



Hawaii Condominium Bulletin

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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.

RICO Tip Line: Beware of Aiding and Abetting! (Part 1)

In the course of fulfilling your duties to a client who wishes to place his or her home on the real estate market for sale or rental, you may recommend that a client renovate a bathroom or kitchen, replace and install new flooring tiles or splash on a fresh coat of new paint. Your client asks you, "Who do you recommend?" You flip up your iphone, go through your list of contractors and provide several names for your client to use. Or you tell your client, "I'll have my contractor give you a call to set-up an appointment." Or, when your client is out of state, you may be asked to handle the entire project as part of getting the property ready for marketing.

While the intent is to certainly help your client quickly, you place your client and yourself at risk if the contractor, electrician, plumber, or other building tradesperson you recommend or hire is not properly licensed in the State of Hawaii. To put it simply, you may be found to be aiding and abetting an unlicensed person.

RICO receives many complaints about unlicensed contractors, either in the form of a written complaint from a disgruntled former client, or a tip of ongoing unlicensed activity at a jobsite. Persons engaging in contracting without the proper contractor licenses are in violation of Hawaii Revised Statutes (HRS) 444-9.

Persons operating without the proper contractor's license are not playing by the same rules as licensees. They may not be paying general excise taxes, workers compensation premiums or liability premiums. They may not be paying minimum wage to their employees, or providing the required unemployment coverage. And, they have little incentive to clearly document the terms of their construction contract with a client or resolve disputes in a professional manner. In short, although unlicensed contractors will sometimes offer to perform work for you cheaply and quickly, there are a variety of ways a construction contract can go wrong, resulting in a complaint about the unlicensed contractor,

and you, as the person who provided the referral. See, HRS 436B-19(6) and (16). Furthermore, hiring an unlicensed contractor puts your client at risk. They may be sued for accidents that occur on a jobsite and may be responsible for code violations, permitting problems and the like.

Finally, even assuming that your construction project is completed without a major incident, the fact that unlicensed work was performed on a property for sale creates its own complications for the owner-seller as well as for the seller's agent. Permitting issues, code violations, or workmanship issues may impact the outcome of a home inspection, the appraised value of the property, and the content of the Seller's Disclosure Statement.

How do you know if an individual is licensed? Check license status and complaints history by going to DCCA's Check Out a Business Online webpage at www.businesscheck.hawaii.gov, or call 587-3222. For more information about hiring a licensed contractor, check out the Hire a Licensed Contractor webpage at www.licensedcontractor.hawaii.gov.

In the next issue of RICO's TIP LINE: Aiding and Abetting, Part II, the role of the Condominium Association, its Board, and Property Managers in preventing unlicensed activity.



Letter from the Chair

In the last issue, I welcomed our three new commissioners; one of whom is Nikki Senter. Nikki is the new public member of the Real Estate Commission, and she is now also Vice Chair of the Condominium Review Committee. We look forward to her help in accomplishing the many tasks the condominium section handles.

Now that the legislative session is over, in this issue we report on the bills that became new laws that affect condominium projects. These include Act 48, which extends from six months to 12 the period of time for which an association may collect past due assessments from foreclosure purchasers. It also increases from \$3,600 to \$7,200 the maximum amount that can be collected. Act 98 provides some administrative relief to condominium associations, and now permits the timeshare association to be listed as the representative agent for individual timeshare owners. Also of note is a bill that did not pass. Senate Bill 1125 would have extended the repeal date for the condominium dispute resolution program, but it did not pass and therefore, disputes can no longer be resolved by a hearings officer at the DCCA.

In this issue, we address the circumstances and extent to which a condominium association may enter a condo unit, the developer's power to appoint directors to the association's board, how to obtain copies of condominium documents, and payment of insurance deductibles after a casualty. If you have any questions, please do not hesitate to contact the condominium section of the Real Estate Branch, or an attorney if you have a specific circumstance or issue.

The State Disability and Communication Access Board has contributed an informative article about service and comfort animals in condominiums, for people with disabilities. The Fair Housing Act requires associations to make reasonable accommodations for such animals, even if the condominium project has an across-the-board "no pets" policy. However, there are reasonableness standards and the association is permitted to make certain inquiries and verifications prior to allowing a service or comfort animal.

