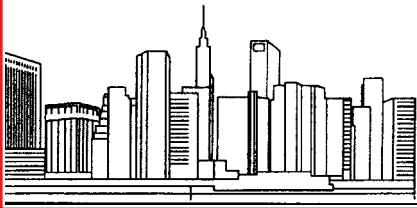


HAWAII CONDOMINIUM BULLETIN



VOLUME 14, NO. 2

OCTOBER/NOVEMBER 2007

Funded through the Condominium Education Fund

New Director, Deputy Director Assume Duties at DCCA

Lawrence M. Reifurth, former Deputy Director, Department of Commerce and Consumer Affairs (DCCA), is the new Director of DCCA effective May 1, 2007. He served as Deputy Director since January 2003.

With Mark Recktenwald's appointment to the Intermediate Court of Appeals, Mr. Reifurth was appointed by Governor Lingle and confirmed by the Senate to serve as Director of the department.

As Director, he manages the 375-person department responsible for administrative hearings, business registra-

tion, consumer advocacy, consumer protection, professional and vocational licensing, regulated industries complaints, and regulation of the cable television, financial services, insurance and securities industries.

As Deputy Director, he was specifically responsible for overseeing the department's fiscal, budget, personnel and administrative services functions, and was primarily responsible for coordinating and implementing the department's legislative efforts.

Prior to his appointment as deputy director, Mr. Reifurth practiced law for

approximately eight years with the law firm of Oshima Chun Fong & Chung.

He also served as Hawaii State Insurance Commissioner within the DCCA in 1994, and was a deputy attorney general from 1989-1994.

From 1989-1992, Mr. Reifurth represented the DCCA's Division of Consumer Advocacy before the Hawaii Public Utilities Commission and various other regulatory bodies.

See New Director on pg.5

Specialists Are Helping Condominium Owners Understand New Law

Once again, condominium specialists are holding review sessions to educate condominium owners, board officers, real estate licensees, and other interested parties about the new condominium law, Chapter 514B, Hawaii Revised Statutes.

In September, condominium specialists visited Kona and Hilo with its educational efforts in tow. Power Point presentations were held from 9:30 AM to 12:30 PM at the Marriott Waikoloa Beach Resort in Kona and the Imiloa Astronomy Center of Hawaii in Hilo. Attendance has

increased from our last visit in 2006.

The audience posed a variety of questions and scenarios for the speakers, Philip Lahne, Esq. of Neeley & Anderson, Attorneys at Law, and condominium specialists.

More sessions will be held:

October 19 in Kauai at the Hilton Kauai Beach Resort (9:30 a.m.-12:30 p.m.)

October 24 in Maui at the J. Walter Cameron Center (9:30 a.m.-12:30 p.m.)

November 9 in Honolulu at the State

Capitol Auditorium (9:00 a.m.-12:00 p.m.)

For more information about these sessions, you may call the Real Estate Commission at (808) 586-2643.

ALSO IN THIS ISSUE

Letter from the Chair	2
Mediation can work	3
Condo Dispute	
Resolution Program	4

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at (808) 586-2643 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.



Letter from the Chair . . .

In my first year as a Commissioner and Chair of the Condominium Review Committee, I saw the implementation of the new condominium law in action, along with the amendments and fine-tuning from this last legislative session.

As a result, Chapters 514A and 514B have been recently updated to reflect the 2007 legislative changes that occurred. Check the Real Estate Commission website: www.hawaii.gov/hirec for the revised statutes for these chapters. Following the close of the 2007 Legislative Session, the Condominium staff began its education efforts in Kona and Hilo to update and educate the condominium community about Chapter 514B, Hawaii Revised Statutes, also referred to as the “new” condominium law. Additional sessions are scheduled for Kauai and Maui in October and in Honolulu in November.

