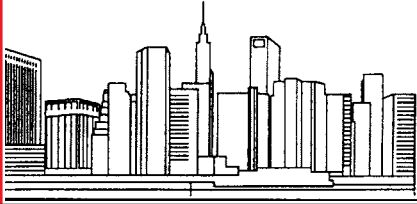


HAWAII CONDOMINIUM BULLETIN



VOLUME 11, NO. 3

OCTOBER 2003

Funded through the Condominium Education Fund

Lists of Hawaii Licensees Will Be Available on State's Website

The Hawaii Department of Commerce and Consumer Affairs (DCCA) and eHawaiiGov are creating a new online service that will allow the public to compile and download customized lists of licensees in Hawaii.

The new "List Builder" service, accessible through the state Internet portal (www.ehawaii.gov.org), will, for the first time, provide users with multiple ways to search the state's licensee database and receive a data file containing the requested records.

The database includes information on more than 92,000 licensees and includes contact information, names, and dozens of business data elements.

The new List Builder service is available 24/7 and provides real time access to Hawaii's business database information.

Users may build a list using various criteria, including all licensing boards, zip codes, and registration data.

See List Builder on pg. 6

Real Estate Branch Makes Public Access Computer Available

The Real Estate Branch has set up a public access computer in the Documents Viewing Area of its office at 250 South King Street, 7th floor. The public access computer allows users to conduct research on condominium projects using the Microsoft Access database.

Copies of the developer's public reports (.pdf format) and/or the current Biennial Registration Applications for Association of Apartment Owners (AOAOs) that registered during the 2003-2005 Biennial Registration can be obtained via the used software.

Users can either save the developer's public reports or biennial registration applications to a CD or floppy disk provided by the user or request a photocopy of the documents at a cost of .25 cents per page. Requests for photocopies will be completed within 10 working days.

For more information, please contact any condominium staff member at 586-2644.

Study Regarding Assisted Living Facilities Presented at Briefing

The State Department of Health and the Real Estate Commission's Assisted Living Study Group recently presented a two-hour informational briefing on a study being conducted on the impact and feasibility of allowing condominium and cooperative housing corporation projects to become licensed as assisted living facilities.

The briefing was presented in the State Capitol Auditorium on October 14 to an audience that included condominium owners and health care providers.

The study is being conducted pursuant to Act 185 enacted in 2003.

Specifically, the Act requires the State Department of Health and the Real Estate Commission to conduct the study and address certain issues relating to but not limited to:

- A new definition of "assisted living services."
- Liability insurance, including cost, availability and access to financing, and the effect of conversion on property and resale values.
- Potential liability exposure of the

individual owners and the board of directors of a condominium or cooperative housing corporation project that becomes licensed.

See Assisted Living on pg. 7

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This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at (808) 586-2644 to submit your request.

The Hawaii Condominium Bulletin is funded by the Condominium Education Fund, Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii.



Letter from the Chair . . .

The year is fast coming to a close and we are pleased to report on the following developments. A "Public Access" computer is now located in the Real Estate Branch's Document Viewing area. The computer is home for selected information about condominium projects and associations of apartment owners (AOAO) which have registered with the Commission. With the present software, the AOAO registration and the developer's public reports may be accessed and saved to a compact or floppy disc. Past publications of the Board of Director's Guide, the cost of the publications of which have been paid by the Condominium Education Fund, is also available for printing from the Commission's website <http://www.hawaii.gov/hirec/>. Of particular note, legislation was passed extending the Commission's deadline to recodify the law.

In connection with the recodification, the Commission held information gathering hearings in September on Kauai, Maui, Kona, and Hilo to report on a draft version of the proposed recodified condominium law and to receive comments and suggestions from interested stakeholders. A good number of interested condominium owners, board members, county officials, real estate licensees and other interested community individuals attended and presented testimony.

