

# HAWAII CONDOMINIUM BULLETIN



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## New Laws Will Affect Condominium Owners

The 2009 Legislative session closed on May 7, 2009. Governor Linda Lingle had until June 30, 2009 to veto the bills, and by July 15, 2009 to notify the Legislature whether she would allow them to become law without her signature. The Legislature may override the Governor's veto by two-thirds vote in each house. This update includes an unofficial status report of legislative action current to the date of this Bulletin.

The following discussion highlights some of the statutory amendments to Chapters 514A and 514B (recodified law) Hawaii Revised Statutes (HRS), Condominium Property Regimes, and other related amendments.

Readers are advised to consult the full text of the Acts as this discussion is intended only to briefly summarize the amendments and does not constitute legal advice. The summaries are not intended to be an exhaustive list or to cover all provisions of the new laws. Interested readers may access the Legislature's website, [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov), to read the full text of the bills or print copies of the Acts.

For specific advice as to how the provisions of the new Acts apply to a particular circumstance, readers should seek the advice of a licensed Hawaii attorney familiar with the condominium laws.

The new Acts include:

**ACT 004 (SLH 2009) HB 520 HD1 SD1** – Repeals the amendments made by Act 228, Session Laws of Hawaii 2008, which require the taking of archival photographs before conducting any demolition, construction, or alteration of any building over fifty years old or any building listed, or eligible for listing, on the Hawaii or National Register of Historic Places.

**ACT 009 (SLH 2009) SB 574 SD1** – Extends the condominium dispute resolution pilot project until June 30, 2011.

**ACT 010 (SLH 2009) SB 298 SD1** – Increases the

amount that condominium associations may recover in maintenance fees from the foreclosure of a condominium apartment from \$1,800 to \$3,600.

**ACT 038 (SLH 2009) SB 862 SD2** – Enables Hawaii housing finance and development corporation to more easily collect the value of shared appreciation equity and other restrictions when an affordable housing property is publicly sold through a foreclosure. Requires written notification of intent to foreclose on properties encumbered by such priority liens.

**ACT 012 (SLH 2009) SB 1113 SD1** – Repeals the requirement that time share units in an existing hotel in a county with a population in excess of 500,000 are required to have at least 60 units and at least 40% of which are made available for sale or rental as residential apartments.

**ACT 066 (SLH 2009) SB 34 SD1 HD1 CD1** – Relating to the mortgage rescue fraud prevention Act. Excludes actively licensed real estate brokers and salespersons from the definition of distressed property consultants in the Mortgage Foreclosure Rescue Fraud Prevention Act. Prohibits ownership within 1 year relating to the acquisition in the distressed property by licensed real estate brokers and salespersons.

*New Laws on pg. 5*

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This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at (808) 586-2643 to submit your request.

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



## Letter from the Chair . . .

We are experiencing difficult times involving cut-backs and less services in all areas, especially in the State Government. The Governor's biggest challenge is working on the budget deficit. She vetoed the Legislature's bill to raise taxes and instead proposed furlough, less health care benefits or eliminating positions for State employees. Amongst all the confusion, Condominium bills continue to exist. The legislative update report goes over the enacted Acts. The Real Estate Commission (Commission) together with the Community Association Institute Hawaii Chapter is happy to announce the installation of the reference library materials at select libraries. The Commission hopes to have more libraries supplied with these references. This set replaces the existing materials with current issues and practices, approximately 60 titles.



William S. Chee

In March 2009, Condominium Specialists covered some of the basic points of the condominium law when they accepted an invitation to attend a Neighborhood Board Meeting.

Congratulations are in order to all Associations who registered by the June 30<sup>th</sup> deadline. There was an increase in "on time" registration than previous years, especially with the online option.

As outgoing Chair of the Condominium Review Committee (CRC), it has been a pleasure serving as Commissioner for three years. The Commission welcomes its newest member, Walter Harvey. I would also like to extend a welcome to Michele Sunahara Loudermilk, who takes over as Chair of the CRC. Recently, she has served as Vice-Chair for the Laws & Rules Review Committee and previously served as Vice-Chair for the CRC. Please continue to support the Commission and Staff.

Enjoy the summer months and take the opportunity to attend education classes and/or Commission monthly meetings. You are always welcome!

Sincerely,

*William S. Chee*

William S. Chee  
Chair, Condominium Review Committee

## Ask the Condominium Specialist

**Q** A group of unit owners would like to view the association's records. Would the time be charged to one (1) individual or charged to each owner?

