

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: February 9, 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
Mark Suiso, Vice Chair, Public / Honolulu Commissioner
Trudy Nishihara, Broker / Honolulu Commissioner
Stanley Kuriyama, Broker / Honolulu Commissioner
Scott Sherley, Broker / Hilo Commissioner
Frances Gendrano, Broker / Honolulu Commissioner
Walt Harvey, Broker / Honolulu Commissioner
Donna Apisa, Broker / Kauai 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: Mark Morita, DCCA Insurance Division, staff attorney
Nadine Cui, Atlas Insurance Agency
Aron Espinueva, Hawaii Association of REALTORS®
Dan Falardeau, Entrust Hawaii
Bill Humphrey, Entrust Hawaii
Philip Wilia, Dower Realty
Charles Pear, McCorriston Miller

Absent: Carol Ball, Broker / Maui Commissioner

Call to Order: Chair Loudermilk called the meeting to order at 9:36 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 Ball was excused from the meeting. Prior notification of her 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

Minutes:

Upon a motion by Commissioner Nishihara, seconded by Commissioner Gendrano, it was voted on and unanimously carried to accept the minutes of the January 12, 2011 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOUO Registrations

Specialist Stone reported that as of January 31, 2011, 1,666 AOUOs have successfully registered.

January 20, 2011 letter from Insurance Commissioner Gordon Ito, DCCA, relating to section 514B-143(a)(3), HRS – Fidelity Bonds greater than the statutory required amount of \$200,000

Specialist Yee noted that the law, §514B-143(a)(3)(A) provides that an association with more than five dwelling units shall obtain and maintain a fidelity bond and that the amount of the fidelity bond required shall not be less than \$20,000 nor greater than \$200,000 unless otherwise provided in the declaration or bylaws. If a greater amount is so stated in the Association's declaration and bylaws, the Commission will accept the greater than maximum required amount supported by a copy of the declaration and bylaws requiring the greater amount.

Mark Morita, staff attorney, of the Department's Insurance Division was present. Representatives of the insurance industry requested the assistance of the Insurance Division in resolving the issue of associations submitting bonds in amounts greater than \$200,000 that had been rejected by the Real Estate Commission.

Staff informed the committee that the Commission's prior decision was to allow a greater bond amount with the submission of the associations supporting documents. The Insurance Division's position is that supporting documents are not necessary.

Mr. Morita noted that the Insurance Division believes that the law does not limit the association's discretion in setting an appropriate bond limit, but instead it is intended to limit the Real Estate Branch's authority to demand a limit higher than \$200,000 from the association. It also believes that it is impractical for the Branch to suggest that an association justify a higher bond amount by documenting that need through an amendment in their declaration and bylaws.

Committee members and staff reviewed and discussed §514B-143(a)(3) and Mr. Morita's comments.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Apisa, it was voted on and unanimously carried to issue the following informal non-binding interpretation as follows:

- §514B-143(a) (3), HRS, does not limit the associations' discretion in setting an appropriate higher bond limit than as specified in §514B-143(a) (3), HRS. Instead, §514B-143(a) (3), HRS, is intended to limit the Real Estate Commission's authority to demand a limit higher than \$200,000 from an association. Thus, the amount required by the Branch cannot exceed that amount.
- The statute does not prevent the Real Estate Branch from accepting a higher insurance amount, nor does it prevent an association from purchasing a higher amount.
- Associations may submit but shall not be required to submit applicable sections of its governing documents justifying a higher fidelity bond amount.

AOUO Online Registration

Staff is seeking Commission's approval to conduct the upcoming AOUO registration process online, similar to the real estate licensee online process. Transitioning to the exclusive online AOUO registration is consistent with the Condominium section's previous efforts to "go green."

Based on the numbers from the previous AOUO reregistration most CMAs completed registrations online for their respective associations. The two largest CMAs, managing approximately 700 associations completed their registration process online. One-third of the self-managed associations renewed also renewed online.

