

Hawaii Condominium Bulletin

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Funded through
the Condominium
Education Trust Fund

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.

Condominium Ownership 101

Historically, Hawaii has had a high percentage of its housing market in condominium housing units. In fact, if you are reading this Bulletin, you are either a condominium owner or one who works closely with condominium communities.

Condominium living differs in many respects from single-family living. If you are a new condominium owner unfamiliar with these differences, what follows are some of the basic tenets of condominium ownership and the characteristics which distinguish it from single family ownership.

Ownership Interest

"Condominium" refers to a type of ownership of real property which consists of individual and common ownership interests. It does not refer to any particular physical structure. A condominium may look like a single-family home, a three story walk-up, or a high-rise structure.

The individual ownership interest consists of an exclusive right of possession and ownership of a particular condominium unit. Common ownership interest includes a percentage of the undivided interest in the common elements (for example, the underlying land or the recreational area), whereas limited common elements are designated for a particular unit, such as a lanai or a parking stall.

Specific ownership interests for a unit are stated in the Declaration of Condominium (or Horizontal) Property Regime.

Management of Condominiums

Condominiums are created by statute and intended to operate as self-governing entities, with minimal government intervention. An association is governed by its condominium association through a board of directors elected from among the condominium owners.

These board members are usually unpaid volunteers and often have no experience in running a large property. Board members owe a fiduciary duty to the association in the performance of their duties. To assist with running the association, many associations hire a professional management company, or a full-time resident manager. Neither is required by law, however, and smaller associations often rely on owner volunteers to handle management tasks.

Maintenance Fees

An important component of condominium living is the monthly assessment of maintenance fees assessed against all owners for the upkeep and maintenance of the condominium association. Each unit owner pays a proportional share of maintenance fees. Special assessments may also be imposed upon owners to fund expenses that were not anticipated, such as property improvements or association legal fees. Special assessments are in addition to regular monthly maintenance fees.

Another significant aspect of condominium living is the statutory replacement reserves required to be set aside for the repair or replacement of those parts of the property that the association is obligated to maintain. Increasingly, banks and mortgage lenders are examining the sufficiency of statutory reserves as a gauge of financial soundness of a condominium association. Statutory replacement reserves are governed by Hawaii Revised Statutes (HRS), § 514B-148.

For more information on condominiums, visit the Real Estate Commission's website at www.hawaii.gov/hirec, or call the Commission at (808) 586-2643 and ask to speak to a Condominium Specialist. The condominium law, HRS, Chapters 514A and 514B is available on the Commission's website. ■

Letter from the Chair

The month of June marks the end of the State's fiscal year. As we look back to our accomplishments over the past year, we also look forward to the coming year. In the next year, the Condominium Review Committee ("CRC") will be busy with several projects, including revisions to the Hawaii Administrative Rules ("HAR") governing condominiums, our traveling specialist pilot program, and focusing on the electronic age we are in.

As previously noted, the CRC has been revising and drafting the HAR that govern condominiums under Chapters 514A and 514B of the Hawaii Revised Statutes. Our Senior Condominium Specialist is assembling the comments we received and preparing a draft of the rules. The process of revising HAR is a lengthy one, and can take up to two or three years to complete, because the drafts must be reviewed by several agencies and groups. However, we hope to have a solid draft completed this year so that we may continue our progress.

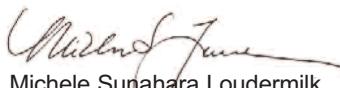
On May 27, the CRC held a free seminar for condominium owners and board members at the State Capitol. We had about 27 attendees and the evaluation forms we received were all generally positive. The seminar focused on the new editions of "Condominium Property Regimes: Owner Rights and Responsibilities" and "Condominium Board Members Powers and Duties", which are posted on the Commission's website.

We are also starting a pilot program on Oahu which, if successful, we hope to eventually take to the other islands as well. The Commission will be offering condominium owners the opportunity to have a condo specialist visit on-site to provide information and education that is of interest to the unit owners. A sign-up form will be available at the Commission office and on the website soon. Please take advantage of this great opportunity!

As people increasingly rely on the internet, cell phones, websites, and applications for receiving and sending information, we too are researching how we can stay current. We will be exploring ways to deliver educational sessions by video and website posting. We will also continue our work on a plan to convert the condo public report process to electronic processes. As always, we will continue posting news releases, educational information and literature on the Commission's website.

