



Hawaii Condominium Bulletin

Rights and Responsibilities of Unit Owners

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

In our last Bulletin, we excerpted a portion from the booklet "Condominium Property Regimes: Board Members' Powers and Duties".

Living in a condominium association has its advantages. For example, you can purchase a condominium unit for less, generally, than the price of a single family home. Often, the purchase of a unit comes with amenities such as the use of a swimming pool and exercise facilities.

On the other hand, communal living and shared ownership of property present unique challenges not experienced in single-family home ownership. Rules and restrictions govern members' everyday life in the association and owners are expected to participate in a majority-rule form of government within the condominium association.

Following is an excerpt from "Condominium Property Regimes: Owner Rights and Responsibilities" the second of two Commission booklets completed in 2009.

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. These things are essential to the survival of the association. Unit owners should also be aware that certain restrictions and responsibilities accompany condominium ownership.

1. Maintenance of Unit and Limited Common Elements

While the association is responsible for maintaining the common elements of the condominium project, you are responsible for the maintenance and upkeep of your unit interior. Typically, this includes the carpeting and drapes, interior walls, cabinets, counter tops, and the appliances and fixtures. You may also have specific maintenance responsibility for limited common elements reserved for your exclusive use such as private yards, lanai, and front doors. You can be required to pay for maintenance of limited common elements if provided in the declaration or bylaws (HRS § 514B-41 (a)).

NOTE: If the common elements cause damage within your unit (e.g. a leak), the association is not automatically liable for that damage, although the association is responsible for repairing the common element which caused the damage. Generally the association must be at fault - negligent - before it will be held liable for the damage caused within your unit by a common element. (The same is true for owners - their liability is usually based on fault or negligence, but sometimes the governing documents make unit owners responsible for damages caused by them or their tenants.)

2. Payment of Common Expenses

Each unit owner has the duty to pay his share of common expenses in a timely manner. Failure to fulfill this financial obligation may jeopardize the association's finances by creating a shortfall of funds necessary to operate the project. Failure to pay may also subject the owner to interest charges and/or late fees and attorneys' fees.

Letter from the Chair

Aloha! As you probably know, the Legislature is back in session, and the Condominium Review Committee has been busy tracking bills and providing testimony where warranted. This issue includes a brief legislative update on bills that affect the condo law, Chapters 514A and 514B of the Hawaii Revised Statutes.

We continue our Ask the Condominium Specialist column and address questions relating to the common issue of pets, and the hopefully not-so-common issue of problems with a resident manager. We also include an excerpt from a Real Estate Commission publication called “Condominium Property Regimes: Owner Rights and Responsibilities”, because it is important for owners to understand that they too have certain rights and responsibilities when they live in a condominium. For the full publication, you can visit the Commission’s website at http://hawaii.gov/dcca/real/condo_ed/condo_gen/condo_bod.

At the end of last June, the pilot program for resolving certain condominium disputes by a hearings officer at the Department of Commerce and Consumer Affairs expired and was not extended. Therefore, that avenue of dispute resolution is no longer available to condominium owners and associations. However, this issue highlights three cases that were heard by the Office of Administrative Hearings prior to June, as the reasoning and analyses in the decisions are still of interest and may be helpful to some of you.

In December, we held a forum and workshop for our condominium project consultants. The all-day workshop is intended to provide a means for the consultants to share questions and issues, review relevant court decisions and new legislation, and to generally discuss any problems that arise during their reviews of draft public reports and amendments. The anticipated result of these workshops is the maintenance of consistency among our consultants, and a better understanding of the issues that arise. Many people are not aware of the long hours our consultants invest in their work for the Commission, and we are truly grateful to all of them for dedicating their time, energy, and experience to these tasks. Thank you!



Sincerely,

A handwritten signature in cursive script, reading "Michele Sunahara Loudermilk".

Michele Sunahara Loudermilk
Chair, Condominium Review Committee

Ask the Condo Specialist

Q: The resident manager in my building harasses me. He accuses me of various rule violations which I believe to be frivolous and bordering on harassment. For example, he accused me of throwing cigarette butts off my lanai and I do not even smoke! This has been occurring for about a year. I own my unit and have no intention of moving. What can I do to stop his actions?

