

HAWAII CONDOMINIUM BULLETIN



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Amendments To The Proxy Statute

Act 185 (SLH 1995) significantly amended the proxy law.

Act 185 (SLH 1995) now requires that all proxy forms, whether given to the board of directors or anyone else, contain at a minimum, boxes that the owner may indicate where the owner desires the proxy to be given. Choices are:

1. for quorum purposes only;
2. to a specific individual whose name must be printed next to the box;
3. to the board as a whole with the vote cast on the basis of the preference of the majority;
4. to the directors present at the meeting with the proxy to be shared with each board member by an equal percentage.

Speakership Highlights

During this past year, the Real Estate Branch staff made several speeches. More than one hundred individuals attended the Honolulu Board of Realtors' Condominium Seminar and Legislative Update. Other presentations included speeches to employees at a condominium managing agent, and at Real Estate Commission-sponsored summit meetings on Oahu and Hawaii Island. Requests for speakers may be submitted to the Real Estate Branch. Approvals may be limited, depending on personnel and other resource constraints.

Upcoming Insurance Brochure

At the request of the Hawaii Real Estate Commission, the Hawaii Real Estate Research And Education Center ("Center") is preparing an information booklet on the topic for the Board of Director's Guide. There are many good national publications on the topic. **See Condominium Reference Library for publication sources.** Plans for the upcoming booklet include providing a discussion of Hawaii specific insurance issues, laws, and information.

Budget Cuts Affect Real Estate Branch

Due to the State government's fiscal situation, the Real Estate Commission budget has been dramatically reduced. The Real Estate Branch staff, who provide services on behalf of the Real Estate Commission, may also be affected by the reduction in force (RIF). Those RIF employees may either fill a vacant position or "bump" an employee who has less seniority. This whole process will take months to complete.

In addition, the Real Estate Branch has vacancies that have not been filled. This means deferring or abbreviating existing programs and postponing new programs. In addition, the timeliness on applications and programs have been affected, with backlogs in certain areas. Even if vacancies are filled, there may be future delays while new employees learn their new duties and responsibilities.

The Real Estate Branch staff is responsible for the following: all real estate licenses, registrations and certificates (this includes salespersons, brokers, sole proprietors, partnerships and corporations, branch offices and site offices, broker experience certificates, educational waivers, change forms), prelicense and continuing education providers and instructors, registration of condominium hotel operators, condominium managing agents, condominium associations, and condominium projects.

Each month, the Real Estate Branch responds to an average of 3,500 phone calls, 490 walk-ins, and 4,400 written requests.

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Letter from the Chair . . .

Dear Condominium Owners,

Earlier this year, each condominium association (six apartments or larger) registered with the Real Estate Commission was sent a three-ring binder to store issues of the Hawaii Condominium Bulletin. We are pleased with the positive responses we have received, such as the thank you note sent by the president of the Association of Apartment Owners of Kahuamoku Manor.

As a result of the past legislative session, there are amendments to the condominium statute, Chapter 514A, Hawaii Revised Statutes. In light of the changes to the proxy requirements, associations should review their forms and procedures.

Those interested in learning more about condominium governance are encouraged to consult the Condominium Reference Library kits available at Hawaii State Library branches for reference. Also, section 514A-82(b)(12) allows directors to expend association funds for education and training, subject to listing the expenses in the budget.

This summer, the Commission bid a fond farewell to its chair Marcus Nishikawa. Barbara Dew has been appointed the new chair. Stanley Kuriyama now serves as vice chair. The Commission also welcomes its newest member, Helen Lindeman.

If you have questions, comments, or suggestions, please feel free to write to or call (586-2646 or from the Neighbor Islands, 1-800-468-4644, extension 6-2646) the Commission's condominium specialists.

Very truly yours,

*Carol Mon Lee,
Chair, Condominium and
Cooperative Review Committee*

Ask the Condominium Specialists

Q. In my condominium association, there seems to be disagreement among various factions. Is there any help available?

A. If there is a dispute among the board of directors or members of the association, the dispute should be taken to mediation at the Neighborhood Justice Center (NJC) ((808) 521-6767). On Maui, please call Mediation Services of Maui, Inc. at (808) 244-5744. On the other Neighbor Islands, please call NJC. In addition, section 514A-121, HRS, requires arbitration of disputes at the request of any party.

