

Hawaii Condominium Bulletin



Hurricane Season in Hawai'i Starts June 1st

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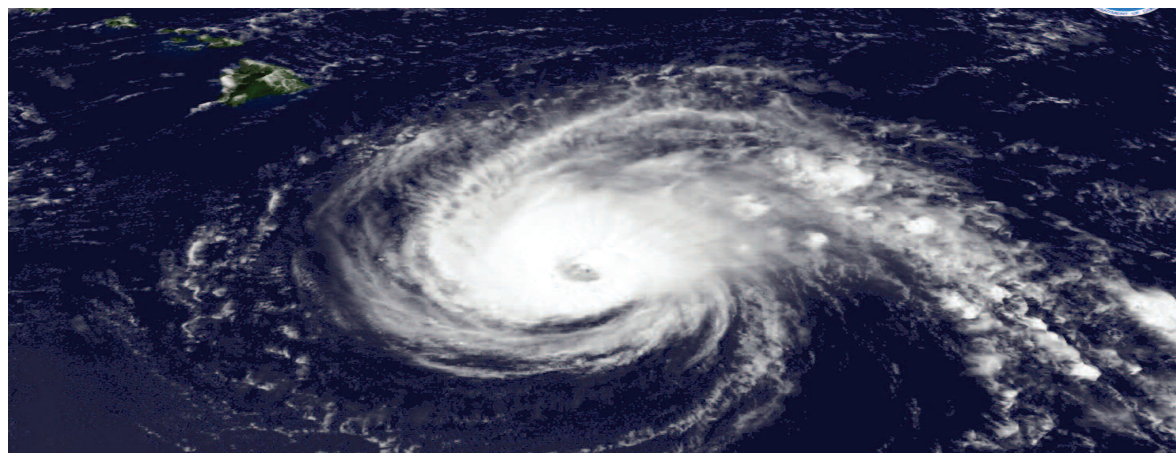
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at (808) 586-2643 to
submit your request.



Hurricane season runs from June 1 through November 30 every year. The following article, taken in part from the Federal Emergency Management Agency's (FEMA's) website, provides a quick overview of hurricane triple threats.

Hurricanes not only pack high winds, but can also cause torrential rains that lead to flash flooding and abnormally high waves and storm surge. Known as "the triple threat," each of these alone can pose a serious threat to life and property. Taken together they are capable of inflicting a large loss of life and widespread destruction.

HIGH WAVES AND STORM SURGE

The greatest loss of life associated with tropical cyclones worldwide is due to coastal inundation from storm surge and high waves. Large ocean swells ahead of the hurricane may reach island shores while the storm is several hundred miles away. As the hurricane nears the coastline, rapidly rising water levels from the wind-driven waves and storm surge will inundate coastal areas, erode beaches, and pound and undermine waterfront structures and roadways.

In 1992, Hurricane Iniki's high waves and storm surge devastated the south shore of Kaua'i to elevations over 20 feet above sea level. People living near the coast at low elevations need to leave before the high waves and storm surge arrives. Be sure to follow any evacuation instructions given by the civil defense authorities.

HIGH WINDS

In Hawai'i, mountainous terrain accelerates hurricane and tropical storm winds causing extremely high winds that can destroy buildings, structures, trees, vegetation and crops. Ridge tops and exposed locations downslope from the mountains are at greatest risk. Before the arrival of a hurricane, consider moving to a home or shelter located in an area less exposed to the wind. Remain indoors during the period of strongest winds since debris carried by the wind can become deadly missiles. Beware of the momentary calm that occurs with the passage of the hurricane's eye. Winds will increase rapidly from the opposite direction on the other side of the eye as the center of the hurricane moves forward.

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Letter from the Chair

June marks the end of the state's fiscal year, and as we wind up the month we review some of the condominium-related bills that have been signed into law. The Governor still has some time to veto and sign bills, so in our next issue we will provide a complete update of bills that eventually become law. In our Ask the Condominium Specialist segment, we address commonly asked questions related to amending bylaws, and requirements for registering condo associations with the Commission.

