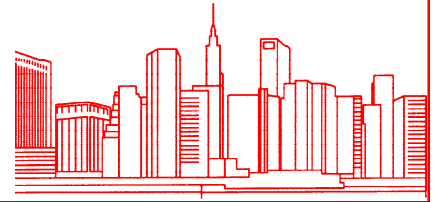
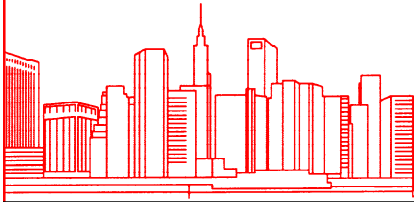


HAWAII CONDOMINIUM BULLETIN



VOLUME 9 NO. 4

SEPTEMBER 2001

Funded through the Condominium Education Fund

New Law Requires Condo Owners and Boards to Mediate Certain Disputes

Act 232 (SLH 2001) became effective on June 13, 2001. The Act makes mediation mandatory for certain types of condominium disputes. Prior to the Act, mediation was voluntary, and owners and boards could easily refuse to participate in mediation of condominium disputes. Act 232, however, requires participation in mediation if a condominium apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the declaration, by-laws, house rules, or specific sections of Hawaii Revised Statutes (HRS) Chapter 514A.

The specific sections of HRS Chapter 514A that now trigger mandatory mediation are as follows:

- 514A-82(b)(1) removal of board members;
- 514A-82(b)(2) amendment of bylaws;
- 514A-82(b)(3) notices of association meetings;
- 514A-82(b)(4) solicitation, voting and distribution of proxies;
- 514A-82(b)(5) director conflict of interest;
- 514A-82(b)(6) right of access to apartments;
- 514A-82(b)(7) owners acting as officers and employees of

See Mandatory Mediation pg. 6

Act 245 Makes Major Changes for Most CHOs, CMAs

Effective June 14, 2001, Act 245 amended Hawaii Revised Statutes (HRS) section 467-30, which previously required condominium hotel operators (CHOs) to register biennially with the Real Estate Commission and obtain a fidelity bond.

Under Act 245, the registration and fidelity bond requirements no longer apply to current active licensed Hawaii real estate brokers conducting condominium hotel activity. This means that brokers registered as CHOs on June 14, 2001 will not have to re-register as CHOs, because Act 245 eliminated their registration requirement.

Also, these brokers are not required to maintain a fidelity bond covering employees who handle or have custody and control of the CHO's or apartment owner's funds, or both.

Act 245 basically permits any current active licensed Hawaii real estate broker to conduct condominium hotel activity without obtaining an additional CHO registration or a fidelity bond covering CHO activity. Brokers may voluntarily obtain a CHO fidelity bond, which is recom-

See Act 245 on pg. 6

HRS Chapter 514A Recodification Update

As discussed in the February and June 2001 issues of the *Hawaii Condominium Bulletin*, the Commission has embarked on an ambitious effort to rewrite Chapter 514A of the Hawaii Revised Statutes (HRS).

Pursuant to Act 213 (SLH 2000), the Commission is conducting a review of Hawaii's nearly 40-year old condominium law to "update, clarify, organize, deregulate, and provide for consistency and ease of use" of the law.

Act 213 further requires the Commis-

sion to make findings and recommendations for recodification of Chapter 514A and to develop draft legislation consistent with its review and recommendations for submission to the 2003 Legislature.

Background Information

In 1961, Hawaii became the first state to pass a law enabling the creation of condominiums. The 1961 "Horizontal Property Regime" law consisted of 33 sections covering a little more than 3 pages in the Revised Laws of Hawaii.

Since that time, the law has been amended constantly. Entering the 2001 legislative session, Hawaii's

See Recodification on pg. 7

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This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at (808) 586-2644 to submit your request

The Hawaii Condominium Bulletin is funded by the Condominium Education Fund, Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii.



Dear Condominium Owners and Managing Agents:

This issue of the *Bulletin* contains important information for the condominium community. May we suggest that you circulate copies at board and committee meetings, leave one at the office front desk, post a copy on association bulletin boards, add *Bulletin* articles to the association newsletter, and don't forget to keep a copy of each issue in a binder for future reference.

Two important new laws, Act 232 and Act 245 (SLH 2001), are featured in this issue.

For the first time, Act 232 makes mediation mandatory if a condominium owner or the board requests mediation of a dispute involving the declaration, bylaws, house rules, or specific sections of HRS Chapter 514A. Condominium owners and board members should not lightly refuse mediation of these types of disputes, because a refusal may result in payment of expenses, costs, and attorney's fees if the dispute later ends up in court.