The Commission also held its last neighbor island outreach meeting for the year on Kauai. The Commission holds three (3) standing monthly committee meetings per year on the neighbor islands, rotating between the Big Island, Kauai, and Maui to provide the neighbor island licensees and interested parties with an opportunity to directly provide the Commission with their specific concerns. The Commission's meeting schedule for the remainder of 2003 and the education calendar are included in this issue. Your attendance and more importantly your input are always welcome.

Pursuant to Act 185 passed this year, we are also currently assisting the State Department of Health on a study on defining "assisted living services" and the impact and feasibility of allowing condominium and cooperative housing corporation projects to become licensed as Assisted Living Facilities. An informational briefing on this subject was held on October 14, 2003 at the State Capitol. Details about this briefing appear in the article on page 1.

On some final notes, the security of association funds is always a major concern especially when it is on the home front. You may find interesting a report on the *Honolulu Advertiser* article, "Newspaper Reports on Pleading in Marsha Joyner Court Case," on page 5. Contributing author for this issue's reference section is Steve Glanstein, Professional Registered Parliamentarian and President of the Community Association Institute, Hawaii Chapter. He provides information and guidance on how to keep records of annual meetings on page 3.

In closing, since the next Bulletin is targeted to be published after the year ends, let me take this opportunity to wish you a safe and happy holiday season.

Sincerely,

Mitchell A. Imanaka

Mitchell A. Imanaka, Chair
Condominium Review Committee

Ask the Condominium Specialist

Q After reviewing the financial reports, it was discovered that a director was compensated for services as a director. Does the condominium law allow this?

A Generally, the bylaws of associations prohibit the compensation of directors. Each association should examine its declarations and bylaws to determine how directors' compensation should be treated. The condominium law should also be examined.

Some related provisions include:

§514A-82(b)(7), HRS, states, "An owner shall not act as an officer of an association and an employee of the managing agent employed by the association."

§514A-82(b)(10), HRS, states, "Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses."

§514A-82(b)(12), HRS, states, "The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other education materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of paragraph (10)."

Other things to consider:

- Do the recorded bylaws specify the duties of a director?
- Do the recorded bylaws include provisions for compensation to the director or specifically prohibit compensation?
- Has the Association ever compensated a director in the past for any services provided to the Association?
- Have the bylaws been amended to provide for compensation?

Q Are all apartment of association owners (AOAO) required to have a managing agent?

A No. Some AOAOs elect to be "self-managed." Basically, this refers to AOAOs that manage their project with the help of volunteers or AOAO employees and do not retain, via a contract, the services of an independent Condominium Managing Agent.

Of note, §514A-95.1(a)(1), HRS, requires each AOAO having six (6) or more apartments to secure a fidelity bond to protect the AOAO against fraudulent or dishonest acts by persons handling the AOAO's fund including its condominium managing agent, in the amount equal to \$500 multiplied by the number of apartments, provided that the bond shall not be less than \$20,000 nor greater than \$100,000.

Minutes

By Steve Glanstein, Professional Registered Parliamentarian

Many condominiums have completed their annual meeting. This is a good time to provide guidance for association members in order to make an accurate record of the official annual meeting proceedings of “minutes.”

This explanation of minutes is based upon *Robert’s Rules of Order Newly Revised* 10th edition, printed in 2000 (abbreviated ROOR), pages 343-344 and 451-458.

Minutes are the records of the proceedings of a deliberative assembly. Hawaii condominium property regimes, cooperatives, community associations, and the board of directors function as deliberative assemblies. Therefore the minutes do not become the official record of the proceedings *until they have been approved*.

The actions of an organization start immediately when a motion is adopted and not when the minutes are approved. On the other hand minutes may be amended years after their approval by the motion to *Amend Something Previously Adopted*.

There is no requirement that an individual be present at a specific meeting in order to be eligible to vote to approve that particular meeting’s minutes. For example, assume that the regular secretary was not present at the March 13, 2003 annual meeting. The secretary may still participate and vote if necessary to approve the minutes.

