

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: September 13, 2017

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: Laurie A. Lee, Chair, Broker / Honolulu Commissioner
Bruce Faulkner, Vice Chair, Broker / Maui Commissioner
Nikki Senter, Public / Honolulu Commissioner
Rowena Cobb, Broker / Kauai Commissioner
Scott Arakaki, Public / Honolulu Commissioner
Aleta Klein, Broker / Honolulu Commissioner
Michael Pang, Broker / Honolulu Commissioner
Sean Ginoza, Broker / Hilo Commissioner

Neil Fujitani, Supervising Executive Officer
Miles Ino, Executive Officer
Carole Richelieu, Senior Condominium Specialist
Benedyne Stone, Condominium Specialist
Dathan Choy, 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: Owen Iida Esq., Imanaka Asato
Aron Espinueva, Hawaii Association of REALTORS®
Ethel Keyes, Hawaii Association of REALTORS®
Marsha Shimizu, Hawaii Association of REALTORS®
Myoung Oh, Hawaii Association of REALTORS®
Harold Berman, The Berman Education Company LLC
James Stone, Esq.

Absent: Aileen Wada, Broker / Honolulu Commissioner

Call to Order: The Chair called the meeting to order at 9:10 a.m., at which time quorum was established.

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 Wada 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:

4. CPR Registration and Developer's Public Reports
 - a. Condominium Projects and Developer's Public Reports
 - 2) Request for Informal Non-Binding Interpretation – Imanaka Asato, August 31, 2017: Regarding the transition in registration from chapter 514A to chapter 514B without invalidating chapter 514A sales contracts where there has been no material change to the project and owner-occupant requirements compliance under chapter 514A; whether a chapter 514B developer's public report satisfies the chapter 514A contingent final public report requirements if prior to expiration

Minutes:

Upon a motion by Commissioner Faulkner, seconded by Commissioner Klein, it was voted on and unanimously carried to accept the minutes of the August 9, 2017 Condominium Review Committee meeting.

Condominium
Governance and
Management:

AOUO Registrations

Specialist Stone reported that as of August 31, 2017, 1,094 AOUOs have successfully registered.

Case Law Review Program

The following articles were distributed for informational purposes: "Judge Rules Against Maui Apartment Owners [sic], Aston", Honolulu Star-Advertiser, August 11, 2017; and Gold Coast Neighborhood Association vs. State of Hawaii, Hawaii Supreme Court, August 25, 2017 (excerpt).

Condominium Related Articles

The following article was distributed for informational purposes: "No Pets Allowed: What About a Protective Dog?", Realty Times, August 22, 2017.

Condominium Seminars and Symposium

CAI Hawaii "Dealing with the Darkside – Criminal Elements" August 24, 2017 evaluations – evaluation submitted by Specialist Richelieu who monitored the seminar on behalf of the Commission. Staff noted that there were 263 registered attendees, of which most were board members. Copies of the Commission's brochures "Condo Governance in Brief" and "Mediation" were included with the handouts. Staff's ratings of the seminar were mostly in the fair to average category.

Condominium
Project
Registration:

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of August 2017 was distributed for informational purposes.

