

CONDOMINIUM REVIEW COMMITTEE
Real Estate Commission
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.state.hi.us/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 14, 2001

Time: 11:00 a.m.

Place: Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Present: Mitchell Imanaka, Chair
Peter Rice, Vice Chair
Charles Aki, Member
Michael Ching, Member
John Ohama, Member
Alfredo Evangelista, Member
Patricia Choi, Member

Calvin Kimura, Supervising Executive Officer
Alan Taniguchi, Executive Officer
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
Gordon Arakaki, Condominium Specialist
Iris Ikeda Catalani, Senior Real Estate Specialist
Lorene Arata, Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Excused: Iris Okawa, Member
Casey Choi, Member

Others: Yoshihisa Hirota, Condominium Management Center of Japan
Sayuri Ito, Condominium Management Center of Japan
David Bettencourt
Jeff Grad
Kenneth Chong

Call to Order: Chair Imanaka called the meeting to order at 11:08 a.m., at which time quorum was established.

Chair's Report: Excused from today's meeting are Commissioners Okawa and C. Choi. Chair Imanaka introduced and welcomed Cheryl Leong as the newest Condominium Specialist on the Real Estate Branch staff.

Condominium
Specialist's
Report:

Additions to the Agenda

Upon a motion by Commissioner Rice, seconded by Commissioner Ching, it was voted on and unanimously carried to recommend to accept the additions to the agenda as follows:

- 4.i. Informal Interpretation of §514A-85 – Darlene J. Levy
- 5.a.4) Seller Disclosures on Condominium Conversion Sales

At this time the Chair took the agenda out of order.

Condominium
Project
Registration:

Lakeside Villas II – Jeffrey S. Grad, Esq.

Mr. Grad, attorney for the project informed the Commission that this is a small condominium project consisting of two sheds on a single family lot in Salt Lake. The land is subject to a deed restriction that no structure will be permitted on the property except a single-family dwelling. The restrictions will expire on June 30, 2001.

Mr. Grad is requesting to be allowed to offer the units for sale but that the closing not be done until July 1, 2001, once the restrictions have expired. He reported that he has received a commitment from Title Guarantee for title insurance that would address and cover the deed restriction.

Chair Imanaka questioned what the restriction on the deed is.

Mr. Grad replied that the restriction states that the lot shall be used for one single-family residence.

Chair Imanaka questioned whether the restriction prohibits the erection of a shed.

Mr. Grad replied in the negative and stated that the restriction only says that it shall be used for one single-family residence.

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

Seller Disclosure on Condominium Conversion Sales

Chair Imanaka reported that the condominium consultants have been meeting on a regular basis to go over issues that come up in the condominium project review process. Condominium Consultant, Kenneth Chong, was present to apprise the committee of an issue.

Mr. Chong reported that in most condominium conversions you have a variety of apartments, some may be single family residence, some older, some new. Conversions are increasing in number and are exempt from HRS 508D disclosure if sold via an unexpired developer's public report. His concern is that the consumer be protected especially with older condominium projects and HRS 508D disclosure statements. These disclosures can be very helpful to purchasers of apartments in a condo conversion where some of the apartments are old.

By requiring sellers to file a 508D disclosure statement, buyers of older apartments will be getting the same level of disclosure from the developer as a buyer now receives

form a non-developer seller. In order to accomplish this, the condo exemption in HRS 508D would need to be revised. The exemption on condos in 508D could be limited to those built five or less years ago. Those built more than five years ago would need to comply with the seller disclosure statement.

Chair Imanaka noted that disclosures to the consumer seem to be the main issue and may be achieved through HRS 514A and the developer's public report. Chapter 514A may have the flexibility to add more disclosures in a developer's public report to protect the consumer.

Mr. Chong remarked that older apartments would need an individual seller disclosure statement, which could possibly be an addendum to the existing developer's public report form.

SEO Kimura reported that the Commission has the administrative authority to incorporate changes to the developer's public report form.

Chair Imanaka asked Mr. Chong if he would be willing to coordinate the development of the standardized disclosures for Commission consideration and decision.

