

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, 2006

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
Mark Suiso, Vice Chair, Public / Honolulu Commissioner – early departure
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
Annette Aiona, Broker / Hilo Commissioner
Frances Gendrano, Salesperson / Honolulu Commissioner

Calvin Kimura, Supervising Executive Officer
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
David Grupen, Condominium Specialist
Diane Choy Fujimura, Senior Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Bernice Littman, Attorney
Esther Han, Case Lombardi & Pettit

Absent: none

Call to Order: Chair Chee called the meeting to order at 10:40 a.m., at which time quorum was established.

Chair's Report: No report was presented.

Condominium Specialist's Report: **Additional Distribution**
The following materials were distributed prior to the start of the meeting:

4. Condominium Governance and Management
 - b. AOA Registrations – Fidelity Bond Exemptions, §514B, HRS, registrations and §26-9(q), HRS – deferred from August 9, 2006
CRC Meeting
6. Program of Work, FY07

- a. Condominium Recodification and Education
 - 1) September 7, 2006 Seminar Report

Minutes:

Commissioner Loudermilk noted that her response to Mr. Leong regarding the "evergreen" report was not included in the minutes and requested that the following language be included "Commissioner Loudermilk responded that even without recorded documents, a public report is evergreen. The developer cannot use it for binding contracts until the documents are recorded, but nevertheless, the report is still evergreen."

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Abrams, it was voted on and unanimously carried to accept the minutes of the August 9, 2006 Condominium Review Committee meeting with corrections as noted by Commissioner Loudermilk.

Condominium
Governance and
Management:

AOAO Registrations

Specialist Grupen reported that as of August 31, 2006, 1,543 AOAOs have successfully registered.

Fidelity Bond Exemptions, §514B, HRS, registrations and §26-9(q), HRS

Specialist Grupen reported that apparently there are no specific provisions for fidelity bond exemptions for AOAOs in Chapter 514B, HRS, and that to continue for the allowance of fidelity bond exemptions per Chapter 514A, HRS, request that pursuant to §26-9(q), HRS, allowing for alternative forms of security and where the applicants certify consent to conditions prescribed by the Commission, the Commission delegate to staff the approval of fidelity bond exemption alternatives.

Deputy Attorney General Wong informed the committee that they need to review the conditions and clearly find that the language and conditions set out in the memo dated September 12, 2006 by Specialist Grupen is satisfactory and provides the security as required by §26-(q), HRS.

SEO Kimura reported that if it is required to amend the statute, staff will work with the appropriate parties to include the amendment in the next revisions to the statute.

Upon a motion by Commissioner Abrams, seconded by Commission Nishihara, it was voted on and unanimously carried that pursuant to section 26-9(q), HRS, recommend approval to delegate to staff the approval of: (1) first-time and re-applications for an AOAO fidelity bond exemption where all condominium units are owned by a sole individual, sole corporation or sole partnership, (2) first-time and re-applications, for an AOAO fidelity bond exemption where all condominium units are 100% commercial use, and (3) first-time and re-applications for an AOAO fidelity bond exemption where the condominium project contains twenty or fewer units pursuant to the following terms and conditions:

- A. Where the applicants certify consent to conditions prescribed by the Commission, recommend approval to delegate to staff the approval of first time and re-applications for an AOAO fidelity bond exemption where all condominium units are owned by a sole individual, sole corporation or sole partnership, subject to the following conditions:

- 1) The AOA, through its board of directors, shall certify to the Commission that it has obtained recent letters from three (3) separate insurance carriers confirming that the AOA is unable to obtain fidelity bond coverage;
- 2) The board of directors shall adopt a resolution acknowledging its request for this fidelity bond exemption;
- 3) All apartments shall continue ownership by the sole individual, corporation, partnership, LLC, or LLP throughout the registration period;
- 4) If the sole owner is a corporation, partnership, LLC, or LLP, the entity shall be registered and in good standing with the Business Registration Division of the Department of Commerce and Consumer Affairs;
- 5) The AOA, through its board of directors, shall comply with the following financial controls:
 - a. The board shall prevent any one individual (or entity) from having sole control over association funds and records without the supervision of at least one other association owner, director, or officer;
 - b. The board have separate operating and reserve accounts;
 - c. The board shall create countersigning requirements for checks drawn on association accounts in excess of \$2,500;
 - d. the board of directors shall promptly and diligently review all AOA fund account statements;
- 6) With the exception of the fidelity bond exemption, the AOA and its board of directors shall comply with the provisions of Chapter 514B, HRS, and Chapter 107, HAR;
- 7) The AOA and the applicant shall be responsible for the subject AOA registration and fidelity bond exemption, and that the applications for AOA registration and for fidelity bond exemption are signed by the sole owner individual, officer of the corporation, general partner of the partnership or LLP, or manager or member of the LLC, AND by an officer of the AOA;
- 8) The AOA and the applicant shall immediately report to the Commission any changes in the ownership of the apartments or other material changes that affect the fidelity bond exemption;
- 9) The conditional registration and fidelity bond exemption expire at the conclusion of the biennial registration period and must be reapplied for with each biennial registration period, and shall be submitted at least 30 days prior to the biennial registration deadline; and failure to abide by these conditions and terms shall result in termination of the fidelity bond exemption and the association registration.

