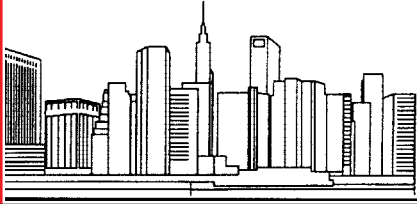


HAWAII CONDOMINIUM BULLETIN



VOLUME 11, NO. 1

Funded through the Condominium Education Fund

FEBRUARY 2003

AOAO Re-Registration Deadline is Monday June 2, 2003

In early April 2003, the Commission will mail out the 2003-2005 Condominium Association Biennial Registration Application.

All current condominium Association of Apartment Owners (AOAO) registration will terminate on June 30, 2003. The new applications cover the biennial registration period July 1, 2003 – June 30, 2005, and will be mailed to the contact person previously designated on the 2001-2003 AOAO registration application (unless the information has been updated with the Commission).

All renewal applications, excluding those requesting a bond exemption, must be post-dated or hand-delivered no later than the Commission's prescribed deadline date which is targeted as June 2, 2003. For those renewal applicants requesting a bond exemption, the re-registration deadline is Wednesday, April 30, 2003. The reason for the earlier bond exemption application deadline is to allow the AOAO enough time to obtain and submit

See Deadline on pg. 6

COMMISSION ANNOUNCEMENTS

Request for Comments on Recodification Project

● Apartment owners, AOAOs, boards of directors, managing agents, and the condominium community are encouraged to submit comments and recommendations on changing the condominium law or contact the Recodification Attorney, Gordon Arakaki, at 586-2644 or by fax at 586-2650 or by letter to: 250 South King Street, Room 702, Honolulu, HI 96813, or at the email address: Gordon_M_Arakaki@dcca.state.hi.us. Working draft and report available at <http://www.state.hi.us/hirec>

Condominium Management Education Fund

● The special fund is sustained by fees assessed to condominium project developers of \$5 per apartment and to registered condominium associations of \$4 per apartment biennially. The fund is utilized for numerous condominium programs, which can be reviewed along with the latest financial statements at: <http://www.state.hi.us/hirec>. The Office of the Auditor, under the direction of Marion Higa, has examined the fund on numerous occasions and states in the latest report, "The trust fund serves the purpose for which the fund was originally created and continues to serve the intended beneficiaries." Comments and recommendations on the special fund are encouraged and may be addressed to the Condominium Review Committee at 250 South King Street, Room 702, Honolulu, HI 96813 or by fax at (808) 586-2650.

Condominium Review Committee Educational Advisory Group Meets

The Condominium Management Education Fund (CMEF) was established by the Real Estate Commission for educational purposes which include the financing or promoting of: education and research in condominium management, registration, real estate, improvement and efficient administration of associations, and expeditious and inexpensive dispute resolutions (Chapter 514A-131, Hawaii Revised Statutes).

In continuing to administer the CMEF, an advisory group, the Condominium Review Committee (CRC) Educa-

tional Advisory Group held a forum on January 14, 2003. The CRC Chair, Commissioner Mitchell Imanaka, facilitated the forum. The purpose of the CRC Educational Advisory Group is to provide the Commission with on-going recommendations and continuing directions for CMEF funded educational programs. Those attending represented various interest groups including condominium board members, owners, managing agents, resident managers, self-managed association of apartment owners (AOAOs), condominium organizations, condominium attor-

neys, and educators.

Those generously giving their time to serve on the advisory group include Richard Port, Agnes Ringle,

See Advisory Group pg. 5

ALSO IN THIS ISSUE

Letter from the Chair	2
Ask the Condominium Specialist	2
Law changes for associations	3
Recodification progress report	5
Administrative Actions	6
Mediation Case Summaries	7
Condominium Education Calendar	8

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 . . .

Dear Condominium Owners,

We begin the New Year with great anticipation of good things to come, and wish you the best for the upcoming year.

We will be continuing our efforts with the different programs: condominium related legislation, recodification of Chapter 514A, Hawaii Revised Statutes, and administration of the mediation and educational programs for the condominium community.

On the same note, I am happy to announce that a new Condominium Review Committee Educational Advisory Group held its first meeting on January 14, 2003.

The purpose of the Group is to provide the Commission with on-going recommendations and continuing direction for Condominium Management Education Fund educational programs. And we continue to keep you updated on the recodification efforts.