Mr. Chong agreed.

Upon a motion by Commissioner Rice, seconded by Commissioner Ching, it was voted on and unanimously carried to recommend approval to prepare and circulate a memo to the condominium consultants recommending that the consultants require, where applicable, certain standardized disclosures in the developer's public report where apartments being converted are five years or older. Condominium consultant, Ken Chong, shall coordinate the development of the standardized disclosures for Commission consideration and decision.

SEO Kimura questioned Mr. Chong if he had other comments on 508D since we are on the subject and there are bills on this subject.

Mr. Chong responded that the proposed definition of material facts is very vague and adds to the confusion. Inclusion of words like "significantly", "measurably", "directly", "substantially", and "adversely" do not assist in clarifying the definition of material facts. Mr. Chong stated that if legislation is not going to help, legislation should not be proposed.

SEO Kimura questioned Mr. Chong on his thoughts on the prelicensing requirement.

Mr. Chong replied that "standard of care" should not be limited to entry level were Nick Ordway's thoughts when he was the Director of the Hawaii Real Estate Research and Education Center. Mr. Chong stated that there is a need to take into account experience in defining the "standard of care"; what the agent and the principal broker should be doing in taking a proactive status in management. It is not appropriate to have "entry level" as a criteria.

Minutes:

Upon a motion by Commissioner Rice, seconded by Commissioner Ching, it was voted on and unanimously carried to accept the minutes of the February 14, 2001 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOAO / CMA / CHO Registrations

Specialist Leong reported that as of February 28, 2001, 1,415 AOAOs have successfully registered. Specialist Leong further reported that 96 CMAs and 122 CHOs are also currently registered.

Upon a motion by Commissioner Rice, seconded by Commissioner Evangelista, it was voted on and unanimously carried to recommend approval to ratify issuance of effective registration dates for Association of Apartment Owners through February 28, 2001 for the 1999-2000 registration. The associations are as follows:

Diamond Head Alii	2/6/2001	Kalolini Estates	2/8/2001
Maluhia Kai	2/5/2001		

Mediation and Arbitration – A calendar of events put on by ADR Hawaii has been distributed for informational purposes.

Education Calendar - Updated calendar of condominium events circulated for information. This information is also provided on the Commission's webpage.

Case Law Review Program

The following articles from the *Community Association Law Reporter* were distributed for informational purposes as part of the committee's case law review program: "Failure to Disclose Details Lawsuit to Buyer Not Sufficient to Rescind Purchase" (January 2001); "Attorney - Client Privilege Extends to Condominium Association as 'Client' and Not to Individual Members" (February 2001); "Amendments to Declaration Are Void If Property Descriptions Are Not Clear" (February 2001); "Mail-In Ballots Do Not Meet Requirements of Declaration or State Nonprofit" Corporation Act (February 2001)

Condominium Related Articles

The articles entitled "Auditing When A Service Organization is in Place" and "Recent Tax Rulings" from the Winter 2001 issue of Ledger Quarterly were distributed for informational purposes.

Condominium Seminars – Hawaii Association of REALTORS®

Marsha Shimizu, Director of Programs, Products & Services of the Hawaii Association of REALTORS® reported that she has distributed to the committee a course content outlining ARELLO's Fair Housing Course entitled "Fair Housing: 2001 and Beyond." The course will be held on April 24, 2001 on Oahu; April 25, 2001 on Maui; and April 26, 2001 on the Big Island. The course materials are approximately 80 pages. The publicity for this course is being geared to property managers, real estate licensees, and condominium boards and owners. HAR would also like to obtain a list from the Real Estate Branch of those registered AOAOs.