That the Commission delegates to staff the conditional initial registrations and reregistrations in which there have been no change in circumstances and the applicant has complied with the conditions above. These policies shall be incorporated into the proposed rules, Chapter 107, HAR, Condominium Property Regimes.

- B. Where the applicants certify consent to conditions prescribed by the Commission, recommend approval to delegate to staff the approval of first time and re-applications for an AOA fidelity bond exemption where all condominium units are 100% commercial use, subject to the following conditions:

- 1) The AOA, through its board of directors, shall certify to the Commission that it has obtained recent letters from three (3) separate insurance carriers confirming that the AOA is unable to obtain fidelity bond coverage;
- 2) The board of directors shall adopt a resolution acknowledging its request for this fidelity bond exemption; and require two signatures for checks in excess of \$2,500;
- 3) The AOA shall be managed by a registered condominium managing agent or licensed as a real estate broker in the State of Hawaii;
- 4) The AOA, through its board of directors, shall comply with the following financial controls:
 - a. The board shall prevent any one individual (or entity) from having sole control over association funds and records without the supervision of at least one other association owner, director, or officer;
 - b. The board have separate operating and reserve accounts;
 - c. The board shall create countersigning requirements for checks drawn on association accounts in excess of \$2,500;
 - d. the board of directors shall promptly and diligently review all AOA fund account statements;
- 5) With the exception of the fidelity bond exemption, the AOA and its board of directors shall comply with the provisions of Chapter 514B, HRS, and Chapter 107, HAR;
- 6) The conditional registration and fidelity bond exemption expire at the conclusion of the biennial registration period and must be reapplied for with each biennial registration period, and shall be submitted at least 30 days prior to the biennial registration deadline; and
- 7) Failure to abide by these conditions and terms shall result in termination of the fidelity bond exemption and the association registration.

That the Commission delegates to staff the conditional initial registrations and reregistrations in which there have been no change in circumstances and the applicant has complied with the conditions above. These policies shall be incorporated into the proposed rules, Chapter 107, HAR, Condominium Property Regimes.

- C. Where the applicants certify consent to conditions prescribed by the Commission, recommend approval to delegate to staff the approval of first time and re-applications for an AOA fidelity bond exemption where the condominium project contains twenty or fewer units, subject to the following conditions:
 - 1) The AOA, through its board of directors, shall certify to the Commission that it has obtained recent letters from three (3) separate insurance carriers confirming that the AOA is unable to obtain fidelity bond coverage;
 - 2) Projects with 6 to 13 apartments shall have either reserves of \$10,000 or less and a total annual budget of \$15,000 or less, OR a total annual budget of \$25,000 or less AND at least two of the following:
 - a) Retains a condominium managing agent who is currently registered as a CMA or licensed as a real estate broker in the State of Hawaii;
 - b) Separate operating and reserve accounts with two signatures required on reserve account;