It is also important to remember that the condominium law is based on self-governance, owner enforcement, and majority rule. The condominium statute was and is intended to be a self-enforcing statute with little involvement by government. Other than the sections mentioned in sections 514A-46, -47, and -48, HRS, addressing any alleged violations of the project documents or statute and rules is primarily the responsibility of the owners of the association.

The Real Estate Commission and its staff do not receive, investigate, or take legal action on complaints. By law, the Regulated Industries Complaints Office ("RICO") is the independent authority that handles complaints of alleged statutory condominium violations specifically enumerated in sections 514A-46, -47 and -48, HRS. These sections grant authority over less than one-third of Chapter 514A.

If you wish to file a complaint, you may write to them at their Honolulu office located at 828 Fort Street Mall, Suite 600A, Honolulu, Hawaii 96813, or call them at (808) 587-3222.

Q. As an owner and board member, I would like to read about condominium management. Are there any educational materials available?

A. Yes. The Condominium Reference Library kits are available at Hawaii State Library branches on all islands. The reference kits consist of booklets discussing various topics concerning condominium management and governance. Please call your nearest branch library for availability and hours of operation. In addition, the Condominium Reserves Reference Manual and three brochures published by the Real Estate Commission are available for sale by the Hawaii Real Estate Research and Education Center. Proxies is available for \$4.00, and Fiduciary Duty and Sense of Community are \$3.00 each. Shipping and handling are additional. For more information, please call (808) 956-7892 (1-800-642-4756 from the Neighbor Islands).

Finally, each association was sent a set of reference materials including a copy of the reserves reference manual, all brochures, and copies of the Hawaii Condominium Bulletin (with three-ring binder).

Legislation

Some new laws impact the self governance of condominium associations, its boards, its managers, and condominium owners. A discussion of selected 1995 Acts is included in this Reference File. The discussion is not and should not be construed as legal advice. Because this Reference File only summarizes some of the changes made by the 1995 Acts that may impact on condominium ownership, governance and management, readers are advised to obtain and read the full text of the acts. Since this Reference File does not contain an exhaustive listing of related 1995 Acts, readers are also advised to check with the 1995 Session Laws Hawaii as to other Acts that may have impact on condominium ownership, governance and management. Readers are also advised to seek the service of competent professionals should they need answers as to how the new law may apply to their particular circumstance.

Act 185 HB 2179, HD1, SD1, CD1 (SLH 1995) Relating To Real Property

In the past, when proxies were given to the board of directors, the law required that an owner indicate by marking a box on the proxy form, the owner's desire to have the proxy shared by each board member. Each member to receive an equal percentage of the proxy. In the event the box was not marked, the owner's choice was construed to mean a proxy vote based on the preference of the majority of the board.

Act 185 (SLH 1995) deleted the above practice by requiring that all proxy forms, whether given to the board of directors or anyone else, contain at a minimum, boxes that the owner may indicate where the owner desires the proxy to be given: Choices are:

1. for quorum purposes only;
2. to a specific individual whose name must be printed next to the box;
3. to the board as a whole with the vote cast on the basis of the preference of the majority;
4. to the directors present at the meeting with the proxy to be shared with each board member by an equal percentage.

Should an owner not mark any of the boxes on the proxy form, the proxy must be considered for quorum purposes only. Thus, simply forgetting to make a choice results in the proxy being used only to establish a quorum for a meeting.

Additionally in the past, condominium associations that chose to have official proxy forms, were required to provide on the form a box where the owner could indicate the owner's desire to have either a summary of the annual audit report, or an unabridged copy of the annual report. If the box was not marked, the board could not be required to submit a summary of the annual audit report or a copy of the annual audit report.

Act 185 (SLH 1995), deletes the owner's option to receive either a summary of the annual audit report or an unabridged copy version. Act 185 (SLH 1995) requires the board to send only a copy of the annual report when the owner indicates the owner's desire to receive the report by marking the box on the proxy form.

See the sample proxies on page 6. These forms represent an educated guess as to how the new law may be translated

into practice. The sample forms are included here for educational and illustrative purposes only and not to be construed as legal advice or meeting the requirements of the law. Only a court can decide on a case specific factual situation whether a particular form meets the requirements of the law. A competent licensed attorney can render an opinion whether any particular proposed form satisfies the requirements of the law.