In May, the Community Association Institute Hawaii Chapter put on an educational seminar about insurance coverage for condominium associations. The seminar was funded in part by the Condominium Education Trust Fund, and provided helpful information. There are three more educational seminars planned for this year, so please take advantage of these opportunities to familiarize yourself with different aspects of condominium governance and living. Also, as a reminder hurricane season began on June 1, and will run through the end of November. This issue includes some useful information about hurricanes and minimizing the danger to you and your property.

The standing committees of the Real Estate Commission met in Lihue, Kauai in early May. When the Commission meets on the neighbor islands, it also holds a Specialists' Office for the Day to answer questions interested individuals and organizations might have on matters relating to condominium development, governance, and real estate licensees. The meeting schedules are posted on the Commission's website, so please note when the Commission will next be traveling to your county if you are interested in attending a meeting.

This completes my eighth year on the Commission, and I would like to thank Neil Fujitani and his entire hard working staff. It has truly been an honor and a pleasure to serve as a Commissioner. As I also leave my post as Chair of the Condominium Review Committee, I would especially like to thank Cynthia Yee, Cheryl Leong, Benedyne Stone, Jon Gasper, Tammy Norton, and Glecya Seminuk for their dedication and diligence. Finally, thank you to my Vice-Chair, Nikki Senter, for her hard work and insightful contributions to the Committee. Best wishes to all of you, and aloha.



Sincerely,

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

Michele Sunahara Loudermilk
Chair, Condominium Review Committee

Ask the Condo Specialist

Q: My condominium was created under HRS, Chapter 514A. What percentage of owners is needed to amend the bylaws of my association? Do we follow the 65% requirement of 514A or the 67% requirement stated in 514B?

A: The existence of two condominium statutes in Hawaii is the source of much confusion to condominium unit owners. Except for two situations discussed below, the short answer is that the vote or written consent of at least 67% of all unit owners is necessary to amend the bylaws.

HRS 514B §-22, states in pertinent part that Part VI of HRS, Chapter 514B, applies to existing condominium associations, even those condominium associations that were created under HRS, Chapter 514A. HRS § 514B-108 (e) sets forth the 67% requirement for amending association bylaws and falls within Part VI of HRS, Chapter 514B. Thus, we have the 67% requirement for amending bylaws.

Part VI of Chapter 514B, 1) applies only for events or circumstances occurring on or after July 1, 2006 and 2) shall not invalidate existing provisions of the condominium project documents if doing so would invalidate any reserved rights of a developer or be an unreasonable impairment of contract. If one of the two exceptions exists in your situation, the 67% requirement may not apply to your association. Consult with an attorney experienced in the Hawaii condominium law to discuss the implications and relevance of the exceptions to your condominium association.

Q: I live in a small condominium association consisting of six units. All unit owners cooperate in assuring that the association runs smoothly. We meet once a year to conduct any association business. We collect a small amount in maintenance fees; there is very little common area for our association to maintain. I was informed recently that state law requires our small association to register with the Real Estate Commission of the State. Is this correct? May we opt out of any registration requirement because of our small size and limited financial needs?

A: No. HRS § 514B-103 requires that all condominium associations with six or more units register biennially with the Commission and obtain a fidelity bond to protect the association from any loss resulting from the dishonest acts of anyone handling association funds. There is an exemption available in certain situations for the fidelity bond requirement, however. Information on the fidelity bond exemption is included with the association registration forms. The registration process is biennial with a registration cost of \$50 and \$4 per unit.

An association that fails to register with the Commission lacks standing under the law to bring any action in State court. (Recently, Commission staff was asked to confirm the registration of an association after the association served suit on a contractor that had done work for the association. At the time the suit was served, the association was not registered with the Commission; the association subsequently registered with the Commission and the suit was served again.)

As part of their review in connection with re-financing and mortgage loan applications, lenders also contact the Commission to confirm that an association is registered.

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.

Hurricane Season in Hawaii Starts June 1st (cont. from page 1)

HEAVY RAIN AND FLASH FLOODING

Heavy and prolonged rains can accompany all types of tropical cyclones including hurricanes, tropical storms, and tropical depressions. Even the weakest tropical depressions can bring torrential rains and flash flooding to the Hawaiian Islands. If heavy rains are in the forecast for your area and you live near a flood prone river or stream, leave before the heavy rains begin. Listen to radio, TV, or NOAA Weather Radio for flash flood warnings and move to high ground if flooding is imminent or already occurring.