- c) Operating account with two signatures for checks in excess of \$500;
 - d) Board review of account statement from CMA;
 - e) Board review of account statement from financial institution;
 - f) Conducts an annual audit/review/compilation;
 - g) Automatic payment by financial institution of utilities and regularly recurring expenses;
 - h) Project is totally commercial or industrial use with no residential use apartments;
- 3) Projects with 14 to 20 apartments shall have either reserves of \$20,000 or less and a total annual budget of \$30,000 or less, OR a total annual budget of \$50,000 or less AND at least three of the following:
- a) Retains a condominium managing agent who is currently registered as a CMA or licensed as a real estate broker in the State of Hawaii;
 - b) Separate operating and reserve accounts with two signatures required on reserve account;
 - c) Operating account with two signatures for checks in excess of \$1,000;
 - d) Board review of account statement from CMA;
 - e) Board review of account statement from financial institution;
 - f) Conducts an annual audit/review/compilation;
 - g) Automatic payment by financial institution of utilities and regularly recurring expenses;
 - h) Project is totally commercial or industrial use with no residential use apartments;
- 4) With the exception of the fidelity bond exemption, the AOA and its board of directors shall comply with the provisions of Chapter 514B, HRS, and Chapter 107, HAR;
- 5) The conditional registration and the fidelity bond exemption expire at the conclusion of the biennial registration period and must be reapplied for with each biennial registration period, and shall be submitted at least 30 days prior to the biennial registration deadline.
- 6) Failure to abide by these conditions and terms shall result in termination of the fidelity bond exemption and the association registration.

That the Commission delegates to staff the conditional initial registrations and reregistrations in which there have been no change in circumstances and the applicant has complied with the conditions above. These policies shall be incorporated into the proposed rules, Chapter 107, HAR, Condominium Property Regimes.

Condominium Seminars and Symposium:

ABC Basic Course – June 24, 2006

It was reported that on March 16, 2006 the Commission received a fax letter with an attached list of seminars requesting CEF subsidy from Milton Motooka, Programs Co-Chair of CAI Hawaii. At that time the Commission approved some of the seminars in the attached list of seminars, none of which listed "ABC seminar". The fax request included language that there will be an ABCs seminar but the date and time had not yet been selected. The Commission did not take into account the ABC seminar and did not approve the seminar at that time.

SEO Kimura reported that CAI Hawaii in a round about way, informed the Commission of its intent to offer the seminar and the Commission is very familiar with its curriculum. The ABC seminar is the #1 nuts and bolts course offered annually by CAI Hawaii.

CAI Hawaii offered the ABC Basic Course on June 24, 2006 and submitted a request for payment in August.

Deputy Attorney General Wong noted that the Commission has a current purchase order with encumbered funds which can pay for the ABC seminar. At the time of the seminar offering, the Commission did have a current contract with CAI Hawaii. She further noted that CAI Hawaii needs to be made cognizant that the approval procedures were outlined in the Commission's letter.

Upon a motion by Commissioner Aiona, seconded by Commissioner Nishihara, it was voted on and unanimously carried to recommend approval to ratify the ABC seminar as a CEF funded seminar and approve payment pursuant to the terms and conditions of the immediate past contract with CAI Hawaii dated March 9, 2006. Further recommend approval to accompany notice of payment with a strong letter reminding vendor that pursuant to the contract it must obtain an explicit approval of the seminar prior to its presentation, otherwise no payment shall be made.

Owner and Board Disputes – Oct. 12, 2006 (Oahu) & Oct. 18, 2006 (Maui)

Upon a motion by Commissioner Abrams, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to recommend approval as a CEF funded seminar "Owner and Board Disputes" subject to the terms and conditions of August 24, 2006 contract between the Real Estate Commission and CAI Hawaii Chapter.

November 2006 – June 30, 2008

The Commission has not received as requested a submittal of seminars being offered for Fiscal Year 2007. Staff has been informed by CAI Hawaii that it will be holding its retreat in November at which time it will decide on the upcoming seminars to be offered.

SEO Kimura noted that the Commission is familiar with the majority of seminars offered by CAI Hawaii and suggested that the Commission delegate to staff to approve the subsidy of previously approved seminars.

Upon a motion by Commissioner Abrams, seconded by Commissioner Nishihara, it was voted on and unanimously carried that subject to CAI Hawaii's satisfying the applicable terms and conditions of the August 24, 2006 contract between the Real Estate Commission and CAI Hawaii Chapter and for the existing contract period; recommend approval to delegate to staff the approval of CAI Hawaii's request for CEF subsidy of proposed seminars so long as the seminar's subject and topic is similar to a seminar subject and or topic which the Commission has approved in the past. All other requests shall be submitted to the Condominium Review Committee for prior approval.

Condominium Related Articles

The following articles from the August 2006 issue of *Hawaii Community Associations* were distributed for informational purposes: "Who Should Not Live in A Community" and "2006 Legislative Update".

