

HAWAII CONDOMINIUM BULLETIN



VOLUME 5 NO. 4

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SPRING 1997

Associations Of Apartment Owners Must Re-Register With The Real Estate Commission by May 30, 1997 — New Biennial Registration Period Begins July 1, 1997 and Ends June 30, 1999

Act 106 (SLH 1996) changed the association registration period from an annual to a biennial period. This new period begins July 1, 1997 and ends June 30, 1999. Associations of apartment owners with 6 or more apartments are now required to re-register for a two year registration period by May 30, 1997. A new biennial re-registration form will be mailed to each association in April. The completed re-registration form must be submitted to the Real Estate Commission by May 30, 1997.

Previously, a completed re-registration application included the submittal of a certificate of insurance as evidence of possessing the required fidelity bond. For this new biennial re-registration, the submittal of a simple certification statement signed by an insurance company's authorized representative will be accepted as evidence of having the required fidelity bond. In summary, the insurance company will be certifying that the association possesses the required insurance.

See AOA on pg. 7

Condorama II – A Seminar Focusing on the Most Critical Issues Facing Community Association Boards (see registration form on pg. 6)

The Hawaii Chapter of the CAI and the Hawaii Real Estate Research and Education Center will jointly sponsor **Condorama II** on May 3, 1997. The seminar will be part of CAI's 42nd National Conference in Hawaii. It will mark the second time that CAI has held a national conference in Hawaii. At the first national conference held in Hawaii in 1991, the Hawaii Chapter of CAI and the Hawaii Real Estate Commission jointly sponsored Condorama. The program was a huge success with over 700 people attending. It was the largest gathering ever for a community association seminar.

Condorama II promises to be an equally exciting and informative seminar. The seminar will feature 14 experts from across the nation and Hawaii in law, insurance, management and accounting. It is rare to have so many qualified speakers perform in one seminar. A great deal of thought was given on the topics to be presented which are felt to be

See Condorama on pg. 4

Licensed Contractors

“State Law Requires the Use of Licensed Contractors — Failure to Do So May Result In: A Breach of a Board Members Fiduciary Duty; A Breach of a Condominium Managing Agent's Fiduciary Duty; A Condominium Owner's And An Association's Inability to Collect Damages from the Contractors Recovery Fund.”¹

The following article was written for this bulletin by the Regulated Industries Complaint Office. This article should be of interest to board members, owners, condominium managing agents, and condominium hotel operators. Using the services of unlicensed contractors may be a breach of a board members fiduciary duty. Board members owe the association of apartment owners a fiduciary duty in the performance of the director's responsibilities (§514A-82.4, Hawaii Revised Statutes). Managing agents are also considered a fiduciary with respect to any property managed (§514A-95 (c), Hawaii Revised Statutes). Use of unlicensed contractor's in the performance of their managing agent's activities may also be a breach of such duty.

Picture yourself confronted with a leaking roof in the entryway of your

See Licensed on pg. 4

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Letter from the Chair...

Dear Condominium Owners:

Yes, what you've all been waiting for; CONDORAMA II!

On Saturday, May 3, 1997, Condorama II will provide you the best and the latest information on issues important to all community associations. Brought to you by the CAI Hawaii Chapter and the Hawaii Real Estate Research and Education Center, it is bound to be the one conference everyone will talk about in 1997. People still remember Condorama I held in 1990 as the largest gathering of condominium owners ever at one event.

Condorama II is being offered as part of the Community Associations Institute's 42nd three day national conference held in Hawaii this year. A variety of interesting programs, including an international component are planned. Condorama II attendees will be able to see CAI's trade show with exhibitors from all over the country.

The CAI Conference will also include the first ever "Career Day" on Friday, May 2, cosponsored by CAI Hawaii Chapter and CAI Research Foundation. Students and graduates will be encouraged to bring resumes for distribution to CAI members for possible employment opportunities.

Also as part of the conference, a session entitled "A Sense of Community – the Next Generation of Association Laws and Rules" will be offered on Thursday, May 1 with speakers including condominium specialists from the Hawaii Real Estate Commission and myself.

Don't miss this rare opportunity to hear the experts here in Hawaii. See you at the conference!