A: First of all, document all of your interactions with the resident manager. Keep a record of his statements to you, including the date of occurrence and any conversation that occurred. This information will be helpful in the event your complaint is considered in a forum such as a board meeting or mediation.

Familiarize yourself with your association's house rules so that you can prepare to advocate on your own behalf. Know the rules that you are accused of violating. In general, knowledge of your condominium documents, including the house rules, bylaws and declaration is a good thing.

Talk to other owners. Have they had similar experiences with this resident manager? There is strength in numbers. If other owners have experienced this type of behavior by the resident manager and are willing to support you, you can act as a group to stop the resident manager's actions.

The resident manager in a condominium association works at the behest of the condominium board of directors. He is an employee of the association who is hired and fired at the discretion of the board. You may request to be placed on the agenda for a board meeting to air your concerns before the full board concerning the resident manager. This public forum creates a record of your complaints while also giving the resident manager an opportunity to respond to your allegations. Perhaps an agreement may be reached by airing your complaints at a meeting with others present.

Mediation is an option too. On O'ahu, Mediation Center of the Pacific conducts mediation for condominium owners involved in condominium-related disputes. They may be reached at 521-6767. Depending upon the issues presented at mediation, the cost may be partly subsidized by the Real Estate Commission. In such instances, the cost to participants is \$25 per party.

If your attempts to stop the resident manager's actions against you fail, you may need the advice of an attorney who can advise you of a course of action to stop the accusations of house rule violations made by the resident manager against you.

Q: I live in a "no pet" building. My neighbor has a dog. When I purchased my unit, I did so in part because I did not want to live in a building with animals. Can the board force my neighbor to get rid of the dog?

A: HRS § 514B-156 addresses the issue of pets kept in condominium units. An owner may keep a pet in the owner's unit pursuant to a provision in the bylaws which allows owners to keep pets. Also, in the absence of a provision in the bylaws affirmatively prohibiting pets, for example, where the bylaws are silent on this matter, an owner may keep a pet. Upon the death of an animal, the owner may replace the pet with another, and may continue to do so for as long as the owner continues to reside in the owner's unit, or another unit, subject to the same bylaw provisions. If bylaws are subsequently amended to prohibit pets, the owner retains the right to keep the pet, or to acquire new pets.

For practical purposes, then, any restrictions on pet ownership must be stated in the condominium bylaws. Moreover, this right to keep a pet remains even after the bylaws are amended to prohibit pets, i.e., the right to pet ownership is grandfathered. This may be the case with your neighbor. The bylaws to your association may have been amended to prohibit pets after your neighbor, and perhaps others, had been keeping pets. Pursuant to HRS § 514B-156 (b), anyone in your association with a pet at the time of the bylaw amendment restricting pets is grandfathered as to pet ownership. While at the time of purchasing your unit, the association was truly "no pets" via a provision in the bylaws prohibiting pets, it may not always have been the case, which explains why your neighbor and others in your association continue to keep pets.

The law concerning pets applies as well to tenants under certain conditions, pursuant to HRS § 514B-156 (d).

The May 2011 issue of the Condominium Bulletin addressed a related pet issue. You may view the Ask the Condominium Specialist question and answer at the Real Estate Branch website, hawaii.gov/hirec, by clicking on to the "Condominium Bulletin" link. Also, the Office of Administrative Hearings issued a decision recently involving a dispute regarding the ability of a condominium unit owner to keep a pet. Refer to the piece "Condominium Dispute Resolution: Administrative Hearings" in this bulletin for a cite to view the decision.

The information provided herein is informal and for informational purposes only. Consult with an attorney familiar with the Hawaii condominium law for specific legal advice.

Rights and Responsibilities of Unit Owners

(cont. from page 1)

A unit owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalties, late fees, lien filing fees, and any other charges included in the assessment; and
- (3) The amount of attorneys' fees and costs, if any, included in the assessment.

The statement must also inform the owner of the owner's rights under the law; namely, that:

- (1) Hawaii law gives unit owners no right to withhold assessments for any reason;
- (2) 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 the unit owner immediately pays the assessment in full and keeps assessments current; and
- (3) Payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owned (HRS § 514B-146 (c)).