**A** According to HRS §514B-154(b)(2), Owners are to pay for administrative costs in excess of eight hours per year. No further detail is provided.

An association should review its declarations, bylaws and house rules to see if this matter is addressed. Further, you are to consider whether the owners are collaborating as a group and reviewing the same documents together or are they reviewing as individuals for themselves?

If the owners come as a unified group, it appears that they would be charged as one (1) individual. However, legal counsel is suggested.

**The information provided herein is informal and for informational purposes only. We cannot and do not provide legal advice and suggest that you consult with an attorney familiar with the condominium law for such.**

## Harvey Joins Commission

As of July 1, we welcomed Walter Harvey, as the newest member of the Real Estate Commission and bid adieu to William S. Chee, who chaired the Condominium Review Committee.

Mr. Harvey is a licensed Real Estate Broker at East Oahu Realty. He is originally from California, where he had been licensed since 1981.

His former occupations included work in pharmaceutical distribution and the U.S Army.

## Association Biennial Registration

The 2009 – 2011 Biennial Registration saw an increase in associations registering online by 30 percent. As of June 30, 2009, a total of 1,658 associations registered. Remember, condominium projects that fail to successfully register by May 31, 2009 must file as a new applicant and pay a penalty of \$50.00 plus a penalty of an additional 10% of the total CETF fee.

Further, projects that do not register lack standing to maintain any action or proceeding in the courts of this State pursuant to Sections 514A-95.1(b) and 514B-103(b), Hawaii Revised Statutes, and is subject to action by the Regulated Industries Complaints Office (RICO).

## Condo Specialist Addresses Neighborhood Board

On March 5, 2009, Senior Condominium Specialist Cynthia Yee addressed the Kailua Neighborhood Board, and members of the audience, about the condominium statute, Chapter 514B, Hawaii Revised Statutes.

Ms. Yee and Condominium Specialist Benedyne Stone attended the meeting at the request of a board member.

Ms. Yee spoke to the group in attendance about some of the basic points of the condominium law, including, for example, creating condominiums, the role of the City and County in the zoning process, and the role of a developer in creating condominiums.

A particular concern of some Neighborhood Board members was the proliferation of vacation rentals in the Kailua/Lanikai area.

Board members were under the impression that the condominium process was responsible for the increase in homes in the area.

In the interest of time, the Condominium Specialists addressed the concerns and answered the ques-

tions of these board members separately from the meeting.

The Condominium Specialists told the neighborhood board members that when submitting a property to the condominium property regime (CPR), a developer must, among other things, ascertain that the intended use for the CPR units is permitted by the City and County, e.g., residential, hotel, or agricultural use, and confirm the number of units allowable on a given property, also under the jurisdiction of the City and County.

**Submitting a property to CPR does not affect or change the allowable permitted use, nor does it change**

**the number of allowable units on a property, i.e., a developer cannot increase the number of units on a property by submitting the property to CPR.**

The CPR process is simply a form of ownership wherein all owners own the underlying land, and separate portions are designated for individual ownership. It is separate and apart from any requirements of the City and County. Explaining the CPR process helped clear up misconceptions by a few board members that the process is responsible for the proliferation of new homes in their community.

### Standing Committees Meet on Valley Isle

The Real Estate Commission held its monthly standing committee meeting in Kahului, Maui on January 7.

A Specialist Office for the Day was held in conjunction with the meeting. Visits to the neighbor islands provide members of the condominium and real estate communities an opportunity to meet with the Specialists about their specific condominium concerns. The next standing committee meeting will be held on Kauai.

Check the Commission's website at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) and view "News Releases and Other Notices" for further information.



**On April 29, 2009, a gift presentation ceremony was held at the Hawaii State Library's Main Branch. CAI's President, Al Denys, along with past Presidents, Surita Savio and Steve Glanstein, Mark Suiso, Real Estate Commissioner, and Neil Fujitani, Supervising Executive Officer of the Real Estate Branch, made the presentation to Diane Eddy, Hawaii State Library Director. Five libraries received a collection from the Foundation for Community Association Research through its Adopt-a-Library program: Hawaii State Library, McCully-Moiliili Public Library, Waikiki-Kapahulu Public Library, Kihei Public Library (Maui) and Lihue Public Library (Kauai). Library branch selections were based on the concentration of registered associations in a district. The Commission and CAI plan to bring in more sets for distributed to more libraries.**

## Condominium Dispute Resolution

On April 20, 2009, Act 009 was enacted, extending the Condominium Dispute Resolution (CDR) pilot project until June 30, 2011. The pilot CDR program was established to allow persons with disputes that could not be resolved through mediation the opportunity to be heard by the Department of Commerce and Consumer Affairs's Office of Administrative Hearings (OAH).