Condominium Project Registration - Public Reports Issued

Project Registration: Upon a motion by Commissioner Ching, seconded by Commissioner Evangelista, it was voted on and unanimously carried to recommend approval to ratify issuance of effective dates for developer's public reports for the month of February 2001 as follows:

Proj No	Project Name	Project Address	TMK #	Report	Date
4557	1731 AUPUNI	1731 AUPUNI ST HONOLULU HI 96817	(1)1-06-013:035	Final	02/15/01
4522	4191 KOLOA ROAD CONDO	4191 KOLOA RD KOLOA HI 96756	(4)2-05-005:074	Final	02/26/01
4544	77 WAIALE CONDOMINIUM	77 WAIALE DR WAILUKU HI 96793	(2)3-04-010:030	Final	02/27/01
2256	AALAPAPA DRIVE	1365/1365A AALAPAPA DR KAILUA HI 96734	(1)4-03-004:030	Suppl 1	02/02/01
4568	CLOUD-9 FARM CONDO PROJ	64-984 MAMALAHOA HWY KAMUELA HI 96743	(3)6-04-001:152	Final	02/20/01
4561	CORTEBELLA PHASE 4	91-221 MAKALAUNA PLACE EWA BEACH HI 96706	(1)9-01-010:048	Prelim	02/06/01
4558	HANAPAI CONDOMINIUM	LOT 6 ANINI VISTA SUBDIV KALIHIWAI HI	(4)5-03-009:006	Final	02/02/01
4386	HOOKELE 72	73-4611 KUKUI ST KAILUA-KONA HI 96740	(3)7-03-024:072	Suppl 1	02/20/01
4570	HU'ELANI PHASE 10	91-832 & 91-836 LAUNAHELE EWA BEACH HI 96706	(1)9-01-069:008	Prelim	02/14/01
4572	HU'ELANI PHASE 7B	91-215 & 91-217 LUKINI PL EWA BEACH HI 96706	(1)9-01-069:008	Prelim	02/20/01
4541	KAU FARM CONDOMINIUM PROJ	KIOLAKAA (3)9-04-002:024 KAU HI	Final	02/01/01	
4548	KAUHALE VILLAS AT HUALALAI	PAKUI ST KAILUA-KONA HI 96740	(3)7-02-013:008	Prelim	02/22/01
4546KE	AINA KAI TOWNHOMES INCR 10	91-6540 KAPOLEI PARKWAY EWA BEACH HI 96706	(1)9-01-012:042	Final	02/14/01
4536	LUXOUR CONDOMINIUM	LOT 24-A SEACLIFF PLANTN KILAUEA HI	(4)5-02-004:097	Final	02/20/01
4543	MAI'A SPLIT ACRES CONDO	3755 WAHA RD KALAHEO HI 96741	(4)2-03-018:002	Final	02/01/01
3756	MOLOAA HUI I	KUHIO HWY KAWAIHAU HI	(4)4-09-009:001	Suppl 1	02/13/01
4566	OHIA VIEW	73-1735 HAO ST KAILUA-KONA HI 96740	(3)7-03-025:034	Final	02/21/01
4552	OLOHENA RIDGE ESTATES I	OLOHENA RD WAIPOULI HI	(4)4-04-003:052	Final	02/26/01
4553	OLOHENA RIDGE ESTATES II	OLOHENA RD WAIPOULI HI	(4)4-04-003:052	Final	02/26/01
2066	PARADISE ISLAND RANCH AG CONDO	LOT 8W9A PUU LANI PH II KILAUEA HI 96754	(4)5-02-012:009	Suppl 1	02/09/01
4550	PAVILIONS AT SEA CLIFF ESTATES	2445 MAKANA'ANO PLACE KILAUEA HI 96754	(4)5-02-004:076	Final	02/07/01
2561	SOPHIA FARMS	KAUAPEA RD HANALEI HI 96714	(4)5-02-005:027	Suppl 1	02/20/01
3561	TERRACES MANELE BAY PHASE II	THE KAPIHA'A PL LANAI HI 96763	(2)4-09-002:001	Suppl 4	02/27/01
4529	THE PLACE	LOT 24 HUALALAI FARMS N KONA HI	(3)7-05-013:047	Final	02/22/01
3653	THE ROYAL PALM AT WAIPIO PHASE II & III	KULEWA LP & POLANI ST WAIPAHU HI 96797	(1)9-04-115:037	Suppl 1	02/27/01
3117	VILLAS AT KOELE PHASE I THE	50,65,115,125 KUKUI LP LANAI CITY HI 96763	(2)4-09-018:002	Suppl 3	02/21/01
3682	VILLAS AT KOELE PHASE II THE	KAUNA O'A DR LANAI CITY HI 96763	(2)4-09-021:002	Suppl 2	02/13/01