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of August 2006 were distributed for informational purposes.

6069	159 LAKEVIEW CIRCLE	159 LAKEVIEW CIR WAHIAWA HI 96786	(1)7-03-008:059	Final	08/07/06
1206	1718 ANAPUNI	1718 ANAPUNI ST HONOLULU HI 96822	(1)2-04-023:057	Suppl 1	08/14/06
5764	227 LEWERS	227 LEWERS ST HONOLULU HI 96815	(1)2-06-002:015	Final	08/21/06
5949	2401 PAUOA ROAD	2401 PAUOA RD HONOLULU HI 96813	(1)2-02-016:029	Final	08/14/06
6104	313 CALIFORNIA AVE CONDO	313 CALIFORNIA AVE WAHIAWA HI 96786	(1)7-03-002:054	Final	08/28/06
6032	45-472 KOOLAU HALE PLACE	45-472 KOOLAU HALE PLACE KANEHOE HI 96744	(1)4-05-091:041	Final	08/11/06
6086	47-386 AND 47-388 MAWAENA ST	47-386 MAWAENA ST KANEHOE HI 96744	(1)4-07-045:027	Final	08/03/06
3826	5132 HO'ONA ROAD CONDOMINIUM	5132 HO'ONA RD KOLOA HI 96756	(4)2-06-006:017	Suppl 1	08/11/06
6047	535 12TH AVENUE	535 12TH AVE HONOLULU HI 96816	(1)3-02-030:011	Final	08/01/06
6044	6820-B	6820-D KOOLAU RD MOLOAA HI 96754	(4)4-09-011:007	Final	08/03/06
6092	85-702 KAUPUNI PLACE	85-702 KAUPUNI PL WAIANAHI HI 96792	(1)8-05-013:016	Final	08/14/06
5205	909 KAPIOLANI	909 KAPIOLANI BLVD HONOLULU HI 96814	(1)2-03-003:073	Final	08/07/06
6031	ALOHA PUALANI	15 WAILANA PL KIHEI HI 96753	(2)3-09-001:131	Final	08/02/06
5709	BEACH VILLAS AT KAHALU'U (PH 2)	78-6721 ALI'I DR KAILUA KONA HI 96740	(3)7-08-014:086	Suppl 1	08/01/06
5907	EGGERKING MANOR	337 EGGERKING RD KAPAA HI 96746	(4)4-01-016:084	Final	08/22/06
6082	EMERALD PLAZA PLACE	147 KUPUOHI ST LAHAINA HI 96761	(2)4-05-010:026	Cont. Final	08/02/06
5509	ESTATE VILLAS AT HAINOA - PH II	HAINOA PL KONA HI 96740	(3)7-02-025:006	Suppl 3	08/01/06
5382	GOLF VILLAS AT MAUNA LANI RESORT	NA ALA HELE RD MAUNA LANI HI	(3)6-08-022:052	Suppl 1	08/11/06
5702	HAINOA VILLAS	HAINOA ST KONA HI 96740	(3)7-02-025:007	Suppl 3	08/11/06
5855	HALE NEHOA	1288 AND 1300 NEHOA ST HONOLULU HI 96822	(1)2-04-027:066	Final	08/10/06
5723	HALI'I KAI (PHASE I)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	(3)6-09-010:001	Suppl 2	08/22/06
5891	HALI'I KAI (PHASE IIA)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	(3)6-09-010:001	Suppl 1	08/22/06
5724	HALI'I KAI (PHASE IIB)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	(3)6-09-010:001	Suppl 1	08/22/06
5892	HALI'I KAI (PHASE III)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	(3)6-09-010:001	Suppl 1	08/22/06
5911	HALI'I KAI (PHASE IV)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	(3)6-09-010:001	Suppl 1	08/22/06
5671	HALI'I KAI (PHASE V)	69-1029 NAWAHINE PL WAIKOLOA HI 96738	(3)6-09-010:001	Suppl 1	08/22/06
6042	HUI O HIHIMANU	KAPAKA RD LOT 20 PRINCEVILLE HI 96722	(4)5-03-008:020	Final	08/03/06
6021	KAHALEKAI	3257 KALAPAKI CIRCLE KALAPAKI HI 96766	(4)3-05-002:028	Final	08/02/06
5207	KILAUEA WATERFALL FARMS	4141 KILAUEA RD KILAUEA HI 96756	(4)5-02-012:015	Suppl 1	08/14/06
6040	KJR ESTATES	6710 PUUPILO PL KAPAA HI 96746	(4)4-02-002:058	Final	08/07/06
6089	LAIE BEACH COTTAGES	55-323 KAMEHAMEHA HWY	(1)5-05-002:034	Final	08/23/06