Upon a motion by Commissioner Gendrano, seconded by Commission Sherley, it was voted on and unanimously carried to conduct the AOUO registration process online.

Case Law Review Program

The following was distributed for informational purposes: *In the Matter of Association of Apartment Owners Of the Palms At Wailea-Phase 2, Petitioner-Appellant/Appellee v. Department of Commerce and Consumer Affairs, Appellee Appellee and The Palms At Wailea, #3603, A California Limited Liability*

Partnership, Respondent-Appellee/Appellant 124 Hawai'i 279, 241 P.3d 571
 (Hawai'i Nov.10, 2010).

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

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

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	UNIT	REPORT	DATE
7039	2435 KOLO ROAD	2435 KOLO RD LIHUE HI 96754	452009027	2	B REPT	1/13/2011
7055	47-648 & 47-648A MELEKULA ROAD	47-648 & 47-648A MELEKULA RD KANEHOE HI 96744	147046021	2	B REPT	1/13/2011
6185	ALLURE WAIKIKI	1837 KALAKAUA AVE HONOLULU HI 96815	126013001	292	B AMD 6	1/31/2011
5962	ANANALU	6519 ANAHULU RD HANALEI HI 96714	458006054	2	SUPPL	1/7/2011
7052	ENGLISH CONDOMINIUM	206 AWAIKU ST LAHAINA HI 96761	247009020	2	B REPT	1/6/2011
5724	HALI'I KAI (PHASE IIB)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	369010001	16	SUPPL 7	1/7/2011
5892	HALI'I KAI (PHASE III)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	369010001	32	SUPPL 7	1/7/2011
5911	HALI'I KAI (PHASE IV)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	369010001	32	SUPPL 7	1/7/2011
5671	HALI'I KAI (PHASE V)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	369010001	41	SUPPL 7	1/7/2011
6428	KAHU'AINA FARMS PHASE 1	7480 KOOLAU RD KILAUJEA HI 96754	451003006	10	B AMD 3	1/10/2011
6711	KAHU'AINA FARMS PHASE 2	7480 KOOLAU RD KILAUJEA HI 96754	451003006	3	B AMD 2	1/10/2011
4160	KAUMANA HEIGHTS	1688 A & B KAUMANA DR HILO HI 96720	325040021	2	SUPPL 2	1/10/2011
7065	LAULANI V, PHASE 12	91-1001 KEAUNUI DR EWA BEACH HI 96706	191149017	9	B REPT	1/24/2011
6271	LAUNIUPOKO 12 CONDOMINIUM	233 WAILAU PL LAHAINA HI 96761	247010077	2	B AMD 2	1/6/2011
6939	MOONSURFER CONDOMINIUM	LOT 124 KAMEHAMEHA HWY HAUULA HI 96717	154018059	2	B REPT	1/26/2011
6224	PENSACOLA CHELSEA CONDOMINIUM	1310 PENSACOLA ST HONOLULU HI 96814	124013021	46	B AMD 4	1/11/2011
0	Preliminary Reports					
0	Contingent Final Reports					
0	Final Reports					
6	Supplementary Reports					
5	B Reports					
5	B Amendment Reports					
16	TOTAL REPORTS					

CPR Project – CPR No. 4652 Ocean Resort Villas

Specialist Yee noted that condominiums created prior to July 1, 2006 can register under Chapter 514A. The developer of this particular project requested in accordance with Chapter 514A, HRS, an 8th extension of its Final Public Report. The project contains time share units. The committee reviewed §514A-41(d), which does not require condominium projects that have been time shared to update the developer's public report with a supplementary public report if the developer provides the prospective purchaser and or purchaser with an updated "Time Share Disclosure Document."

Specialist Yee noted that the public report states that it is in its infancy stage, etc. All documents on file with the Real Estate Commission should be true and

accurate. She noted that the public report as is, may be inaccurate if there are continuing sales.