Aloha,

Carol Mon Lee, Chair

Condominium Review Committee

Ask the Condominium Specialists

Q. Why is it that when I call the Real Estate Commission and sometimes in answer to my questions, the condominium specialists tell me that the Real Estate Commission does not have authority in that area to receive a complaint? What areas does the Commission have authority over?

A. The condominium law is based on self governance, owner enforcement, **mandatory** arbitration, and **limited** government intervention. Thus, the Real Estate Commission has limited jurisdiction or its authority extends only to those sections cited in sections 514A-46, 47, and 48, Hawaii Revised Statutes (HRS), which represent less than one-third of the sections in the condominium law. By law, the Real Estate Commission delegates the receipt, investigation, and prosecution of complaints relating only to those areas cited in 514A-46, 47, and 48, HRS to its investigatory arm, the Regulated Industries Complaint Office (RICO). RICO's phone numbers on the various islands are: Oahu — 587-3222; Kauai — 274-3200; Maui — 243-5358; Hilo — 933-4522; Kona — 329-6684.

A listing of those limited jurisdiction sections in 514A-46, 47, and 48 HRS include:

Section 514A-	Partial Description
-2	Chapter not exclusive; other HRS sections apply
-31-49	Part III Registration and Administration of Condominium Projects
The following sections apply only to the Registration of Condominium Projects:	
-61	Disclosure requirements in selling to initial purchasers
-62	Copy of public report to be given to prospective purchaser
-63	Rescission rights.
-65	Escrow Requirement
-67	Financing Construction
-68	Misleading statement and omissions
-70	Warranty against structural and appliance defects; notice of expiration required
The following relate to condominium governance issues:	
-83.5	Documents of the association of apartment owners (availability)
-84	Management and contracts, developer, managing agent, and association of apartment owners.

See Q & A on next page

The Legislative Reference Bureau Completes Arbitration Study — Recommends Steps To Make the Existing Non Binding Condominium Arbitration More Meaningful.

As was reported in the Summer 1996 bulletin, the Hawaii Senate of the Eighteenth Legislature, 1996, passed Senate Resolution 54, S.D. 2, requesting that the Legislative Reference Bureau (Bureau) conduct a study of the then current state of arbitration of condominium disputes. Among other issues, the Senate requested that the report of the study discuss: the effectiveness of non-binding arbitration to resolve disputes; whether the “trial de novo” feature for arbitrated condominium disputes should be deleted (a demand for trial de novo allows a non binding arbitrated decision to be heard over again); whether changes could be made to make non-binding arbitration more meaningful by assessing the losing party at a “trial de novo” with all fees and costs incurred at the “trial de novo,” as permitted by the Hawaii court rules of civil procedures; and whether if trial de novo were retained, the trial could be held in courts other than circuit court depending on the nature of the dispute and the amount in controversy.

Several months ago, the Bureau completed the study and submitted its report to the 1997 Legislature. The findings and recommendations from the study are discussed in Chapter 6 of the report entitled “Fighting Battles In Modern American Castles: Condominium Dispute Resolution” Report No. 6, 1996. Inquiries about the report and requests for copies of the report should be made directly to the Legislative Reference Bureau, State of Hawaii, 587-0690.

In summary, the Bureau found that a relatively small number of cases had problems with the non-binding arbitration and trial de novo features in the resolution of condominium disputes. The small number of cases did not demonstrate a problem significant enough to warrant replacing non-binding arbitration

and trial de novo with mandatory arbitration. The replacement would trigger constitutional concerns relating to the denial of the right to a jury trial. The Bureau instead recommended that the Legislature take steps to make the existing non-binding arbitration more meaningful. As part of its report, the Bureau recommended a number of pre and post-arbitration proceeding amendments to the existing law.

Highlights of the report’s findings and recommendations from pg. 38 are as follows:

Findings

1. a small percentage of the total amount of all dispute resolution proceedings between condominium owners, associations, and their managing agents end up in court proceedings, arbitration or mediation (Bureau identified 199 incidents over a ten year period);
2. on the average respondents returning surveys were slightly more satisfied with non-binding arbitration;
3. the sentiment that non-binding arbitration is “meaningless” may be caused by having no clear link between the trial de novo and arbitration provisions in the condominium law (chapter 514A- Hawaii, Revised Statute);
4. the forums for trial de novo include the circuit court; and the district court when the claim is not a real action and the amount in controversy does not exceed \$20,000;
5. constitutional issues relating to the right to jury trial are triggered if trial de novo is removed and replaced with other forms of alternative dispute resolution.