The *Reference File* features an article by Tracey Wiltgen, Executive

Director of the Mediation Center of the Pacific, on mediation. All of you should be aware that mediation is *mandatory* by statute in resolving condominium disputes and a prerequisite in filing a request under the Condominium Dispute Resolution Program (CDR). Mediation and CDR case summaries are provided for your information.

The Community Association Institute Hawaii Chapter provides education seminars for the condominium community throughout the year. “One Hour Board Meetings” was the session held in August. G. Steve Elisha, Esq., who was the moderator at this seminar, provides a synopsis of this session on page 5. Please review the Condominium Education Calendar for other learning opportunities.

Remember to check the Commission meeting schedule as there is a standing invitation to attend our monthly meetings.

Sincerely,

William S. Chee

William S. Chee
Chair, Condominium Review Committee



Ask the Condominium Specialist

Q If foreclosure action is taken by the association for non payment of maintenance fees, are we able to collect back maintenance and legal fees from the new purchaser?

A §514B-146(g), Hawaii Revised Statutes (HRS), indicates that the board may “assess the amount of the unpaid regular monthly common assessments for common expense against a person” who purchases a delinquent unit in a judicial or nonjudicial power of sale foreclosure.

However, if a purchaser holds the mortgage on a delinquent unit before the notice of lien was filed and acquired the unit through a judicial or nonjudicial foreclosure proceeding, or a foreclosure auction, they are not obligated or liable for the special assessment.

But if a purchaser purchases from a mortgagee, he will be responsible for the special assessment. This purchase may require the association to provide at no charge a notice of the association’s intent to claim lien against the delinquent unit for the amount of the special assessment before this purchaser receives title to the delinquent unit. The notice is to state the amount of the special assessment, how this amount was calculated, and the legal description of the unit.

The special assessment cannot exceed the total amount of unpaid regular monthly common assessments assessed during the six (6) months “immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure.” The special assessment “shall” not exceed \$1,800.

“Regular monthly common assessments” does not include: (1) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section 514B-148; (2) Late charges, fines, or penalties; (3) Interest assessed by the association; (4) Any lien arising out of the assessment; or (5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys’ fees and court costs.

Q We noticed that the new law, Chapter 514B, HRS, now includes a section on “Aging in place.” Is the association required to have provisions to address this matter?

A With more awareness of the growing numbers of aging individuals and/or communities including condominiums, the legislature worked on provisions that are now included in Chapter 514B, HRS. Much time and consideration were taken to provide steps an association may do should the need arise. However, an association is not required to have provisions in the bylaws for “aging in place.” Should your association decide to do so, please review Section 514B-142, HRS.

Got a Problem? Try Mediation First

Condominium associations are fertile ground for conflict. From billion dollar developments to modest projects, conflict can weed its way through any setting. Different people with different needs and expectations, a myriad of rules and regulations, often subject to interpretation, close quarters and shared elements, all serve as fertile ground for potential conflicts. The question: Once a conflict has sprouted, what is the best treatment? Request a hearing through the Department of Commerce & Consumer Affairs (DCCA) Condominium Dispute Resolution Program or go to mediation? The answer: schedule a mediation session first.

Mediation is not only a smart step it is a **required** step **before** filing for a hearing through the DCCA. Mediation offers the least costly intervention and generally the most satisfying, **if** you learn how to best use the process. Preparation is the key.

PREPARATION

Hearing vs. Mediation

Mediation is a very different process from a hearing. More specifically, in mediation there is no final decision and no win or lose; there are potentially creative solutions and agreements made by the parties themselves. Equally important, discussions in mediation are private. These core differences are important considerations when preparing for mediation.

Mediation, unlike a hearing or trial, does not involve discovery, witnesses or evidence. The mediator, unlike a hearings officer, does not make a decision. Instead, the mediator assists parties in: talking through the situation, understanding each others perspectives and views; and negotiating solutions that ideally work for everyone within the parameters of the relevant laws.