Towards the closing of 2002, in November 2002, the Commission held a Condominium Specialist Office for the Day at the various neighbor islands in conjunction with the License Renewal Workshops.

This provided an opportunity for association members and others to speak to the specialist regarding various questions concerning Chapter 514A, Hawaii Revised Statutes, and association concerns.

With the beginning of the New Year, the Commission held one of the many neighbor island outreach meetings on Maui (a program of work item). The Commission holds two (2) monthly meetings per year and rotates between the Big Island, Kauai, and Maui.

In this issue, Richard Ekimoto, an attorney and contributing author, discusses the new Nonprofit Corporation Act and its impact on incorporated associations of apartment owners.

Finally, it is that time of year again, where we remind you of the AOA re-registration deadline, June 2003.

In closing, the Commission's meeting schedule for 2003 and the education calendar are included. Your attendance is always welcome. The Commission looks forward to your input at these meetings.

Sincerely,

Mitchell A. Imanaka

Mitchell A. Imanaka, Chair
Condominium Review Committee

2003 Legislative Update

Currently, the Legislature is considering several issues of interest to condominium owners. A brief summary is provided. Some of the bills may become law and some may not.

This article summarizes selected bills. The summaries are not intended to be an exhaustive list or to cover all provisions of a bill.

Interested readers may access the Legislature's website: <http://www.capitol.hawaii.gov>, for a listing of bills, to follow the status of the bills as they go through the process or to read the full text of the bills.

If and when the bills become acts, a more detailed summary of the legislation will be placed on the Commission's web site at: www.state.hi.us/hirec.

The following are pending bills requested by citizens except where noted:

HB 45—Removes sunset date for Act 39 (SLH 2000), which allows for the continued assessment of purchasers of delinquent condominium units for unpaid common expenses by the homeowners association.

See Legislative Update on pg. 7

Ask the Condominium Specialist

Q I am a president of a 150-unit condominium, and attend all committees of the association of apartment owners. Our "proxy committee" is currently working on revising the association's official proxy form to be in accordance with the most current law, specifically §514A-83.2, Hawaii Revised Statutes. What are the requirements for a valid proxy?

A Your association is to be congratulated for having an active board and volunteer committee. We are not authorized or licensed to provide legal advice. We can offer the following for informational purposes. §514A-83.2, HRS, appears to require, among other things, that the proxy satisfy certain conditions to be valid:

1. Be delivered to the secretary of the association of apartment owners or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains. (Section 514A-83.2(a)(1), HRS)

2. Contain at least the name of the association of apartment owners, the date of the meeting of the association of apartment owners, the printed names and signatures of the person giving the proxy, the apartments for which the proxy is given, and the date that the proxy is given. (Section 514A-83.2(a)(2), HRS).

Act Changes Laws for Incorporated Associations

By Richard S. Ekimoto, Esq., Elisha Ekimoto & Harada

Hawaii recently adopted the Revised Model Nonprofit Corporation Act. The Revised Model Nonprofit Corporation Act was drafted by the American Bar Association and forms the basis for the nonprofit corporation laws in most of the states. Beginning on July 1, 2002, all incorporated condominium and community associations in the State of Hawaii are required to follow the Nonprofit Corporation Act. If there is a conflict with the new Nonprofit Corporation Act and the Condominium Property Act (HRS Chapter 514A), the Planned Community Act (HRS Chapter 421J), and the Time Share laws (HRS Chapter 514E), the community association statutes will govern. However, if there is no conflict, the new Nonprofit Corporation Act will apply. If your association is incorporated, the procedures you follow have now changed!

A short summary of some of the key provisions of the Nonprofit Corporation Act are:

- **Quorum for Membership Meetings.** The Act permits the Board to adopt a By-Law amendment to reduce the quorum requirement for membership meetings unless prohibited by the By-Laws. Incorporated associations with difficulty meeting the quorum requirements for its membership meetings may wish to have their Boards adopt an amendment to the By-Laws reducing the quorum. The Act provides that membership approval is not necessary unless the By-Laws prohibit the Board from taking this action. In a situation where the quorum is reduced, additional protections are needed since a small minority of the total membership can make decisions. Therefore, if less than 1/3 of the members are present at a meeting at which a quorum is present, only the matters described in the meeting notice may be voted upon (similar to special meetings). The limitation on matters that may be considered applies even if the quorum is reduced by a vote of the owners rather than a vote of the Board.