Finally, Commissioner Mark Suiso's term ends this year. I would like to thank Mark for his years of service as a Commissioner, and particularly as Vice-Chair of the CRC. Mark has been instrumental in the collection and distribution of educational materials to our public libraries, our website, and through seminars. Although he will no longer be a Commissioner, I know Mark will continue to serve our community in many other ways, so a heartfelt thank you, Mark. (As we go to print, we now know that Commissioner Suiso will remain a member of the Commission until Governor Lingle is able to rename a replacement. Mahalo Commissioner Suiso for assisting the Real Estate Commission!).

Sincerely,



Michele Sunahara Loudermilk
Chair, Condominium Review Committee

Aloha to Commissioners

The Real Estate Commission says "Aloha" and "Mahalo" to Commissioners Louis Abrams and Annette Aiona. Commissioner Abrams was Chair of the Laws and Rules Review Committee and Commissioner Aiona was Vice Chair of the Education Review Committee.

Mahalo also to Commissioner Mark Suiso. Although his term has ended, Commissioner Suiso has graciously agreed to remain on board until a replacement by the Governor is made. Commissioner Suiso is Vice Chair of the Condominium Review Committee and was active in setting up the Commission's Adopt-a-Library Program at selected libraries throughout the State. He also devoted much time and effort to collecting and reviewing comments for the newest Commission condominium booklets, Condominium Property Regimes: Owner Rights and Responsibilities and Board Members Powers and Duties.

The Commission will miss the energy that Commissioners Abrams and Aiona brought to the discussions of real estate and condominiums in Hawaii.

Beginning July 1, 2010, the Commission welcomes its newest Commissioner, Scott Sherley, real estate broker, from the Island of Hawaii.

Commissioner Sherley is the broker-in-charge of ERA Pacific Properties and a Condominium Managing Agent in Hilo and Maui.

Welcome Commissioner Sherley!

Q: I Believe a Board Member Has a Conflict of Interest. Can This Member Be Removed?

A: "Conflict of interest" means an issue in which a director has a direct personal or financial interest not common to other members of the association. HRS § 514B-125(f). A director shall not vote at any board meeting on any issue in which the director has a conflict of interest. A director who has a conflict of interest on any issue before the board shall declare the nature of the conflict before any vote on the issue, and the minutes of the meeting shall record that a disclosure was made.

If you believe a board member has a conflict of interest that prevents this member from representing the interests of the association, you may attempt removal of the board member from the board pursuant to HRS § 514B-106(f). If this is not successful, you may submit the dispute to mediation or arbitration, or hire a private attorney. Keep in mind that an important tenet of condominium law is "majority rule". A majority of owners must support efforts at removal and replacement of a board member, in accordance with any provisions in your bylaws regarding the removal and replacement of directors. If removal and replacement is to occur at a special meeting, then the requirements of HRS § 514B-121(b) must also be met.

Q: Can I Make a Complaint Against a Board Member?

A: The Regulated Industries Complaints Office (RICO) is the agency designated by law to receive certain complaints regarding condominium associations. Unless a condominium board member is also a real estate licensee, and an alleged violation of HRS, Chapter 467 (the Real Estate licensing law) has occurred, RICO has no jurisdiction over volunteer board members.

Under the condominium law, however, RICO has been authorized to receive and investigate complaints relating to HRS, Chapter 514B, Parts IV (Registration and Administration of Condominiums) and V (Protection of Condominium Purchasers), and HRS, §§ 514B-103 (condominium association registration), 514B-132 (condominium managing agents), 514B-134 (management contracts for the association prior to organization of the association), 514B-149 (handling and disbursement of association funds), and 514B-152 -154 (maintenance and provision of association records). RICO's telephone number to file a complaint is (808) 586-2653. Its web address is www.hawaii.gov/dcca/rico.

For disputes outside of the above-noted sections of the law, for example, a dispute with a condominium board member, the condominium law provides for dispute resolution through mediation, arbitration, or civil litigation.

Condominium Property Regimes: Board Members Powers and Duties

A condominium association is a “mini-government,” created under the law by the recording or filing of a master deed, declaration and bylaws, and condominium map, pursuant to which unit owners elect the association’s board of directors. The board in turn is given broad authority under “self-governance principles” to govern and manage the affairs of the association, limited only by federal and state laws, county ordinances, and condominium governing documents. Condominium associations have legally established authority and power through their boards to create or propose bylaws and house rules governing the project and its owners; to “tax” through the collection of maintenance fees and assessments; and to impose penalties and interest for late payment of assessments, and fines for violations of the declaration, bylaws, and house rules.