While it isn't necessary to prepare witnesses and testimony before mediating, it is important to have factual information and an accurate understanding of laws, rules and statutes governing the issue in question, organized and at hand to support informed discussions. Equally important, because the parties themselves come up with the final resolution in mediation, it is critical to consider possible options beforehand that can be offered as potential resolutions to the matter.

The fact that mediation is a private or confidential process provides parties with the opportunity to freely discuss all matters without fear that it can later be used against them. Discussions that occur within mediation, stay within the mediation and cannot later be used in a hearing. Similarly, the mediator, mediator notes and any information gathered by a mediation center or organization overseeing the mediator, cannot be subpoenaed or used in a hearing.

The core differences between mediation and hearing should guide preparation for the mediation process including: who should be at the mediation table and what information should be collected, organized and brought to mediation.

The Tools

The first step in preparing for mediation is identifying the tools the people who are essential to participate in the process. In mediation, witnesses aren't part of the process. Only the people directly involved in the dispute or have authority to make decisions need to be at the mediation table. While attorneys are not required in mediation, they can play a valuable role in clarifying laws and advising on possible creative agreements that fall within the boundaries of the laws.

To be effective, all participants should be willing and able to put emotions and past dealings to the side, focus on the information at hand and problem solve solutions that will allow them to move forward to the future.

The Roots

The next step in preparing for mediation is to unearth the root of the conflict. It could be a House Rule, bylaw, or statute. What provision(s) apply to the conflict? What is your understanding of the provision? Has that provision been specifically addressed in similar situations in your condominium in the past? How would a Hearings Officer or Judge interpret the provision? What does your lawyer say? What does or might the other party's lawyer say? Answer all of these questions prior to the mediation. Bring a copy of the applicable provisions of law with you.

Turning the Soil

A Hearing focuses participants on winning and losing. Mediation focuses participants on problem-solving and looking to the future. It is important to sift through and identify any additional sources of conflict that have become entangled with the main source. For example, are there related laws or rules that appear in conflict with the key law that is the root of the dispute? Have actions been taken to address the conflict before mediation was initiated that may have created more confusion and/or increased emotions that hinder effective problem solving?

Each provision or action taken should be identified, reviewed and clarified regarding its role in the conflict and potential impact on reaching a mediated agreement. For example, a board mediating with an owner in violation of a current house rule may consider providing the owner with a longer period to correct the violation if the owner lived in

(Continued on next page)

Try Mediation First from pg. 3

the condominium for many years when the rule wasn't enforced. However, that same board may be reluctant to offer the longer period if prior to the mediation, the owner personally attacked individual board members or passed inflammatory fliers out at association meetings.

Well-prepared mediation participants will outline each fact and key incident that could impact a mediated agreement. Consideration of all factors that are clearly presented by prepared participants can help move the mediation process to problem solving faster and be more likely to reach a resolution. In the example above, the board representative may be willing to reach a mediated agreement with the owner if the owner agrees in writing that s/he will handle any future complaints with the board through an agreed upon process, without flyers and personal attacks and/or a written apology is made through the AOA newsletter.

Unlike a hearing, in mediation there is no win/lose. Creativity may be key or simply moving to the future may motivate an agreement.

If Mediation Doesn't Work

Despite preparation every mediation does not result in a written agreement. The parties may then request a hearing through DCCA. Only issues addressed in mediation may be heard by a Hearings Officer. Therefore, the end of the mediation can be productive in moving the parties towards a clear next step.

Contributing Author:

Tracey S. Wiltgen is the Executive Director of the Mediation Center of the Pacific, Inc., a community dispute resolution organization that provides direct mediation and facilitation services for a broad range of disputes including business matters, ADA issues, civil rights complaints, consumer/merchant, condominium, domestic disputes, and community conflicts. Ms. Wiltgen is a licensed attorney, a member of the Society of Professionals in Dispute Resolution (nationally and locally), the National and Hawaii State Bar Associations and past chair of the ADR section.