- **Voting by One of Two or More Co-owners.** The Act provides that if a member consists of two or more people, the vote of one binds all the co-owners and if two or more co-owners vote, the vote for the member is prorated. This has been the practice of most community associations in the State, but a recent Hawaii trial court ruled contrary to this decision. The decision is on appeal to the Hawaii Supreme Court. For incorporated associations, however, the vote of one of the co-owners of a unit will bind all the co-owners as long as the other co-owners do not object regardless of the outcome of the appeal.

- **Acceptance of Signatures by Corporation.** The Act expressly states that a nonprofit corporation can rely on a signature on a vote, consent, waiver, or proxy appointment if the name is the same as the member and if the corporation is acting in good faith. The Act also provides that if the names are different, the corporation can rely on the signature if it acts in good faith and: (1) the member is an entity and the named signed purports to be an officer or agent of the entity; (2) the name signed purports to be the attorney-in-fact of the member and the signatory provides acceptable evidence to the corporation of the authority; (3) the member consists of two or more persons and the signatory is one of the co-members; (4) the name signed purports to be the executor, guardian or conservator of the member and the signatory provides acceptable evidence to the corporation of the authority; or (5) the name signed purports to be a receiver or trustee in bankruptcy and the signatory provides acceptable evidence to the corporation of the authority. The Act also provides that the corporation can reject the vote, consent, waiver, or proxy appointment if the secretary or other

officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature or the signatory's authority to sign for the member. Any officer or agent that accepts or rejects a vote, consent, waiver, or proxy appointment in accordance with the standards in the Act cannot be liable in damages to the member for the acceptance or rejection. Furthermore, actions of the corporation based on the acceptance or rejection is valid unless ruled otherwise by a court of law.

- **Holding Board Meetings by Telephone Conference Call.** The Act provides for the use of telephone conference calls or other similar technology for Board meetings. In order for attendance to be valid, all people participating in the meeting must be able to hear each other simultaneously. The latest version of Robert's Rules of Order Newly Revised was changed to expressly require By-Law authority to have meetings by telephone conference call. The Nonprofit Corporation Act, however, supersedes Robert's Rules of Order. Therefore, unincorporated associations without a By-Law provision authorizing telephone conference call meetings, cannot hold Board meetings in this manner if they are required to comply with Robert's Rules of Order Newly Revised unless they are incorporated.

- **Limitation of Liability of Non-compensated Officers and Directors.** The Act provides that an officer or director that is not compensated and has no expectation of compensation is not liable for performance of his or her duties except in cases of gross negligence or wilful misconduct in the performance of his or her duties.

- **Record Dates of Meetings.** Corporations have usually had a procedure for establishing record dates in their By-Laws. Since it is impracticable for corporations to constantly keep up-to-the-second records of its members, record dates were created to establish which members are entitled to notice and entitled to vote. For instance, a record date for a notice of a meeting could be five days before the notice is mailed. That way, the managing agent would not need to determine whether there were any transfers of units during the time they prepared the mailing labels and the actual mailing. Similarly, since proxies are required to be delivered on 4:30 p.m. on the second business day prior to the meeting for most community associations, it might make sense to establish that date as the record date for voting for the meeting. The Act authorizes the Board to establish record dates. Since the default record dates established by the Act are the day before the notices are sent out for the notices and the day of the meeting for voting, the Board should adopt different record dates if these are not appropriate for them.

- **Written Consent of Members.** The Act permits action by the members of the Corporation upon the written consent of 80% of the members. The old Nonprofit Corporation Act required 100% approval for written consents. Condominium associations can already seek approval by written consent. Some of the more common are: (1) amendments to the Declaration with 75% approval; (2) amendments to the By-Laws with 65% approval; and (3) loans

Act Changes Laws from pg. 3

with 50% approval.

If the Condominium Property Act does not expressly provide for written consent for a particular action, the written consent of 80% of the members would be sufficient in an incorporated condominium association.

● **Cumulative Voting.** Cumulative voting is permitted only when the By-Laws authorize it. The Act adds additional requirements. First, the notice of meeting or a document enclosed with the meeting notice must state that cumulative voting will take place. Second, a member intending to exercise cumulative voting may need to provide 48 hours notice or greater notice if required by the By-Laws. However, once a member gives such notice, all members can cumulate their votes. The Act also clarifies the vote needed to remove a director without cause when the director was elected by cumulative voting.