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PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	TOTAL	REPORT	DATE
8029	'A'ALI'I	987 QUEEN STREET HONOLULU HI 96814	132002067	752	B REPT	8/17/2017
8024	55-87 B LANIHULI STREET	55-87 B LANIHULI ST LAIE HI 96762	155017015	2	B REPT	8/10/2017
8048	59-394 MAKANA ROAD	59-394 MAKANA ROAD HALEIWA HI 96712	159029036	2	B REPT	8/25/2017
8019	99-314 AND 99-314A EKE PL	99-314 AND 99-314A EKE PL AIEA HI 96701	199043020	2	B REPT	8/29/2017
8045	AHIA HALE	16 KUMU NIU PLACE LAHAINA HI 96761	247010043	2	B REPT	8/25/2017
7956	FRIEDMAN I	1401 NAALAE ROAD KULA HI 96790	222015031	2	B REPT	8/16/2017
7998	HANA PLANTATIONS	84-1130 HANA STREET WAIANAE HI 96792	184011006	4	B REPT	8/29/2017
7885	KA MALANAI KAILUA PH 2	361 AND 409 KAILUA RD KAILUA HI 96734	142001062	60	B AMEND 1	8/29/2017
8039	KA MILO AT MAUNA LANI, PHASE 18	68-1122 NORTH KANIKU DR KOHALA COAST HI 96743	368022041	6	B REPT	8/2/2017
8005	KAHOMA VILLAGE	FRONT STREET LAHAINA HI 96761	245008001	203	B REPT	8/17/2017
8050	KAMANI AT KEHALANI (PH 6)	OFF OMA'OMA' O STREET WAILUKU HI 96793	235001090	10	B REPT	8/24/2017
7512	KAPALUA BAY CONDOMINIUM	1 BAY DR LAHAINA HI 96761	242004028	56	B AMEND	8/8/2017
7978	LEI PAUKU AT HOAKALEI, INCREMENT 5	19-2220 KAIWAWALO ST EWA BEACH HI 96706	191134061	16	B AMEND	8/24/2017
8032	MAKANA HALE MANOA	3005 KALAWAO STREET HONOLULU HI 96822	129025015	8	B REPT	8/11/2017
8038	MALAEKAHANA BEACH - ESTATES (PHASE 1)	56-155 KAMEHAMEHA HWY KAHUKU HI 96731	156001090	3	B REPT	8/10/2017
6450	MATIAS CONDOMINIUM	5147 KUA RD KALAHEO HI 96741	424002007	3	B AMEND	8/17/2017
8031	NAHEOLEA CONDOMINIUM	99-768 & 99-768A NAHIOLEA ST AIEA HI 96701	199058051	2	B REPT	8/3/2017
7976	PARADISE RIDGE ESTATES	2747 S KIHEI ROAD KIHEI HI 96753	239004132	16	B REPT	8/28/2017
7970	PU'UWAI PLACE - PHASE 1	PAIWA STREET WAIPAHI HI 96797	194002024	25	B REPT	8/22/2017
8030	RESIDENCE AT TENTH AVE	1628 AND 1628A 10TH AVE HONOLULU HI 96816	133040014	2	B REPT	8/2/2017
7827	WAIONE ESTATES	95-330 WAIONI ST MILILANI HI 96789	195010103	6	B REPT	8/8/2017
8006	WILLIAM HENRY ESTATES	45-252 WILLIAM HENRY ROAD KANEHOE HI 96744	145017009	6	B REPT	8/3/2017
0		Preliminary Reports				
0		Contingent Final Reports				
0		Final Reports				
0		Supplementary Reports				
18		B Reports				
4		B Amendment Reports				
22		TOTAL REPORTS				

Request for Informal Non-Binding Interpretation – Imanaka Asato, August 31, 2017: Regarding the transition in registration from chapter 514A to chapter 514B without invalidating chapter 514A sales contracts where there has been no material change to the project and owner-occupant requirements compliance under chapter 514A; whether a chapter 514B developer's public report satisfies the chapter 514A contingent final public report requirements if prior to expiration

Commissioner Senter disclosed that Mr. Iida is a partner in the firm to which she previously worked and stated that she is able to make an unbiased decision.

Chair Lee disclosed that the law firm of Imanaka Asato represents her clients and stated that she is also able to make an unbiased decision.

Mr. Iida noted that developers and attorneys are struggling with the effects of Act 181. He stated that their request for an informal non-binding interpretation is a result of Act 181 which repeals Chapter 514A effective January 1, 2019. He

further noted that they represent a developer of a condominium project who has obtained a contingent final public report under Chapter 514A. They are seeking guidance with regards to the following questions:

- A. Whether the re-registration under Chapter 514B of a project previously registered under Chapter 514A does not, by itself, provide a right of rescission;
- B. Whether compliance with the owner-occupant requirements under Chapter 514A relieves the developer from again complying with owner-occupant requirements upon re-registration; and
- C. Whether obtaining a developer's public report under Chapter 514B satisfies the requirements of obtaining a final public report prior to the expiration of the contingent final public report under Chapter 514A.