The National Oceanic and Atmospheric Administration (NOAA) classify hurricanes into five categories. The characteristics of wind speed, central pressure, and damage potential determine a hurricane's category.

Category 1 hurricanes have sustained winds of 74-95 mph and its very dangerous winds will produce some damage. Well-constructed frame homes could have damage to roof, shingles, vinyl siding and gutters. Large branches of trees will snap and shallowly rooted trees may be toppled. Extensive damage to power lines and poles likely will result in power outages that could last a few to several days.

Category 2 hurricanes have sustained winds of 96-110 mph and its extremely dangerous winds will cause extensive damage. Well-constructed frame homes could sustain major roof and siding damage. Many shallowly rooted trees will be snapped or uprooted and block numerous roads. Near-total power loss is expected with outages that could last from several days to weeks.

Category 3 hurricanes have sustained winds of 111-129 mph and devastating damage will occur. Well-built framed homes may incur major damage or removal of roof decking and gable ends. Many trees will be snapped or uprooted, blocking numerous roads. Electricity and water will be unavailable for several days to weeks after the storm passes.

Category 4 hurricanes have sustained winds of 130-156 mph and catastrophic damage will occur. Well-built framed homes can sustain severe damage with loss of most of the roof structure and/or some exterior walls. Most trees will be snapped or uprooted and power poles downed. Fallen trees and power poles will isolate res-

idential areas. Power outages will last weeks to possibly months. Most of the area will be uninhabitable for weeks or months.

Category 5 hurricanes have sustained winds of more than 157 mph and catastrophic damage will occur. A high percentage of framed homes will be destroyed, with total roof failure and wall collapse. Fallen trees and power poles will isolate residential areas. Power outages will last for weeks to possibly months. Most of the area will be uninhabitable for weeks or months.

Category 3 and higher hurricanes are major hurricanes, but Categories 1 and 2 are still extremely dangerous and require preventive measures.

Use the following links for more information about hurricanes:

- For more information about disaster supplies kits. <http://www.ready.gov/build-a-kit>

- Avoiding Hurricane Damage, a FEMA checklist for homeowners. <http://edit.ready.gov/sites/default/files/documents/files/Protect%20Your%20Home%20against%20Hurricane%20Damage.pdf>

- How to Guides to Protect Your Property or Business from High Winds. <http://www.fema.gov/library/viewRecord.do?id=3263>

This article was reprinted with permission from Le`ahi, a publication of the Hawaii State Civil Defense Agency, 3949 Diamond Head Road, telephone, 733-4300.

CAI Hawaii Educational Seminar Insurance: How Much is Enough?

On Thursday, May 24, 2012, the Community Association Institute Hawaii Chapter sponsored a seminar at the Hale Koa Hotel entitled, “Insurance – How Much is Enough?”.

The seminar was moderated by Hawaii insurance industry professional, Sue Savio. Featured speakers were Jamie Schraff, insurance professional and member of the national CAI Insurance Committee; Eric Marler, Esq., Great American Insurance Directors and Officers claims liaison for Great American’s Community Association Program; and Milton Motooka, Esq., partner in the Hawaii law firm Motooka and Yamamoto, whose law practice for over 30 years has been primarily in the representation of community associations.

Ms. Schraff briefed the audience on the basics of Directors and Officers insurance and the application process, covering such topics as what kinds of actions D&O insurance covers, how appropriate coverage is determined by insurance companies and how premiums are calculated.

Mr. Marler provided the attendees with “war stories” of litigation gone wild, such as the Florida community association unit owner whose refusal to construct his driveway consistent with the architectural standards of the association cost him \$500,000 in litigation fees.

Many in attendance were familiar with the recent multi-million dollar jury award in the case of a Moloka`i condominium association (“Bevill Case”). Although Mr. Motooka was not involved in the Bevill Case, he was familiar with all of the pleadings filed in the litigation and reported on the particular facts. He provided the attendees monetary details of the Bevill Case award along with advice on how condominium boards could avoid such suits.