● **Board Committees.** The Act authorizes committees of the Board. Committees of the Board consist of at least two members of the Board and serve at the pleasure of the Board. Creation of the committee requires the approval of a majority of all directors in office at the time of the vote. The Board committees can be delegated certain functions of the Board consistent with the Act and the By-Laws. Board committees are different from advisory committees of the Association.

● **Standards for Directors' and Officers' Duties.** The Act establishes standards for officers and directors. These include: (1) acting in good faith; (2) acting with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) acting in a manner the officer or director reasonably believes to be in the best interests of the corporation.

The Act allows officers and directors to reasonably rely on information provided to him or her by officers, attorneys, accountants and employees of the corporation if the director reasonably believes the information to be reliable and competent and within the person's professional or expert competence. Directors may also rely on the information provided by a Board Committee that the director is not a member if the director reasonably believes the committee warrants confidence. The Act provides that an officer or director acting in compliance with these standards cannot be liable.

● **Directors' Conflict of Interest.** The Act contains procedures on approving actions in which one of the directors has a conflict of interest. It also defines direct and indirect conflicts of interests. Conflict of interest transactions are permitted provided that they are fair or properly approved.

● **Membership Lists.** From the record date for notice of the meeting, a nonprofit corporation must maintain an alphabetical list of the members that received notice of the meeting and the members that are entitled to vote at the meeting, but did not receive notice of the meeting. Both lists must be available to the members.

Since this deviates from the current practice of community associations and managing agents, associations are well advised to modify their procedures if they are incorporated. The Act also limits the uses that a member can make of the membership list acquired from the corporation. The membership list shall not be obtained or used by any person for any purpose unrelated to a member's interest as a member, including: (1) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation; (2) used for any commercial purpose; (3) sold

to or purchased by any person; or (4) published in whole or in part to the general public.

● **Indemnification of Directors.** The Act establishes the circumstances in which the corporation may indemnify directors in a proceeding. The corporation may indemnify a director if:

(1) The director acted in good faith; and

(2) The director reasonably believed:

(a) in the case of conduct in the director's official capacity, that the conduct was in the corporation's best interest; or

(b) in the case of other conduct, that the conduct did not oppose the corporation's best interest.

The Act also requires that the corporation indemnify an officer or director if they are wholly successful in defense of the action. Indemnification is not proper if a director is found liable in a proceeding by the association or if the proceeding is not brought by the Association, if the director was found liable on the basis of the director's improper receipt of a personal benefit.

The Act also establishes procedures for the Association to determine whether it should indemnify a director. These provisions do not apply to the defense and indemnity of a director under the association's insurance policies. It is also possible for a director to apply to the courts for indemnification in appropriate cases.

The Association may also advance defense costs (other than those provided by insurance) only if the director agrees to repay the advance if the director did not meet the standards for indemnification. If the corporation indemnifies or advances defense expenses to a director, the Act requires that the corporation notify its members with or before the notice of the next membership meeting.

● **Corporate Records.** The Act establishes certain documents that are available for review by a corporation's members. The Act also requires that the member: (1) provide five (5) business days notice of the request; (2) make the request be made in good faith; (3) make the request for a proper purpose; (4) describe with reasonable particularity the purpose and the records the member desires to inspect; and (5) make a request for records that are directly connected with the proper purpose. Many of the documents available for review are the same as those required under the Condominium Property Act and the Planned Community Act.

● **Financial Statements.** The Act requires that if financial statements are prepared for the corporation on the basis of generally accepted accounting principals ("GAAP"), the annual financial statements must also be prepared on the basis of GAAP. GAAP requires that community association financial statements be prepared on an accrual basis. We are aware of at least one accountant that modifies financial statements prepared on an accrual basis to a cash basis when preparing the year-end financials.

While this procedure was always questionable, the Act now makes it illegal. In addition, the Act requires that the financial statements include a statement indicating whether they were prepared in accordance with GAAP and if not, how they deviate from GAAP.

Accordingly, those associations that do not have financial statements prepared on an accrual basis, will need to include a statement that they are not in accordance with GAAP because they are prepared on a cash basis.

● **Emergency Powers.** The Act authorizes directors to adopt, amend, or repeal bylaws effective only in an emergency which may be necessary for managing the corporation during the emergency. The emergency bylaws remain effective only during the emergency. In addition, in an emergency, notice of Board meetings only need be given to those directors it is practicable to reach. An emergency is when a

Act Changes Laws from pg. 4

quorum of the Board cannot readily be assembled because of some catastrophic event.

