

Hawaii Condominium Bulletin



Condominium Hotel Operator Re-Registration

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Funded through
the Condominium
Education Trust Fund

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The re-registration period for current condominium hotel operators (CHO) ends December 31, 2012. All re-registered CHOs approved by the Real Estate Commission by that time may operate legally until December 31, 2014.

Condominium hotels and CHOs are governed by the real estate licensing law, Hawaii Revised Statutes, Chapter 467. HRS § 467-30, defines a condominium hotel as “those apartments or units in a project as defined in section 514A-3 or 514B-3 and subject to chapter 514A or 514B, which are used to provide transient lodging for periods of less than thirty days”. A rental for a period of thirty days or more is considered a long term rental and is not governed by the CHO law.

Condominium hotels may operate only in condominium projects that are specifically authorized for transient (short term) lodgings by county zoning and regulations, and in which short term rentals are specifically permitted by the condominium association’s declaration and bylaws. (The type of use allowed on a property is dictated by each county; for example, whether certain

areas are zoned for business, industrial, or residential use is determined by the county.)

Unit owners who want to offer their own units as transient rentals may become part of the condominium association’s transient lodging rental pool. This rental pool may be run by a separate entity charged with managing the rental pool units within the larger condominium association. Monies collected from the rental pool activities are kept separate from funds related to activities of the larger condominium association, according to the applicable law and administrative rule. Administrative rule also requires the separation of CHO records from those of the larger condominium association. (Hawaii Administrative Rules § 16-99-149)

What kinds of activities determine whether one is acting as a CHO? HRS § 467-30(e) tells us that these include:

“the management of the apartments or units in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condo-

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Letter from the Chair



Here we are....already into December, it's amazing how quickly the Holidays pounce upon us, and 2013 is just around the corner.

This issue of the Condominium Bulletin highlights the "Ask the Condominium Specialist" with some excellent Questions and Answers as well as a brief update to the "Condominium Directors Guide". What many people may not realize is the wealth of information available on our website for free. Just under Condominium Directors Guides you will find such useful information as "Condominium Reserves Workbook", "A Quick Guide to Condominium Living in Hawaii", "Condominium Property Regimes: Owner Rights and Responsibilities" and "Condominium Property Regimes: Board Members Powers and Duties", just to name a few. There is a plethora of information and educational materials available for not only Board Members and Managers, but also for individual condominium owners as well. It's all there waiting for you on our website. http://hawaii.gov/dcca/real/condo_ed/condo_gen/

In November I had the opportunity to sit in on the Condominium Consultant Forum, along with my Co-Chair Bruce Faulkner. This is the first time I have attended such a Forum. I have spent much of my career in real estate as a Condominium Managing Agent, but this was an area that I never really delved into in my day to day work. I was amazed at the amount of work and detail our Condominium Consultants go through in the course of reviewing applications and documents for "New" condominium projects being developed. My hat is off to these hard working consultants. Until Next Year have a Very Merry Christmas and a Happy New Year.

Sincerely,
Scott A. Sherley
Chair, Condominium Review Committee

2012 Legislative Update

In the June Condominium Bulletin Legislative Update, we omitted information concerning the termination of administrative hearings of condominium disputes with the Office of Administrative Hearings, pursuant to HRS § 514B-161. The administrative hearings were discontinued as of June 30, 2011, pursuant to Act 9 (2009) and this was clarified in the law this year in Act 34 (2012).

Ask the Condominium Specialist

Q: Although my condominium association is located in an area zoned by the county for business as well as residential use, my condominium documents state that the units are to be used for residential purposes only. May I conduct a business from my condominium unit where the county has approved business use if the association prohibits such use?

A: HRS § 514B-32 (a) (6) states that the condominium declaration must describe the permitted and prohibited uses of each unit. If your declaration limits the use of units to residential purposes only, you may not conduct a business from your unit, notwithstanding that the county permits this use by zoning. Doing so would be a violation of the terms of the declaration and allow the condominium board to impose any fines authorized to be levied for violations of the condominium documents. This is consistent with the philosophy of self-governance inherent in the Hawaii condominium law that all unit owners and their tenants are expected to comply with the governing documents of their condominium association.

Q: I am a board member in my condominium association. Our property manager is advising our board to vote on a certain matter via email. May we vote on issues before us by sending our vote in through an email to the property manager?

A: HRS Chapter 514B does not directly answer your question. In general, however, the Hawaii condominium law favors open and transparent actions by the board. Several provisions of the condominium law require in-person voting by board members at meetings that are open to all members of the association. HRS § 514B-125 (a).

For example, HRS § 514B-126 provides that “[m]inutes of meetings of the board shall include the recorded vote of each board member . . .” Also, HRS § 514B-125 (b) states that a board may vote in executive session upon certain matters only. And there are prohibitions against voting where a board member has a conflict of interest “at any board meeting”. HRS § 514B-125 (f).

The statutory provisions requiring open and public meeting and voting processes appears inconsistent with the notion that board members may vote on an issue via email. Check with your governing documents to see if they address this issue, keeping in mind that any conflict with the law would render the provisions moot. If your association has an attorney, consult with the attorney for advice, if not, adopt a prudent position and conduct all meetings and votes, other than executive session matters, in open meetings.

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.

Condominium Hotel Re-Registration (cont. from page 1)

minium apartments or units directly or indirectly from the apartment or unit owners for purposes of providing transient lodging”.