The minutes are supposed to be a record of *what was done and not what was said!*

Minutes should not contain the following:

1. The engineer’s opinion;
2. The lawyer’s opinion;
3. The parliamentarian’s opinion;
4. The property manager’s opinion or report;
5. The resident manager’s opinion or report;
6. The secretary’s opinion;
7. The treasurer’s opinion or report;
8. Individual members’ demands for their, “remarks to be in the minutes.”

Minutes don’t need to contain the following:

1. An individual’s apartment number;
2. The name of the seconder, unless *specifically ordered* by the group; or
3. The name of every guest who attends the meeting, unless *specifically ordered* by the group.

Each of the above items has appeared in minutes of at least one Hawaii community association or board.

Most of these items have caused some form of conflict at either an association annual meeting or a board of directors’ meeting.

Therefore, we will conclude with a brief description of what minutes should contain and a sample set of meeting minutes for a fictitious annual association meeting.

Minutes should contain the following basic information:

1. The name of the organization;

2. Type of meeting, for example, annual, regular, special, etc.;

3. The date, time, and place, if not always the same;

4. The fact that the regular chairman and secretary were present, or the names of the persons who substituted for them; and

5. Whether the minutes of the previous meeting were read and approved or first corrected and then approved with corrections.

Minutes should contain the following information related to each subject matter:

1. All main motions or motions that bring a main question back to the organization (Take from the Table, rescind or Amend Something Previously Adopted, Discharge a Committee, and Reconsider);

2. The disposition of main motions or motions that bring a main question back to the organization—if one of these motions is temporarily disposed of (for example, postponed to the next meeting, referred to a committee, etc.) then any motions directly related to the original motion must also be included in the minutes;

3. Other motions that were not lost or withdrawn in cases where it is necessary to record them for completeness or clarity;

4. Formal notices of motions to be brought up at a future meeting; and

5. The motions Point of Order and Appeal (demand for enforcement of the rules and an attempt to reverse the chair’s ruling, respectively) whether sustained or lost, including the reason for the chair’s ruling.

Minutes are also subject to several additional rules:

1. When a count is ordered or the vote is by ballot, the number of votes should be entered. In the case of an election, all votes must be disclosed both to the membership and in the minutes, including improper votes and votes received by individuals who were not elected.

2. When the voting is by roll call (for example at a board meeting conducted for an association organized under HRS §514A) then the names of those voting on each side should be entered in the minutes.

3. The name of a committee and the reporting member can be entered in the minutes when a committee report is provided. However, the report does not become part of nor is it attached to the minutes unless **specifically ordered** by the group.

4. The name and subject of a guest speaker can be entered but no effort should be made to summarize the remarks.

Sample association minutes
Association of Apartment Owners of ABC Condo
Annual Meeting—March 13, 2003
Community Recreation Center

A. CALL TO ORDER

President _____ called the meeting to order at 7:30 p.m. _____
_____ was Recording Secretary for the meeting. A quorum
was established with ___% present in person or by proxy.

B. CONDUCT OF MEETING

Special meeting rules were adopted by unanimous consent. (Rules are attached)

C. APPOINTMENT OF TELLERS

J.P. Moneybags and Noah Morrison were appointed tellers for any counted votes
at the meeting.

D. APPROVAL OF MINUTES

The minutes of the _____ Annual Meeting were approved as written.

E. REPORTS OF OFFICERS

President _____ gave the President's Report

Treasurer _____ gave the Treasurer's Report.

The Auditor's Report for the year ending _____ was adopted by unanimous
consent.

F. ELECTION OF DIRECTORS Nominations and elections were conducted.

The results are:

John Doe	72.59%--2 year term
Howard Johnson	55.33%--1 year term
Jane Roe	5.33%
(One illegal vote—rejected:	0.5374%

G. NEW BUSINESS

Tax Resolution: The following resolution was adopted by unanimous consent.

“Resolved by the owners of the Association, that the amount by which each member’s assessment in 2003 exceeds the total payments of the Association for maintenance, repairs and other expenses and capital expenditures of the Association as the Board of Directors has appropriately paid or determined payable, shall be applied to regular member assessments in the year 2004.”