**The following is a summary of recent OAH decisions only and does not constitute legal advice.** The reader is advised to read the entire decision, which is available at the Real Estate Commission website on the home page, under "Office of Administrative Hearings Decisions" which is listed on the right side of the page. The Commission's website address is [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec).

### **CDR – 2008-1: Barbara Suzuki vs. Board of Directors, Waikalani Woodlands**

Petitioner requested an administrative hearing regarding the placement of several trash bins within the condominium association.

The Hearings Officer found that the request for a hearing fell outside the jurisdictional authority of the Hearings Officer in that the Petitioner "failed to sufficiently . . . establish that this matter involves the interpretation or enforcement of the [p]roject's governing documents". The petition for hearing was dismissed.

### **CDR 0809-2: Pame A.M. Romano vs. Kuhio Village II AOA Board Members, President; Clarence Furuya & Etc.**

Petitioner filed a request for a hearing; Respondent (together with Petitioner, Parties) filed a Motion to Dismiss; the Motion to Dismiss was granted in part and denied in part. A Settlement Conference was scheduled with all Parties and the Hearings Officer.

Subsequently, Petitioner informed the Hearings Officer that an agreement was reached. Petitioner thereafter disagreed with the wording of the agreement.

The Hearings Officer found that the only remaining issue was a \$50 fee against Petitioner which was waived by Respondents. The Hearings Officer found the remaining issue moot and dismissed the matter, with prejudice.

### **CMDR 0809-2: Pame Romano and John Dew vs. Kuhio Village II, AOA Board, C.O. Furuya, Hawaiiiana Management, and Agent Craig Richter**

Fourteen issues were mediated by Petitioners and Respondents (collectively, Parties). The Parties executed an agreement on the fourteen issues.

Petitioners subsequently filed a request for an administrative hearing in which they raised some of the fourteen issues that had been addressed in the mediation, as well as new issues related to the original issues.

The Hearings Officer found that the original issues were resolved, and the new issues must be

addressed in mediation.

Respondents' Motion to Dismiss Petitioners' Request for Hearing was granted, and Respondents' request for a hearing was dismissed, without prejudice.

**CDR 0809-1: Catherine Shim, Individually, and on behalf of other owner/former owners and Harbor Square Volunteer Apartment Owners' Committee (VAOC) vs. AOA Harbor Square**

Petitioner filed a request for a hearing. Petitioner's counsel informed the Hearings Officer that the matter had been resolved. By amended order, the Hearings Officer dismissed the matter, with prejudice.

**CDR 0809-4: Tommy Wai Hung Ma and Sindy Sin Yee Ma vs. AOA Queen Emma Gardens and Touchstone Properties, Ltd.**

Petitioners alleged that the condominium association did not procure and maintain liability insurance as required by the association's bylaws. The Hearings Officer agreed and granted Petitioners' Motion for Summary Judgment, ordering Respondents to procure and maintain liability insurance as provided for in the association's bylaws and to pay Petitioners' reasonable attorney's fees and costs.

**CDR 0809-5: Sherry W. Arndt, Nancy Shah, and John Ervin, vs. David Nagy, Patricia Dykstra, Emory Bush, and Charles Gallagher 2008 MLS Director**

The Hearings Officer granted Respondents' Motion to Dismiss based upon Petitioners' untimely request for a hearing. Petitioners' Motion for Summary Judgment was rendered moot, and denied.

*New Laws from pg. 1*

**ACT 079 (SLH 2009) SB 884 SD2 HD1 CD1** – Transfers excess balances from various non-general funds to the general fund; repeals central service and administrative fee exemptions; transfers interest from non-general funds to the general fund.

**ACT 128 (SLH 2009) HB 876 HD1 SD2 CD2** – Expands limitations on association liability for elderly unit owners or residents aging in place to include disabled persons.

**ACT 129 (SLH 2009) SB 1107 SD2 HD2 CD1** – Merges the condominium management education fund into the condominium education trust fund.