Other sections of Act 185 (SLH 1995) provide for the following:

- Prohibits the board of directors from adopting any rule prohibiting the solicitation of proxies or distribution of materials relating to association matters in connection with the common elements; except the board may adopt rules regulating reasonable time, place and manner of any solicitation and distribution;
- Allows the board of director to prohibit commercial solicitations;
- Requires the Real Estate Commission to establish a plan for recodifying chapter 514A, Hawaii Revised Statutes, to make it easier to understand and follow. Requires a report on the plan be submitted to the legislature not later than twenty days prior to the convening of the regular session of 1996. Requires the plan to include but not be limited to:
 - ➡ who should work on the recodification and who should be consulted on such;
 - ➡ the particular areas to be researched or considered for statutory amendments; and
 - ➡ an estimate of costs and needed resources; funding sources; and an examination of the possibility of using the condominium management education fund for such purposes.

Act 28 HD1 (SLH 1995) Relating to Condominium Property Regimes

Except in emergency situations, a board may not exceed its total adopted annual operating budget by

more than twenty per cent. The current law defines four situations as “emergency situations.” None of the situations allow a board to exceed its budget to meet increased insurance premiums.

In the aftermath of Hurricane Iniki, condominium associations faced huge increases in insurance premiums. This insurance related emergency situation was not contemplated when the budget reserve law was enacted.

Act 28 (SLH 1995) amends the law to include in the definition of “emergency situation” extraordinary expenses necessary for the association to obtain adequate insurance for the property which the association must insure. Act 28 (SLH 1995) thus provides the board of directors greater flexibility in budgeting for necessary unforeseen expenses.

Other Related Acts

Act 214 HB 1317 (SLH 1994) Mandatory Seller Disclosures In Real Estate Transactions

Although Act 214 (SLH 1994) was enacted in 1994, it did not become effective until July 1, 1995. Act 214 (SLH 1994), now codified as Chapter 508D, Hawaii Revised Statutes, requires the seller (condominium owner) or the seller’s agent (generally the real estate agent) to provide a buyer with a “Disclosure of real property condition statement,” within ten days from acceptance of an offer. Upon receipt of the statement, the buyer has fifteen calendar days to examine the statement or rescind the offer to purchase real property.

Seller disclosure is not a new law. Sellers have been required by common law to make such disclosures. Act 214 (SLH 1995) just formalizes an old requirement.

Except for specific exempt situations (specified in §508D-3, Hawaii Revised Statute), a seller (a condominium owner) cannot transfer or dispose of any interest in residential real property (condominium apartment) unless:

- a disclosure of real property condition statement is signed by the seller and dated within six months of acceptance of an offer, and delivered to the buyer;
- the buyer is given a reasonable opportunity to examine the statement; and
- the buyer acknowledge receipt of the statement on the real estate purchase contract, in a separate document; and
- indicates in writing any rescision of the offer.

A “Disclosure of real property condition statement: or ‘statement’ means a written statement prepared by the condominium owner (seller) or the seller’s agent’s observa-

tions of visible, accessible areas; related recorded and unrecorded documents; information available from government agencies; and information within the knowledge and control of the seller.

The law requires the statement be prepared in good faith by the seller (condominium owner) or at the seller’s direction. When the material information is unknown or unavailable, the law permits after reasonable efforts to ascertain the information, approximation of the information.

Although, the law requires the seller or the seller’s agent to prepare the statement, in practice, sellers (condominium owners) have been requesting the board or the association’s managing agent to fill out the portion of the statement that pertains to the association. Many boards and managing agents have been cooperating with the requests and have been using a preprinted form to do so. The forms are generally prepared and reviewed by competent professionals i.e. attorneys, principal brokers etc. The cooperation carries out the spirit of the law.

Act 17 HB 13—S (Special SLH 1995) Relating To The Hawaii Hurricane Relief Fund

Currently, a special mortgage recording fee is imposed on each mortgage and each amendment to a mortgage. The fees are deposited into the hurricane reserve trust fund.

Among other amendments, Act 17 (Special SLH 1995) permits the Hurricane Relief Fund to exempt mortgage transactions from payments of the special mortgage recording fee and provide for equitable assessment of the special mortgage recording fee pursuant to rules adopted by the board. Act 17 (Special SLH 1995) also adds three new definitions to the Hurricane Relief Fund Chapter providing definitions for “companion policy, licensed property and casualty insurer, and mortgage.” The Act also amends the definition of “eligible property.”

Act 154 HB 1997, HD3, SD1, CD1 (SLH 1995) Relating To Family Leave

Private and public employers (i.e., condominium associations) with one hundred or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year must provide four weeks of unpaid leave upon the birth of a child of an employee, adoption of a child, or to care for the employee’s child, spouse, or parent with a serious health condition. Act 154 (SLH 1995) provides procedures and remedies needed to enforce the family leave law.