Ratification of Property Management Contract: The selection of _____ was approved by unanimous consent.

Ratification of Board’s Selection of Auditor: The selection of _____, CPA was approved by unanimous consent.

H. ADJOURNMENT

The meeting adjourned at _____ p.m.

(Name)
Recording Secretary

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Commission Convenes Meetings of Standing Committees on Kauai

On September 10, 2003 the Real Estate Commission convened its monthly standing committee meetings in Lihue, Kauai, and held a Condominium Specialist Office for the Day.

Committee meetings and Condominium Specialist Office for the Day are held on different islands to provide members of the condominium and real estate communities with an opportunity to attend the Commission’s Laws and Rules, Education, and Condominium Review Committee meetings usually held on Oahu. Participants include condominium apartment owners, real estate licensees, and state and county government agencies.

Prior to and following the adjournment of the Condominium Review Committee meeting, participants were provided with the opportunity to meet with the Senior Condominium Specialist about their specific condominium concerns.

Some of the condominium concerns and issues raised and discussed at the meeting included the Kauai County Planning Department’s concern (unbeknownst to the Real Estate Commission) about the registration of possible fraudulent condominium projects with the Real Estate Commission, self management of the condominium by its employees with no real estate broker license, liability of a real estate broker for sales of condominiums pursuant to the initial and subsequent developer’s public report, and guest house rights.

The Commission is scheduling another neighbor island committee meeting on Maui.

Newspaper Reports on Pleading in Marsha Joyner Court Case

The Honolulu Advertiser reported in its September 13, 2003, issue that Marsha Joyner, a civil rights activist and president of the Dr. Martin Luther King Day Coalition of Hawaii, pleaded no-contest to a felony charge of stealing “thousands” of dollars from The Association of Apartment Owners of the Kon Tiki ’Ano Hou (AOAO), in Waikiki where she also owns an apartment.

The newspaper also reports that she pleaded no-contest to avoid negative publicity, an Oahu grand jury indicted her in March on second-degree theft, and the former on-site manager of the apartments, Grant R. Peters, was also indicted. The records state he was not arrested and may be residing in New York.

The article also reported the remarks of the Honolulu Deputy Prosecutor, Randal Lee, that Ms. Joyner’s business, Malenka O Hawaii, received payments from the AOAO between March 1998 and October 2000 for “no work that could be justified.”

The article indicated that Ms. Joyner must return to court December 10, 2003, and appear before the Circuit Court, where a ruling will be made on her request for deferred acceptance of no-contest. If this plea is accepted, the case will be dismissed provided she “stays out of trouble for a set period of time.” Should the request be denied, she may face a maximum term of five (5) years for the theft charge.

List Builder from pg. 1

The resulting count is displayed immediately, and an email notice is automatically sent when the list is ready to be downloaded, always within 24 hours.

The data can then be uploaded into commonly used software packages and further customized if desired.

By using List Builder, users can focus on specific types of licensees and businesses that buy certain products or services or are located in a certain area. List Builder is available to users who subscribe to the eHawaiiGov service at a cost of \$75 per year. The lists cost 5 cents per record, and subscribers receive a bill at the end of the month.

The goal of the online List Builder is to improve public access to information. Look for the List Builder soon.

Commission Holding Hearings on Recodification Project

Many people worked hard over the past two-and-a-half years to get the recodification of Hawaii's condominium property regimes law to this point.

The Commission particularly thanks the volunteers of the Blue Ribbon Recodification Advisory Committee (BRRAC) for the hundreds of volunteer hours they have spent on the project, and the members of the Hawaii Developers Council and other interested stakeholders for their interest and suggestions for improving Hawaii's condominium law.

In conjunction with its ongoing efforts to obtain input from condominium property regime stakeholders, the Commission is in the midst of holding information gathering hearings regarding the recodification of HRS Chapter 514A. As of this writing, hearings have been held on Kauai (September 16), Maui (September 23), Kona (September 29), and Hilo (September 30). A final hearing was held on Oahu in Conference Room 016 at the State Capitol on October 7.

