

# Hawaii Condominium Bulletin



## Hawaiian Humane Society Helps Oahu Residents Find Pet-Friendly Homes

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submit your request.



At the Hawaiian Humane Society, we believe that families should never have to choose between their pet and a place to live. That's why we list pet-friendly rentals from landlords for free on the Humane Society's website ([hawaiianhumane.org](http://hawaiianhumane.org)).

The Humane Society's Pets in Housing program works to increase the number of pet-friendly residences. We work with landlords and tenants, home owners and associations, property and resident managers, realtors, as well as people who love animals and people who don't.

Since more than 60 percent of Oahu's households include pets, policies that ban animal companions limit the pool of qualified applicants and unnecessarily penalize the majority of pet owners who are responsible.

Here are a few facts to know:

- 43 percent of Oahu households own dogs.
- More than 300,000 pets are family members on Oahu.
- It is illegal to charge a pet deposit in Hawaii.
- Responsible pet owners tend to be great tenants.
- Smaller dogs do not necessarily make better tenants.
- Breed-restrictive policies don't work and breed is not indicative of aggression.

- And bans increase the number of families that have to relinquish pets. Pets are family too and for most of us, giving up a pet is breaking up the family.

For those searching for a home, here are a few tips to help:

**Step 1** – Take your time. Give yourself eight weeks before your lease expires to check ads and contact realtors and rental agencies.

**Step 2** – Secure endorsements. Secure a letter from your current landlord or condominium association that says you're a responsible pet owner. Also get a letter from your veterinarian stating that you have been diligent in your pet's medical care and that your pet is sterilized.

**Step 3** – Respect the rules. Keeping a pet in violation of a no-pets rule puts your pet and you at risk for eviction.

**Step 4** – Put your best paw forward. Offer to bring your well-behaved pet to meet the owner or property manager.

**Step 5** – Put it in writing. Permission to have a pet should be in writing and should be signed by you and your new landlord. We recommend using our Pet Addendum form, which can be found on our website.

Hawaiian Humane Society is committed to creating more pet-friendly housing in our community. A number of resources are on its website to help. The Humane Society can also come talk to your Association and can help you custom design pet policies for your building or rental unit. Call us at 356-2212.

This article was contributed by Starr Dods, Public Relations Coordinator for the Hawaiian Humane Society.

# Letter from the Chair

This year welcomes the Metal Rabbit under the Chinese lunar calendar. Feng shui consultants have said that because metal and water are the elements associated with this sign, industries such as airlines, metals, financial, and marine will do well. CLSA Asia-Pacific Markets, an independent brokerage and investment group headquartered in Hong Kong, publishes a lighthearted annual “feng shui index”, which predicts much room for financial gain, but with a fair share of bumps along the way. Gold is predicted to break \$2,000 per ounce, although property (tied to the earth element) will have difficulty. The best rallies are predicted for July/August, October/November, and next January, although the market will struggle until June. Whether or not you follow the tenets of astrology or feng shui, it never hurts to plan your year and organize your affairs.

To that end, in this issue of the Hawaii Condominium Bulletin we address monthly maintenance fees, Condominium Hotel Operator registrations, which expired on December 31 if they were not renewed by then and more day-to-day matters such as parking stalls, mailboxes, and pets in rentals. We invite you to contact one of our Condominium Specialists if there are any topics you would like to see covered in our Bulletin.

Under the “new” condominium statute, Hawaii Revised Statutes Chapter 514B, although developers are no longer required to extend the effective dates of the public reports for condominium projects, they must file an annual report under HRS 514B-58. A report is required even if there are no changes to report, or if the developer has sold all of its original units in the prior year. Since January 2006, 1,180 public reports were issued under Chapter 514B, but as of December 22, 2010, only 227 annual reports had been filed. Failure to file the annual report may result in civil penalties of up to \$10,000 per violation. The form is fairly short, and can be found on the Real Estate Commission website ([http://hawaii.gov/dcca/real/rec\\_forms](http://hawaii.gov/dcca/real/rec_forms) under “Developer’s Annual Report”). If you have not filed your annual report, please do so right away.