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

Purchased or funded by Condominium Management Education Fund, Real Estate Commission, State of Hawaii.

Sample of a Generic Proxy

Association of Apartment Owners of _____
(PRINT or TYPE name of association of apartment owners here)

PROXY

I. Purpose of Proxy and Designation of proxy holder

(COMPLETE ONE ONLY— BOX A OR B)

BOX A:

I, the undersigned owner hereby instruct the Board of Directors to use my proxy

for **purpose of establishing a quorum only.**

OR

BOX B:

I, the undersigned owner hereby do hereby constitute and appoint (CHECK ONE OPTION):

Print the name of the specific person you appoint. The law requires you to print the name next to the box.

The board of directors of the Association of Apartment Owners as a board (with the board to vote the proxy with the preference of the majority of the board)

The board directors present at the meeting (with the vote to be shared with each board member receiving an equal percentage)

as my proxy to vote for the election and reelection of board directors on my behalf and to act on my behalf on any and all business that come before the Annual Meeting to be held on _____, (place date of meeting here) and at any and all adjournments in connection with this meeting, in accordance with the percentage interest owned in the common elements that the undersigned owner would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given, and ratifying and confirming all that my agent by virtue may do hereof. The undersigned also hereby acknowledges receipt of notice of said meeting.

If you did not complete one of the above boxes then your proxies will be used for quorum purposes only.

II. Annual audit reports

Check one box only

The condominium law requires the board to make a copy of the annual audit available to each condominium apartment owner thirty days prior to the date of the annual meeting. The board is not required to send you a copy of the report if this section is not marked. (Check one box only)

Send me a copy of the annual audit report.

Do not send me a copy of the annual audit report.

III. Procedures for a valid proxy

This proxy is valid only for the annual meeting noted in this Proxy and at all adjournments thereof. It may be revoked prior to its exercise. Should you attend the meeting, you may cancel the proxy and you may then vote in person. **TO BE VALID, THIS PROXY MUST:**

- **be delivered to the managing agent or the association secretary no later than 4:30 p.m. on _____ (Place deadline date here. The deadline date is the second business day prior to the date of the meeting).**
- **provide the proxy giver's printed name and signature, apartment number; the printed name of the proxy holder, and date the proxy is given.**

IV. Names and signatures

The name signed and printed on this proxy must be as the name appears on the record title of condominium ownership.

Those persons and entities signing for the owner of the apartment, such as executors, administrators, trustee, guardians, conservators, corporate officers and partners must submit to the Association, prior to the meeting, a copy of their appointment or other documentation verifying their authority to act in such capacity. **All of the blanks including the following blanks must be completed as indicated or the proxy will be void.**

PRINTED NAME OF OWNER:

SIGNATURE OF OWNER:

OWNER'S APARTMENT NO. _____

DATE SIGNED: _____

Sample Proxy

Note: For use by condominium owner giving a directed proxy to the board of directors.

Association of Apartment Owners of _____
(PRINT or TYPE name of association of apartment owners here)

PROXY

I. Choice of proxy given (check one)

I hereby give a _____ general proxy or a _____ directed proxy as follows.

II. Purpose of Proxy and Designation of proxy holder

(COMPLETE ONE BOX ONLY)

BOX A:

I, the undersigned owner hereby instruct the Board of Directors to use my proxy :

for purpose of establishing a quorum only.

OR

BOX B:

I, the undersigned owner hereby do hereby constitute and appoint **CHECK ONE OPTION**):

Print the name of the specific person you appoint. The law requires you to print the name next to the box.

as my proxy to vote for the election and reelection of board directors on my behalf and to act on my behalf on any and all business that come before the Annual Meeting to be held on _____, (place date of meeting here) and at any and all adjournments in connection with this meeting, **EXCEPT FOR THE ITEMS LISTED IN SECTION IV FOLLOWING, I INSTRUCT THE PROXY HOLDER TO VOTE AS I HAVE INSTRUCTED IN THAT SECTION FOLLOWING,**

The board of directors of the Association of Apartment Owners as a board (with the board to vote the proxy with the preference of the majority of the board)

The board directors present at the meeting (with the vote to be shared with each board member receiving an equal percentage)

as my proxy to vote for the election and reelection of board directors on my behalf and to act on my behalf on any and all business that come before the Annual Meeting to be held on _____, (place date of meeting here) and at any and all adjournments in connection with this meeting, in accordance with the percentage interest owned in the common elements that the undersigned owner would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given, and ratifying and confirming all that my agent by virtue may do hereof. The undersigned also hereby acknowledges receipt of notice of said meeting.