Commissioner Arakaki questioned Mr. Iida if he researched the legislative history.

Mr. Iida responded that there was no mention of why the change was made from no rescission rights to rescission rights. The text was not underlined or stricken in Act 244, SLH 2007. Material change is usually a trigger for rescission rights.

Commissioner Senter questioned when Mr. Iida's client's contingent final public report expires.

Mr. Iida responded that the contingent final public report is valid for 9 months. The contingent final public report in this instance expires on September 14, 2017.

Commissioner Senter commented that staff tried to solicit testimony from the condominium consultants and the development industry regarding the repeal of Chapter 514A. The only testimony received was from consultant Richard Kiefer.

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

Executive Session:

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

After a review of the information presented by Mr. Iida, the letter dated August 31, 2017, and based upon the specific facts and questions as presented, Commissioner Arakaki moved to issue the following informal non-binding interpretation: Issue A is sufficiently answered in the negative by Act 244, SLH 2007, and Act 93, SLH 2005, where there has been no "material change." With regard to issue B, the Commission determined compliance with the owner-occupant requirements under Chapter 514A, while registered under Chapter 514A, would relieve the developer from complying with the owner-occupant requirements upon re-registration under Chapter 514B. As for issue C, the developer will not be required to file a final public report under Chapter 514A if the developer obtains a Chapter 514B developer's public report prior to the

expiration of the contingent final public report received under Chapter 514A. Commissioner Senter seconded the motion. The motion was voted on and unanimously carried.

Specialist Richelieu reported staff will also be working with the Director's office to provide information on the repeal and transition to developers and other interested parties. Staff has drafted a memorandum to developers as part of this effort.

Consultants

A Condominium Consultants' Forum has been scheduled for October 2, 2017.

Article

The following article was distributed for informational purposes: "Construction Litigation: Who Bears the Risk of Fault and Prerequisites to Filing an Action", Hawaii Bar Journal, August 2017.

Program of Work:

Education and Referral

As part of its educational outreach, staff participated as a speaker at Associa's Board Training Seminar held on Saturday, August 19, 2017. The seminar was well attended with approximately 160 board members and managing agents.

Staff researched into its participation in the Maui County Fair. Staff may look into participating with other government agencies in the 2018 Fair.

Rulemaking, Chapter 119

A draft of subchapters one through eight of proposed chapter 119 rules relating to condominiums were provided for the Commissioners review.

Deputy Attorney General Wong suggested having 8 chapters rather than subchapters due to the new rulemaking procedures which affect all proposals for changes to rules be made at the chapter level.

Specialist Richelieu requested that comments to the proposed draft rules be received by October 13, 2017.

Legislative Acts and Resolutions – legislative wrap up summary

Specialist Richelieu provided a written legislative summary and copies of the following Acts for the Commissioners information: Act 71 relating to condominiums, Act 73 relating to condominiums, Act 81 relating to condominiums, Act 170 relating to medical marijuana, Act 181 relating to condominiums, and Act 190 relating to condominiums.

Consumer Education

The Department participated at the BIA Home Building summer trade show from August 11 – 13, 2017. The Insurance Division and the Director's office were present and distributed the Real Estate Commission's brochures at their booth.

Specialist Stone is coordinating with CAI Hawaii to offer the Commission's next free Condorama at the State Capitol on November 4, 2017.

Staff and Commissioners Development

Staff attended the Office of Information Practices UIPA Draft Rules and Sunshine Law informational briefing on September 6, 2017.

Condominium Organizations Forum: No comments, recommendations or concerns were received.

Next Meeting: October 11, 2017
Upon adjournment of the Laws and Rules Review Committee meeting scheduled to convene at 9:30 a.m.
Grove Farm Building Conference Room
3-1850 Kaumuali'i Hwy.
Lihue, Kauai

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 10:27 a.m.

Respectfully submitted:

/s/ Carole R. Richelieu

Carole R. Richelieu
Senior Condominium Specialist

September 22, 2017

Date

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

CRR:tn/