



Hawaii Condominium Bulletin

Board of Private Detectives & Guards (“Board”) ACT 208, SLH 2010 and Its Effect on Condominium Associations

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Funded through
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Act 208 became law in 2010, and takes effect on July 1, 2013. It impacts condominium associations that hire “in-house” private security guards without going through a private security company. Under this law, all security guards must be registered with the Board of Private Detectives and Guards of the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs and comply with all licensing and educational requirements. The following is a summary, provided by the Board of Private Detectives and Guards, of registration and licensing requirements under the new law. For more information on the law and its requirements, go to hawaii.gov/dcca/pvl.

On July 6, 2010, Act 208 became law in Hawaii without Governor Linda Lingle’s signature. Act 208 establishes registration and licensure requirements, including training, instruction and continuing education for guards and individuals acting in a guard capacity. The new registration and licensure requirements become effective on July 1, 2013, with a sunset, or termination date of July 1, 2016.

The legislative intent of this bill was to raise the professional standards for security guards employed across the state and establish new registration, training, classroom instruction, education and criminal history background check requirements for all guards and employees of guard agencies who act in a guard capacity.

With regard to condominium associations and boards of directors, Act 208, codified in Hawaii Revised Statutes §463-10.5, repealed the regulatory exemption for guards who are “employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer employee relationship”, e.g., condominium associations. Thus, where in the past condominium boards may have privately hired persons to act as security guards, formerly unregulated “in-house” proprietary guards are now required to register with the Board and meet registration, instruction, and training requirements prior to acting as a guard, including:

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Letter from the Chair



Aloha!

A Big Mahalo & Aloha to Michele Sunahara Loudermilk Chair of the Condominium Review Committee whose term ended June 30th. I have some big shoes to fill.

In July 2012 our new Chair of the Real Estate Commission, Nikki Senter, appointed me as the Chair of the Condominium Review Committee after serving 2 years as the Education Committee Chair. Both Condominiums and Education have been a very big part of my real estate career over the last 27 years, being a continuing education instructor and a Condominium Association Managing Agent. Not only have I spent many years managing condo associations, but I also owned and served on the board of directors for my own condominium, and have seen the issues from both sides.

I look forward to the coming year on the Condominium Review Committee and I am sure I will find it every bit as educational and interesting as I did on the education committee.

Sincerely,

Scott. A. Sherley

Chair, Condominium Review Committee

New Members Join the Commission

Welcome to Bruce Faulkner, broker, Maui, who joined the Hawaii Real Estate Commission effective July 1, 2012. Mr. Faulkner will serve a four-year term representing Maui, and his term expires on June 30, 2016.

Mr. Faulkner is a sole proprietor doing business under the name of Maui HI Realty in Makawao. He was born and raised on O'ahu where he graduated from Kailua High School. He earned a Bachelor of Arts degree in Sociology from Mauna Olu College on Maui. He is a long-time Maui resident, and has extensive work experience in the construction industry and as a contractor. He has been a real estate licensee since 1985, and served as a past President of the REALTORS® Association of Maui, Inc. Mr. Faulkner is also active in the Maui community.

Scott Arakaki has been appointed by Governor Abercrombie as a public member interim commissioner, with his confirmation by the Hawaii Senate to take place in the 2013 legislative session. Mr. Arakaki is an experienced attorney with a law practice concentrating

on real estate, commercial, construction, and personal injury litigation; he also has experience in the areas of business law, commercial and real estate transactions and collection law.

Mr. Arakaki is a graduate of University of Hawaii, Manoa, and obtained his law degree from the University of Notre Dame in 1994. Since 2004, he has been a Certified Real Estate Instructor, and is an instructor in Landlord/Tenant law for the Volunteer Legal Services organization.

We welcome Mr. Faulkner and Mr. Arakaki to the Real Estate Commission!



Bruce Faulkner



Scott Arakaki

Ask the Condominium Specialist

This edition of the "Ask the Condominium Specialist" column focuses on Act 326 (2012), the Transient Accommodations Tax Bill, and its effect on condominium associations. Real Estate Branch staff has received many inquiries about the practical effect of this bill on condominium unit owners operating short term vacation rentals from their units and on the condominium association of which these units are a part.