6038	MAKA U'I ESTATES	LAIE HI 96762 6180 KAWAIHAU RD KAPAA HI 96746	(4)4-06-032:015	Final	08/25/06
6096	MAKANA KAI AT WEHILANI - PH I	WAIKOLOA RD KOHALA HI	(3)6-08-002:027	Final	08/29/06
5728	MAUI OCEAN CLUB (LAHAINA TOWER)	100 NOHEA KAI DR LAHAINA HI 96761	(2)4-04-013:001	Final	08/03/06
6016	PANILOLO GARDENS BUILDING A	68-3868 PANILOLO AVE WAIKOLOA HI 96738	(3)6-08-003:034	Final	08/07/06
6103	PLANTATION TOWN APARTMENTS	94-979 KAUOLU PL WAIPAHU HI 96797	(1)9-04-017:058	Final	08/29/06
6070	POINT AT KA HANAHOU	45-007 KA HANAHOU PL KANEHOE HI 96744	(1)4-05-047:094	Final	08/22/06
6041	SEAVIEW VILLAS	77-6593 SEAVIEW CIRCLE KAILUA KONA HI 96740	(3)7-07-015:071	Prelim	08/14/06
6094	SLEEPING GIANT VIEW CONDO	LOT 243-E KAPAA HI 96746	(4)4-06-012:075	Final	08/14/06
6025	THE MIRANDA	3488 LWR HONOAPIILANI RD LAHAINA HI 96761	(2)4-04-001:074	Suppl 1	08/17/06
5954	TRUMP INT'L HOTEL & TWR @WAIKIKI BEACH WALK	KALIA HONOLULU HI 96815	(1)2-06-003:032 Final	Cont.	08/09/06
6078	VILLA PUNAHOU	1025 PUNAHOU/1607 & 1609 YOUNG HONOLULU HI 96826	(1)2-08-001:024	Final	08/07/06
6014	WAILEA BEACH RESORT & RESIDENCES	3550 WAILEA ALANUI DR WAILEA HI 96753	(2)2-01-008:067	Prelim	08/04/06
5408	WAIPOULI BEACH RESORT (PH I)	4-818 KUHIO HWY KAPAA HI 96746	(4)4-03-008:001	Suppl 2	08/14/06
5409	WAIPOULI BEACH RESORT (PH II)	4-818 KUHIO HWY KAPAA HI 96746	(4)4-03-008:001	Suppl 2	08/14/06
5410	WAIPOULI BEACH RESORT (PH III)	4-818 KUHIO HWY KAPAA HI 96746	(4)4-03-008:001	Suppl 2	08/14/06
5411	WAIPOULI BEACH RESORT (PH IV)	4-818 KUHIO HWY KAPAA HI 96746	(4)4-03-008:001	Suppl 2	08/14/06
5412	WAIPOULI BEACH RESORT (PH V)	4-818 KUHIO HWY KAPAA HI 96746	(4)4-03-008:001	Suppl 2	08/14/06
5413	WAIPOULI BEACH RESORT (PH VI)	4-818 KUHIO HWY KAPAA HI 96746	(4)4-03-008:001	Suppl 2	08/14/06
5414	WAIPOULI BEACH RESORT (PH VII)	4-818 KUHIO HWY KAPAA HI 96746	(4)4-03-008:001	Suppl 2	08/14/06
5390	WAIPOULI BEACH RESORT (PH VIII)	4-818 KUHIO HWY KAPAA HI 96746	(4)4-03-008:001	Suppl 2	08/14/06
6105	WAOLANI ESTATES	2622 WAOLANI AVE HONOLULU HI 96817	(1)1-08-025:036	Final	08/28/06
6066	WILIKOKI PLACE CONDOMINIUM	27 WILIKOKI PL KAILUA HI 96734	(1)4-03-019:016	Final	08/28/06
Preliminary Reports:		2			
Contingent Final Reports:		2			
Final Reports:		27			
Supplementary Reports:		22			
Total:		53			

Informal Non-Binding Interpretation Requests §514A-107(b), HRS – Yannara Rakell Dantas and Marcos Andre Dantas

Mr. and Mrs. Dantas are requesting a waiver under the category of "other unforeseeable occurrence subsequent to execution of the affidavit." Mrs. Dantas claims that currently they cannot afford their home in Ewa Beach and would like to sell their unit and move to Florida where it is more affordable.