Condominium associations that are not incorporated should strongly consider incorporating to take advantage of the provisions of the Act that would give the Association greater powers and management flexibility described above. In addition, the Nonprofit Corporation Act is one of the uniform acts drafted by the Commissioners on Uniform Acts and adopted by many states. That means that a substantial body of case law is typically developed interpreting the provisions of the uniform laws. This will mean that condominium associations that are incorporated will receive the benefit of that case law when it is necessary to interpret the laws that affect them.

While the Nonprofit Corporation Act imposes some additional

requirements on corporations, it is likely that these requirements will be imposed on unincorporated associations by the courts in the future. The protective provisions of model acts tend to find their way into the case law even when they are not directly applicable to a particular situation.

Courts reason that if the protective provisions are recommended by the American Bar Association and applicable to incorporated associations, the same protective procedures should apply to unincorporated associations.

Therefore, there is little additional burden to incorporating and several benefits including the potential limitation of liability for association members and their directors if they incorporate.

Recodification Progress Report Submitted to Legislature

The Commission has submitted its HRS Chapter 514A recodification progress report to the 2003 State Legislature. [Pursuant to Act 213, Session Laws of Hawaii (SLH 2000), the Commission is conducting a review of Hawaii's 40-year old condominium law to "update, clarify, organize, deregulate, and provide for consistency and ease of use" of the law.]

The report, which is available on the Commission's website at <http://www.state.hi.us/hirec>, consists of the following:

Part I presents introductory material explaining the genesis and importance of the Hawaii Real Estate Commission's ambitious effort to rewrite Hawaii's Condominium Property Act (HRS Chapter 514A).

Advisory Group from pg. 1

Jane Sugimura, Steve Glanstein, Richard Emery, Len Kacher, Kenneth Kanehiro, Jonathan Carr, and Lois Janis. During the meeting, the CRC Educational Advisory Group focused on two issues. First, how can the Commission widen the reach of its educational efforts? Second, what can the Commission do to multiply the condominium communities' interests in CMEF educational offerings? Discussion on the first issue touched on the possibility of owner apathy, a revisit of educational meetings in geographic areas other than Honolulu, less expensive programs, a minimum of one very low cost owner education program a year, and increase direct contact with board members.

Discussion on the second issue generated several preliminary recommendations for multiplying interest including: reviving the Hawaii Real Estate Research & Education Center (HREREC) at the University of Hawaii, increasing seminars and informational material directed at new board members, and surveying owner interests. The meeting concluded with the group supporting the conduct of a survey that would provide the group with information to better understand how to widen the reach of the Commission's educational efforts and multiply the condominium communities' interests in CMEF educational offering and programs. If you are interested in participating in the CRC Educational Advisory Group, please contact Condominium Specialist David Grupen at 586-2644.

Part II covers background information to help readers understand the complexity and limitations of the condominium law recodification.

Part III discusses the actual recodification efforts.

Part IV contains findings and recommendations.

Part V concludes the report and is followed by various appendices (including a preliminary draft #2 of the recodification of Hawaii's condominium property regimes law).

At this time, as discussed below, the Commission is requesting a one year extension of the HRS Chapter 514A recodification project and an extension of Act 39 (SLH 2000).

Extension of HRS Chapter 514A Recodification Project

Many people have worked very hard over the past twenty-four months to get the recodification of Hawaii's condominium law to this point.

The Commission particularly thanks the volunteer attorneys of the Blue Ribbon Recodification Advisory Committee for the hundreds of volunteer hours they have spent on the project.

In order to craft a law with the best chance of meeting its many (sometimes competing) goals, the Commission believes that more time is necessary to work on refining the condominium law recodification (currently preliminary draft #2) with a broader representation of our community.

As the recodification has evolved, the complexity of the issues involved and the number of competing interests requiring resolution all indicate that the Commission should take additional time to produce a final recommendation to the Legislature.

Therefore, the Commission is recommending to the Legislature that the position and funding authorized by Act 213 (SLH 2000) for the HRS Chapter 514A recodification project be extended to complete the project. Proposed recodification legislation should be submitted to the Regular Session of the 2004 Legislature.

To conduct post-bill passage educational activities, the Commission also recommends that the proposed recodification legislation should also contain provisions to extend the position and funding authorized by Act 213 (SLH 2000).