Two Condominium Dispute Resolution Filings Dismissed

In July 2004, the Condominium Dispute Resolution Program (CDR) was established to allow disputes that could not be resolved through mediation, an avenue to be heard at the Department of Commerce and Consumer Affairs' Office of Administrative Hearings (OAH). Since that time, the new condominium law, Chapter 514B, Hawaii Revised Statutes (HRS) became law on July 1, 2006, which would co-exist with the original law, Chapter 514A, HRS.

In 2006, the provisions for this program were repealed for Chapter 514A, HRS, and established for Chapter 514B, HRS, which pertained to condominiums created after July 1, 2006. No CDR provisions were provided for those condominiums created before July 1, 2006.

On July 2, 2007, Governor Lingle signed Act 244 into law which reinstated the CDR Pilot Program under §514A-121.5, HRS, and Act 242 which clarified the scope of the condominium dispute resolution pilot program created by Act 277, 2006 Session.

Chapter 514A and 514B, HRS, both state, "If a dispute is not resolved by *mediation* . . . in addition to any other legal remedies that may be available, any party that *participated in the mediation* may file a request for a hearing with the office of administrative hearing . . ." (emphasis added)

Hearing requests must be filed with OAH within 30 days from the final day of the unsuccessful mediation, and can only be initiated against a party that *participated*

in the mediation. The Real Estate Commission would like to remind apartment owners and board members that the *prerequisite* for filing a request for CDR is **participation in mediation**. Decisions on two (2) *dismissed* CDR cases were based on *non participation in mediation*.

As much time and effort is put in to filing a request and the hearing process by all parties, it is important to understand that the required steps *must* be followed and necessary for an effective outcome. For more information about the Condominium Dispute Resolution Program, please contact the Senior Hearings Officer of the Office of Administrative Hearings at (808) 586-2828.

Committees Meet in Kona

On September 10, 2007, the Real Estate Commission held its standing committee meetings in Kona at the Marriott Waikoloa Beach Resort. In conjunction with this meeting, the Condominium and Real Estate Specialist Office for the Day was also provided.

These visits to the neighbor islands provide members of the condominium and real estate communities an opportunity to meet with the Specialists about their specific condominium concerns and/or real estate licensing questions and concerns.

Some of the condominium issues included: collecting association fees on foreclosed units; applicability of Chapter 514B, HRS; and budgets and reserves.

2007 Real Estate Commission Meeting Schedule

These committees meet one after another, beginning at 9 a.m.: Laws & Rules Review, Education Review, and Condominium Review

Wednesday, October 10, 2007
Monday, November 19, 2007
Wednesday, December 12, 2007

Real Estate Commission 9 a.m.

Friday, October 26, 2007
Friday, November 30, 2007
Friday, December 21, 2007

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor, Honolulu, Hawaii.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at www.hawaii.gov/hirec or 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 contact the Executive Officer at 586-2643 to submit your request.

New Director from pg. 1

Mr. Reifurth moved to Hawaii from California, where he had worked as a lawyer from 1983-1989.

He received his Juris Doctor degree from Northwestern University School of Law in 1983, and his B.S. degree from Marquette University in 1979.

After a few months of single-handedly running the department, Director Reifurth welcomed his new right-hand man, Ronald Boyer.

Governor Lingle has appointed Mr. Boyer to serve as DCCA's Deputy Director, the position previously held by Director Reifurth, effective July 16, 2007.

Deputy Director Boyer previously worked for the Office of the Governor as lead policy analyst.

His position included identifying legislation and administrative policies to improve government operations, preparing analytical reports and recommendations for the Governor, participating in policy formulation, and reviewing and tracking proposed legislation.

Deputy Director Boyer graduated from the University of Hawaii, and also served in the U.S. Air Force in the 1st Combat Evaluation Group in Shreveport, Louisiana, and the 548th Reconnaissance Technical Group at Hickam Air Force Base.

