



Hawaii Condominium Bulletin

AOUO Biennium Registration

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Hawaii.gov
Official site for the State of Hawaii

Department of Commerce & Consumer Affairs (DCCA)

Condominium AOUO - Online Reregistration Filing

**GENERAL INSTRUCTIONS
FOR CONDOMINIUM ASSOCIATION BIENNIAL REGISTRATION APPLICATION
JULY 1, 2011 - JUNE 30, 2013**

REGISTRATION CHANGES: The word "registration" also refers to the word "reregistration" as required by §514B-103(a) (2) Hawaii Revised Statutes (HRS). Read and complete the forms carefully. Condominium Associations with a bond expiration date after June 30, 2011 are no longer required to submit a Certification Statement of Insurance (CSI) form as part of the biennial registration process. The fidelity bond information is certified by the condominium association officer, developer, 100% sole owner, or managing agent with a completed Delegation of Duty Form.

As part of the 2011-2013 Condominium Association Biennial Registration, an Association officer, developer or developer's agent, or 100% sole owner may delegate the duty to complete the registration application and other applicable documents to the Association's managing agent if any. The managing agent must be currently registered as a condominium managing agent or licensed as a real estate broker in Hawaii (with broker's current pocket card). The Association officer, developer or developer's agent, or 100% sole owner must complete the "Delegation of Duty to Register" form. **Although it is not necessary to submit the Delegation of Duty to Register form as part of the registration process, managing agents shall not sign registration documents without the delegation and shall maintain a copy of the form as part of the Association's records.**

WHO MUST REGISTER: Section 514B-103, HRS, requires registration by condominium projects or associations having more than five units. Condominium projects must register within 30 days of the Association's first meeting (§514B-103(a) (2), HRS). If the Association has not held its first meeting and at least one year has passed since recordation of the purchase of the first unit, then the developer, developer's affiliate, or the managing agent is required to register the Association of Unit Owners (AOUO), but need not obtain a fidelity bond (§514B-103(a)(2), HRS).

DEADLINE: TUESDAY, MAY 31, 2011 (or THURSDAY, April 28, 2011, if submitting a fidelity bond exemption application). A completed registration application consists of the timely submission of a registration application, a CSI form (if required) or a bond exemption application (if applicable), and all required fees and documents. Condominium projects that fail to successfully reregister by May 31, 2011 must file as a new applicant, and are subject to payment of penalty fees.

FEES AND PENALTIES: Enclose one check payable to "Commerce and Consumer Affairs" covering the following amounts:

- **Registration fee:** Nonrefundable \$50. Additional \$50 penalty for any late payment of registration (§514B-103(a)(3), HRS).

The current AOUO registration period ends on June 30, 2011. Section 514B-103, HRS, requires all condominium associations with six or more units to register with the Real Estate Commission.

In keeping with the Commission's paperless initiative, no renewal packets were printed; the AOUO registration is being conducted exclusively on-line. The registration form may be accessed at:

www.ehawaii.gov/condo

If your condominium association is managed by a condominium managing agent, a registration notice was mailed to the company. If your condominium association is self-managed, a registration notice was mailed to the person designated as the contact officer in the most recent registration information on file with the Commission.

This year, pursuant to Act 158, Session Laws of Hawaii 2009, a new question 3b has been added to the registration form. It requires identification of the individual designated to provide reasonable access to persons authorized to serve civil process, in compliance with Chapter 634, HRS. Chapter 634, HRS, details the information which the association's access policy must contain.

The information collected on the registration is made available to the members of the Legislature and general public upon specific request. Prospective purchasers and their real estate agents use the registration information in considering condominium purchases.

In order to process all registrations in a timely manner, the deadline for registration is May 31, 2011. Any questions regarding the registration process may be directed to Commission staff at (808) 586-2643.

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.

Letter from the Chair

Aloha! Over the last several months, the Condominium Review Committee has been busy with various projects and initiatives, some of which are discussed in this issue. Although we continue to work on new administrative rules for the condominium law, the legislative session has kept us busy tracking bills and providing testimony.

This issue includes a brief legislative report on bills related to condominiums that were still alive as we went to press. A couple of them are noteworthy, such as House Bill 1494, which requires a condominium association to prohibit smoking in common elements and limited common elements under certain conditions and circumstances. Senate Bill 1499 would require associations to disclose the number of leasehold units in a project and their appraised values, with the condominium's biennial registration. In our next issue, we will identify those bills that actually become laws during this legislative session.