After the hearings, the Commission will reconvene the BRRAC to help further refine the proposed recodification in consideration of hearing testimony and additional comments. Commission approval of a final report and final draft of the proposed condominium law recodification is expected by early December, with submission to the Legislature to take place just after Christmas.

The Commission has tried to make the recodification process as accessible and transparent as possible for everyone affected by Hawaii's condominium property regimes law. We want to make sure that everyone can understand what we are doing at every step in the process and why.

To that end, the Commission has posted the complete text of the discussion draft, with comments, along with earlier drafts of the recodification and background information on the Commission's website at: <http://www.hawaii.gov/hirec/> (click on "Ch. 514A, HRS Recodification.")

If you have questions, please email the Condominium Recodification Attorney at Gordon.M.Arakaki@dcca.hawaii.gov or call him at 586-2735.

Board of Director's Guides Are Available on the Commission's Website

Past publications of the Board of Director's guides are now available via the Real Estate Commission's website, www.hawaii.gov/hirec.

Although the publications have not been updated to reflect the most current information, the general information may be good reference material.

Readers may be able to begin researching their condominium governance issues. The source cites for much of the information included in the publications can easily be checked for the latest updates.

At the website, select "Condominium" on the menu and proceed to the next menu where you will find these guides:

Fiduciary Duty, January 1994

Proxies, June 1994

Sense of Community, April 1995

Condominium Insurance—Including Fidelity Bonds, March 1996

An Introduction to Condominium Living in Hawaii, March 1998

A Quick Guide to Condominium Living in Hawaii, March 1998

Preventing Housing Discrimination in Hawaii Condominiums, May 1998

The Commission has plans to update the publications as part of its ongoing program of work.

Administrative Actions

Maika'i Associates, Inc., Heidi Venable and Jean F. Brown—REC 2001-153-L

The Respondents entered into a Settlement Agreement prior to RICO's filing of Petition for Disciplinary Action.

It was alleged that the respondent, Maika'i, violated HRS §467-14 (7) (failing to properly account for funds belonging to an association of apartment owners for which it served as property manager) and §436B-19(16) (hiring an unlicensed contractor to perform tree-trimming services.)

The Respondents denied they violated §467-14(7), HRS, but admitted they no longer have the records refuting the allegation.

They also denied that they violated §436B-19(16) by hiring an unlicensed contractor but admitted that the contractor was not licensed as or working for a licensed contractor.

Under terms of the Settlement Agreement, the Respondents agreed to pay a \$1,500 fine and make restitution to the association of apartment owners in the amount of \$2,733.57.

The Commission approved the Settlement Agreement on July 30, 2003.

Assisted Living from pg. 1

- Apportionment of costs and fees between individual owners of the condominium or cooperating housing project and those owners who have elected from time to time to receive assisted living services.
- The appropriateness of licensing vendors that would provide assisted living services to residents of a condominium or cooperative housing corporation project for a fee, under con-

tract with the board of directors of the condominium or cooperative housing corporation project.

The State Department of Health and the Real Estate Commission are required to submit a joint report of their findings and recommendations, including proposed legislation, to the Legislature no later than 20 days prior to the convening of the regular session of 2004.

MEDIATION CASE SUMMARIES

MCP = Mediation Center of the Pacific, Inc.

KMC = Ku'ikahi Mediation Center

MSM = Mediation Services of Maui, Inc.

RICO = Regulated Industries Complaints Office

KEO = Kauai Economic Opportunity, Inc.

WHMC = West Hawaii Mediation Center

CMA = Condominium Managing Agent

BOD = Board of Directors

Cases Handled by MCP 4/1/03 – 8/31/03

Between April 1, 2003 and August 31, 2003, there were a total of seven (7) cases involving condominium disputes. Three (3) of the cases were mediated, one (1) closed without mediating, and three (3) are pending mediation.