He received the Air Force Commendation Medal and Good Conduct Medal.

Authority on Board Meetings Addresses CAI Hawaii Seminar

In late September, The Community Associations Institute, Hawaii Chapter (CAI), presented The Effective One Hour Board Meeting seminar on Oahu, Maui, and the Big Island.

The Maui seminar was presented in conjunction with The Condominium Council of Maui.

The speaker at those freewheeling seminars was Craig Huntington, a nationally known community association authority and the president of Community Association Banc.

The seminar provided key techniques for holding efficient and timely board of directors meetings. Mr. Huntington, a high energy speaker, engaged each audience with concepts, stories and interaction.

Presenting three seminars on three islands in four days was not easy. "It was a challenge," said Steve Elisha, the regional vice president for Community Association Banc and moderator of the seminars, "but it helps CAI to meet its commitment to statewide education. We appreciated the help The Condominium Council of Maui gave us as well."

Both CAI and CCM present seminars on a variety of topics of importance to everyone associated with community associations.

MEDIATION CASE SUMMARIES

MCP = Mediation Center of the Pacific, Inc.
MSM = Mediation Services of Maui, Inc.
WHMC = West Hawaii Mediation Center
BOD = Board of Directors

KMC = Ku'ikahi Mediation Center
RICO = Regulated Industries Complaints Office
KEO = Kauai Economic Opportunity, Inc.
CMA = Condominium Managing Agent

CASES HANDLED BY MCP

Between June 1, 2007 and September 30, 2007, there were a total of nine (9) cases involving condominium disputes. Five (5) were mediated, three (3) were closed without mediating, one (1) was withdrawn.

Parties	Complaint	Disposition
Owner vs. BOD	Dispute regarding use of units	No agreement
Owner vs. BOD	Repairs required under bylaws	Withdrawn
Owner vs. BOD	Board meeting notice, communication, board	No agreement
Owner vs. BOD	Bylaw changes/disclosure	No agreement
BOD vs. owner	Landscaping common elements	Closed. No mediation
Owner vs. BOD	Architectural planning, permitting, common elements	Closed. No mediation
BOD vs. owner	Water damage repairs	Agreement
Owner vs. BOD	Bylaws dispute	No agreement
Owner vs. BOD	BOD conduct/procedures, communication	Closed. No mediation

CASES HANDLED BY MSM

Between June 1, 2007 and September 30, 2007, there were a total of four (4) cases involving condominium disputes. Three (3) cases were mediated, and one (1) was closed without mediating.

Owner vs. BOD	Maintenance fees owed	Agreement
Owner vs. BOD	Common elements	No agreement
Owner vs. Owner	Interpretation of House Rules	Mediated
Owner vs. Owner	House rules violations	Closed. No mediation

(No cases reported by KEO, KMC, RICO, WHMC)



Condominium Seminars II

*“A Closer Look At The
New Condominium Law”*



Hawaii Real Estate Commission
Admission - Free

Seminar includes a closer examination of the impact of the new condominium law on:

- ⌘ Condominium owners' rights and responsibilities;
- ⌘ Duties and responsibilities of:
 - ⌘ boards of directors;
 - ⌘ managing agents;
 - ⌘ resident managers;
- ⌘ Prospective purchasers;
- ⌘ Real estate licensees;
- ⌘ Developers and their attorneys;
- ⌘ Related professionals; and
- ⌘ The general public.

“A must educational opportunity for all.”

Friday, November 9, 2007

9:00 a.m. to 12:00 p.m.

Hawaii State Capitol Building - Auditorium
415 South Beretania Street

Condominium Specialists will be available to discuss condominium related issues.

For more information please contact any Condominium Specialist at the Hawaii Real Estate Commission at (808) 586-2643 or visit the Commission's website at www.hawaii.gov/hirec.