Deadline from pg. 1

evidence of the fidelity bonding no later than June 2, 2003, if the bond exemption application is denied.

AOAOs must postmark completed registration applications, fees, and all required documents no later than midnight of the deadline date to Real Estate Branch, Association Registration; 250 S. King St., Room 702; Honolulu, HI 96813, or deliver them no later than 4:30 p.m. on the applicable deadline date to the same address.

The Commission strongly encourages re-registering early to avoid penalty fees for late payment or late registration after June 2, 2003.

In order to successfully re-register, an AOAO must timely submit a completed re-registration application form, a CSI form (where indicated, if any, on the preprinted bond expiration date) or a bond exemption application (if applicable),

and all required fees. Fees for 2003-2005 include a \$50.00 nonrefundable registration fee, the \$4 per apartment Condominium Management Education Fund (CMEF) fee, plus (if applicable) a nonrefundable \$50.00 fidelity bond exemption application fee if requesting a bond exemption application.

Condominium projects that fail to successfully register by June 2, 2003 must file as a new applicant and pay a penalty of \$50.00, plus a penalty of an additional 10% of the total CMEF fee. They also lack standing to maintain any action or proceeding in the courts of this State until the AOAO properly registers, and are subject to action by the Regulated Industries Complaints Office (RICO).

After the AOAO registration applications are mailed out in early April 2003, persons needing registration assistance may call 586-2644 to speak to a condominium registration clerk.

Standing Committees Held their January Meetings on Maui

On January 10, 2003 the Real Estate Commission (Commission), convened its monthly standing committee meetings in Kahului, Maui.

The Commission also held a Condominium Specialist Office for the Day in conjunction with the meeting. Committee meetings and Condominium Specialist Office for the Day are held on different islands as part of the Commission's program of work.

The meetings provide the 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 varying from condominium apartment owners, board members, real estate licensees, and representatives from the Realtors® Association of Maui attended the Condominium Review Committee meeting. Committee members and participants engaged in an interchange of information and questions about various condominium concerns and issues including the new Hawaii Nonprofit law and its impact on incorporated association of apartment owners.

Following the adjournment of the Condominium Review Committee meeting, the Senior Condominium Specialist met with individuals and their individual condominium concerns as part of the Commission's Condominium Specialist Office for the Day. The Commission's recodification attorney was also on hand to meet with interested individuals and organizations.

The Condominium Specialist Office for the Day is part of the Commission's Program of Work which sends staff members to a neighbor island for a day to be available to meet with condominium owners, managing agents, real estate licensees and other related individuals, professionals, and organizations interested in condominium issues. Some of the condominium concerns and issues raised during the

individual meetings included conflicting interests in mixed use condominium projects, changes to declarations and bylaws of condominium property regimes, changes to the common elements, location of board meetings, alternative dispute resolutions, the role of the regulated industries complaints office, communications with property managers and resident managers, education of condominium apartment owners, and abandoned property on common elements and removal.

The Commission is scheduling neighbor island committee meetings on the Big Island on Thursday, May 8, 2003, at the Kona Board of Realtors.®

Administrative Actions

Fidelity Management, Inc. and Richelle M. Thomason—REC 2000-110-L

The respondents Fidelity Management, Inc. and Richelle M. Thomason, Principal Broker, allegedly managed the Ulu Wehi project, a planned unit development created by the Waianae Community Development. Respondents entered into a settlement agreement to resolve the issues raised in the filed disciplinary action petition. The respondents did not contest the allegations set forth in the Petition: failing, within reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee; conduct constituting fraud or dishonest dealings; converting other people's moneys to the licensee's own use; and failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.

The respondents voluntarily agreed to the revocation of their real estate broker's licenses; pay an administrative fine of \$5,000; and make restitution to Ulu Wehi.

Legislative Update from pg. 2

HB 75—Amends Act 213 to extend recodification project until 2004, including the funding and position. (A Commission requested bill)

HB 582—Provides that proxies given to the board of an AOA or planned community association may not be used for an election of board members and each member, including commercial organizations, shall only be entitled to cast a single vote.

HB 583—Requires minutes of AOA or planned community association board of directors meetings and agenda for the next meeting be mailed to any member who requests to be on the mailing list. Any corrections to the minutes not approved shall be reflected in the subsequent meeting minutes. Repeals the requirements that approved and unapproved final drafts of minutes be available within 60 days after the meeting. Repeals the provisions that executive session minutes may be withheld if their publication would defeat the lawful purpose of the executive session.