Membership in a condominium association is mandatory. Unit owners automatically become voting members of the association and are responsible for their share of the common expenses in proportion to their percentage share of ownership of the common elements. Associations meet annually to address important matters such as election of directors, review of the annual financial report and reports of board officers and association committees, and amendment of the declaration or bylaws. Special association meetings are held from time to time to address specific items that require membership consideration and approval.

The primary responsibility of a condominium board of directors is to establish policies governing the operations of the association, for both the upkeep and protection of the property’s physical assets, as

well as keeping the association’s finances in a healthy state. Since board members are typically unpaid volunteers, they often delegate authority to individual officers, a managing agent, or association employees to handle the day-to-day operations of the condominium. Although the board can delegate authority to others, it cannot delegate its ultimate responsibility.

Hawaii’s condominium law provides that every director owes the association a “fiduciary duty” to exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation. Board members can only do what the law and the association’s condominium governing documents (declaration and bylaws) authorize them to do. Board members should be cautious about exercising “implied” or “inherent” powers which are not clearly stated in the law or condominium documents.

Board members who request and reasonably rely on the advice of professionals, such as attorneys, are usually protected by the “business judgment rule.” Board members who exceed their authority are likely to face increased liability, including the possibility of personal liability. However, in judging the actions of directors, courts typically recognize that volunteer board members will not always make the right decision, but if they act within their authority, follow the right procedures and act in the interest of the association, they will usually not be personally liable for their actions on behalf of the association. For that reason, board members should be familiar with their powers, duties, and responsibilities under the law and their governing documents. ■

Condominium Property Regimes: Owner Rights and Responsibilities

The word “condominium” describes a legal form of common ownership or control and not a type of building or residence. In the condominium form of property ownership, an individual owns a unit (also known as an “apartment”) exclusively, and owns “common elements” jointly with all other unit owners in the condominium. An owner may also be given an exclusive right to use certain parts of the common elements, such as parking stalls, which are described as “limited common elements.”

The operation of a condominium is carried out through its “association,” whose members consist of all the unit owners in the condominium project. Condominium associations have legally established authority or duties to preserve and maintain common property; create and enforce rules affecting association living; and provide other services, such as security, trash pickup, and the like.

A condominium association is a “mini-government” in which unit owners elect the association’s board of directors, which in turn is given broad authority under “self-governance principles” to govern and manage the affairs of the association, limited only by federal

and state laws, county ordinances, and condominium governing documents. Depending on the condominium’s governing documents, the board of directors may have power over more aspects of the association members’ lives than any other level of government. On the other hand, unit owners have the authority to elect and remove directors, amend their governing documents, and petition for special meetings. In addition, owners have the right to inspect many association documents, attend most board meetings and participate in mediation, arbitration, litigation and administrative hearings to resolve disputes.

Although the board of directors is essentially the decision-making body for the condominium, the association’s effectiveness rests primarily with its membership, the unit owners. For an association to be successful, owners must take an active part by attending condominium meetings, voting, serving on committees, and assisting in other affairs of the association whenever possible. In addition, owners have the responsibility to maintain their units, pay their assessments, and comply with the governing documents and house rules.



Condominium Review Committee (CRC) Report

Excerpt from the Real Estate Commission's 2009 Annual Report to the Governor and Legislature

The CRC, for fiscal year 2009, under the leadership of Chair William Chee and Vice Chair Mark Suiso continued with the implementation challenges of Chapter 514B, Hawaii Revised Statutes (HRS), including the challenges of new legislation. Concurrently, in this same period, the Committee continued with the administration of the original condominium law, Chapter 514A, HRS, as well as other important planned program of work (see list below). You may read the full text report at www.hawaii.gov/hirec.

The CRC is a Commission standing committee that holds monthly public meetings in which condominium issues are presented, discussed, examined, and considered. This is a working committee that handles "nuts and bolts" issues. Developers, apartment owners, boards of directors, condominium managing agents, attorneys, educators, researchers, government officials, and others with condominium concerns participate at the meetings. The responsibilities of the CRC include: registration of condominium projects by developers; condominium association registrations; and governance, education and research program inclusive of the programs, funded under the Condominium Education Trust Fund (CETF).

