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: August 8, 2018

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
John Love, Vice Chair, Public / Honolulu Commissioner
Bruce Faulkner, Broker / Maui Commissioner
Aileen Wada, Broker / Honolulu Commissioner
Scott Arakaki, Public / Honolulu Commissioner
Aleta Klein, Broker / Honolulu Commissioner
Michael Pang, Broker / Honolulu Commissioner
Sean Ginoza, Broker / Hawaii Island Commissioner
Russell Kyono, Broker / Kauai Commissioner

Neil Fujitani, Supervising Executive Officer
Miles Ino, Executive Officer
Carole Richelieu, Senior Condominium Specialist
Benedyne Stone, Condominium Specialist
Dathan Choy, Condominium Specialist
Lorie Sides, Condominium Education Specialist
Diane Choy Fujimura, Senior Real Estate Specialist
Amy Endo, Real Estate Specialist
David Grupen, Real Estate Specialist
Shari Wong, Deputy Attorney General – late arrival
Tammy Norton, Recording Secretary

Others: Ethel Keyes, Hawaii Association of REALTORS®
Chatney Pacheco, Hawaii Association of REALTORS®
Harold Berman

Absent: None

Call to Order: The Chair called the meeting to order at 9:28 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.

**Minutes**

Upon a motion by Commissioner Klein, seconded by Commissioner Faulkner, it was voted on and unanimously carried to accept the minutes of the July 11, 2018 Condominium Review Committee meeting as circulated.

**AOUO Registrations**

Specialist Stone reported that as of July 31, 2018, 1,566 AOUOs have successfully registered.

**Condominium Seminars and Symposium**

**CAI Hawaii 2019 planning session**

The supplemental contract between CAI Hawaii and the Real Estate Commission has been fully executed with an effective date of July 28, 2018. Staff attended CAI Hawaii's Program Committee's planning meeting and broached the subject of a budget and reserves topic. The topic will be incorporated into the August 9th seminar on maintenance fees. The employment law topic will be incorporated into its October seminar on almost free legal advice.

CAI Hawaii provided members of the planning meeting with a historical list of seminars and registration numbers.

Commissioner Klein noted that the 2018 seminars scheduled for the neighbor islands, but canceled due to low registration numbers, were the same topics offered on Oahu. She suggested offering more interesting topics on the neighbor islands such as the "Fire and Life Safety" topic.

Specialist Richelieu commented that CAI Hawaii is looking at bringing in a national speaker for their upcoming seminar as they have done in the past. This may draw a larger crowd.

Commissioner Wada stated that the number of registered versus the number of actual attendees is a concern. She noted that in the past, she has seen many name tags left on the sign in table and was concerned that the Commission is paying for registered versus actual attendees as there are many no shows.

Specialist Richelieu responded that she will follow up with CAI Hawaii on the registered versus actual attendee issue.

**CAI Hawaii "Legislative Update 2018"**

Specialists Stone, Sides, and Choy attended CAI Hawaii's Legislative Update 2018 seminar which covered new laws ranging from the changes in priority of payments, mediation, wage inequality disclosure, service animals, all mail ballot voting, landlord
tenant changes, road maintenance, to the County's fire and life safety evaluation bill. The Commission did not subsidize this seminar.

Case Law Review Program


Condominium Related Articles

The following articles were distributed for informational purposes: CAI "Survey Says: Residents Satisfied with Their Community" June 7, 2018; CAI "Hawaii Community Associations facts & figures" 2016-2017; Hawaii New Now "Jury awards Maui couple $1.7M in suit against their condo association" July 19, 2018; and Honolulu Star-Advertiser "Jury award Maui couple $1.7M in suit against their condo association" July 22, 2018.

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of July 2018, was distributed for informational purposes.

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<th>PROJ #</th>
<th>PROJECT NAME</th>
<th>PROJECT ADDRESS</th>
<th>TMK #</th>
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Consultants' Forum

Staff will be conducting a condominium consultants' forum on August 31, 2018, to provide continuity between consultants, review new legislation, new forms and procedures, and recent committee decisions.