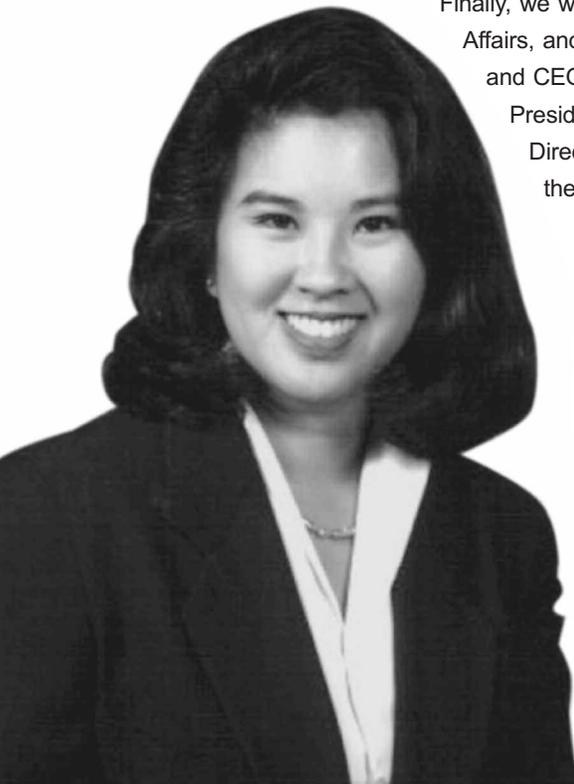
The Condominium Review Committee continues to work on the new Hawaii Administrative Rules for Chapters 514A and 514B of the Hawaii Revised Statutes. Because rulemaking is a lengthy process that often can take up to two years from start to finish, it is important to take as comprehensive an approach as possible. We have requested input from many groups and individuals, including accountants, architects, insurers, management companies, developers, lawyers, and consumers. We invite your suggestions and ideas.

Finally, we welcome Keali’i Lopez as our new Director of the Department of Commerce and Consumer Affairs, and Everett Kaneshige, as our new Deputy Director. Ms. Lopez was previously the President and CEO of ‘Olelo Community Media, and Mr. Kaneshige was the COO of Monarch Properties and President and CEO of Pocket Real Estate. We also wish former Director Ron Boyer and Deputy Director Rod Maile the best in their endeavors, and sincerely thank them both for their service to the State of Hawaii.

Sincerely,



Michele Sunahara Loudermilk  
Chair, Condominium Review Committee



# Ask the Condo Specialist

**Q:** I've received a notice from my association that I must pay my delinquent maintenance fees or the association will place a lien on my unit and may initiate foreclosure proceedings. Is the association required to give me a certain amount of time, say ninety days, in which I must pay my delinquent maintenance fees before initiating the lien process? The notice did not indicate any such time period.

**A:** No. The condominium law applicable to foreclosure for unpaid maintenance fees (HRS, § 514B-146) does not provide for a grace period in which a delinquent unit owner is allowed to make up back maintenance fee payments. A lien on a condominium unit may be foreclosed by the procedures set forth in HRS Chapter 667, "Mortgage Foreclosures". See an attorney for your rights and obligations under both the condominium law and HRS Chapter 667 upon receiving such a notice.

If you dispute the amount claimed by the association, you may request a written statement which indicates: 1) the amount and due date of the common expenses included in your assessment; 2) any penalty, late fee, lien filing fee, and any other charge included in the assessment; 3) the amount of any attorneys' fees and costs included in the assessment; 4) that under Hawaii law, a unit owner has no right to withhold assessments for any reason; 5) the right of a unit owner to demand mediation or arbitration to resolve disputes regarding the amount or validity of an association's assessment, provided the unit owner immediately pays the assessment in full and keeps current on assessments; and 6) that payment in full does not prevent the owner from contesting the assessment or from receiving a refund of amounts now owed.

For additional information see the "Ask the Condominium Specialist" column in the November 2009 edition of the Condominium Bulletin for a discussion of HRS § 514B-146. You can access this edition online at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec).

**Q:** Who can serve on a condominium association's board of directors? I do not live in a unit which I own, but would like my tenant, who is a member of my family, to run for the association's board of directors.

**A:** HRS § 514B-107 governs who may serve on a board of directors. Board members must be: unit owners or co-owners; vendees under an agreement of sale; a trustee of a trust which owns a unit; or an officer, partner, member, or other person authorized to act on behalf of any other legal entity which owns a unit; and there can be no more than one representative on the board from any one unit.

*The information provided here is for general purposes only, and is not intended to replace specific legal advice from an attorney familiar with the condominium law, and any other applicable law. Readers are strongly advised to consult with an attorney regarding their particular situation.*

# Condominium Hotel Operators



The registration period for condominium hotel operators (CHO) ended December 31, 2010. Twenty-four CHOs registered successfully by the deadline, allowing them to operate legally until December 31, 2012.