As the State of Hawaii tries to keep up with changing technology, the biennial condominium association registrations are now entirely electronic. The registration period ends on June 30, so if your condominium has more than six units, please be sure your association registers if it has not already done so. Also, we have re-vamped our online public report library, and we think it is more informative and user friendly. You can search for condominium projects by name, developer, or tax map key number, and you can view the public reports, amendments, and biennial registrations. Please try it out; we hope you will like it.

In this issue, we continue our discussion of maintenance fees, this time focusing on fee disputes. A unit owner has several options if he or she wishes to contest a fee or assessment, but the law requires that the owner pay the disputed amount first. In these tough economic times where some owners have difficulty paying all their bills on time, and associations may find themselves short of funds they budgeted for, it is important to understand how the condominium law works, and how to protect your rights and alternatives.

Many thanks to the State Disability and Communication Access Board, which contributed the article on the Fair Housing Act and its requirements for reasonable accommodations and modifications in condominiums. One of the Access Board's tasks is to assess the needs of and resources for people with disabilities in Hawaii, including in the area of housing. We look forward to publishing additional articles from the Access Board in future issues.

I would like to welcome the three new commissioners who were recently confirmed by the State Senate. Rowena Cobb, who will be the new Kauai commissioner, has been a Hawaii licensee since 1979, and is an active member of the Hawaii Association of Realtors. Nikki Senter is the new public member commissioner, and is a lawyer with Imanaka Kudo and Fujimoto. She is currently a condominium consultant to the Real Estate Commission, and teaches the Real Estate Law Core B class. Aileen Wada is the new Honolulu commissioner, and is a partner at Prudential Locations. I look forward to working with all of you, and I also thank Donna Apisa for her service and her great attitude. Best wishes to you, Donna; you will be missed.

Finally, we bid a fond aloha to two-term Commissioner and Chair of the Real Estate Commission, Trudy Nishihara whose term ends on June 30, 2011. During her 8-year tenure as a Commissioner from O'ahu, she served as Chair of the Education Review Committee, and from 2006, served as the Chair of the Commission. Mahalo, Trudy for your support of condominium issues in Hawaii.

Sincerely,



Michele Sunahara Loudermilk
Chair, Condominium Review Committee



Ask the Condo Specialist

Q: I was informed by my board that my dog is not allowed in my condominium unit and that he must be removed. The bylaws of my association do not prohibit pets. There is a provision in our house rules, however, which prohibits pets. I do not want to give up my pet. Is the board action legal?

A: A condominium unit owner may keep (and upon the death of the animal, replace) their pet if the bylaws either permit or do not prohibit pets in the association, for as long as the owner continues to live in the association. § 514B-156 (a), HRS.

If the bylaws are subsequently amended to prohibit pets, a unit owner keeping a pet pursuant to subsection (a) of § 514B-156, “shall not be subject to the prohibition but shall be entitled to keep the pet and acquire new pets as provided in subsection (a)”. § 514B-156 (b), HRS.

Additionally, if the bylaws do not prohibit owners from keeping pets, § 514B-156 (d), HRS states that the bylaws also cannot prohibit tenants from keeping pets in the unit, as long as the unit owner gives written permission to keep the pet, and the tenant complies with any restrictions applicable to owners contained in the bylaws.

It appears on the face of it, that there is no basis for prohibiting your pet if your bylaws are silent. Seek the advice of an attorney who can take a closer look at your issue and advocate on your behalf.

Q: My association is considering restricting smoking on the lanai area of the individual units based upon the health concerns expressed by an owner. May we do this under the condominium law?

A: Chapter 328J, HRS, Smoking, addresses the issue of smoking in public places and places of employment. Section 328J-3 (13), HRS, prohibits smoking in all enclosed or partially enclosed areas that are open to the public, including, but not limited to, “[l]obbies, hallways, and other common areas in . . . condominiums”. Section 328J-7 (1), HRS, exempts private residences from any smoking ban, unless the residence is used as a licensed child care, adult day care, or health care facility.