Act 245 eliminated the registration and fidelity bond requirements for most condominium hotel operators (CHOs), and no longer requires most condominium managing agents to submit proof of fidelity bonding. It is important to note that Act 245 does not affect CHOs with Real Estate Broker Exemptions; they must continue to register biennially and provide evidence of current fidelity bonding to the Commission.

The Reference File contains Part One of a helpful subject index for the *Hawaii Condominium Bulletin* covering Fall 1991 through June 2001. Part Two will be published in the next issue of the *Bulletin*. When you have a question about condominium-related topics, you may use this index to research past *Bulletin* articles by subject. The goal of publishing this index is to help you easily find information your association needs.

We are also pleased to provide an update on the Commission's efforts to recodify HRS Chapter 514A. This article contains interesting background information, basic concepts of condominium property laws, and explains the structure we are using for the recodification.

Finally, enclosed with this *Bulletin* is an unofficial copy of HRS Chapter 514A, which includes the amendments made in the 2001 legislative session. This copy should be kept in a binder for use by all apartment owners.

Sincerely,

Mitchell A. Imanaka

Mitchell A. Imanaka, Chair
Condominium Review Committee

Ask the Condominium Specialist

Q We're getting a lot of complaints about the pets in our condominium project. Is it okay for the board to amend the house rules to prohibit or limit pets?

A Generally no, pet prohibitions or restrictions must be stated in the bylaws. To amend the bylaws to prohibit or limit pets, HRS section 514A-82(b)(2) requires that the vote or written consent of 65% of all owners be obtained within 120 days after the board mails out the proposed bylaws. If the proposed bylaw is adopted, the board must also record the amendment in the Bureau of Conveyances or Land Court. Amending the bylaws may not totally eliminate pets. HRS section 514A-82.6 allows pets kept prior to the prohibiting amendment to remain and be replaced so long as the owner resides in the apartment or another apartment subject to the same bylaws. Also, we have received reports that federal and state fair housing laws permit pets for disabled occupants, despite pet prohibitions in the bylaws.

Q Every day I rush home to find an available parking stall in my residential condominium's parking area. I often have to park on the street because we have less than one parking stall per apartment and stalls are not designated for particular apartments. In the project next to mine (also zoned residential), each apartment has its own stall. Both of these condominiums were built in the 1970s. Why the difference? Aren't there laws governing parking stall requirements in condominium projects?

A Yes, each county regulates zoning and building ordinances and codes that apply to parking stalls. The Real Estate Commission does *not* have authority over county parking stall requirements. HRS section 514A-14.5(b) requires that most residential apartments in condominium projects *newly constructed* after April 29, 1986 include ownership of a parking stall. Because your condominium was built before 1986, the requirement doesn't apply. The differences between required parking stalls in projects built before 1986 may be due to county zoning and building ordinances and codes, or may be a reflection of the price paid for an apartment with ownership of a stall, versus one without ownership of a stall.

In August, the Commission issued an informal non-binding opinion as to whether a developer must provide one stall per apartment for residential apartments *constructed prior* to April 29, 1986, where the developer proposes to convert existing structures to residential condominium apartments *after* April 29, 1986. The Commission said 514A-14.5 does not require a developer to provide one stall per unit where there are insufficient stalls to meet this requirement, provided all existing stalls of the proposed converted condominium project shall be appurtenant to all apartments intended for dwelling/residential purposes, so long as the parking plan satisfies county requirements. Thus, developers should contact the county to determine if zoning and building laws permit less than one stall per unit on a specific property.

Index for Hawaii Condominium Bulletin: Fall 1991 - June 2001

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Mediation Case Summaries

MCP=Mediation Center of the Pacific, Inc.
KEO=Kauai Economic Opportunity, Inc.

MSM=Mediation Services of Maui, Inc. WHMS=West Hawaii Mediation Services KMC=Ku'ikahi Mediation Center
RICO=Regulated Industries Complaints Office BOD=Board of Directors CMA=Condominium Managing Agent

Cases handled by MCP (4/1/01 – 6/30/01)

A total of twelve (12) cases involving condominium disputes were opened and/or closed between April 1, 2001 and June 30, 2001. Of those twelve cases, seven (7) cases were mediated, two (2) cases were closed without mediating, and three (3) cases are pending. [Note: The June 2001 edition of the *Hawaii Condominium Bulletin* contained specific information about some of these cases. Information about the remaining cases (general description of the parties, nature of the complaint, and disposition of the complaint) will be published after receipt of the information.]