**Resolutions Adopted:**

**HR 128 HD 1 (SLH 2009)** – Urging the Real Estate Commission to *consider* allowing developers and attorneys to submit condominium registration filings in electronic format.

**SR 113 SD 1 (SLH 2009)** – Urging the Real Estate Commission to adopt and submit a strategic plan to allow developers and attorneys to submit condominium registration filings in electronic format.

## **Pangilinan Joins Branch As Executive Officer**

Jon Pangilinan is the newest member of the Real Estate Branch.

He is the new Executive Officer, filling the vacancy created when Neil Fujitani became the Supervising Executive Officer in 2008.

Mr. Pangilinan is a graduate of the University of Hawaii at Manoa, and majored in Economics, with a minor in Filipino. He has experience working with the State of Hawaii Legislature, Senate Ways and Means Committee, in 2005 and 2008.

Mr. Pangilinan also worked with the State of Hawaii Ombudsman's Office from 2005-2007.

Part of Mr. Pangilinan's responsibilities will include rule making, overseeing legislation that impacts real estate licensing and education and condominium property regimes, supervising Real Estate Branch activities, and becoming knowledgeable of both the real estate licensing laws and rules and the condominium laws and rules (Chapters 514A and Chapter 514B).

# Do You Know Where to Go for Mediation Services?

Since 2002, mandatory mediation became part of Chapter 514A, Hawaii Revised Statutes (§514A-121.5, HRS) and continues in Chapter 514B, HRS (§514B-161, HRS). Several articles in past Hawaii Condominium Bulletin (Bulletin) discussed mediation and its benefits. Mediation case summaries are also reported in the Bulletin.

Mediation is an informal, inexpensive, and confidential process to resolve disputes quickly. The mediator is an impartial third party who assists the parties to meet face-to-face to work out a mutually acceptable resolution.

Do you know where to go if you need mediation services? Mediation services are available from the following providers:

**Oahu:** Mediation Center of the Pacific, Inc.  
680 Iwilei Road, Suite 530  
Honolulu, HI 96817-3838  
Tel: (808) 521-6767  
Fax: (808) 538-1454  
Website: [www.mediate.hawaii.org](http://www.mediate.hawaii.org)  
Email: [mcp@mediate.hawaii.org](mailto:mcp@mediate.hawaii.org)

**Maui:** Mediation Services of Maui, Inc.  
95 Mahalani Street, #25  
Wailuku, HI 96793  
Tel: (808) 244-5744  
Fax: (808) 249-0905  
Website [www.mauimmediation.org](http://www.mauimmediation.org)  
Email: [info@mauimmediation.org](mailto:info@mauimmediation.org)

**W. Hawaii:** West Hawaii Mediation Center  
65-1279 Kawaihae Road, #213  
Kamuela, HI 96743  
Tel: (808) 885-5525 (Kamuela)  
Tel: (808) 326-2666 (Kona)  
Fax: (808) 887-0525

**E. Hawaii:** Ku'ikahi Mediation Center  
120 Keawe Street, Suite 203  
Hilo, HI 96720  
Tel: (808) 935-7844  
Fax: (808) 961-9727  
Website: none

Website: [www.whmediationcenter.org](http://www.whmediationcenter.org)

Email: [kuikahi\\_mediation@hawaiiantel.net](mailto:kuikahi_mediation@hawaiiantel.net)

**Kauai:** Kauai Economic Opportunity, Inc.  
2804 Wehe Road  
Lihue, HI 96766  
Tel: (808) 245-4077  
Fax: (808) 245-7476  
Website: none  
Email: [keo@keoinc.org](mailto:keo@keoinc.org)

If you wish to view the statutes that govern condominium property regimes Chapters 514A, and 514B, HRS, and Chapter 107, HAR, are available online. Please refer to the following sites: Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov) Website to access unofficial copy of laws: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs) Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

You may view publications on mediation on the Real Estate Branch Website at: [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec), select Condominium Registration and Education, select Mediation Resources.

**Mediation of Condominium Disputes** Informational brochure on the mediation of condominium disputes.

**Condominium Dispute Resolution Pilot Program** (Press Release dated July 28, 2004)

Act 164, signed into law by Governor Lingle on July 2, 2004, established the Condominium Dispute Resolution Pilot Program ("CDR Pilot Program"), which the State Office of Administrative Hearings (OAH), Department of Commerce and Consumer Affairs will conduct over the next two years.