With regard to prohibiting smoking on a condominium lanai, however, Chapter 328J, HRS, is silent. It neither allows nor prohibits smoking on a condominium lanai. Therefore, seek the advice of an attorney familiar with the condominium law if you are contemplating a prohibition against smoking in lanai areas. The interests of all owners, including those with health issues should be considered when implementing any ban on smoking.

Q: The owners in my association are being assessed a “special assessment”. What is this and why is it in addition to my regular monthly maintenance fees?

A: A special assessment is an assessment against all of the owners for a one time expense, that is, an expense that is not part of the normal annual budget. Examples of a special assessment are litigation fees or an assessment to purchase the fee interest in the association property.

Pay to Play: How to Address Assessment Disputes

In our last Condominium Bulletin, we discussed maintenance fees as a general matter. In this article, we will examine the procedural steps owners may take to address condominium maintenance fee or assessment disputes.

The over-arching principle is the statutory requirement to make your payments, even if you ultimately dispute the amount or basis for the assessment. Under Hawaii Revised Statutes (“HRS”) § 514B-146(c), “[n]o unit owner shall withhold any assessment claimed by the association”.

Accordingly, while your first (and common sense) reaction may be to withhold payment of any assessment in dispute, doing so may prevent you from exercising your right to challenge the association. In short, the law says that you must pay first before attempting to resolve your dispute over payment.

As a procedural matter, a unit owner who disputes an assessment may request a written statement from the association that contains the following:

- 1) the amount of common expenses included in the assessment;
- 2) the due dates of each amount claimed;
- 3) the amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- 4) the amount of any attorneys’ fees and costs included in the assessment;
- 5) a statement informing the owner that under Hawaii law, a unit owner has no right to withhold assessments for any reason;
- 6) a statement that a unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association’s assessment, provided that the unit owner immediately pays the assessment in full and keeps assessments current; and
- 7) a statement that payment in full does not prevent the owner from contesting the assessment or receiving a refund of any amounts not owed.

A written statement including this information can help an owner focus on the facts of the disputed amounts.

A unit owner who pays the association the full amount being claimed has certain options available to him regarding the resolution of the dispute.

On one hand, the owner may file a complaint in small claims court describing the nature of the dispute and the appropriate relief. Another option is to demand that the association participate in mediation in an effort to find an amicable resolution regarding either the amount or validity of the association’s claim. § 514B-146(d), HRS.

If small claims court or mediation are unsuccessful in resolving the dispute, either party may file for arbitration under § 514B-162, HRS, again, as long as the owner has paid in full all amounts claimed by the association on or before the date of filing for arbitration.

In summary, Hawaii law requires owners to pay a disputed assessment BEFORE proceeding to the various dispute resolution options.

It is important to note that HRS § 514B-146(a), gives an association the right to an automatic lien against a unit should an assessment become delinquent. Once the association’s lien has been filed it has priority over all other liens except for tax liens and sums unpaid on any mortgage of record that was recorded prior to the notice of the association’s lien. It is important, therefore, to stay current on your assessments to avoid the imposition of an automatic lien against your unit.

Finally, owners who rent out their condominium units should be aware of a legal remedy available to an association in the event maintenance fees are not paid. Hawaii law gives the association the right to collect the tenant’s rent as payment toward the delinquent assessment owed to the association. Should an owner fail to pay maintenance fees for thirty days or more, the condominium board may “demand in writing and receive each month from any tenant occupying the unit or rental agent renting the unit, an amount sufficient to pay all sums due” the association from the unit owner. This amount includes interest, but cannot exceed what the tenant owes in rent each month. HRS § 514B-145 (a).

Of course, this article is only a general review of general legal concepts related to assessment disputes. To the extent you find yourself behind in your maintenance fees, you must retain an attorney familiar with the condominium law who can provide specific advice concerning your rights and obligations given your particular facts and the applicable law.

2011 Legislative Report

Listed below are a few of the bills that the Hawaii legislature is considering this session that would affect condominium associations. At the date of this writing, these bills were still alive. By the next issue of the Condominium Bulletin, we should be able to list which bills have become law.

HB 1130 – Repeals the sunset date of July 1, 2012, to Act 158, Session Laws of Hawaii 2009, which required condominium associations, planned community associations, and cooperative housing corporations to establish an access policy for civil process servers.

HB 1494 – Requires a condominium association, if not prohibited by bylaws or articles of incorporation, to prohibit smoking in common elements and covered limited common elements, while designating a covered and accessible smoking area.