A unit owner who pays an association the full amount it claims also may file in Small Claims Court or require the association to mediate to resolve disputes concerning the amount or validity of the association's claim. If the dispute cannot be resolved in mediation, either party may file for arbitration, but the unit owner must keep all assessments current during the arbitration, or it may be suspended or dismissed (HRS § 514B-146 (d)).

REMEMBER: Hawaii law has NO provision allowing owners to either withhold assessments or pay them into an escrow account. Even if you have a dispute with the association or do not agree that you owe the money, ALWAYS pay your assessment first, "under protest" if necessary, and then resolve the dispute. In that way, you can avoid unnecessary late and legal fees.

Your regular monthly assessments cover the day-to-day costs of running the association, which may include repairs and maintenance costs, insurance reserve funds, security, and the operation of common recreational facilities such as swimming pools and tennis

courts. The law gives the board wide discretion in determining the level and timing of repairs and improvements, subject to the statutory requirement to estimate and fund replacement reserves (see page 31) (HRS § 514B-148), although the bylaws may impose restrictions. The amount of a unit owner's fee is determined by the owner's common interest as set forth in the declaration (HRS § 514B-41 (a)).

All owners MUST pay their assessments, which constitute a priority lien on the unit (HRS § 514B-146 (a)); they cannot be avoided simply by not utilizing various common facilities (HRS § 514B-144 (g)). Assessments cannot be withheld or put into escrow because owners think they do not owe them or disagree with board policies. The board of directors is responsible for notifying the owners in writing of any maintenance fee increases at least 30 days in advance (HRS § 514B-144 (h)).

If you are purchasing a condominium unit, you can be held liable for the seller's share of all unpaid assessments for common expenses up to the time of the transfer. You may obtain a statement of the amount of unpaid assessments from the board of directors (HRS § 514B-144 (f)), to ensure that the unit's account is current at the time of purchase.

In the event that an owner loses the unit through foreclosure, the buyer in foreclosure may be liable for assessments charged to the unit and still owing prior to the foreclosure up to an amount equal to twelve months of maintenance fees or a fixed amount (currently \$7,200). The remaining unpaid share of assessments will be a common expense allocated among all of the units, including the foreclosed unit (HRS § 514B-146 (b)).

3. Payment of Other Expenses

In addition to paying maintenance fees and assessments, you should expect to be individually responsible for such items as real estate taxes, cost of a private telephone, personal insurance premiums covering the contents and interior of the condominium unit, and utility costs billed directly to you.

4. Improvement of the Apartment Unit

If you wish to make any additions or alterations to your condominium unit, be sure to check the law, declaration, and bylaws for any restrictions that may apply. No work may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any

easement, as determined by the board of directors (HRS § 514B-140 (a)). If you're not sure what restrictions apply in your case, ask the board of directors BEFORE beginning work.

You must have the approval of the board of directors and the consent of at least 67 percent of unit owners and the consent of all directly affected owners to do any "material" addition or alteration, or to excavate a basement or cellar (HRS § 514B-140 (b)). "Nonmaterial" additions and alterations within your unit, such as renovating your kitchen or removing a non-load-bearing partition wall between two rooms, may require the approval only by the board unless otherwise provided by the declaration or bylaws (HRS § 514B-140 (c)). The installation of a solar energy device on a common element (for example, the roof) is allowed for single family dwellings and townhouses (HRS § 196-7).

You should always check the declaration and bylaws. They may require the approval of a majority of the owners to any renovations, including all owners who are directly affected. Plans and specifications prepared by a licensed architect may also be required.

5. Compliance with the Governing Documents and House Rules

You have an obligation to comply with the association's governing documents and house rules. Failure to comply may result in fines or legal action.

6. Responsibility for the Actions of Others

As a unit owner, you are often personally responsible for your own actions and the actions of your guests, tenants, family members, and pets with respect to the common areas or the other owners in the project. ALL persons using the property must comply strictly with the restrictions contained in the declaration, bylaws, and house rules (HRS § 514B-112).