Program of Work: Rulemaking, Chapter 119

Commissioners and staff were reminded of today's deadline for comments to the proposed Ch. 119 draft. Two comments were received from staff and Commissioner Love will soon be forwarding his comments.

Legislative Acts and Resolutions – "2018 Legislative Wrap Up"

A written report on the 2018 legislative wrap up by Specialist Richelieu was distributed for informational purposes. The FAQs on the website are being updated.

Interactive Participation with Organizations – CAI 2018 Law Seminar

The committee acknowledged receipt of Specialist Richelieu's written report on her participation at the Community Associations Institute 2018 Law Seminar.

Consumer Education

Staff created four new condominium brochures: Developer’s Public Reports; Expanded Alternative Dispute Resolution; 2018 Legislative Session Update; and Introduction to Condominium Living. The brochures may be found on the Commission's website at www.hawaii.gov/hirec. The quarterly email blast was also sent to all on the Commission's condominium subscription list.

Records Management

The Commission’s decision on its records retention schedule of 60 years for developer's public reports was forwarded to the State Archivist on July 20, 2018. Since the retention period is not "permanent," the files will not get transferred to the Archives, instead, we will work with the State Records Center on storage and destruction.

Recess: Chair Lee recessed the meeting at 9:59 a.m.

Reconvene: Chair Lee reconvened the meeting at 10:47 a.m.
Real Estate Branch Request for Withdrawal of Informal Non-Binding Interpretation Regarding Supplementary Report Requirements

Staff reported that the current interpretation applies to Chapter 514A projects which will be repealed on January 1, 2019. The current informal non-binding interpretation does not require a developer’s supplementary public report to disclose the change of a shed apartment to a residential dwelling where the public report discloses that such changes to the project are permitted.

Staff believes that the change is a material fact and should be disclosed via a developer’s supplementary public report.

Commissioner Pang stated that he has never seen this Commission withdraw its informal non-binding interpretation and questioned if staff recalled one being done.

Specialist Richelieu responded that she is not sure if the Real Estate Commission has ever withdrawn an informal non-binding interpretation in the past, but has seen it done in other boards.

Commissioner Arakaki noted that if the interpretation causes confusion, maybe a clarification is needed. If a consumer challenges the Commission's interpretation, the consumer should bring the issue before the Commission for a decision.

Commissioner Arakaki noted that informal non-binding interpretations were issued on a case by case basis based on specific facts. He suggested deferring the issue for further research.

Specialist Choy commented that delaying decision making may cause a problem for Chapter 514A condos as they may not meet the safe harbor provision.

Commissioner Arakaki suggested that staff issue a memorandum with tips to move forward with their Chapter 514A developer's public report to make developers and developers' attorneys aware.

Specialist Choy responded that Act 181 states that Chapter 514A developer public reports must be active and accurate to transfer to Chapter 514B. Staff could provide language in its outreach stating the following: "In light of the Chapter 514A repeal, statutory language supersedes the informal non-binding interpretations issued by the Commission."

Deputy Attorney General Wong arrived at 11:09 a.m.

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 Pang, seconded by Commissioner Faulkner, it was voted on and unanimously carried to move out of executive session.

After a review of the information presented, Commissioner Arakaki moved that the November 1994 informal non-binding interpretation should not be relied on to determine compliance with Act 181. Commissioner Klein seconded the motion. The motion was voted on and unanimously carried.
Real Estate Branch Request for Informal Non-Binding Interpretation Regarding Changes to DPRs

After a review of the information presented, Commissioner Pang moved that the Commission will allow a developer to disclose up to two material changes or five pertinent changes, which would otherwise render a developer's public report misleading, through an amendment to a developer's public report, subject to the Real Estate Commission retaining its final decision-making authority to require a full amended developer's public report. Commissioner Ginoza seconded the motion. The motion was voted on and unanimously carried.

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

Next Meeting: Wednesday, September 12, 2018
Upon adjournment of the Laws and Rules Review Committee meeting scheduled to convene at 9:30 am
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 11:40 a.m.

Respectfully submitted:

/s/ Carole R. Richelieu

Carole R. Richelieu
Senior Condominium Specialist

August 16, 2018

Date

[X] Minutes approved as is.
[ ] Minutes approved with changes; see minutes of _______________________________