The law allows the Commission to expend monies from the CETF for educational purposes which include financing or promoting: Education and research in the field of condominium management, condominium project registration, and real estate, for the benefit of the public and those required to be registered under this chapter; The improvement and more efficient administration of associations; and expeditious and inexpensive procedures for resolving association disputes.

The Commission may use any and all monies in the CETF for purposes consistent with the above. Additionally, the law requires the Commission to submit to the legislature annually and herein incorporated is: (1) a summary of the programs funded during the prior fiscal year with funds from the CETF, (2) a statement of which programs were directed specifically at the education of condominium owners, (3) summary information on programs that were funded or are to be funded and the target audience for each program, (4) a copy of the budget for the current fiscal year, including summary information on programs which were funded or are to be funded, (5) the amount of money in the fund during the prior fiscal year, and (6) a budget for the current fiscal year that includes a line item reflecting the total amount collected from condominium associations.

In addition, this year the CRC Report includes an Addendum that

responds to two similar 2009 legislative resolutions. Specifically House Resolution No. 128 HD1 requested "The Real Estate Commission To Consider Allowing Developers To Submit Condominium Registration Filings In Electronic Format," and Senate Resolution No. 113 SD1 requested "The Real Estate Commission To Adopt A Strategic Plan To Allow Condominium Registration Filings In Electronic Format." ■

The 2009 Annual Report programs include:

(See report for the specifics of the program)

Condominium Laws and Education
Advice, Education and Referral
Condominium Project and Developer's Public Reports
Hawaii Condominium Bulletin
Condominium Mediation and Arbitration Program
Condominium Dispute Resolution Pilot Program
Condominium Association Registration
Condominium Seminars and Symposium
Ad Hoc Committee on Condominium Education and Research
Condominium Managing Agents Registration
Condominium Hotel Operator Registration
Rule Making Chapter 107
Meetings
Government and Legislative Participation and Report
Legislative Acts and Resolutions
Neighbor Island Outreach
Condominium Education Trust Fund
Consumer Education
Rule Making Chapter 53, Fees
CPR Project Workshop and Meetings
Condominium Specialists' Office for the Day
Condominium Speakership Program
Technology and Website
Case Law Review Program
Start-up Kit for New AOUs
Record Management
Cooperative Education, Research and Administrative Program
Division and Department Program
Staff and Commissioners Development
Condominium Reference Library

Results of the 2010 Legislature Affecting Condominium Associations

The 2010 Hawaii legislative session adjourned sine die on April 29, 2010. Following are some of the bills affecting condominium associations and their owners which were enacted this session, and either amended or directly affects HRS Chapters 514A or 514B:

ACT 53 – HB2197, HD1, SD1, Relating to solar energy.

ACT 53 gives boards of directors the authority to install, or to allow the installation of solar energy or wind energy devices on the common elements of condominiums. Effective April 23, 2010.

ACT 201 – SB2817, SD1, HD1, CD1, Relating to solar energy devices.

ACT 201 requires every private homeowners association or entity to revise rules by July 1, 2011, that shall not impose conditions or restrictions that render a solar energy device more than 25 per cent less effective; increase the cost of installation, maintenance, and removal of a solar energy device by more than 15 per cent; or until June 20, 2015, require an encumbrance on title because of the placement of the solar energy device. Effective July 7, 2010.

ACT 169 – HB2288, HD1, SD2, CD1, Relating to real property transfer fees.

ACT 169 prohibits the imposition of fees for a future transfer of real property. Specifies that certain fees are exempted, including certain usual payments to a condominium association. Effective June 22, 2010. Sunsets (automatic repeal) June 30, 2015.

ACT 91 – SB2643, SD1, HD1, CD1, Relating to the general excise tax.

ACT 91 extends the general excise tax exemptions for condominium common expenses paid by managers, submanagers, and suboperators, and for hotel employee expenses paid by hotel operators and timeshare projects through December 31, 2012; clarifies that the maximum allowable tax exemption per calendar year is \$400,000. Effective May 11, 2010.

The following bills passed into law in the 2010 legislative session relate to condominium associations indirectly:

ACT 155 – HB2595, HD1, SD2, CD1, Relating to the general excise tax. Effective June 1, 2010.

ACT 153 – HB2020, HD2, SD2, CD1, Relating to traffic regulation. Effective June 1, 2010.

ACT 99 – HB2129, HD1, SD1, Relating to graffiti. Effective May 12, 2010.

ACT 208 – SB2165, SD1, HD2, CD1, Relating to private security guards. Effective July 7, 2010.