CHOs are governed by the real estate licensing law, Chapter 467, HRS. Section 467-30, HRS, defines a condominium hotel as “those apartments or units in a project as defined in section 514A-3 or 514B-3 and subject to chapter 514A or 514B, which are used to provide transient lodging for periods of less than thirty days”.

A rental for a period of thirty days or more is considered a long term rental and is not governed by the CHO law.

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

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

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

“the management of the apartments or units in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium apartments or units directly or indirectly from the apartment or unit owners for purposes of providing transient lodging”.

The CHO law provides that the registration requirements apply only to those CHOs operated by non-brokers, that is, persons or entities that do not hold a real estate broker’s license in Hawaii. Hawaii licensed real estate brokers who operate CHOs are not required to register. Therefore, the number of registered CHOs noted above for the just-ended biennial reflects only non-broker CHOs. The Real Estate Commission does not keep numbers on Hawaii licensed brokers operating CHOs.

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

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

# Maintenance Fees

Every month, you write out a check for condominium maintenance fees. Why are you paying this and where does this money go? This column will address some of the basics of maintenance fees; next time we'll discuss what to do if you have a dispute regarding payment of maintenance fees.

The law provides for maintenance fees to be paid by all owners and assessed in proportion to the common interest ownership of each owner. You may refer to your condominium declaration if you are unsure of your common interest ownership. The common interest ownership amount for your unit must be stated in the condominium declaration.

Common expenses, frequently referred to as "maintenance fees" or "assessments", is defined in Hawaii Revised Statutes (HRS), §514B-3, as "expenditures made by, or financial liabilities of, the association for operation of the property, and shall include any allocations to reserves".

"Operation of the property" is defined, also in HRS § 514B-3, as the "administration, fiscal management, and physical operation of the property and includes the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements". Maintenance fees, therefore, cover the day-to-day costs of maintaining the condominium association property. This includes maintenance and minor repairs (large repairs or maintenance projects may be the subject of a special assessment or may come out of the association's reserve fund), upkeep of any common areas (e.g., swimming pool or lobby), landscaping, employee salaries, and association insurance.

All owners must pay maintenance fees to maintain the condominium association. An owner may not choose to opt out of maintenance fee payments by avoiding use of certain common areas, e.g., recreation facilities. In a condominium, every one pays their common interest ownership share.

HRS § 514B-144 says that assessments, i.e., maintenance fees, must be "based on a budget adopted and distributed or

made available to unit owners at least annually by the board". In addition, notice of a maintenance fee increase must be provided to owners directly from the board, or through the managing agent or resident manager, in writing, at least thirty days prior to such increase. (HRS § 514B-144(h)).

Moreover, the law provides that "[e]xcept in an emergency situation or with the approval of a majority of unit owners, a board may not exceed its total adopted annual operating budget by more than twenty per cent during the fiscal year to which the budget relates". (HRS § 514B-148(e)). Where majority owner approval has not been received, i.e., where a maintenance fee increase is due to an emergency situation, the board must adopt a resolution containing written findings regarding the necessity of the maintenance fee increase, including why the increase could not have been reasonably foreseen. This written finding must be distributed to all owners along with the notice of the increase.

Finally, in addition to monthly maintenance fees, special assessments are also allowed under certain conditions, pursuant to Hawaii Administrative Rules (HAR) § 16-107-72,

"if the board underestimates the reserve requirements for an asset, or if the cost to maintain, repair, or replace an asset will reduce the replacement reserve funds to less than fifty per cent of a full replacement reserve during any budget year".

Special assessments may not be imposed, however, to make up for a shortfall in reserve funds. HAR § 16-107-62.

Next time, we'll look at options available under the law where an owner disputes an assessment.

# Transferring Limited Common Elements

Under Chapter 514A, Hawaii Revised Statutes (HRS), the right to transfer limited common elements between affected owners was limited to the transfer of limited common element parking stalls under §514A-14, HRS. Chapter 514B, HRS, has expanded this right to all limited common elements.

Section 514B-40, HRS, allows for the transfer or exchange of limited common elements to take place between owners, with the approval of any mortgagees or lessors if required. The amendment to the declaration reflecting the transfer does not need the usual 67% owner approval required under Chapter 514B, HRS. The relevant statutory provision reads in full:

**§514B-40 Transfer of limited common elements.** Except as provided in the declaration, any unit owner may transfer or exchange a limited common element that is assigned to the owner's unit to another unit. Any transfer shall be executed and recorded as an amendment to the declaration. The amendment need only be executed by the owner of the unit whose limited common element

is being transferred and the owner of the unit receiving the limited common element; provided that unit mortgages and leases may also require the consent of mortgagees or lessors, respectively, of the units involved. A copy of the amendment shall be promptly delivered to the association.