SB 714 SD1 – Requires that condominium property managers, associations of apartment owners, and planned community associations make association documents available to owners and their respective agents under reasonable terms and for reasonable costs.

SB 1125 SD1 – Extends the sunset date on the condominium dispute resolution pilot project and preserves the availability of mediation, arbitration, administrative resolution, and right of judicial appeal for disputes related to certain condominium matters.

SB 1483 SD1 - Allows a condominium association that includes time share units to exclude information about individual time share owners from the records that the association is required to maintain unless the individual time share owner requests that the association maintain the owner's name and address in the association's records.

SB 1499 SD1 – Requires condominium projects or associations to submit data on the number of leasehold units in the project or association and their appraised value with their biennial registrations with the real estate commission.

Re-designed Condominium Project Website Up and Running

The Real Estate Branch has updated one of its websites.

Access the “Developer’s Public Reports/Association Biennial Registration” at hawaii.gov/dcca_condo/index.html to see the Real Estate Branch’s newly re-designed web site. From here you can view public reports and biennial registrations for condominium associations.

At the updated web site, prospective purchasers can review a developer’s public report for a particular condominium project. The public report includes useful information about the property and the units, including the ownership status of the underlying land, e.g., whether the property is held leasehold or is fee simple; a description of the units; a description of the common areas and limited common areas; and notes any encumbrances on the title.

The condominium association’s biennial registration information is also accessible at this site. This is where you can review informa-

tion about the life of an association. For example, users of the site can review the range of maintenance fees for the association; find out whether or not pets are allowed by the association and if so, whether there are any limitations to the ownership of pets; see if the association has been involved in any litigation since the last registration period; or review basic information on the association’s budget and reserves.

Prospective purchasers or those seeking general information about a particular association will find the information contained at this web site useful. We hope you’ll find the re-designed site easy to use and access.



The Fair Housing Act and Reasonable Accommodations for Condo Residents with Disabilities

Condominium managers and Boards of Directors should be familiar with the general requirements of the federal Fair Housing Act's reasonable accommodation and reasonable modification provisions for individuals with disabilities. A reasonable accommodation is an exception, change or adjustment to a rule, policy, practice, or service. A reasonable modification is a physical structural change made to the existing premise at the resident's expense. The Act makes it unlawful to deny these reasonable accommodations or reasonable modifications for a person with a disability or anyone associated with them, when such accommodations or modifications may be necessary to afford persons with disabilities an equal opportunity to use and enjoy the dwelling – unless the request creates an undue financial or administrative burden or fundamentally alters operations.

The process for a condominium to provide a reasonable accommodation begins with the individual with a disability, a family member, or person acting on their behalf, making a verbal or written request for an exception, change or adjustment to a rule, policy or service due to their disability. The request should include the requested accommodation, and if the need is not apparent or known, explain the relationship between the requested accommodation and their disability. To show that an accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the disability. At a condominium, this request is usually submitted to the Board of Directors.

If the individual's disability is not obvious, the Board of Directors, within certain limitations of the Act, may request reliable disability-related information to verify the disability. It should be noted that the Americans with Disabilities Act (ADA) prohibits state and local government entities and places of public accommodations from requesting disability verification from individuals with disabilities who request reasonable accommodations.

Here are examples of three requests for reasonable accommodations and outcomes:

- A condominium has a 5-hour parking limit for visitors who park in the guest parking lot, and cars are subject to towing if in violation of this policy. All guest parking visitors register in the security desk sign-in log. A resident who uses a wheelchair uses a caregiver three days a week for six hours each day. The resident requests that an exception be made to allow his caregiver to park in guest parking for six hours. The Board of Directors approves the reasonable accommodation request with the understanding that the caregiver checks

in and out with security that patrols guest parking, upon arrival and departure.

- The condominium's Board of Directors is having a special meeting for all owners to discuss the needed major renovations to the property and the resulting special assessment. An owner who is deaf requests as a reasonable accommodation, a sign language interpreter for his attendance at this special meeting. The Board of Directors approves this request at their expense for the hiring of a sign language interpreter.