HB 642—Requires certification of condominium association managers by the Real Estate Commission and sets forth certification process which includes an examination.

HB 929—Establishes the time in which a non-judicial foreclosure of a condominium apartment is effective for the purposes of having the new owner pay the owner's share of common assessments and expenses.

HB 1072—Expands the start date for the transfer of a condominium unit that triggers ownership and liability for the unit's share of common expenses and assessments to include recordation of the mortgagee's affidavit of non-judicial foreclosure.

HB 1339—Extends the sunset date for Act 39 (SLH 2000), which provides that subsequent purchasers of a condominium apartment be responsible for any delinquent common assessments. Allows notification of the amount, instead of a lien for the amount to be provided.

HB 1511—Exempts AOAOs from the liability for the purchase of, conveyance of, and allocation of expenses for the AOAO's leased fee interest prior to June 25, 2002, if the AOAO had a good faith belief that the purchase or conveyance was valid.

HB 1580—Requires all real estate transactions by real estate licensees be through an escrow depository. Requires escrow depositories to collect the general excise tax (GET) owed by real estate licensees at the closing of the transaction. Lowers the GET rate for real estate licensees to 3.92%. This bill will impact condominium managing agents and condominium hotel operators and their operation.

HB 1608—Similar to HB 583. It also repeals requirements that approved minutes be available within seven (7) days of approval and unapproved final drafts of minutes be available within 60 days after the meeting. Repeals provision that executive session minutes may be withheld if their publication would defeat the lawful purpose of the executive session.

HB 1659—Establishes a fair market value standard in determining the value of the leased fee interest for condominiums and co-ops that must be used (1) for leases executed after the effective date of the act and (2) for pre-existing leases that do not specify an appraisal standard.

SB 373—Establishes the time in which a non-judicial foreclosure of a new condominium unit is effective for the purposes of having the new owner pay the owner's share of common assessments and expenses.

SB 394—Similar to HB 1339.

If you wish to testify, please refer to the website instructions.

Mediation Case Summaries

MCP = Mediation Center of the Pacific, Inc.

MSM = Mediation Services of Maui, Inc.

WHMC = West Hawaii Mediation Center

BOD = Board of Directors

KMC = Ku'ikahi Mediation Center

RICO = Regulated Industries Complaints Office

KEO = Kauai Economic Opportunity, Inc.

CMA = Condominium Managing Agent

Cases Handled by MCP 10/1/02 – 12/31/02

Between October 1, 2002 and December 31, 2002, there were a total of six (6) cases involving condominium disputes. Two (2) of these cases were mediated, and four (4) were closed without mediating.

Parties	Complaint	Disposition
Owner vs. BOD	Dispute regarding AOAO owned parking spaces	Mediated
Owner vs. BOD	Dispute regarding unequal enforcement of house rules	Mediated
Owner vs. BOD	Dispute regarding BOD authority used to approve design request and construction improvements	Declined mediation
Owner vs. BOD	Dispute regarding governance and management issues.	Declined mediation
Owner vs. BOD	Dispute regarding BOD's responsibility to supervise Provision of common elements maintenance	Closed. Unable to set date.
Owner vs. BOD	Dispute regarding BOD's compliance with rules allowing owners to participate at BOD meetings	Declined mediation

Cases Handled by MSM 10/1/02 – 12/31/02

Between October 1, 2002 and December 31, 2002, there was a total of one (1) case involving condominium disputes. It was closed without mediating.

Owner vs. Property Manager	Dispute regarding house rules and bylaws	No response from Owner
----------------------------	--	------------------------

Cases Handled by KEO 10/1/02 – 12/31/02

Between October 1, 2002 and December 31, 2002, there was one (1) case involving a condominium dispute.

AOAO vs. Owner	Dispute regarding compliance with declarations and bylaws	Declined mediation
----------------	---	--------------------

(No cases reported by WHMC, KMC and RICO)

Real Estate Commission

Meeting Schedule

Laws & Rules Review Committee – 9 a.m.
 Education Review Committee – 10 a.m.
 Condominium Review Committee – 11 a.m.