ACT 186 – SB2231, SD1, HD2, CD1, Relating to electric vehicles. Effective June 30, 2010.

ACT 162 – SB2472, SD2, HD1, CD1, Relating to mortgage foreclosures. Effective June 3, 2010.

ACT 139 – SB2565, SD1, HD1, CD1, Relating to the Hawaii Civil Rights Commission. Effective May 25, 2010.

ACT 9 – SB2602, HD1, Relating to real estate licensees. Effective March 23, 2010.

If you are interested in learning more about these bills or other bills which may affect condominium living, you can access the Legislature's website, www.capitol.hawaii.gov for a listing of bills, to check the current status of a bill as it proceeds through the legislative process, or to read the full text of any bill. ■

Mediation Case Summaries

Mediation Services of Maui (MSM)

Between January 2010 through March 2010, MSM conducted four condominium-related mediation between disputing parties.

PARTIES	ISSUE	DISPOSITION
Owner vs. Condominium Managing Agent	Dispute over maintenance fees	No mediation
Owner vs. Board	Dispute regarding common element	Mediated to agreement
Owner vs. Board/Management Co.	Alleged conflict of interest by board members	No mediation (no response from Board/Mgmt. Co.)
Owner vs. Board	Dispute over decision-making authority of the board	No mediation

Mediation Center of the Pacific (MCP)

Between January 2010 through March 2010, MCP conducted the following mediations:

Owner vs. Board	Alleged violation of house rules	Closed; no mediation
Owner vs. Board	Enforcement of house rules; imposition of fines	Mediated; no resolution
Owner vs. Board	Access to documents; conflicts of interest	Closed; no mediation
Owner vs. Board	Responsibility for repairs	Closed; no mediation
Owner vs. Board	Interpretation of bylaws re: special meetings	Closed; no mediation
Owner vs. Board	Fiduciary responsibility of board members	Closed; no mediation
Owner vs. Board	Water damage to unit	Closed; no mediation
Board vs. Owner	Bylaw and house rule provisions re: pets	Closed; no mediation
Owner vs. Board	Fees owed by owner	Closed; no mediation
Owner vs. Board	Imposition of fines	Closed; no mediation
Board vs. Owner	Noise issue; enforcement of house rules	Closed; no mediation

Kuikahi Mediation Center (Kuikahi)

Kuikahi conducted the following mediation between January 2010 and March 2010:

Owner vs. Board	Regarding increase in maintenance fees	Mediated; no agreement
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Kaua'i Economic Opportunity, Inc. (KEO)

KEO conducted the following mediations during the period January 2010 through March 2010:

Owner vs. Board	Interpretation of house rules	Closed; no mediation
Owner vs. Condominium Managing Agent	Regarding list of owners	Closed; no mediation
Owner vs. Owner	Use of limited common elements	Closed; no mediation

West Hawaii Mediation Center

Owner vs. Board	Voting procedures; control of common elements	Closed; Owner subsequently declined mediation
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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
7/22/10	12:00 pm	*Legislative Update - Oahu	Hale Koa Hotel	CAIH
7/30/10	12:00 pm	*Legislative Update - Kona	King Kamehameha Kona Beach Hotel	CAIH
8/3/10	8:00 am	Board Do's and Don'ts - Maui	King Kamehameha Golf Club	CCM
9/15/10	8:00 am	Financial Planning Seminar – Maui	King Kamehameha Golf Club	CCM
9/16/10	12:00 pm	*Maximizing Your Dollars - Oahu	Hale Koa Hotel	CAIH
10/29/10	6:00 pm	CAI Hawaii Annual Meeting - Oahu	Hale Koa Hotel	CAIH

**The seminar is partly funded by funds from the Condominium Education Trust Fund, Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii for condominium apartment owners whose AOAO 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	c/o SCBNR 250 Alamaha St #N213 Kahului, HI 96732
HAR	Hawaii Association of Realtors www.hawaiirealtors.com	733-7060	1136 12th Ave., Ste. 220 Honolulu, HI 96816
HCAAO	Hawaii Council of Associations of Apartment Owners	566-2122	PO Box 726 Aiea, HI 96701
HSAP	Hawaii State Association of Parliamentarians www.hsap.org		
HSBA-CLE	Hawaii State Bar Association - Continuing Legal Educ. 537-1868 www.hsba.org		1132 Bishop Street, 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	(866) 352-9539	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