Q & A from previous page

-85	Records; examination; disposal (managing agent or board to keep detail accurate records)
-95	Managing agents (registration)
-95.1	Association of apartment owners registration; fidelity bond
-97	Association of apartment owners funds; handling and disbursement
-98	False statement (false testifying or filing any documents with the commission)
-132	Payments to the fund (apartment owners contribution to the condominium managing agent education fund)
-134	False statement (unlawful for associations, officers, board of directors, agents to file any false statement with the commission)

If you call with a complaint that is outside of the Commission’s limited jurisdiction, the condominium specialist will explain that the complaint is not in an area in which the Commission has authority. The specialist will recommend, in the spirit of owner enforcement and self governance, that you try mediating or arbitrating the dispute. The specialist, where appropriate and known to the specialist will also assist you with advice, referral, and information relating to your complaint and inquiry.

Licensed from pg. 1

building. You find yourself asking, who can I call to fix the leak? This article is to help you keep in mind some of the issues you, as a member of a regulated industry, should consider before setting out to hire someone to fix the leak.

AIDING AND ABETTING:

Specific laws prohibit those in the regulated industries administered by the Professional and Vocational Licensing Division, from “aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license.” (HRS, section 436B-19(6)). There is also a prohibition from “employing, utilizing or attempting to employ or utilize at any time any person not licensed under the licensing laws where licensure is required.” (HRS, section 436B-19(16)). If found to have violated either provision, a licensee can be sanctioned by way of fine, or license revocation or suspension.

You may be fined \$100.00 or more per violation and each day’s violation may be deemed a separate violation.

IN CONSIDERING WHO TO HIRE, AM I HELD TO A HIGHER STANDARD OF CONDUCT THAN THE AVERAGE CITIZEN?

All citizens are obligated to abide by the law, including those pertaining to license regulations. However, what may make you feel as if you are held to a higher standard than that of an average citizen is the fact that your license can be sanctioned if you aid and abet an unlicensed person while acting in your professional capacity.

HOW DO I KNOW IF THE WORK I NEED DONE REQUIRES A LICENSE?

Under the contracting statutes (Chapter 444, HRS), there is a “handyman” exemption. This exemption applies to any job where the aggregate contract price for labor, materials, taxes, and all other items is not more than \$1,000.00.

Condorama from pg. 1

critical to the operation of community associations. **Condorama II** has been divided into four sessions.

The first session will address the critical issue of the current and newest scams perpetrated on community associations. In the age of computers and the internet, the embezzlement of association funds has grown in sophistication. **“White Collar Crimes in the 90’s – How Safe is Your Money?”** will examine actual examples of embezzlement in community associations and offer practical solutions on how boards

HOWEVER, THE “HANDYMAN” EXEMPTION DOES NOT APPLY IN ALL CASES.

The “handyman” exemption does NOT apply if a particular job is less than \$1,000.00 but is part of a larger or major project or operation, whether undertaken by the same or different contractor. If the job is part of a larger job, a license is required.

The “handyman” exemption does NOT apply in any case where a building permit is required, regardless of the cost of the job. If a building permit is required, a license is required. You should contact the City and County Building Department to check if a particular job requires a building permit.

HOW CAN I CHECK IF A CONTRACTOR IS PROPERLY LICENSED?

You can call the Professional and Vocational Licensing Division (PVLD) at 586-3000 to verify the licensure of a contractor. You should make sure the contractor is licensed, and has the appropriate classification(s) to do that particular job. You may also request that the contractor show you their pocket license, but always call PVLD to verify that the license is still current.

Endnotes

- ¹ §444-26, Hawaii Revised Statutes, provides, among other provisions, recovery from the contractors recovery fund from which any person, including condominium owners, injured by an act, representation, transaction, or conduct of duly licensed contractor,... Recovery from the fund shall be limited to actual damages suffered... provided recovery from the fund shall not be awarded to persons injured by an act, representation, transaction, or conduct of a contractor whose license was suspended, revoked, forfeited, terminated, or in an inactive status at the time claimant entered into the contract with the contractor.

can better protect the association’s assets from embezzlement and scams.