Funded in part with funds from the Condominium Education Trust Fund, Real Estate Commission, Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs for condominium unit owners whose associations are current-

ly registered with the Real Estate Commission, this seminar was one of a series given by CAI Hawaii so far this year. These seminars are informative and timely and give participants the opportunity to meet others involved in various aspects of the daily life of condominium associations.

There are three more seminars scheduled for this year, “Legislative Update” on June 21, 2012; “Balancing the Budget – How Associations can do a better job than the Federal Government” on August 9, 2012; and “Contracts, Bids, and Finances” on September 27, 2012. All luncheon seminars are scheduled to be held at the Hale Koa Hotel. For more information, call CAI direct at (888) CAI-4321.

Mediation Case Summaries

Mediation Services of Maui (“MSM”)

From March 2012 through May 2012, MSM conducted the following condominium-related mediation:

PARTIES	ISSUE	DISPOSITION
Owner vs. Board	Interpretation of bylaws regarding the installation of an air conditioning unit.	Parties settled prior to mediating.

Mediation Center of the Pacific (“MCP”)

From March 2012 through May 2012, MCP conducted the following condominium-related mediation:

Owner vs. Board	Owner requested board approval to install security light outside unit.	Mediated to agreement.
Owner vs. Board and Property Manager	Issue of water damage to unit and assumption of costs of repair.	Owner w/drew complaint
Owner vs. Board	Dispute over decreased width of parking stalls	Owner w/drew complaint.
Owner vs. Board	Owner challenged the basis for assessed legal fees against unit.	Board declined mediation.

For the period March 2012 through May 2012, Kaua`i Economic Opportunity, West Hawaii Mediation Center and Kuikahi Mediation Center did not conduct any condominium-related mediations.

2012 Legislative Update

On April 12, 2012, Governor Abercrombie signed into law Act 18, HB 1746 HD1. Act 18 allows condominium boards of directors to authorize the installation of utility meters to measure utility use by individual units, provided that the condominium association bears the cost of installing the meters. This bill addresses the unfairness inherent in the old law which apportioned utility costs based on each unit’s undivided interest in the condominium, rather on the individual units’ actual utility usage.

On April 20, 2012, Governor Abercrombie signed Act 34 into law. Act 34 amended various provisions of Hawaii Revised Statutes and the Session Laws of Hawaii for the purpose of correcting errors and references and clarifying language.

Pursuant to Act 9 (2009), the 2008 amendment to HRS § 514B-161, requiring the mediation of issues arising out of Part VI of HRS, Chapter 514B, was repealed on June 30, 2011. Act 34 clarified this repeal; HRS § 514B-161 does not require the mediation of issues which fall under Part VI of HRS Chapter 514B and the language of the law now reflects this.

Act 182 was signed by Governor Abercrombie and became law on June 29, 2012. Act 182 implements the recommendations of the

mortgage foreclosure task force to address mortgage foreclosures and other related issues. As it relates to the condominium law, Chapters 514A and 514B have been amended to provide, among other things, that liens recorded by a condominium association will expire six years from the date of recordation unless collection is initiated to enforce the lien before the expiration date.

The lien can be foreclosed by court lawsuit or by non-judicial foreclosure pursuant to Chapter 667, however no association can foreclose under Chapter 667 where the lien arises solely from fines, penalties, legal fees or late fees; such liens have to be foreclosed in a court action.

Under Act 182, the amount of the special assessment assessed a delinquent owner cannot exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or non-judicial power of sale foreclosure (the previous time frame was twelve months) and no monetary cap is provided for in the new law (previously, it was not to exceed \$7,200).

Associations should consult carefully with its attorney regarding the impact of Act 182 on any foreclosure proceedings.

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, June 13, 2012
Wednesday, July 11, 2012
Wednesday, August 8, 2012
Wednesday, September 12, 2012
Wednesday, October 10, 2012
Wednesday, November 7, 2012
Wednesday, December 12, 2012

Friday, June 29, 2012
Friday, July 27, 2012
Friday, August 24, 2012
Friday, September 28, 2012
Friday, October 26, 2012
Wednesday, November 21, 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.

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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