B. Rights of Condominium Unit Owners

Along with the duties and obligations of condominium ownership, owners have specific protections provided by Chapter 514B. So that each unit owner may be informed and have a voice in the operation of the condominium, Hawaii law provides for a number of rights including notice of meetings, open board meetings, elections, removal of directors, voting, and personal access to condominium records.

1. Meetings

DIFFERENT rules and requirements apply to association and board meetings. Therefore, you should be careful to distinguish between the two types of meetings.

Association Meetings:

Association meetings fall into two categories, "annual" association meetings and "special" association meetings. The function of the annual meeting is to present certain important matters that must be addressed by the entire association for consideration and/or approval. Election of directors, review of the annual financial report, reports of board officers and association committees, amendment of declaration or bylaws, and status of projects proposed or approved at the prior annual meeting are a few of the items often found on the annual meeting agenda. If so provided by the declaration or bylaws, association meetings may be conducted by any means that allow participation by all unit owners in any deliberation or discussion (HRS § 514B-121 (d)). Association meetings usually must be held at the condominium or elsewhere within the State as determined by the board, except in the event of a natural disaster (HRS § 514B-121 (e)).

NOTE: Once elected, board members have broad powers to act on behalf of the association and its members, subject to the law, declaration and bylaws (HRS §§ 514B-106, 514B-107). Failure to participate in the annual meeting and election severely limits your opportunity to directly influence the direction of the association.

Special association meetings are held from time to time to address one or more specific items that require membership consideration and approval and cannot wait until the next annual meeting, such as amendments to project documents and removal of directors. Special meetings may generally be called by the president, a majority of the board, or by a petition to the secretary or managing agent by not less than 25 percent of unit owners (HRS § 514B-121 (b)). As a general rule, only the topics listed in the notice may be considered at a special meeting.

Association meetings usually must be held at the condominium or elsewhere within the State as determined by the board, except in the event of a natural disaster (HRS § 514B-121 (e)). Regardless of what the bylaws state, notice of association meetings must be given to members at least 14 days prior to the meeting. The notice must contain the date, time, and place of the meeting, as well as items on the meeting agenda, including the general nature and rationale of any proposal to amend the declaration or bylaws, or remove a member of the board; provided that no unit owner is precluded from proposing an amendment to the declaration or bylaws or removal of a director at an annual meeting (HRS § 514B-121 (c)). See also "Removal of Directors," "Amendment of the Declaration" and "Amendment of the Bylaws" on pages 45, 46, and 47.

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Rights and Responsibilities of Unit Owners (cont. from page 5)

Board Meetings:

Chapter 514B requires that boards meet at least once a year. Notice of board meetings must be posted at least 72 hours prior to the meeting, or simultaneously with notice to the board (HRS § 514B-125 (d)), at prominent locations within the project. Unless otherwise provided by the declaration or bylaws, board meetings may be conducted by any means of communication through which all participants may simultaneously hear each other during the meeting (HRS § 514B-125 (c)).

All board meetings, except for those held in "executive session," are open to all members of the association, unless a majority of quorum of the board votes otherwise. You may participate in any discussion, unless a majority of a quorum of the board votes otherwise (HRS § 514B-125 (a)). The board, with approval of a majority of quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters; any pending or potential lawsuits involving the association; when necessary to protect the attorney-client privilege of the association; or when necessary to protect the interests of the association while negotiating con-

tracts, leases, and other commercial transactions. The board must first announce, in open session, the nature of the business to be discussed in executive session (HRS § 514B-125 (b)).

Although a board may vote not to allow owners to participate at board meetings, many boards permit owner participation, subject to reasonable restrictions. For example, boards may impose time limits on owner statements and require that complex issues be presented to the board in advance or in writing. Some boards set aside time at the beginning or end of their meetings for owner discussion.

Minutes must be kept for board meetings. The law requires that board minutes include the recorded vote of each board member on all motions, except those voted on in executive session (HRS § 514B-126 (a)). Therefore, owners should try to ensure that the board makes a decision or acts on any issue the owner presents to the board at a meeting. The minutes will then include a record of disposition of the issue. When a board decision is unanimous, the minutes may simply reflect that fact. Normally, minutes do not include a summary of the discussions leading to the vote.