Paid Advertisement by the Condominium Education Fund, Hawaii Real Estate Commission, Professional & Vocational Licensing Division, Department of Commerce and Consumer Affairs

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
11/15/2007	8:30 – 4:30	Condominium Construction Issues in Hawaii	Ilikai Hotel	LOR
01/26/2008	TBA	* Avoiding Disasters at Annual Meetings	Japanese Cultural Ctr.	CAI-H
03/27/2008	TBA	* Dealing w/ Hazards – Asbestos/Mold	apanese Cultural Ctr.	CAI-H
4/26/2008	TBA	* ABC's	Japanese Cultural Ctr.	CAI-H
4/30-5/3/2008		CAI's 57th Nat'l Conference & Exposition	Orlando, Florida	CAI
6/28/2008	TBA	* Disaster Preparedness & Health Issues	Japanese Cultural Ctr.	CAI-H
7/24/2008	TBA	* Legislative Update	Hale Koa Hotel	CAI-H
8/21/2008	TBA	* Covenants Enforcement	Hale Koa Hotel	CAI-H
9/25/2008	TBA	* Top Traits of Boards and Managers	Hale Koa Hotel	CAI-H
10/25/2008	TBA	* Defending & Winning Suits Against the Associations or Boards	Japanese Cultural Ctr.	CAI-H

*** The seminar is partly funded by funds from the Condominium Education Fund, Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii for condominium apartment owners whose AOA is currently registered with the Real Estate Commission.**

Information is subject to change. For full information on the above-listed courses, please call the provider.

	Provider	Phone	Address
CAI	Community Associations Institute (National) www.caionline.org	(703) 548-8600	225 Reinekers Ln #300 Alexandria, VA 22314
CAI-H	Community Associations Institute - Hawaii Chapter www.caihawaii.org	488-1133	P.O. Box 976 Honolulu, HI 96808
CCM	Condominium Council of Maui www.mauicondocouncil.com	573-4231	PO Box 1362 Kihei, HI 96753
HAR	Hawaii Association of Realtors www.hawaiiirealtors.com	733-7060	1136 12 th Ave., Ste. 220 Honolulu, HI 96816
HCAAO	Hawaii Council of Associations of Apartment Owners	737-2021	3454 Waialae Ave Ste. 6 Honolulu, HI 96816
HSAP	Hawaii State Association of Parliamentarians www.hsap.org		98-238 Paleo Way Aiea, HI 96701
HSBA-CLE	Hawaii State Bar Association - Continuing Legal Educ. www.hsba.org	537-1868	1132 Bishop St., Ste 906 Honolulu, HI 96813
IREM	Institute of Real Estate Management Hawaii Chapter No. 34 www.iremhawaii.org	847-0141	PO Box 17040 Honolulu, HI 96817
LOR	Lorman Education Services www.lorman.com		2510 Alpine Road Eau Claire, WI 54703
UH-OC	Noncredit Programs, Outreach College, University of Hawaii	956-8244	2530 Dole Street Honolulu, HI 96822

Real Estate Branch and Real Estate Commission's web page at: <http://www.hawaii.gov/hirec>

Address: 335 Merchant Street, Rm. 333; Honolulu, HI 96813; Phone: (808) 586-2643

HAWAII CONDOMINIUM BULLETIN, OCTOBER/NOVEMBER 2007 © Hawaii Real Estate Commission. All rights reserved. This Bulletin, or any part thereof, may not be reproduced without the written permission of the Hawaii Real Estate Commission, except permission is granted to registered Hawaii condominium associations to reproduce and distribute copies of this entire publication, but not for profit, as an educational service. This publication is intended to provide general information and is not a substitute for obtaining legal advice or other competent professional assistance to address specific circumstances. The information contained in this Bulletin is made pursuant to Hawaii Administrative Rules Section 16-201-92 and is not an official or binding interpretation, opinion or decision of the Hawaii Real Estate Commission or the Department of Commerce and Consumer Affairs. 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.