Preliminary Reports: 4
 Contingent Final Reports: 0
 Final Reports: 14
 Supplementary Reports: 9

Total: 27

Condominium
Governance and
Management:

Informal Interpretation of §514A-85 – Darlene J. Levy

Senior Condominium Specialist Yee informed the committee that Ms. Levy is requesting an informal interpretation of §514A-85; whether this section requires a condominium association to maintain all association records within the State.

Chair Imanaka stated that the statute is clear and that it does not require all association records to be kept within the State

Upon a motion by Commissioner Ching, seconded by Commissioner Evangelista, it was voted on and unanimously carried to recommend approval to issue an informal non-binding interpretation that §514A-85(b) does not require all association records to be kept within the State, only those records specified in §514A-85(a) and §514A-85(b).

514A-12, HRS – Filed or Approved Floor Plans & Architect or Engineer Statement

Upon a motion by Commissioner Rice, seconded by Commissioner P. Choi, it was voted on and unanimously carried to recommend deferral of this agenda item to the next CRC meeting.

Program of Work:

Interactive Participation with Organizations – CAI Conference, May 3-5, 2001

Upon a motion by Commissioner Aki, seconded by Commissioner Evangelista, it was voted on and unanimously carried to recommend approval for two staff members, one staff member being the recodification attorney, and one Commissioner to attend and participate subject to CMEF budget, including the recodification budget, and DCCA approval. The Chair of the Real Estate Commission and the Supervising Executive Officer shall determine the attendees.

Condominium Reference Library

Senior Condominium Specialist Yee informed the committee that she is in contact with CAI regarding copyright permissions.

Neighbor Island Outreach – May 11, 2001 committee meetings to be held on the island of Kauai at the Kauai State Office Building.

CMEF Budget &
Finance Report:

No report presented.

Condominium
Organizations Forum:

There were no comments, recommendations or concerns 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:

Mr. Yoshihisa Hirota and Ms. Sayuri Ito of the Condominium Management Center of Japan were present. Mr. Hirota stated that they were very interested in the discussion that went on at today's meeting. Japan has approximately 4 million condominium

units. Management of condominiums has reached the point where it is necessary for the government to step in. Japan is looking at implementing licensing persons and managing agency. Currently researching AOAO and project registration in Hawaii.

Chair Imanaka informed Mr. Hirota and Ms. Ito that the Hawaii Real Estate Commission is willing to help and assist the Condominium Management Center of Japan.

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

Condominium
Project
Registration:

Lakeside Villas II – Jeffrey S. Grad, Esq.

Upon a motion by Commissioner Evangelista, seconded by Commissioner Rice, it was voted on and unanimously carried to recommend approval to issue an effective date for a developer's final public report subject to the developer:

- 1) Incorporating the condominium consultants recommendations in the developer's final public report together with the consultant's recommended disclosures;
- 2) Obtaining a title insurance endorsement which would insure against loss or damage (but not attorney's fees) arising out of a final court order or judgment enforcing the one single family home provision;
- 3) Indemnifying a purchaser for any loss incurred; and
- 4) Closing escrow only after the expiration of the deed restriction.

Next Meeting: Wednesday, April 11, 2001; 11:00 a.m.
Kapuaiwa Room
HRH Princess Victoria Kamamalu Bldg.
1010 Richards Street, Second Floor
Honolulu, Hawaii 96813

Adjournment: With no further business to discuss, Chair Imanaka adjourned the meeting at 11:55 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee
Cynthia M. L. Yee
Senior Condominium Specialist

April 11, 2001
Date

[] Minutes approved as is.
[] Minutes approved with changes; see minutes of _____
CY/trv