“Why Boards Get Sued” will address the top ten causes suits are filed against directors. It is, unfortunately, getting more common place to see suits filed against directors. The program will discuss the duties of directors, the best manner in which the directors can fulfill their duties and how directors can avoid liability. Finally, the program will project the future trends of director liability.

Continued on next page

Continued from previous page

One of the most difficult tasks facing a board is conducting an efficient meeting. **“The One-Hour Productive Board Meeting”** will provide boards with a blueprint to shorten board meetings to one-hour, and useful tools to streamline the meeting process. Shorter and more effective meetings enhance the operation of the association and make it easier to attract owners to serve on the board.

The **“Ask the Expert”** session gives all of the attendees the opportunity to find solutions to their most pressing problems. A panel of distinguished national and Hawaii experts in law, property management, insurance and accounting will answer the questions posed by the audience. It provides the attendees with the unique opportunity of having their problems analyzed from several key perspectives in the community association industry.

As a bonus, the Insurance and Risk Management Professional Committee of CAI is conducting a free seminar for the attendees of Condorama II entitled, **“How to Solve the Insurance Puzzle.”** How a community association protects its assets is a challenge shared by

all community associations. The program analyzes the pieces of the complex insurance puzzle by reviewing insurance basics and explaining how the pieces fit together. The Insurance program will be held at 1:15 p.m. following the conclusion of the **Condorama II** at noon. This will give the attendees and opportunity to have lunch before the program.

A unique tradeshow will be open to **Condorama II** participants from noon to 1:00p.m. Exhibitors from the mainland and Hawaii offer a wide variety of products and services for community associations

Condorama II promises to be a great educational opportunity. With the joint sponsorship of the Hawaii Chapter of CAI and the Hawaii Real Estate Research and Education Center, a reduced registration fee of \$40 is being offered for registrations postmarked on or before April 19, 1997 (\$50 after April 19; \$60 at-the-door). Additional registrations from the same association or firm receive a \$10 per registrant discount. This makes **Condorama II** an unbeatable bargain and a must attend. For further information, please contact Ms. Suzette Pa, at 488-1133.

Condorama II Agenda

8:00 - 8:15 a.m.	Welcome and Introductions
8:15 - 9:45 a.m.	White Collar Crimes in the 90's – How Safe is Your Money? Kevin Davis, Ian Graham Insurance Nico F. March, Prudential Securities George E. Nowack, Jr., Esq., Weissman Nowack Curry Patricia V. Ross, Federal Bureau of Investigation Ronald S. Stone, CPA, California State University, Northridge
9:45 - 10:25 a.m.	Why Boards Get Sued Michael Kim, Esq., Arnstein & Hehr Milton M. Motooka, Esq., Love Yamamoto & Motooka
10:25 - 10:40 a.m.	Break
10:40 - 11:20 a.m.	Ask the Experts Emory Bush, Hawaiiana Management Jonathan Carr, CPA Donald Dykeman, Esq., Dykeman, Meda & Curtis John Morris, Esq., Iwai & Morris Michael Packard, PCAM, CPM, Chaney, Brooks & Company Barbara Wick, Condominium Insurance Specialists of America
11:20 - 11:55 a.m.	The One Hour Productive Board Meeting Larry Pothast
11:15 - 12:00 noon	Closing & Evaluations
12:00 - 1:00 p.m.	Tradeshow will be open to Condorama II registrants
1:15 - 2:00 p.m.	How to Solve the Insurance Puzzle

State of Hawaii Department of the Attorney General Completes Report to the Legislature On Family Child Care Homes In Certain Living Arrangements Including Condominiums

The Department of the Attorney General, together with the Department of Human Services, the Commission on Persons with Disabilities, the "insurance commission," and the Real Estate Commission, pursuant to Section 5 of Act 303 (SLH 1996) enacted in 1996, were required to review and discuss "issues of tort liability," the Americans with Disabilities Act, and constitutional concerns in connection with the provision of Act 303 voiding recorded restrictions or prohibitions against family child care homes in certain living arrangements. Such arrangements included; limited-equity housing cooperatives, cooperative housing corporations, condominium property regimes, and townhouse projects.