As it applies to condominium unit owners and condominium associations, Act 326 is intended 1) to ensure compliance with state and county transient accommodations tax laws and 2) to confirm a consumer protection requirement contained in the Landlord-Tenant Code that a landlord operating transient rentals who resides outside of the State of Hawaii or on a different island must designate an on-island contact to act in the landlord's behalf; the only exception to this requirement is transient occupancy on a day-to-day basis in a hotel or motel. The following article was kindly provided by the State of Hawaii Department of Taxation staff.

August 2012

LOCAL CONTACT FOR TRANSIENT ACCOMMODATIONS

By State of Hawaii Department of Taxation

Each year, hundreds of proposed bills are introduced for discussion and consideration. One of the more hotly debated bills during the 2012 legislative session had been House Bill 2078 HD2 SD2 CD1 relating to the transient accommodation tax. In the end, the Legislature adopted the measure and the bill became law without the Governor's signature, due to his concern about the penalty provisions in the new law.

HB 2078 HD2 SD2 CD1, now otherwise known as Act 326, Session Laws of Hawaii 2012, introduced a new section to the Transient Accommodation Tax (TAT) chapter of Title 14, Hawaii Revised Statutes. In this new section, several new requirements are imposed on non-resident property owners who engage in the business of furnishing transient accommodations, for less than one hundred eighty consecutive days, for consideration. Non-resident owners include any property owner that does not live on the same island where the transient accommodation is located.

Highlights of the new requirements include:

- Nonresident owners must designate a local contact, residing on the same island where the transient accommodation is located.
- The name, address and contact information of the local contact shall be furnished "...to any association of homeowners, community association, condominium association, cooperative, or any other nongovernmental entity with covenants, bylaws, and administrative provisions with which the operator's compliance is required for the property where the transient accommodation is located."
- The name and phone number of the local contact shall be included in any contract or rental agreement and posted inside the transient accommodation.
- Any advertising of a transient accommodation on a website requires that the registration number (also sometimes referred to as the transient accommodation tax number) for the transient accommodation be displayed on the website or via an online link.

This new law has stimulated a lot of interest in learning about the TAT law and its application. As a reminder, if property is offered as a transient accommodation, both the general excise and transient accommodations tax may apply. In the coming weeks, the Department of Taxation will issue additional guidance regarding the application and requirements of Act 326.

More general information about the TAT and other taxes is available on our website (www.hawaii.gov/tax) or through our taxpayer assistance telephone lines at 587-4242.

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.

Board of Private Detectives & Guards (“Board”) ACT 208, SLH 2010 and Its Effect on Condominium Associations (cont. from page 1)

- (1) Be not less than 18 years of age;
- (2) Possess a high school education or its equivalent;
- (3) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person’s performance in the profession; and
- (4) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the individual to act as a guard, unless the conviction has been annulled or expunged by court order; provided that the individual shall submit to a national criminal history record check as authorized by federal law, including but not limited to the Private Security Officer Employment Authorization Act of 2004, and specified in the rules of the board.

In addition, the guard employee shall meet an 8 hour mandatory classroom training prior to registration, 4 hours of on-the-job-training prior to actual service, and 4 hours of classroom instruction annually thereafter to renew the registration.

Condominium boards who directly hire private security to protect their associations rather than contract with a private security company are responsible for hiring persons registered with the Board and in compliance with all educational and registration requirements.

It was the intent of the Legislature to include all guards with the exception of active duty federal, state, or county law enforcement officers or personnel. All guards acting in a guard capacity includes retail loss/prevention security personnel; hotel security officers; financial institution security personnel; armored car guards; utility security officers (e.g. HECO, Board of Water Supply); doormen and bouncers; hospital security officers; and all private proprietary security officers/guards which includes community association guards.

Please visit the Board’s website at <http://hawaii.gov/dcca/pvl/boards/private/> and click on “Private Detective and Guards Important Announcements” for the latest information, announcements and updates.