Therefore, unless your condominium association declaration provides otherwise, the transferring and receiving owners may complete the transfer of limited common elements by executing and recording the change to the declaration, and if necessary, obtaining the approval of any mortgagees or lessors of the units involved. A copy of the recorded amendment describing the change must be promptly delivered to the condominium association. Limited common element parking stalls may be exchanged in this manner.

*This information is provided for general purposes only and is not intended to replace legal advice from an attorney familiar with all applicable laws. Contact an attorney for specific advice in response to your particular situation.*



## Governor Abercrombie Names Keali'i Lopez, Director of Commerce and Consumer Affairs

Governor Neil Abercrombie has named Keali'i Lopez as the new Director of the Department of Commerce and Consumer Affairs. Ms. Lopez was most recently the President and Chief Executive Officer of 'Olelo Community Media. Under her leadership, 'Olelo expanded its number of community media centers to seven public schools, including economically disadvantaged schools, to provide video production transition and mentoring for youth and community members.

Prior to her work at 'Olelo, Ms. Lopez worked at Kamehameha Schools developing its Distance Education Program and participat-

ed in the process to develop a statewide Telecommunications Infrastructure with the Hawaii Public Utilities Commission.

Governor Abercrombie also named Everett S. Kaneshige as Deputy Director of DCCA. Mr. Kaneshige has been involved in Hawaii's real estate and technology industries for more than 20 years as an attorney, businessman and entrepreneur. Most recently, Mr. Kaneshige was Chief Operating Officer of Monarch Properties and President and Chief Executive Officer of Pocket Real Estate.

We welcome Ms. Lopez and Mr. Kaneshige to DCCA.

# Mediation Case Summaries

## Mediation Services of Maui (MSM)

From October 2010 through December 2010, MSM conducted the following condominium-related mediations:

<b>PARTIES</b>	<b>ISSUE</b>	<b>DISPOSITION</b>
Board vs. Owner	Issue of window compliance with project documents.	Mediated; no agreement.
Owner vs. Board	Non-payment of maintenance fees.	Mediated; no agreement.

## Mediation Center of the Pacific (MCP)

From October 2010 through December 2010, MCP conducted the following condominium-related mediations:

Board vs. Owner	Alleged non-compliance with house rules concerning the use of the property.	Board w/drew request for mediation.
Owner vs. Board	Alleged bylaw violation concerning notice of special board meeting.	Board did not respond to request for mediation.
Owner vs. Board	Alleged house rule violations.	Mediated to agreement.

## West Hawaii Mediation Center (WHMC)

From October 2010 through December 2010, WHMC conducted one condominium mediation.

Owner vs. Board	Dispute regarding fines relating to rental property.	Board refused mediation.
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From the period October 2010 through December 2010, Kaua'i Economic Opportunity, Incorporated and Kuikahi Mediation Center did not conduct any condominium-related mediations.

# 2011 Real Estate Commission Meeting Schedule

Laws & Rules Review Committee – 9:00 a.m.

Condominium Review Committee – Upon adjournment of the  
Laws & Rules Review Committee Meeting

Education Review Committee – Upon adjournment of the  
Condominium Review Committee Meeting

Real Estate Commission – 9:00 a.m.

Wednesday, February 9, 2011

Wednesday, March 9, 2011

Wednesday, April 13, 2011

Wednesday, May 11, 2011

Wednesday, June 8, 2011

Wednesday, July 13, 2011

Wednesday, August 10, 2011

Wednesday, September 7, 2011

Wednesday, October 12, 2011

Wednesday, November 9, 2011

Wednesday, December 7, 2011

Friday, February 25, 2011

Thursday, March 24, 2011

Thursday, April 28, 2011

Friday, May 27, 2011

Thursday, June 23, 2011

Friday, July 29, 2011

Friday, August 26, 2011

Friday, September 23, 2011

Friday, October 28, 2011

Wednesday, November 23, 2011

Friday, December 16, 2011

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) or call the Real Estate Commission Office at (808) 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at (808) 586-2643 to submit your request.

Real Estate Branch and Real Estate Commission's web page at: <http://www.hawaii.gov/hirec>  
Address: 335 Merchant Street, Rm. 333; Honolulu, HI 96813; Phone: (808) 586-2643

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