In summary, the Department of the Attorney General recommended that the Legislature consider the experience of other states in this area, before deleting the exemption for common interest communities and require the application of Act 303 (SLH 1996) to condominiums, cooperatives and other living arrangements. Deleting the exemption would result in voiding any condominium's recorded restriction or prohibition entered into whether by way of covenant, condition upon use or occupancy, or upon transfer of title to residential real property, which directly or indirectly restrict or prohibits family child care homes.

Condorama II Faculty

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Honolulu, Hawaii

Jonathan Carr, CPA
Honolulu, Hawaii

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Honolulu, Hawaii

Larry Pothast, PCAM
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San Francisco, California

Patricia Rose
Special Agent - Federal
Bureau of Investigation
(FBI)
Los Angeles, California

Ronald S. Stone, PhD, CPA
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University, Northridge
Northridge, California

Barbara D. Wick
CISA/CICUS
Arlington Heights, Illinois

Condorama II Registration Form

Name _____

Firm/Association _____

Address _____

City _____ State _____ Zip _____

Phone _____ FAX _____

Please Register the Following Additional Members of the Firm/Association:

1. _____ 3. _____
2. _____ 4. _____

REGISTRATION FEE:

Postmarked by April 19, 1997 – \$40 \$ _____
Postmarked after April 19, 1997 – \$50 \$ _____

Additional registrants from the same firm/association
Postmarked by April 19, 1997 – \$30 x _____ \$ _____
Postmarked after April 19, 1997 – \$40 x _____ \$ _____
TOTAL ENCLOSED \$ _____
No. Registered _____

PLEASE MAKE CHECKS PAYABLE
TO: CAI-HAWAII CHAPTER

RETURN COMPLETED FORM TO:
CAI - Hawaii Chapter
P.O. Box 976
Honolulu, Hawaii 96808
FAX: (808) 536-8899

QUESTIONS & INFORMATION:

Please call Suzette Pa
Phone: (808) 488-1133

If you require special accommodations, please call Suzette Pa

* REGISTRATION DEADLINE:
April 28, 1997

* Registration fee includes:

- Seminar Materials
- Full Validation for Parking

Seating is Limited! Early Registration is Recommended

AOAO from pg. 1

By May 30, 1997, the following are due to the Real Estate Commission :

Re- Registration Form *	all items completed
Evidence of Fidelity Bond	certification statement of insurance completed and signed by the insurance company
Payment of Registration Fee	\$50.00 (FOR 2 YEARS - New Biennial fee)
Payment of Condominium Management Education Fund Fee	\$4 for each apartment (FOR 2 YEARS)

Associations who fail to submit a completed re-registration application by May 30, 1997 are subject to the following pursuant to §514A-95.1, Hawaii Revised Statutes:

Registration After the Deadline Date of May 30, 1997	Payment of Amount of Registration Fee- \$50 plus Additional Registration Fee Penalty of \$50.00; Treated as a new applicant subject to initial requirements for registration Payment of Condominium Management Education Fund Fee & Penalty —\$4 for each apartment plus penalty assessment of 10% of the amount due
Impact of Non Registration	Cannot maintain an action in court—lack standing to collect or to foreclose any lien for common expenses etc. Subject to disciplinary action.

* The law requires the association to report immediately, in writing, to the commission any changes to the information contained on the registration or re-registration application including any renewals or non renewals of fidelity bond coverage and on any other documents submitted with the registration or re-registration.

By May 10, 1997, please call 586-2646, if your association does not receive its re-registration materials.

May 7, 1997 Condominium Review Committee Meeting Will Be Held In Kamuela On The Big Island

On May 7, 1997, at 1:30 p.m., the Real Estate Commission's Condominium Review Committee will convene in Kamuela, Hawaii in the Conference Room of the Lucy Henriques Medical Center, 67-1123 Mamalahoa Highway.