Legislative Action Affecting Condominium Associations

At the time of this writing, the Hawaii Legislature has been in session for two months, with approximately another two months left to go. Adjournment *sine die* is May 3, 2012. Bills that remain alive have "crossed over" to the other side, to the House or Senate, from their originating side for further consideration, public hearings and fine tuning.

The Real Estate Commission has been following bills that, if passed, would amend the Hawaii condominium law. Some of the bills that are still alive would: 1) allow a condominium board to authorize the installation of separate utility meters, notwithstanding provisions to the contrary in the association's declaration or bylaws, provided that the association pays for the cost of installing the meters; 2) prohibit a board of directors from leasing common ele-

ments of an association at a rent set below fair market value to individuals or entities who are not unit owners; 3) require separate utility metering for associations consisting of residential and non-residential units of all condominium associations, regardless of the date of construction; and 4) authorize the assignment of specific parking stalls for the placement of electric vehicle charging stations under certain conditions.

The Commission is also closely monitoring bills related to Act 48 (2011), commonly known as the mortgage foreclosure law. Act 48 amended Hawaii Revised Statutes, Chapter 514B as it related to association liens and the collection of unpaid assessments. Several bills seeking to amend portions of the existing law remain alive.

Mediation Case Summaries

Mediation Services of Maui (“MSM”)

From December 2011 through February 2012, MSM conducted the following condominium-related mediations:

PARTIES	ISSUE	DISPOSITION
Owner vs. Board	Whether bylaws provided for repairs by association to unit due to water damage.	Owner decided not to mediate.
Owner vs. Board	Whether damage to unit caused by construction of a common element should be repaired and paid for by the association.	Mediated, but no agreement reached.

Mediation Center of the Pacific (“MCP”)

From December 2011 through February 2012, MCP conducted the following condominium-related mediation:

Owner vs. Board	Procedure for board ballot initiatives.	Owner w/drew; case closed.
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West Hawaii Mediation Center (“West Hawaii”)

From December 2011 through February 2012, WHMC conducted the following condominium-related mediation:

Board vs. Owner	Dispute concerning interpretation of governing documents relating to work done on the exterior of a unit.	Mediated to agreement.
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For the period December 2011 through February 2012, Kaua`i Economic Opportunity and Kuikahi Mediation Center did not conduct any condominium-related mediations.

Condominium Dispute Resolution: Administrative Hearings

The Office of Administrative Hearings issued three decisions recently which had been heard under its Condominium Dispute Resolution program. This was a temporary program which ran through June 30, 2011.

The three decisions are Everett Senter v. Harbor Lights, Association of Apartment Owners, Board of Directors, CDR-1011-1; Barbara Guest v. Board of Directors, Karen Michaud, Kanoelani Apartments, CDR-1011-5; and Dawn Smith v. Chuck Heitzman, Setsuko Hayakawa and AOA Nauru Tower, CDR-1011-2.

The decision set forth in Guest v. Board of Directors, et. al., will be of interest to condominium owners and boards of directors. The case involved the validity of a house rule prohibition of pets where no comparable prohibition was present in the bylaws. The hearings officer concluded as a matter of law that a prohibition of pets that is contained only in the condominium’s house rules is not legally effective where the condominium’s by-laws are silent regarding any prohibition of pets. To read this and other CDR decisions, go to the OAH link at www.hawaii.gov/dcca/oah/oah_decisions/cdrdec.

2012 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, March 7, 2012	Friday, March 23, 2012
Wednesday, April 11, 2012	Friday, April 27, 2012
Wednesday, May 9, 2012*	Friday, May 25, 2012
Wednesday, June 13, 2012	Friday, June 29, 2012
Wednesday, July 11, 2012	Friday, July 27, 2012
Wednesday, August 8, 2012	Friday, August 24, 2012
Wednesday, September 12, 2012	Friday, September 28, 2012
Wednesday, October 10, 2012	Friday, October 26, 2012
Wednesday, November 7, 2012	Wednesday, November 21, 2012
Wednesday, December 12, 2012	Friday, December 21, 2012

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor. The May 9, 2012, Committee meetings will be held in Lihue, Kauai at the State Office Building, 3rd Floor Conference Rooms, 3060 Eiwa Street.

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

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