Mr. Charles Pear, attorney for the developer, noted that §514A-31(b) states in part that the developer shall not be required to deliver to a prospective purchaser or purchaser a true copy of the developer's public report or disclosure abstract as required by Chapter 514A when a time share plan is duly registered under Chapter 514E.

He also noted that §514A-41(d) and §514A-61(d) also note that notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under Chapter 514E.

Mr. Pear noted that the Disney project is registered in all 50 states. They have a compliance team which oversees that all registration requirements are met in each state. For this particular project, the disclosure statement had been filed.

Commissioner Kuriyama questioned if they are not required to provide a developer's public report to the prospective purchaser, why are they submitting for an extension of the report?

Mr. Pear responded that they are being overly cautious by submitting a request for an extension along with a copy of the time share disclosure document.

Discussion included the accuracy of the developer's public report on file with the Real Estate Commission in time share condominium projects where there are changed circumstances.

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

Program of Work:

Hawaii Condominium Bulletin

Specialist Stone announced that the February issue of the Hawaii Condominium Bulletin has been posted to the Commission's website. A hard copy was circulated for the Committees perusal.

Rulemaking, Chapter 107, HAR – Status Report

It was reported that the next draft of the rules will be submitted to a blue ribbon panel for review. Commissioners to provide any suggested names to be a part of the blue ribbon panel to staff. Chair Loudermilk suggested utilizing members from the recodification blue ribbon panel.

Rulemaking, Chapter 107, HAR - Additional Revisions to Preliminary Rough Draft Version of Proposed Rules Relating to "Spatial Units"

Specialist Yee asked for the Commissioner's thoughts on the spatial units issue.

Chair Loudermilk noted that there are many different kinds of spatial units. She noted that there is a need for there to be a loose description of spatial units due to the varying types of description.

Government and Legislative Participation and Report

Staff provided an update on House Bill No. 1662. It was reported that House Bill No. 1662 rewrites the mediation process, deletes the CDR condo court provision and requires that the Commission report annually its efforts to advance mediation. The Commission provided testimony that the current bill as proposed is unnecessary. The Commission already reports annually to the Legislature its efforts relating to mediation and the moneys expended for mediation. The bill makes provisions to subsidize mediation in general. However, at the legislative hearing on this bill the proponents appear to be deleting facilitative mediation and replacing it with evaluative mediation. Staff noted for the committee that the Commission already includes in its mediation contracts subsidies for facilitative and evaluative mediation. To date the Commission has not received any invoices from the vendors for evaluative mediation.

Chair Loudermilk reported that she spoke with the proponent of the bill, Mr. Phil Nerney and invited him to attend a Commission meeting to discuss his issues.

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:

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Apisa, it was voted on and unanimously carried to accept the Condominium Education Trust Fund Financial Report for the period ending December 31, 2010 subject to an explanation of the projected fees and the actual fees collected.

Executive Session:

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

CPR Project – CPR No. 4652 Ocean Resort Villas

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Sherley, it was voted on and unanimously carried that pursuant to Title 16, Chapter 201, Subchapter 5, Hawaii Administrative Rules, to issue the following informal non-binding interpretations as follows:

- Chapter 514A, HRS, does not require condominium projects that have been time shared to update the developer's public report if the developer provides the prospective purchaser or purchaser with an updated "Time Share Disclosure," therefore the developer need not submit for an extension of the developer's public report;
- Should the developer elect to file a request for an extension, then the developer must disclose any material changes to the developer's public report;
- In the specific case of CPR 4652, Ocean Resort Villas, the two reviewed changes (construction and the submission of all existing resort apartments to a time share plan) are not material changes in that the subject matter was disclosed in the developer's public report.

Next Meeting: March 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 10:37 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

February 11, 2011

Date

Minutes approved as is.

Minutes approved with changes; see minutes of _____