Condominium owners are invited to attend and participate at this public meeting. Members of the Real Estate Commission, the Commission's staff, and the staff of the Hawaii Real Estate Research and Education Center will be present. The meeting will be conducted

pursuant to a duly filed agenda and includes an open forum, a time available for the public to address the committee members. Issues relating to condominium project registration, governance, management, association registration and the Real Estate Commission's condominium program of work are some of the topics that are generally discussed at the condominium review committee meeting. Interested persons are encouraged to attend (the meeting).

Amended Real Estate Commission Meeting Schedule for 1997

Condominium Review Committee (10:30 a.m.)

Wednesday, May 7 – Kamuela, HI
 Tuesday, June 10 – Kuhina Nui Room
 Wednesday, July 9 – Kapuaiwa Room
 Wednesday, August 13 – Kapuaiwa Room
 Friday, September 12 – Kapuaiwa Room

Real Estate Commission (9 a.m.)

Friday, April 25 – Kapuaiwa Room
 Friday, May 23 – Kapuaiwa Room
 Friday, June 27 – Kapuaiwa Room
 Thursday, July 24 – Kapuaiwa Room
 Friday, August 29 – Kapuaiwa Room

Kapuaiwa and Kuhina Nui Rooms

HRH Princess Victoria Kamamalu Bldg., 1010 Richards Street, 2nd Floor, Honolulu, HI

Subject to change. Please reconfirm dates, times and location with commission staff. Phone 586-2643.

Education Calendar

This listing reports the availability of some condominium governance related events. The Hawaii Real Estate Commission and the Hawaii Real Estate Research and Education Center **express no opinion** about the quality or content of any event which they do not sponsor; neither should the listing be construed as an endorsement or sponsorship of any event by the Hawaii Real Estate Commission or the Hawaii Real Estate Research and Education Center, unless expressly indicated. Interested parties are advised to conduct their own investigation and formulate their own opinion about these matters. Participants are advised that courses are subject to change, please check directly with the provider about the specifics of a particular event.

Date	Time	Course Title	Location	Provider
5/2-4 & 9-11 (6days)	N/A	ARM 101, Successful Site Management	Regency Tower	IREM/HAC
5/8/97	11:30-1:30	Education Luncheon - \$20 per person Hawaii's Business Future - Thomas Smythe, DBED	Hale Koa Hotel	HCAAO
6/7/97	8:30-12:00	Fiscal Management - \$59	To be announced	Alakahi
6/12/97	11:30-1:30	Annual meeting - \$20 per person Hawaii's High Technology Development Speaker TBA	Hale Koa Hotel	HCAAO
7/12/97	8:30-4:00	Fundamental Legal Issues - \$59 for Hawaii Condominium Associations	To be announced	Alakahi

For full information on the above-listed courses, please call the provider

	Provider	Phone	Address
Alakahi	The Alakahi Foundation	522-5990 (Oahu)	1142 Auahi St. Suite 1806, Honolulu, HI 96814
CAI –	Community Associations Institute Hawaii Chapter	488-1133 (Oahu)	P.O. Box 976, Honolulu, HI 96808
HAC	Oahu ARM Committee	523-6096 (Oahu)	1571 Piikoi St. #506, Honolulu, HI 96822
HCAAO –	Hawaii Council of Associations of Apartment Owners	533-2528 (Oahu)	677 Ala Moana Blvd., Suite 701, Honolulu, HI 96813
IREM –	Institute of Real Estate Management Hawaii Chapter No. 34	737-4000 (Oahu)	1136 12th Ave., Suite 220, Honolulu, HI 96816
CCM –	Condominium Council of Maui	879-8847 (Maui)	P.O. Box 647, Kihei, HI 96753
UH-SBMP–	Small Business Management Program College of Continuing Education, University of Hawaii	956-8244 (Oahu)	2530 Dole St., Honolulu, HI 96822

Visit the Real Estate Branch and Real Estate Commission's homepage at: <http://kumu.icsd.hawaii.gov/hirec>

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This publication is an informal interpretation, pursuant to Chapter 16-201, Hawaii Administrative Rules. This publication is not an official opinion or decision, nor should it be viewed as binding on the Real Estate Commission or the Department of Commerce and Consumer Affairs.

Purchased or funded by Condominium Management Education Fund, Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii.

ERRATA

AOAO REGISTRATION ARTICLE

Corrected Page 7

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April 7, 1997