Cases handled by MSM (4/1/01 - 6/30/01)

A total of three (3) cases involving condominium disputes were opened and/or closed between April 1, 2001 and June 30, 2001. Of those three cases, one (1) case mediated to agreement, one (1) case closed without mediation, and one (1) case is pending.

PARTIES	COMPLAINT	DISPOSITION
Owner vs. BOD	Bylaws violations re: board election ballots	Mediated; agreement reached
Owner vs. BOD	Interpretation of declaration re: responsibility for water damage	Mediation scheduled; agreement reached prior to mediation

(No cases reported by WHMS, KMC, KEO, or RICO (4/1/01 – 6/30/01))

Mediation subsidized through the Condominium Education Fund may be obtained through the following providers:

Oahu: Mediation Center of the Pacific, Inc.; 680 Iwilei Rd. #530; Honolulu, 96817; Tel. 521-6767

Maui: Mediation Services of Maui, Inc.; 95 Mahalani St.; Wailuku, 96793; Tel. 244-5744

Island of Hawaii – Hamakua, Kohala, Kona & Ka'u districts: West Hawaii Mediation Services; P.O. Box 7020; Kamuela 96743; Kamuela Tel. 885-5525; Kailua-Kona Tel. 326-2666

Island of Hawaii – East Hawaii districts: Ku'ikahi Mediation Center; 300 W. Lanikaula St.; Hilo 96720; Hilo Tel. 935-7844; Kamuela Tel. 885-5388

Kauai: Kauai Economic Opportunity, Inc.; 2804 Wehe Rd.; Lihue 96766; Tel. 245-4077

Complaints against licensees: Regulated Industries Complaints Office; 235 S. Beretania St. 9th Flr.; Honolulu 96813; Tel. 587-3222

Mandatory Mediation from pg. 1

managing agent;

514A-82(b)(8) association employees selling/renting association apartments;

514A-82(b)(9) notice and board meetings;

514A-82(b)(10) expending association funds for director travel/fees/per diem;

514A-82(b)(11) providing board members with copies of declaration, bylaws, house rules and HRS Chapter 514A;

514A-82(b)(12) association expenses to educate directors;

514A-82(b)(13) associations enforcing liens;

514A-82.1 background check on condominium employees;

514A-82.15 board representation in mixed use condominiums;

514A-82.3 association borrowing of money;

514A-82.5 pet bylaws applying equally to owners and tenants;

514A-82.6 pet replacement and pet prohibition;

514A-83 purchaser's right to vote;

514A-83.1 board meeting requirements;

514A-83.2 proxy requirements;

514A-83.3 membership list requirements;

514A-83.4 minutes of board and association meetings;

514A-83.5 documents of the association;

514A-84 management of the association and contracts;

and

514A-84.5 availability of project documents.

The Standing Committee Report for H.B. No. 1231, H.D. 1, S.D. 1, (signed into law as Act 232) stated that the

purpose of this law "is to require the mediation of disputes between a condominium owner and the board of directors of an association of apartment owners (AOAO)." The committee found that mediation is an effective method of resolving disputes, and is less costly than settling disputes through litigation. If a condominium owner or the board refuses to participate in mediation of the above-listed types of disputes, Act 232 permits a court to take the refusal into consideration when awarding expenses, costs and attorney's fees in a subsequent judicial proceeding to resolve the matter.

It appears, then, that the Hawaii Legislature is sending a strong message to condominium owners and boards. The message is that apartment owners and board members should not lightly refuse mediation of disputes regarding the declaration, bylaws, house rules, and specified sections of HRS Chapter 514A. A refusal may result in payment of expenses, costs and attorney's fees if the dispute later ends up in court.

The Hawaii Real Estate Commission encourages the use of mediation to resolve condominium disputes, subject to availability of funds. Through the Condominium Education Fund, the Commission subsidizes mediation for registered condominium associations, their owners, tenants (excludes Residential Landlord-Tenant Code disputes), officers, directors, and employees acting in the scope of employment, and for registered condominium managing agents. To arrange for Commission-subsidized mediation services and to answer questions about mediation, please call the following mediation providers directly:

The Mediation Center of the Pacific, Inc. (Oahu) 521-6767
Mediation Services of Maui, Inc. (Maui) 244-5744

West Hawaii Mediation Services (Kamuela) 885-5525;
(Kailua-Kona) 326-2666

Kuikahi Mediation Center (Hilo) 935-7844

Kauai Economic Opportunity, Inc. (Kauai) 245-4077

Act 245 from pg. 1

mended by risk management experts, but the Commission shall no longer be listed as the certificate holder, and shall no longer collect proof of CHO fidelity bonding.