The three committees of the Real Estate Commission are required by law to meet in all of the counties from time to time. We generally try to meet in each county at least once a year, so in September the committees, including the Condominium Review Committee, met in Kona. At the same time, we hold a Specialists' Office for the Day, which gives residents who do not travel to Honolulu the chance to meet personally with our various specialists. These sessions include the Commission's condominium specialists, who are available to assist with general questions about the condominium laws. The meeting schedules are posted on the Commission's website: www.hawaii.gov/hirec so if you live in a county other than Honolulu, please feel free to attend a meeting when we are in your area.



Sincerely,

A handwritten signature in cursive script that reads "Michele Sunahara Loudermilk".

Michele Sunahara Loudermilk
Chair, Condominium Review Committee

Ask the Condo Specialist

Q: I live in a newly-developed condominium association. A board meeting was held recently and the developer appointed four members to the board. Is this legal?

A: Hawaii Revised Statutes (“HRS”) § 514B-106 (d), provides for a period of developer control of a condominium association to the extent that the declaration for the association allows. It states that the declaration may authorize a period of developer control where “a developer, or persons designated by the developer, may appoint and remove the officers and members of the board”.

HRS § 514B-106(d), states that developer control terminates, however, no later than the earlier of: 1) sixty days after conveyance of seventy-five per cent of the common interest to unit owners other than the developer or affiliate of the developer; 2) two years after the developer has ceased to offer units for sale in the ordinary course of business; 3) two years after any right by the developer to add new units was last exercised; or 4) the day the developer, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association.

Therefore, the answer to your question depends on the particular facts of a case, in this instance upon relevant language in the condominium declaration and the time frame of developer control in your situation. As usual, seek the advice of an attorney familiar with the condominium law for fact specific responses to your situation.

Q: I would like copies of the declaration and bylaws for my condominium association. May I obtain these copies from the Real Estate Branch?

A: For true copies of the declaration and bylaws, and to be assured of all updates to those documents, the Bureau of Conveyances is the office to contact. It is a part of the Department of Land and Natural Resources and is located in the Kalanimoku Building, 1151 Punchbowl Street in Honolulu. The telephone number is 587-0147, and its web address is www.hawaii.gov/dlnr/boc.

Q: My condominium unit suffered water damage, which my association’s insurance is covering. The insurance adjuster is insisting that I pay the deductible before payment of any claims is released. Must I pay the deductible?

A: The condominium law gives boards of directors some options with regard to the deductible in settling damage claims to a unit or common elements. HRS § 514B-143 (d), states that in the case of a claim for damage to a unit or common elements, the board may, among other things, “[r]equire the unit owners of the units affected to pay the deductible amount”. The board may also pay the deductible as a common expense, in which case all owners would share in the cost of the deductible, or, after giving notice to the owner and an opportunity for a hearing, the board may assess a deductible amount against owners who cause the damage, or from whose units the damage or cause of loss originated.

Additionally, HRS § 514B-143 (h) states that in the case of a condominium project in which all units are restricted to nonresidential use, that the provisions in HRS § 514B-143 “may be varied or waived”.

The information provided here is for general purposes only, and is not intended to replace specific legal advice from an attorney familiar with the condominium law, and any other applicable law. Readers are strongly advised to consult with an attorney regarding their particular situation.

The Fair Housing Act and Reasonable Accommodations for Service and Comfort Animals at “No Pets” Condos for Residents with Disabilities



The last issue of this newsletter provided a summary of the reasonable accommodation provisions of the Fair Housing Act for individuals with disabilities. A reasonable accommodation is an exception, change or adjustment to a rule, policy, practice, or service. The Act makes it unlawful to deny a reasonable accommodation 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. A reasonable accommodation request is usually submitted to the condominium’s Board of Directors.

One reasonable accommodation request received by many condominiums with a “no pets” policy is from individuals with disabilities requesting an exception to this policy to be allowed to have a service or emotional support, comfort animal. Under the Fair Housing Act, the condominium must make an exception to its “no pets” policy to accommodate the individual with a disability – provided there is an identifiable relationship between the requested accommodation for the animal and the disability of the individual. A condominium may not impose extra or additional fees as a condition for approving the requested reasonable accommodation for an animal.