Real Estate Commission

Wednesday, February 12, 2003 – Kapuuiwa Room
 Wednesday, March 12, 2003 – Kapuuiwa Room
 Monday, April 7, 2003 – Kapuuiwa Room
 Thursday, May 8, 2003 – Kona Board of Realtors®
 Tuesday, June 10, 2003 – Kapuuiwa Room
 Wednesday, July 9, 2003 – Kapuuiwa Room
 Wednesday, August 13, 2003 – Kapuuiwa Room
 Wednesday, September 10, 2003 – Kapuuiwa Room
 Wednesday, October 8, 2003 – Kapuuiwa Room
 Wednesday, November 12, 2003 – Kapuuiwa Room
 Thursday, December 11, 2003 – Kapuuiwa Room

Friday, February 28, 2003 – Kapuuiwa Room
 Friday, March 28, 2003 – Kapuuiwa Room
 Friday, April 25, 2003 – Kapuuiwa Room
 Friday, May 23, 2003 – Kapuuiwa Room
 Friday, June 27, 2003 – Kapuuiwa Room
 Wednesday, July 30, 2003 – Kapuuiwa Room
 Friday, August 29, 2003 – Kapuuiwa Room
 Friday, September 26, 2003 – Kapuuiwa Room
 Friday, October 31, 2003 – Kapuuiwa Room
 Wednesday, November 26, 2003 – Kapuuiwa Room
 Friday, December 12, 2003 – Kapuuiwa Room

Meetings on Oahu 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
2/2003	TBA	Directors Training	TBA	CCM
2/22/03	9am-12 pm	*Mold: A Mushroom Problem or a Spore-Adic Myth?	Japanese Cultural Ctr	CAI-H
3/2003	TBA	Annual Luncheon Seminar	TBA	CCM
3/20/03	TBA	*Assisted Living	Hale Koa Hotel	CAI-H
5/1-3/03		52 nd Nat'l Conference & Exposition	Wyndham Anatole Hotel Dallas, TX	CAI
5/24/03	TBA	*Termites/Landscape	Japanese Cultural Ctr	CAI-H
6/21/03	TBA	*Condo Wars	Japanese Cultural Ctr	CAI-H
7/17/03	TBA	*Legislative Update	Hale Koa Hotel	CAI-H
9/20/03	TBA	*Monies	Japanese Cultural Ctr	CAI-H
10/18/03	TBA	*Sprucing/Condos	Hale Koa Hotel	CAI-H
11/20/03	TBA	*Prostitutes, Pushers and Psychotics	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	Community Associations Institute (National)	(703)548-8600	225 Reinekers Ln #300 Alexandria, VA 22314
CAI-H	Community Associations Institute - Hawaii Chapter	488-1133	P.O. Box 976 Honolulu, HI 96808
CCM	Condominium Council of Maui Email: cmmaui@hotmail.com	879-5266	PO Box 1362 Kihei, HI 96753
HCAA0	Hawaii Council of Associations of Apartment Owners	533-2528	677 Ala Moana Blvd, #401 Honolulu, HI 96813
HSAP	Hawaii State Association of Parliamentarians	488-2489	
HSBA-CLE	Hawaii State Bar Association - Continuing Legal Educ.	537-1868	1132 Bishop St., Ste 906 Honolulu, HI 96813
IREM	Institute of Real Estate Management Hawaii Chapter No. 34	733-7060	1136 12th Ave, Ste 220 Honolulu, HI 96816
OAC	Oahu Arm Committee	523-6096	91-1030 Kaiheenalua St. Ewa Beach, HI 96706
UH-OC	Noncredit Programs, Outreach College, University of Hawaii	956-8244	2530 Dole Street Honolulu, HI 96822

Real Estate Branch and Real Estate Commission's web page at: <http://www.state.hi.us/hirec>
 Address: 250 S. King St., Rm. 702; Honolulu, HI 96813; Phone: 586-2644
 February 2003

HAWAII CONDOMINIUM BULLETIN, FEBRUARY 2003 © Hawaii Real Estate Commission. All rights reserved. This Bulletin, or any part thereof, may not be reproduced without the written permission of the Hawaii Real Estate Commission, except permission is granted to registered Hawaii condominium associations to reproduce and distribute copies of this entire publication, but not for profit, as an educational service. This publication is intended to provide general information and is not a substitute for obtaining legal advice or other competent professional assistance to address specific circumstances. The information contained in this Bulletin is made pursuant to Hawaii Administrative Rules Section 16-201-92 and is not an official or binding interpretation, opinion or decision of the Hawaii Real Estate Commission or the Department of Commerce and Consumer Affairs. 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.