Act 245 does **not** affect **CHOs with Real Estate Broker Exemptions**. Those registered on June 14, 2001 as a CHO with Real Estate Broker Exemption must continue to register biennially with the Commission, and must continue to provide evidence of current fidelity bonding to the Commission.

Condominium managing agents (CMAs) are also affected by Act 245. CMAs are still required to register biennially with the Commission and to maintain a current fidelity bond. The Act, however, eliminates the requirement for CMAs to provide evidence of fidelity bonding to the Commission, unless specifically requested to do so by the Commission. This means that registered CMAs are no longer required to have their insurance provider submit an updated Certification Statement of Insurance (CSI) form, un-

less the Commission specifically requests them to do so. Also, new CMA applicants no longer submit a CSI form with their CMA application. All CMAs, however, must still obtain and keep current a fidelity bond pursuant to HRS section 514A-95, even if they no longer provide the Commission with evidence of that bond.

Act 245 is the result of a bill introduced by the Commission in compliance with Lt. Governor Hirono's "Slice Waste & Tape" Project to reduce regulatory burdens on businesses, the general public, and State government. CHO registration and fidelity bond requirements were deemed duplicative and unnecessary for current active licensed Hawaii real estate brokers who are covered by the real estate recovery fund, which provides direct benefits to harmed consumers. Also, eliminating the fidelity bond submission requirements for CMAs helps to streamline government paperwork. Act 245 (SB 1061, SD 1, HD 1, CD 1) may be reviewed on the State of Hawaii web site at www.capitol.hawaii.gov.

Recodification from pg. 1

“Condominium Property Regime” law consisted of 116 sections taking up over 96 pages in the Hawaii Revised Statutes. As noted by the 2000 Legislature, “[t]he present law is the result of numerous amendments enacted over the years made in piecemeal fashion and with little regard to the law as a whole.” (Act 213, SLH 2000.)

The 2000 Legislature recognized that “[Hawaii’s] condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micromanages condominium associations . . . [t]he law is also overly regulatory, hinders development, and ignores technological changes and the present day development process.” (Act 213, SLH 2000.) Consequently, the Legislature directed the Real Estate Commission to conduct a review of Hawaii’s condominium property regimes law, and to submit draft legislation to the 2003 Legislature to recodify HRS Chapter 514A.

Basic Concepts of Condominium Property Laws

It is useful to understand exactly what a “condominium property regimes law” is – and what it isn’t. A condominium property regimes law is a land *ownership* law, a *consumer protection* law, and a *community governance* law. It is not a land *use* law (i.e., it does not govern what structures may be built on real property; separate state and county land use laws control – or should control – land use matters).

A condominium property regimes law enables people to:

Own real estate under the condominium form of property ownership (i.e., a form of real property ownership where each individual member holds title to a specific unit and an undivided interest as a “tenant-in-common” with other unit owners in common elements such as the exterior of buildings, structural components, grounds, amenities, and internal roads and infrastructure);

Protect purchasers through adequate disclosures; and

Manage the ongoing affairs of the condominium community.

The 1961 Hawaii State Legislature was concerned about protecting Hawaii’s consumers. It added a part providing for the regulation of condominium projects by the Hawaii Real Estate License Commission (including developer registration of projects and requiring the issuance of final public reports before offering units for sale). The Legislature also provided for the internal administration of condominium projects. It believed: 1) many details would more properly be included in by-laws to be passed by the council of co-owners; and 2) the law should also exclude details that may have been contrary to FHA regulations or to policies of lending institutions, making it impossible for purchasers to secure financing. [See, Standing Committee Report 622, House Bill No. 1142 (1961).]

Basic Structure Used to Recodify the Law

The 1980 Uniform Condominium Act (UCA), with appropriate changes incorporated from the 1994 Uniform Common Interest Ownership Act (UCIOA), serves as the basis for recodifying our condominium law. Where appropriate, we are also

incorporating provisions of HRS Chapter 514A, other jurisdictions’ laws, and the Restatement of the Law, Third, Property (Servitudes). [Note: Every provision of HRS Chapter 514A will be analyzed for possible inclusion within the structure of the UCA.]

First Draft Soon to be Completed

We are currently working on the first draft of the recodification of Hawaii’s condominium property regimes law. The end of 2001 is our target for completion of the first draft. The Commission’s recodification workplan, timetable, base working document and other recodification materials are available on the Commission’s website at <http://www.state.hi.us/hirec>. Our base working document is a comparison of the UCIOA, UCA, and HRS Chapter 514A.