It is important to note that the reasonable accommodation provisions of the Fair Housing Act allow for an animal – including both service and comfort therapy animals – as an accommodation for an individual with a disability, and there is no training or certification required for the animal. Animals can include dogs, cats, birds or other animals. However, the Americans with Disabilities Act (ADA) which does not cover housing, has a different and restricted definition of service animals that does not include comfort, emotional support animals.

When a condominium with a “no pets” policy receives a request from an individual with a disability to have an animal, and the person’s disability and need for the animal is readily apparent or known, the condominium may not request any additional information for approving the requested reasonable accommodation.

If the disability is apparent or known, but the need for the animal as an accommodation is not readily apparent or known, the condominium may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example: An individual who is deaf requests a reasonable accommodation to the “no pets” policy to have his dog. The individual’s dis-

ability is readily apparent, but the need for the dog is not readily apparent or known to the condominium's Board of Directors. The individual upon request for information related to the need for the accommodation explains that the dog alerts him to the presence of people and sounds, such as someone knocking at the door, the building fire alarm, the apartment smoke detector, appliance buzzers, and other sounds both inside the apartment and when outside. This individual with a disability provided upon request information for the needed accommodation related to his disability. The condominium may not request additional information for approving the requested accommodation.

When the disability of an individual who requests an accommodation is not readily apparent or known, the condominium may request within certain limitations of the Act, reliable disability-related information that is (1) necessary to verify that the person meets the Act's definition of disability (i.e. has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the disability and need for the requested accommodation.

Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself e.g. proof of receipt of disability benefits, Handi-Van eligibility or disability bus pass use, or a credible statement by the individual himself. Other disability verification sources include but are not limited to health care providers, non-medical service agencies, peer support groups, or a reliable third party who is in a position to know about the individual's disability.

Once the condominium has established that the individual meets the Act's definition of disability, the request for further documentation should only seek information that is necessary to evaluate if the accommodation for an animal is needed because of a disability. In most cases, an individual's medical records or detained information about the nature of the person's disability are not necessary for the inquiry. Information related to disability verification and reasons for the accommodation must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation, or unless law requires disclosure.

Example: An individual requests to have a comfort animal in his unit, and his disability and need for the animal are not readily apparent or known.

The condominium requests information to verify disability and the need for the animal. The individual is a current participant in an employment program with a job-training agency specifically limited to individuals with disabilities, and provides a contact phone number for the program's social worker. Upon phone contact by the condo-

minium, the social worker is able to provide information to verify disability and the need for the comfort animal. The condominium may not request additional information for approving the requested accommodation.

In summary, condominiums with "no pets" policies are reminded that under the reasonable accommodation provisions of the Fair Housing Act:

- An individual with a disability can request an accommodation to have an animal that includes a service and emotional support, comfort animal.
- There is no requirement for training or certification of the animal.
- Animals can include dogs, cats, birds, and other animals.
- If the person's disability and need for the animal is readily apparent or known, the condominium may not request any additional information for approving the requested reasonable accommodation.
- Once the condominium has established that the individual meets the Act's definition of disability, the request for further documentation should only seek information that is necessary to evaluate if the accommodation for an animal is needed because of a disability.
- In most cases, an individual's medical records or detained information about the nature of the person's disability are not necessary for the inquiry.
- The Americans with Disabilities Act (ADA), which does not cover housing, has a different and restricted definition of service animals that does not include comfort, emotional support animals.

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 provisions of the Fair Housing Act. You can download "Reasonable Accommodations Under the Fair Housing Act" at <http://www.hud.gov/offices/ftheo/library/huddojstatement.pdf>.

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.

Legislative Action Affecting Condominium Associations

Below is a summary of some of the bills tracked by the Real Estate Branch this year and passed by the legislature that affect condominium associations.

This list is not inclusive of all bills passed by the legislature that may affect condominium life. For more information on these and other bills, you can visit the website capitol.hawaii.gov.

Act 48 – Amends HRS § 514A-90, and HRS § 514B-146 (h) by increasing the amount that condominium associations are authorized to collect in past-due assessments and extending the time frame in which to collect it from the purchaser of a delinquent unit who purchases from the foreclosing lender.

