484	EGGERKING ESTATES CONDOMINIUM	376 EGGERKING RD KAPAA	441008033 HI 96746	2	B REPT 2/1/2008
6496	HALAPA HALE	4866 LAIPO RD KAPAA	446017078 HI 96746	2	B REPT 2/13/2008
6488	KAAAWA OCEANVIEW	51-432 & 51-432A LUHIMAUNA RD KAAAWA	151011007 HI 96730	2	B REPT 2/7/2008
6526	KALANIPU'U	HOOLAULEA WAY KALAPAKI	435001027 HI 96766	79	B REPT 2/12/2008
6364	KARGAS	76-6015 MAMALAHOA HWY HOLUALOA	376005004 HI 96725	2	FINAL 2/12/2008
6174	KOLOA LANDING AT POIPU BEACH	2641 POIPU RD KOLOA	428015025 HI 96756	329	B AMD 2 2/7/2008
5797	KUAHINE AT CASTLE POINT	57 AND 57A KAILUANA PL KAILUA	143022011 HI 96734	2	SUPPL 2/25/2008
6506	LEOKANE INDUSTRIAL COURT	94-125 LEOKANE ST WAIPAHU	194049045 HI 96797	5	B AMD 2/22/2008
6491	LOT 106 CONDOMINIUM	5-7371 KUHIO HWY WAINIHA	458009012 HI 96714	2	B REPT 2/4/2008
6311	MAKAHA OCEANVIEW ESTATES	84-621 ALA MAHIKU ST WAIANAEE	184002064 HI 96792	68	B AMD 2/11/2008
6514	MAUKA VALLEY PLANTATIONS	75 & 83 WAILAU PL LAHAINA	247010008 HI 96761	2	B REPT 2/25/2008
3641	NAWILIWILI ESTATES	6171 OLOHENA RD KAPAA	432006005 HI 96746	10	SUPPL 2/14/2008
6504	SALPA CONDOMINIUM	370 & 378 HAUMANA RD HAIKU	228004042 HI 96708	2	B REPT 2/25/2008
6471	TIARE	53-407 HALAULA MAULILI RD KAPAAU	353009004 HI 96755	2	FINAL 2/5/2008
0	<b>Preliminary Reports</b>				
0	<b>Contingent Final Reports</b>				
2	<b>Final Reports</b>				
4	<b>Supplementary Reports</b>				
12	<b>B Reports</b>				
4	<b>B Amendment Reports</b>				
22	<b>TOTAL REPORTS</b>				

### **Project Statistics**

Age reports for Chapter 514B and Chapter 514A public reports assigned for consultant review during fiscal years 2007 and 2008 were distributed for informational purposes. It was reported that Chapter 514B project reviews are taking longer than Chapter 514A project reviews. The target was to get the 514A and 514B reports respectively reviewed within 90 days. The statistics indicate that the initial target goal is being met.

### **Registration of Condominium Projects with Fractionalized Interval Ownership Interests**

Specialist Yee reported that staff has received at least two condominium project registration applications where the developer is selling or anticipates selling undivided fractional interests in the unit. This appears to be a non-traditional method of project filing and the first time these issues are coming before the Commission. Some concerns have been raised whether sales to owner-occupants, county compliance, security issues, disclosure of changing the use of the units or apartments, and regulation of sales of such apply to sales of fractionalized interest units. Staff's preliminary discussions with two different county planning and permitting officials indicate among the different counties there are varying concerns and approaches to regulation of or non regulation of fractionalized interest.

Ms. Ginger Matsukawa, Vice President, Interval Ownership Division of Old Republic Title and Escrow of Hawaii was present. Ms. Matsukawa reported that she has been in the business over 30 years. She noted that fractionalized business is a trend on the mainland and very big for the title and escrow companies. There is a need to ensure the protection of the buyer. Time share rules and regulations apply to sales of 59 days or less. Fractionalized interest is 60 or more days each. The escrow companies want to ensure that rules and regulations governing fractionalized interest units are followed and that no violations occur. Old Republic Title and Escrow does check with each county as to permissibility of such before insuring. Due diligence is followed by all title companies. All documents are recorded before closing. Overselling the interest is an issue and necessitates good tracking.

Commissioner Abrams questioned whether the title company will protect the purchaser if the agent misrepresents and raised securities issues if any.

Ms. Matsukawa responded in the negative and stated that they are strictly concerned with a clear title. Currently there are approximately 12 to 15 residential and condominium units that have been fractionalized. She is aware of one client who will be coming in shortly with 10 units as fractionalized.