Informal Non-Binding Interpretation Requests §514A-107(b), HRS – Joseph Adam Chepetsky

Mr. Chepetsky's request was reviewed. Specialist Grupen summarized that Mr. Chepetsky signed an owner-occupant affidavit for two separate units at two different projects separate from his mother's, Josephine Chepetsky, unit. Mr. Chepetsky claims that it is a financial burden to him due to the mortgage company erroneously posting a 30 day late to the three credit agencies resulting

in a bad credit score. He also claims that he needs to provide medical care to his mother but no documentation was submitted.

§514B-3 "Project", 514B-21, 514B-31, 514B-82, 514B-54, 514B-32, 514B-33, 514B-108, 514B-86, 514B-92, 514B-93, HRS – Declaration of Condominium Property Regime Recordation and Execution Requirements for Commission's Issuance of an Effective Date for a Developer's Public Report

Specialist Yee reported that staff was previously instructed to do further research on this issue and currently has no updated research to add. Staff has been accepting executed declarations. The Chapter 514B forms were developed with the assumption that the declaration and bylaws would be recorded. The current form based on recorded declarations and bylaws, leads the consumer to believe that the CPR is cast in stone and the project has been legally created. Staff will need to revise the forms to allow for the disclosure of the unrecorded but executed declaration.

Commissioner Loudermilk noted that the definition of project in Ch. 514B is still unclear as "B" says "executed." Until there is a change in Ch. 514B clarifying "project" the Commission should be accepting executed declarations and noting that it is a non-binding contract until the declaration is recorded.

Bernice Littman, Esq. of Cade Schutte informed the committee that she was a part of the Blue Ribbon Recodification Advisory Committee which drafted the legislation and notes that it was drafted imperfectly. The thought at that time was that as things became more dangerous for the consumer, the developer would need to provide more information. There are currently 4 stages: 1) pre-registration form, 2) non-binding money, executed declaration is sufficient, at this point it is safe for the consumer, equivalent of a preliminary public report under Ch. 514A; 3) binding money – 514B-86 requires a recorded declaration and is equivalent to a contingent public report under 514A; 4) binding used money - equivalent to a final public report under 514A. Ms. Littman noted that she is in favor of accepting executed but unrecorded declarations.

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Abrams, it was voted on and unanimously carried that since the definition of "project" as set forth in section 514B-3, HRS, and throughout Chapter 514B, HRS, remains unclear, and subject to any future amending legislation, recommend approval, to issue an informal non-binding interpretation of section 514B-54(a)(4), HRS, and accept "executed" (just signed not recorded) declarations as one of the conditions for the Commission's issuance of an effective date for a developer's public report pursuant to section 514B-54, HRS; subject further to the developer's inclusion in the developer's public report appropriate disclosures for consumer protection purposes. Further recommend approval to have staff consistent with this recommendation amend where necessary the current developer's public report form previously approved by the Commission for use by developers.

Program of Work:

Recodification of Chapter 514A – September 7, 2006 Seminar Report

The Commission initiated a second wave of "New Condominium Law Seminars." A seminar was held on Oahu on September 7, 2006 to accommodate interested persons who could not attend the initial seminars, including access via Olelo

public television. The seminar was held at the State Capitol Auditorium on a weekday with approximately 80 to 90 attendees. The seminar was broken into two sessions, management and development.

Commissioner Gendrano reported that she attended the seminar and found it very informative.

Recodification of Chapter 514A – September 20, 2006, Kauai Realty

The Commission will be providing a speakership/seminar on the new condominium law and its impact on real estate licensees to Kauai Realty on September 20, 2006 in direct response to a request made by Kauai Realty.

Neighbor Island Outreach – Maui, January 2007

It was reported that the next scheduled Neighbor Island Outreach program will be held on January 10, 2007 on the island of Maui.

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:

No discussion presented.

CEF Budget &
Finance Report:

No report presented.