Parties	Complaint	Disposition
Owner vs. BOD	Dispute regarding damage to unit caused by common element	Declined mediation
Owner vs. BOD	Dispute regarding enforcement of house rules	Mediated
Owners vs. BOD	Dispute regarding enforcement of house rules	Mediated
Owner vs. BOD	Dispute regarding enforcement of house rules	Mediated

Cases Handled by MSM 4/1/03 – 8/31/03

Between April 1, 2003 and August 31, 2003, there were a total of three (3) cases involving condominium disputes. One (1) was mediated and two (2) were closed without mediation.

Owner vs. BOD	Dispute regarding bylaws	Declined mediation
Owner vs. BOD	Dispute regarding house rules	Closed without mediation
Owner vs. BOD	Dispute regarding bylaws and house rules	Mediated

(No cases reported by WHMC, KEO, KMC, and RICO)

Real Estate Commission Meeting Schedule

Laws & Rules Review Committee—9 a.m.
Education Review Committee—Upon adjournment of Laws & Rules Review Committee Meeting.
Condominium Review Committee—Upon adjournment of the Education Review Committee Meeting

Wednesday November 12, 2003—Kapuaiwa Room
 Thursday, December 11, 2003—Kapuaiwa Room

Real Estate Commission—9 a.m.

Friday, October 31, 2003—Kapuaiwa Room
 Wednesday, November 26, 2003—To be announced
 Friday, December 12, 2003—Kapuaiwa Room

Unless otherwise noted, meetings will be held in the HRH Princess Victoria Kamamalu Building, located at 1010 Richards Street, Second Floor, Honolulu, Hawaii. Meeting dates, locations, and times are subject to change without notice. Please visit the Commission's website at www.state.hi.us/hirec or call the Real Estate Commission's Office at 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 586-2643 to submit your request.

Condominium Education Calendar 2003

This calendar lists upcoming educational events of interest to the condominium community. The publishers express no opinion about the quality or content of any event they do not sponsor. This listing should not be construed as an endorsement or sponsorship of any event unless expressly indicated. Events may be subject to change; please check directly with the provider to confirm each event.

Date	Time	Event Title	Location	Provider
10/16/03	11:30 a.m.	* Money Pit or Pot of Gold	Hale Koa Hotel	CAI-H
10/30/03	8:30—4:30	Casualty & Property Insurance, Hot Topics and Updates to Hawaii Real Estate Law Manual, Volume 1	Sheraton Waikiki Hotel	HSBA-CLE
10/30—11/1		CAI 30 th Anniversary Conference	Hyatt Regency Crystal City Arlington, Virginia	CAI
11/20/03	TBA	* Icebergs Ahead! Steering Through the Ice Field & Keeping Your Association Afloat	Hale Koa Hotel	CAI-H

****The seminar is partly funded by funds from the Condominium Education Fund, Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii for condominium apartment owners whose AOAO is currently registered with the Real Estate Commission. For full information on the above-listed courses, please call the provider.***

Provider	Phone	Address
CAI	(703) 548-8600	225 Reinekers Ln #300 Alexandria, VA 22314
CAI-H	488-1133	P.O. Box 976 Honolulu, HI 96808
CCM	573-4231	P.O. Box 1362 Kihei, HI 96753
HCAAO	533-2528	677 Ala Moana Blvd, #401 Honolulu, HI 96813
HSAP	488-2489	
HSBA-CLE	537-1868	1132 Bishop Street, Ste 906 Honolulu, HI 96813
IREM	733-7060	1136 12 th Ave., Ste 220 Honolulu, HI 96816
ARM	733-7060 X 119	1136 12 th Ave., Ste 220 Honolulu, HI 96816
UH-OC	956-8244	2530 Dole St. Honolulu, HI 96822

Real Estate Branch and Real Estate Commission's web page at: <http://www.hawaii.gov/hirec>

Address: 250 S. King St., Rm. 702; Honolulu, HI 96813; Phone: (808) 586-2644

October 2003

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