- The swimming pool at a condominium opens an hour later at 7:00 a.m. on Wednesday mornings due to an additional maintenance procedure. A resident with an apparent mobility disability requests that the Wednesday swimming pool maintenance schedule be adjusted to have the pool available at 6:00 a.m. due to her need to exercise in the pool for physical therapy before leaving for work. The Board of Directors denies this reasonable accommodation request, on the basis that it would disrupt the maintenance schedule and work assignments of the limited maintenance staff and fundamentally alter the condominium's maintenance operations.

The U.S. Department of Justice and U.S. Department of Housing and Urban Development, who enforce the Fair Housing Act, have jointly prepared a very informative, and easy to read Q&A publication, on the reasonable accommodation and reasonable modification provisions of the Fair Housing Act. You can download "Reasonable Accommodations Under the Fair Housing Act" at <http://www.hud.gov/offices/fheo/library/hud DOJstatement.pdf> and download "Reasonable Modifications Under the Fair Housing Act" at http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.

The next issue will continue with reasonable accommodations requests by individuals with disabilities for service and comfort animals at condominiums with "no pets" policies.

The Disability and Communication Access Board (DCAB), State of Hawaii, contributed this article. The DCAB provides technical assistance on compliance with laws affecting individuals with disabilities, and is not an enforcement agency. For information about DCAB, visit www.hawaii.gov/health/dcab or email questions to dcab@doh.hawaii.gov.

Mediation Case Summaries

Mediation Services of Maui (MSM)

From January 2011 through March 2011, MSM conducted the following condominium-related mediations:

PARTIES	ISSUE	DISPOSITION
Board vs. Owner	Violation of house rules.	Mediated to agreement.
Owner vs. Board	Dispute re: fines levied by board for violation of house rules.	Parties could not agree to mediation.
Owner vs. Board	Dispute re: fines levied By board for violation of house rules.	No mediation; owner paid fines.

Mediation Center of the Pacific (MCP)

From January 2011 through March 2011, MCP conducted the following condominium-related mediations:

Owner vs. Board	Enforcement of house rules regarding noise.	Board refused mediation.
Owner vs. Board	Dispute over the authority to charge owners for attorney's fees.	Board refused mediation.
Owner vs. Board	Allegation that board failed to follow project documents before alteration of common element.	Owner withdrew case.
Board vs. Owner	Dispute over source of water leak and responsibility to repair.	Mediated to agreement.
Owner vs. Board	Allegation that board installed flooring contrary to bylaw provision.	No response from Board to request for mediation.
Owner vs. Board	Enforcement of house rules regarding noise.	Mediated; no agreement.

Kaua'i Economic Opportunity (KEO)

From January 2011 through March 2011, KEO conducted one condominium mediation.

Owner vs. Board	Dispute over interpretation of the bylaws regarding an addition to the condominium unit.	Mediated; no agreement.
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From the period January 2011 through March 2011, West Hawaii Mediation and Kuikahi Mediation Center did not conduct any condominium-related mediations.

2011 Real Estate Commission Meeting Schedule

Laws & Rules Review Committee – 9:00 a.m.

Condominium Review Committee – Upon adjournment of the
Laws & Rules Review Committee Meeting

Education Review Committee – Upon adjournment of the
Condominium Review Committee Meeting

Real Estate Commission – 9:00 a.m.

Wednesday, April 13, 2011
Wednesday, May 11, 2011
Wednesday, June 8, 2011
Wednesday, July 13, 2011
Wednesday, August 10, 2011
Wednesday, September 7, 2011
Wednesday, October 12, 2011
Wednesday, November 9, 2011
Wednesday, December 7, 2011

Thursday, April 28, 2011
Friday, May 27, 2011
Thursday, June 23, 2011
Friday, July 29, 2011
Friday, August 26, 2011
Friday, September 23, 2011
Friday, October 28, 2011
Wednesday, November 23, 2011
Friday, December 16, 2011

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

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 (808) 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 (808) 586-2643 to submit your request.

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

Clarification

We would like to clarify information contained in "Transferring Limited Common Elements", an article which appeared in our February 2011 Condominium Bulletin concerning the transfer of limited common elements.

Section 514B-40, HRS, applies only to those condominium associations that were either created under Chapter 514B, HRS, or that have opted in to Chapter 514B, HRS. If your association was not created under Chapter 514B, HRS, or did not adopt it, then, § 514B-40, HRS is not applicable to situations involving the transfer of limited common elements. Again, consult with an attorney familiar with the Hawaii condominium law for specific legal advice.

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