Act 98 – Amends HRS § 514B-153 (e) by requiring a condominium association that includes time share units to list its name and address as the representative agent for individual time share owners in records that the association is required to maintain, unless the individual time share owner requests the association to maintain the

individual owner's name and address in the association's records instead.

Act 9 SLH 2009, set the repeal date for the Condominium Dispute Resolution Program as June 30, 2011. This date was not extended and as such, an administrative hearing through the Department of Commerce and Consumer Affairs is no longer available as an option for condominium dispute resolution.

Act 141 Relating to Small Claims Court – Raises the maximum monetary claim that may be filed in small claims court, from not more than \$3,500, to not more than \$5,000. Filing in small claims court is an option for condominium dispute resolution where the litigated amount is not more than \$5,000.

Act 65 Relating to Service of Process – Repeals the sunset date of July 1, 2012, requiring condominium associations to establish an access policy for civil process servers.

Three New Members Join the Real Estate Commission

The Real Estate Commission welcomes three new Commissioners. As of July 1, 2011, Rowena Cobb, Aileen Wada, and Nikki Senter have joined the six current Commissioners in the work of the Commission.

Ms. Cobb is the principal broker and owner of Cobb Realty, which was founded in 1982. Among her many past and present positions, Ms. Cobb is a member and continuing education instructor for the Kauai Board of REALTORS.



Cobb



Wada



Senter

Ms. Wada is an O'ahu broker and manager at Prudential Locations, LLC since 1979. Ms. Wada is the recipient of numerous awards from the brokerage, including the President's Circle, Leading Edge Society Award, and the Client Service Award.

Ms. Senter is an attorney with the law firm of Imanaka, Kudo and Fujimoto. She joins the Commission as a public member. Her law practice includes work in the areas of condominium and real estate development. Ms. Senter also teaches the Commission's core courses.

Mediation Case Summaries

Mediation Services of Maui (“MSM”)

From April 2011 through July 2011, MSM conducted the following condominium-related mediations:

PARTIES	ISSUE	DISPOSITION
Owner vs. Board	Alleged conflict of interest by Board.	Mediated; no agreement.
Owner vs. Board	House rules regarding pets and common areas.	Board declined mediation.

Mediation Center of the Pacific (“MCP”)

From April 2011 through July 2011, MCP conducted the following condominium-related mediations:

Owner vs. Board	Provision of documents; reserve fund.	Mediated; no agreement.
Owner vs. Board	Bylaw provisions relating to the installation of wireless components.	Mediated to agreement.

West Hawaii Mediation Center (“West Hawaii”)

From April 2011 through July 2011, WHMC conducted one condominium mediation.

Board vs. Owner	Dispute over rules regarding access to individual units.	Mediated to agreement.
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From the period April 2011 through July 2011, Kauaʻi Economic Opportunity and Kuikahi Mediation Center did not conduct any condominium-related mediation.

Association Access to Your Unit

Each condominium unit owner in Hawaii is statutorily obligated to maintain their unit pursuant to Hawaii Revised Statutes (“HRS”) § 514B-137.

In light of this obligation, HRS § 514B-137 provides that unit owners are mandated to allow “the association and the other unit owners . . . employees, independent contractors, or agents of the association or other unit owners, during reasonable hours, access through the owner’s unit” which is reasonably necessary for the purposes of maintenance, repair, or replacement within a unit. In addition, review your condominium declaration and bylaws to determine whether those documents address the extent to which the condominium association is responsible for the operation of the property and the unit owner is responsible for the maintenance, repair and replacement of the owner’s unit.

Moreover, subsection (b) of HRS, § 514B-137 goes further and gives the association “the irrevocable right”, through the board, for access “at any time as may be necessary for making emergency repairs to prevent damage to the common elements” or to other units.

While an owner may feel inconvenienced or that his privacy has been violated, for the benefit of the association and other owners, the condominium law recognizes the importance of the right to access units to make reasonable repairs, and in times of an emergency, the irrevocable right to such access. Again, also review your condominium documents for any specific conditions regarding access to your unit.

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, September 7, 2011

Wednesday, October 12, 2011

Wednesday, November 9, 2011

Wednesday, December 7, 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