**Condominium Dispute Resolution Pilot Program -**

Act 92 (SB 1345) allows a broader range of condominium disputes to be heard by the CDR Pilot Program within DCCA. Prior to the implementation of Act 92, only certain kinds of condominium disputes could be addressed through the CDR Pilot Program. The law became effective on July 1, 2005.

**Condominium Dispute Resolution Pilot Program - Decisions**

The Office of Administrative Hearings holds administrative hearings for certain types of condominium disputes and issue a report to the legislature.

If you wish to contact the Real Estate Branch, you may call you may call the Real Estate Branch at 586-2643 or STATE TOLL-FREE NUMBERS from the neighbor islands are:

**Big Island** 974-4000, ext. 6-2643

**Kauai** 274-3141, ext. 6-2643

**Maui** 984-2400, ext. 6-2643

**Molokai & Lanai** 1-800-468-4644, ext. 6-2643

## Mediation Case Summaries

### Mediation Services of Maui (MSM)

Between **July 2008, and December 2008**, MSM conducted two (2) cases involving condominium disputes.

<u>Parties</u>	<u>Complaint</u>	<u>Disposition</u>
Owner vs. BOD	Alleged violation of condominium rules and subsequent fines	No mediation occurred
Owner vs. BOD	Alleged rules violations and subsequent fines	Mediated; agreement reached

Between **January 2009 and May 2009**, MSM reported one (1) case in which the board of directors declined to mediate.

Owner vs. BOD	Interpretation of Bylaws	No mediation
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### Mediation Center of the Pacific (MCP)

Between **July 2008 and December 2008**, MCP conducted a total of four (4) condominium-related mediation cases.

Owner vs. BOD	Placement of new common element	Mediation declined
Owner vs. BOD	Allege a meeting held with improper notice	Mediation declined
Owner vs. BOD	Allege a violation of fiduciary duties and meeting with improper notice	Mediation declined
Owner vs. BOD	Dispute regarding water damage to unit from common element	Mediated; agreement reached

MCP reported nine (9) mediations between **January 2009 and May 2009**.

Owner vs. Board	Excessive noise from a common element	Mediated to agreement
Owner vs. Board	Dispute regarding modifications to property	Mediated to agreement
Owner vs. Board	Alleged house rules violation by board	Conciliated to agreement
Owner vs. Board	Maintenance of common area	No mediation
Owner vs. Board	Liability insurance coverage and Board management of common areas	Mediated, no agreement
Owner vs. Board	Access to documents and alleged house rule violation	No mediation
Owner vs. Board	Improvements on common areas	Mediated to agreement
Owner vs. Board	Accounting of maintenance fees and related attorneys fees	Mediated to agreement
Owner vs. Board	Repair of common element	Complaint w/drawn

*(Continued on pg. 8)*

Kaua'i Economic Opportunity, Inc. (KEO)

KEO reported one (1) case opened and closed between **July 2008 and December 2008**.

Owner vs. BOD	Dispute over late maintenance fees	Mediated; agreement reached
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KEO reported one (1) case between **January 2009 and May 2009**, in which the AOUO refused to mediate.

Owner vs. AOUO	Dispute over past due maintenance fees	No mediation
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West Hawaii Mediation Center

West Hawaii Mediation Center reported one (1) condominium-related mediation for the period **July 2008 to December 2008**.

Owner vs. BOD	Allegation that BOD was permitting units to be used for other than residential purposes	Mediated; interim agreement reached
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No condominium mediation cases were reported by West Hawaii Mediation Center **between January 2009 and May 2009**.

No condominium mediation cases were reported by the Kuikahi Mediation Center for **July 2008 to December 2008 and January 2009 to May 2009**.

## 2009 Real Estate Commission Schedule

**Laws & Rules Review Committee**

**Real Estate Commission, 9 a.m.**

**Condominium Review Committee**

**Education Review Committee**

**(These committees meet one after another, beginning at 9 a.m.)**

Wednesday, July 8, 2009 (Kauai)

Friday, July 31, 2009

Wednesday, August 12, 2009

Friday, August 28, 2009

Wednesday, September 9, 2009

Friday, September 25, 2009

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor, except the July 8, 2009 Committee meetings, which will be held at Conference Rooms A, B, and C of the State Office Building, 3060 Eiwa St., Lihue Kauai.

*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 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.*

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