The CHO law provides that the registration requirement applies only to those CHOs not holding a real estate broker’s license in Hawaii. Hawaii licensed real estate brokers who operate CHOs are not required to register; those holding a real estate salespersons license are expected to operate a CHO through their principal broker and may not register.

CHOs registering with the Real Estate Commission are required to obtain a fidelity bond to protect the CHO against the fraudulent or dishonest acts of its employees. The amount of the bond must be in an amount equal to \$500 multiplied by the aggregate number of units in the CHO. There is a statutory minimum bond amount of \$20,000, and a maximum amount of \$100,000.

New legislation of relevance this year to CHOs is Act 326 (2012), known as the Transient Accommodations Tax Bill. This law 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. In summary, the Transient Accommodations Tax Bill mandates that a CHO operating transient rentals who resides outside of the State of Hawaii or on

a different island as the transient rental unit must designate an on-island contact to act in the CHO’s behalf; the only exception to this requirement is transient occupancy on a day-to-day basis in a hotel or motel. This information must be posted in the rental unit and provided to the condominium association’s board of directors. For more information regarding this new law and its effect on CHOs, please refer to the September 2012 Condominium Bulletin, “Ask the Condominium Specialist” column.

For specific questions concerning the transient rental of your condominium unit and the requirements of Act 326, consult with an attorney familiar with the condominium and real estate laws in Hawaii.

Updates to Board of Directors Guides

Since the Condominium Board of Directors Guides (“Guides”) were first published and placed on the Real Estate Branch website in 2009, subsequent changes to the condominium law have rendered certain information in the Guides obsolete. The changes reported here are limited to updating only the condominium law, Chapter 514B, HRS. Every effort has been taken to ensure the accuracy and completeness of the information. There may be changes to other laws, other than Chapter 514B, HRS, that are beyond the scope of the update. Readers are cautioned to conduct their own research regarding updates to other applicable laws.

Notably, two amendments to Hawaii Revised Statutes (“HRS”) 514B have affected the information provided in the Guides:

- Administrative hearings through the Office of Administrative Hearings of the DCCA are no longer available for the resolution of condominium disputes as of June 30, 2011, pursuant to Act 9 (2009). Any information in the Guides concerning the availability of administrative hearings is not applicable.
- Pursuant to Act 182 (2012), HRS § 514B-146 (h), is amended. The time for which unpaid regular monthly assessments may be collected in a judicial or nonjudicial foreclosure sale is now six months and there is no maximum amount that may be collected within that time frame.

Mediation Case Summaries

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

Mediation Services of Maui

PARTIES	ISSUE	DISPOSITION
Owner vs. Board	Whether owner approval is needed for addition to common area.	Mediation occurred; no resolution.
Board vs. Owners	Owners unhappy with board installation of fence around pool area which owners argue negatively affects their view.	Mediation occurred; no resolution.

Kaua'i Economic Opportunity

Owner vs. Board	Interpretation of bylaws regarding Board use of proxy votes.	Mediation occurred; no agreement reached.
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Mediation Center of the Pacific

Owner vs. Board	Maintenance and legal fees set forth in the bylaws.	Mediated; no agreement.
Owner vs. Board	Status of bathroom fixture allegedly approved by the board.	Mediated; no agreement.
Owner vs. Board	Noise issue and board responsibility for reducing.	Mediated; no agreement.
Owner vs. Board	Owner contesting fines.	Closed; no mediation.
Owner vs. Board	In mixed use building, responsibility of commercial owner to reduce noise.	Closed; no mediation.
Board vs. Owner	Maintenance and legal fees required by bylaws.	Mediated to agreement.
Owner vs. Board	Fee assessment challenged.	Mediated to agreement.
Owner vs. Board	Owner contesting fee imposed while on vacation.	Closed; no mediation.

2012 Annual Report of Real Estate Commission

In December, the 2012 Annual Report of the Real Estate Commission ("Report") will be submitted to Governor Abercrombie. Among other things, the Report includes information on condominium association registration (1,649 condominium associations registered with the Commission, representing 156,846 condominium units); the efforts of the Commission with regard to Rulemaking, Chapter 107; the Commission's participation in the legislative process; filings by developers for new and conversion condominium projects; condominium mediation; and the Condominium Education Trust Fund.

The Report, including charts and information on all of the Commission's condominium programs, will be available online at the REC website, www.hawaii.gov/hirec after December 20, 2012.

2013 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, January 9, 2013*	Friday, January 25, 2013
Wednesday, February 6, 2013	Friday, February 22, 2013
Wednesday, March 6, 2013	Friday, March 22, 2013
Wednesday, April 10, 2013	Friday, April 26, 2013
Wednesday, May 8, 2013	Friday, May 24, 2013
Wednesday, June 12, 2013	Friday, June 28, 2013
Wednesday, July 10, 2013	Friday, July 26, 2013
Wednesday, August 7, 2013	Friday, August 23, 2013
Wednesday, September 11, 2013	Friday, September 27, 2013
Wednesday, October 9, 2013	Friday, October 25, 2013
Wednesday, November 13, 2013	Wednesday, November 27, 2013
Wednesday, December 11, 2013	Friday, December 20, 2013

*The January 9, 2013 committee meetings will be held at the REALTORS Association of Maui offices, located at 441 Ala Makani Place, Kahului, Maui.

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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