Executive Session:

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

Condominium
Project
Registration:

Informal Non-Binding Interpretation Requests - §514A-107(b), HRS

Commissioner Kuriyama commented that he has a difficulty in forming an opinion regarding these requests and recommended that the Commission no longer take up these requests especially since they are only informal and non-binding on the Commission.

Specialist Gruppen responded that at the July 2006 meeting it was delegated by the Commission that staff process ministerial requests, pursuant to HRS §436B-8(b), if any of the statutory extenuating circumstances exist based on satisfactory evidence from the requestor. If any of the statutory extenuating circumstances exist, staff is delegated to issue a "no action" letter on behalf of the Commission. All other requests requiring the discretion of the Commission shall be placed on the Condominium Review Committee meeting agenda. Since the delegation staff

has been handling those requests. The two requests before the committee require the discretion of the Commission.

Deputy Attorney General Wong responded to Commissioner Kuriyama that if the Commission no longer wants to have these requests come before them there will need to be change to the statute.

Commissioner Loudermilk questioned if the Commission could take a no opinion position.

Deputy Attorney General Wong responded that you would definitely have to make a change in REC policy and recommend that 514A-107 be amended.

SEO Kimura reported that this would be similar to a real estate broker who violated the law and asks the Commission for its opinion. The Commission would first refer the issue to RICO. If someone were to file a complaint regarding a violation of the owner occupant law, again the case would be referred to RICO to investigate first.

Commissioner Suiso departs at 11:38 a.m.

Commissioner Kuriyama stated that his suggestion was not made just because the law is unclear, but also that cases and circumstance are based on the honest people who request an informal non-binding opinion from the Commission prior to selling. There are many sections of the law that we enforce that most people have to interpret on their own.

Deputy Attorney General Wong noted that 514A-107(e) states that the Commission shall adopt rules, pursuant to chapter 91, to carry out the purposes of, and its responsibilities under, this part, and 514A-107(c) states in part that any individual who executes an affidavit pursuant to this part...shall have the burden of proving his or her compliance with the requirements of this part.

Upon a motion by Commissioner Abrams, seconded by Commissioner Nishihara, it was voted on and unanimously carried that pursuant to section 16-201-87, HAR, to delegate to its supervising executive officer or the officer's designate the authority to review each request for a Commission's "no action" letter to determine whether the request is suitable for processing as a request for an "Informal interpretation" pursuant to Subchapter 5, of Title 16, Hawaii Administrative Rules. Where the request for interpretation requires an evidentiary hearing, recommend approval that staff issue a letter on behalf of the Commission that "based on the information presented the requestor has not met the burden of compliance and is still subject to enforcement as set forth in Section B of Part V, of Chapter 514B, HRS "Sales to Owner-Occupants" or Part VI, of Chapter 514A, HRS."

Consultants – Galen Leong, Esq, Submitted Recodification Summaries Chapter 514B, HRS

Upon a motion by Commissioner Aiona, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to recommend the following: 1) recommend approval to accept Mr. Leong's work product for incorporation in part, whole, or none at all in Commission's next draft of the summary and to approve CEF payment for the services rendered pursuant to the terms and conditions of

the existing contract dated October 25, 2005 between Ashford and Wriston and the Department of the Attorney General funded by monies from the Condominium Education Fund; 2) recommend approval to circulate staff prepared rewrite and update of Part VI "Management of Condominiums" to members of the CRC for comments and changes if any; and then circulate to selected members of the target group for input and comments; and further recommend approval to then appropriately circulate and distribute the end product to the condominium community and related professionals; and 3) recommend approval to direct staff to update and rewrite where necessary the summaries entitled "Registration and Administration of Condominium Projects Under the Recodified Condominium Property Act" and "Establishment of a Condominium Property Regime under the Recodified Condominium Property Act", circulate to members of the CRC for comments and changes if any, and then circulate for input and comments to selected members of the target group; and further recommend approval to then appropriately circulate and distribute the end product to the condominium development community and related professionals.

REB Staff Prepared Summary Updates

Upon a motion by Commissioner Abrams, seconded by Commissioner Nishihara, recommend approval to direct staff (condominium specialist in consultation with real estate specialists) to draft a summary of the new law for real estate agents, circulate to members of the CRC for comments and changes if any, and then circulate for input and comments to selected members of the real estate community and further recommend approval to then appropriately circulate and distribute the end product to the real estate community and related professionals.

Next Meeting: Tuesday, October 10, 2006
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 11:45 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

October 10, 2006

Date

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