Our Request to You

You can help us by doing the following:

1. Identify your problems with HRS Chapter 514A as well as the provisions you would like to keep.
2. Study our base working document (the comparison of UCIOA, UCA, and HRS Chapter 514A).
3. Work through your association or professional organization to compile a list of problems and solutions. (We welcome comments and suggestions for improvement of HRS Chapter 514A from all of you. However, with over 1,400 registered condominium projects in Hawaii, plus attorneys, real estate salespersons, bankers, insurers, and more, we recommend that you work through larger groups and organizations if at all possible.)
4. Contact us. Address correspondence to: Mitchell Imanaka & Gordon Arakaki; DCCA Real Estate Branch; 250 South King Street, Room 702; Honolulu, HI 96813. You may also call us at 586-2644 or 586-2646, or e-mail us at Gordon_M_Arakaki/DCCA@dcca.state.hi.us

Administrative Actions

Trading Places International and Agnes Clare Ventura, fka Clare V. Butchart – REC 2000-18-L

RICO received a complaint alleging that the Respondents violated statutes and/or regulations governing the conduct of real estate brokers licensed by the State of Hawaii. At all times relevant, the Respondents were licensed real estate brokers, and Trading Places International is a registered condominium managing agent and was a registered condominium hotel operator at the time. The parties desired to settle this matter without a hearing. Pursuant to the terms of a Settlement Agreement Prior to Filing of Petition for Disciplinary Action, the Respondents agreed to pay a \$500 fine. If the Respondents fail to abide by any of the terms of the Settlement Agreement, their licenses shall be subject to revocation without further hearing.

The Commission approved the Settlement Agreement on April 27, 2001.

REAL ESTATE COMMISSION MEETING SCHEDULE 2001

Laws & Rules Review Committee-9 a.m.

Education Review Committee-10 a.m.

Condominium Review Committee-11 a.m.

Real Estate Commission-9 a.m.

Wednesday, October 10, 2001

Wednesday, November 14, 2001

Thursday, December 13, 2001

Tuesday, October 30, 2001

Friday, November 30, 2001

Friday, December 14, 2001

All meetings (unless specifically noted) will be held in the Kapuaiwa Room, HRH Princess Victoria Kamamalu Building, 1010 Richards Street, Second Floor, Honolulu, Hawaii. Meeting dates, locations, and times are subject to change without notice. Please call the Real Estate Commission Office at 586-2643 to confirm the dates, times, and locations of the meetings. This material can be made available to individuals with special needs. Please call the Executive Officer at 586-5643 to submit your request.

Condominium Education Calendar

This calendar lists upcoming educational events of interest to the condominium community. The publishers express **no opinion** about the quality or content of any event they do not sponsor. This listing should not be construed as an endorsement or sponsorship of any event, unless expressly indicated. Events may be subject to change; please check directly with the provider to confirm each event.

Date	Time	Event Title	Location	Provider
10/18/01	11:30 am	*Termites & Ground Maintenance	Hale Koa Hotel	CAI-H
10/18 to 10/20		CAI's Community Leadership Forum	Charlotte, North Carolina Adam's Mark Hotel	CAI

**Seminar has been approved by the REC for CEF subsidy. Registration fees for condominium apartment owners whose AOA is currently registered with the REC are being subsidized with funds from the Condominium Education Fund.*

For full information on the above-listed courses, please call the provider.

	Provider	Phone	Address
CAI	Community Associations Institute (National)	(703)548-8600	225 Reinekers Ln #300 Alexandria, VA 22314
CAI-H	Community Associations Institute - Hawaii Chapter	488-1133	P.O. Box 976 Honolulu, HI 96808
C.C.M.	Condominium Council of Maui	879-5266	20 Makena Road Makena, HI 96753
H.C.A.A.O.	Hawaii Council of Associations of Apartment Owners	533-2528	677 Ala Moana Blvd, #401 Honolulu, HI 96813
H.S.A.P.	Hawaii State Association of Parliamentarians	488-2489	
H.S.B.A.-C.L.E.	Hawaii State Bar Association - Continuing Legal Educ.	537-1868	1132 Bishop Street, Ste 906 Honolulu, HI 96813
I.R.E.M.	Institute of Real Estate Management Hawaii Chapter No. 34	733-7060 ext. 106	1136 12th Ave, Ste 220 Honolulu, HI 96816
O.A.C.	Oahu Arm Committee	523-6096	91-1030 Kaiheenalua Street Ewa Beach, HI 96706
U.H.-S.P.P.	Special & Professional Programs, College of Continuing Education, University of Hawaii	956-8244	2530 Dole Street Honolulu, HI 96822

Real Estate Branch and Real Estate Commission's web page at: <http://www.state.hi.us/hirec>. Address: 250 S. King St., Rm. 702; Honolulu, HI 96813; Phone: 586-2644

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