Public Hearing

A public hearing on proposed amendments to rules pertaining to fees relating to Condominium Property Regimes was held on Friday, September 14, 2012, at 1:00 p.m. in the King Kalakaua Conference Room, First Floor, King Kalakaua Building, Department of Commerce and Consumer Affairs, 335 Merchant Street, Honolulu, Hawaii for interested persons to submit testimony.

The proposed amendments to the rules would among other things, clarify and confirm certain procedures related to the development of condominium property regimes and, specifically with regard to the Condominium Education Trust Fund (“CETF”), increase CETF fees from \$4 per biennial registration, per unit, to \$7 per biennial registra-

tion, per unit. The current fee schedule was put in place over 20 years ago. The CETF reserves, which are used to promote the educational purposes mandated in the condominium law at Hawaii Revised Statutes § 514B-71, have been severely depleted.

The proposed rules now go to the Director of the DCCA for adoption, then to the Small Business Regulatory Task Force and to the Governor for final approval.

Proposed rules may be viewed and downloaded at hawaii.gov/dcca/pvl/har/pvl/HAR16-53.

Mediation Case Summaries

From June 2012 through August 2012, the following Real Estate Commission-subsidized condominium mediations were conducted pursuant to Hawaii Revised Statutes § 514B-161. Other condominium mediations may have been conducted through the District Court process by the providers listed below and Mediation Center of the Pacific, West Hawaii Mediation Center and Kuikahi Mediation Center.

Mediation Services of Maui

| PARTIES | ISSUE | DISPOSITION |
|-----------------|---|--|
| Owner vs. Board | Dispute over authority in bylaws to renovate common area without owner approval. | Parties opted to come to an agreement w/out mediation. |
| Owner vs. Board | Owner claims bylaws allow payment plan to board for late payments; board disagrees. | Board declined mediation. |
| Owner vs. Owner | Dispute between neighbors over “quiet enjoyment” as stated in bylaws. | No mediation occurred. |

Kaua‘i Economic Opportunity

| | | |
|-----------------|---|------------------------|
| Owner vs. Owner | Interpretation of bylaws regarding access to common area. | No mediation occurred. |
|-----------------|---|------------------------|

Condominium Specialists’ Public Participation

Condominium Specialists from the Real Estate Branch attended the Hawaii Council of Associations of Apartment Owners (“HCAAO”) annual Legislative Update, held at the Hale Koa Hotel on July 12, 2012.

Jane Sugimura, President of HCAAO, provided a summary of the bills passed in the Hawaii Legislature in the 2012 session affecting condominium associations. The event included a “meet and greet” with legislators in attendance who stayed to answer questions from constituents after the presentation of the formal event. Condominium Specialists also stayed to answer questions from attendees.

On July 31, 2012, Condominium Specialists attended a briefing of KHON Action Line Volunteers given by the Department of Commerce and Consumer Affairs (“Department”) Educational Specialist, Jacqueline Choy on the overall work of the Department.

The Action Line Volunteers field many inquiries from condominium owners when manning the Action Line phones and had specific condominium-related questions for the two Condominium Specialists. In particular, they are presented with many situations involving tenants renting condominium units and resulting landlord-tenant disputes. These disputes are most often governed by the Residential Landlord-Tenant Code, Chapter 521. The Condominium Law, Chapter 514B, does not address many of the issues faced by tenants and landlords such as security deposits, rental agreements, and the obligations of the tenant and the landlord. The Condominium Specialists advised Action Line Volunteers of the existence of the Office of Consumer Protection’s Landlord-Tenant Hotline, which is available M-F, 8-12, at 586-2634 for landlord-tenant issues.

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, September 12, 2012

Wednesday, October 10, 2012

Wednesday, November 7, 2012

Wednesday, December 12, 2012

Friday, September 28, 2012

Friday, October 26, 2012

Wednesday, November 21, 2012

Friday, December 21, 2012

The September 12, 2012 Committee meetings will be held at the Hawaii Innovation Center in Hilo, Hawaii, at 117 Keawe Street.

All other 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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