Chair Chee expressed concerns with the change in lifestyle fractionalized interests bring to an association and questioned whether there is sufficient notice to consumers and purchasers of the change. Other discussion followed whether the county codes, ordinances allow for such use, whether the condominium association governing documents especially the declaration need to be amended

by 75% of the owners for such changed use and whether fractionalized interest ownership is permitted where the declaration is silent.

Steven Lee, Esq. of the island of Kauai was present. Mr. Lee reported that for the projects he handles fractionalized interests units are insured by title companies and comply with all state and county ordinances which are slightly different from the "hui" of years past which did not provide any protection or insurance of regular rights. You cannot do anything in fractionalized interest units that cannot be done in a whole ownership unit. Maui County has a big issue on occupancy. Some fractionalized units may not meet standards and are denied by the title companies. For the fractionalized interest units projects he is involved with, such must also have a professional management company.

Mr. Lee explained that in a typical fractionalized interest ownership project the owners own all of the furniture and equipment. An owner is a co-tenant with other owners from two to six maximum. Owners pay in 2007 for fees owed in 2008. Fees are adjusted if there are special assessments, etc. If an owner has  $\frac{1}{2}$  interest, they would pay for  $\frac{1}{2}$  of the year in advance. If the owner doesn't pay, they don't get to use the property. If the fractionalized interest owner doesn't pay their share they can be foreclosed on and another fractionalized owner found. The management company issues a default notice and the owner has 10 days to pay, if not a lien is filed and a foreclosure action takes place. The owners also waive their right to partition the unit.

Security issues – multi billion dollar industry in the United States. When buying into a fractionalize interest project, you pay a premium only for what you want to use. There is little or no profit motivation.

Commissioner Loudermilk questioned the definition of "unit" and owner-occupant issues.

Mr. Lee responded that a unit is a unit, the physical room which never changes. It is not subdivided, no division of the actual unit occurs. He further noted that if it is a 20 unit project, only  $\frac{1}{2}$  will be submitted as fractionalized interest units, the other  $\frac{1}{2}$  will be offered as owner-occupant. The developer's public report should disclose the fractionalized units.

Mr. Lee informed the committee that the 30 day recession rights, mandatory arbitration between owners or owner/developer, voluntary mediation, and binding arbitration apply to the sale of fractionalized interests and ownership.

Executive Session:

Upon a motion by Commissioner Nishihara, seconded by Commissioner Ball, it was voted on and unanimously carried to enter into executive session, pursuant to Section 92-5(a)(4), HRS, "To consult wit the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities."

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

**Proposed Rules of the Liquor Commission, City and County of Honolulu -  
"Condominium Hotel License, Condominium Hotel Guest Room . . ."**

Memo and proposed amendments distributed for informational purposes.

**"Council looks at ag preservation" – HonoluluAdvertiser.com (February 11,  
2008)**

Article distributed for informational purposes.

Program of Work: **Legislative Acts and Resolutions**

Acting SEO Fujitani reported that staff is tracking the bills. A written summary on the status of the bills were distributed. SEO Fujitani reported the following:

HB No. 2460 – CDARS bill. Hearing held on Monday, requesting REC to work with the banks to clean up language and make the bill viable. A hearing is scheduled today for the companion bill.

HB No. 2691 – Technical amendments to Chapters 514A and 514B. Questions that pertain to condo funds. Working with House CPC with continuing discussion.

HB No. 3305 – No hearing scheduled yet.

GM for Commissioners Loudermilk and Ball heard, received committee support. Will go before the full Senate.

HCR 118 & SCR 85 – Notify residence of plans for emergency situations. Want the Commission to print and mail out information.

Acting SEO Fujitani also reported that a draft report from the Auditor's Office on the sunrise review has been received. The Auditor's office is requesting comments and/or changes to be submitted to their office.

**Neighbor Island Outreach**

It was reported that the May 7, 2008 committee meetings will be held on the island of Maui at the Realtors Association of Maui offices in Kahului.

Condominium  
Project Registration:

**Registration of Condominium Projects with Fractionalized Interval  
Ownership Interests**

The committee requested that staff develop a checklist for this type of registration for the condominium consultant to consider in their review and work towards the inclusion of disclosure language in the developer's public report relating to condominium projects with fractionalized ownership interests.

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: **Esther Han, Case Lombardi Pettit**

Ms. Han informed the committee that they have submitted an amended public report for reserve rights and wanted to know if the public report will be held up until the Committee reviews the requested disclosure language for fractionalized interval ownership projects.

Ms. Han was informed that the project should not be held up.

CEF Budget & Finance Report: No report presented.

Next Meeting: April 9, 2008  
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 Chee adjourned the meeting at 11:03 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

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Cynthia M. L. Yee  
Senior Condominium Specialist

March 25, 2008

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Date

Minutes approved as is.  
 Minutes approved with changes; see minutes of \_\_\_\_\_