If you did not complete one of the above boxes then your proxy will be used for quorum purposes only.

II. Annual audit reports

Check one box only

The condominium law requires the board to make a copy of the annual audit available to each condominium apartment owner thirty days prior to the date of the annual meeting. The board is not required to send you a copy of the report if this section is not marked. **(Check one box only)**

- Send me a copy of the annual audit report.
- Do not send me a copy of the annual audit report.

III. Procedures for a valid proxy

This proxy is valid only for the annual meeting noted in this Proxy and at all adjournments thereof. It may be revoked prior to its exercise. Should you attend the meeting, you may cancel the proxy and you may then vote in person. **TO BE VALID, THIS PROXY MUST:**

- **be delivered to the managing agent or the association secretary no later than 4:30 p.m. on _____ (Place deadline date here. The deadline date is the second business day prior to the date of the meeting).**
- **provide the proxy giver's printed name and signature, apartment number; the printed name of the proxy holder, and date the proxy is given.**

IV. Instructions to proxy holder

I expressly direct that the proxy holder cast my vote as follows:

- (Question) _____ yes _____ no
- (Question) _____ yes _____ no
- (Candidate) _____
- (Candidate) _____
- (Candidate) _____

On all other matters, I authorize the proxy holder to use his or her discretion to vote of those matters as she or he deems appropriate.

VI. Names and signatures

The name signed and printed on this proxy must be as the name appears on the record title of condominium ownership.

Those persons and entities signing for the owner of the apartment, such as executors, administrators, trustee, guardians, conservators, corporate officers and partners must submit to the Association, prior to the meeting, a copy of their appointment or other documentation verifying their authority to act in such capacity. **All of the blanks including the following blanks must be completed as indicated or the proxy will be void.**

PRINTED NAME OF OWNER: _____

SIGNATURE OF OWNER: _____

OWNER'S APARTMENT NO. _____

DATE SIGNED: _____

2001, The Arrival — Moving into Future Association Living

Sponsored By:

CAI – Hawaii Chapter and the Hawaii Real Estate Research and Education Center (funded in part by the Condominium Management Education Fund, Real Estate Commission, State of Hawaii, Trustees).

Cost: \$5.00 per person, condo association members
\$7.00 for other attendees

Time: 7:00p.m. – 8:30p.m. for all locations

Topics include:

- ◆ Don't like the Rules? Rewrite the Law
- ◆ Seller Disclosure Implications
- ◆ Managing the Future Association
- ◆ Live Demo of CAO On-line Network

Date	Day	Location
Sept. 12	Tues	Leeward Oahu, Waipahu High School
Sept. 14	Thurs	East Honolulu, Kaiser High School
Sept. 19	Tues	Windward Oahu, Castle High School
Sept. 21	Thurs	Central Oahu, Mililani Rec Center #5
Sept. 22	Fri	Downtown, UH College of Business

Call CAI for registration information: 488-1133

KONA MEETING

The Real Estate Commission will convene standing committee meetings at the Hilton Waikoloa Village Hotel in Waikoloa, Hawaii, on October 4, 1995.

Amended Real Estate Commission Meeting Schedule for 1995

Laws & Rules Review Committee 9a.m.

Condominium & Cooperative Review Committee 10a.m.

September 13, 1995 – Kapuaiwa	November 8, 1995 – Kapuaiwa
*October 4, 1995 – Waikoloa	**December 14, 1995 – Ka Lanakila
Kapuaiwa and Kuhina Nui Rooms	Ka Lanakila Room
HRH Princess Victoria Kamamalu Bldg.	HRH Princess Victoria Kamamalu Bldg.
1010 Richards Street, Second Floor	250 South King Street, Penthouse
Honolulu, Hawaii	Honolulu, Hawaii

**Wednesday meeting 2:30 p.m., **Thursday meeting*

Subject to change. Please reconfirm dates, times and location with commission staff.

Phone 586-2643.

Education Calendar

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

Date	Time	Course Title	Location	Provider
9/12-22	7-8:30pm	Neighborhood Condominium Association Seminars	See notice on pg. 7	CAI, REC, HREREC
9/11-22/95	7-8:30pm	Making Sense of the Reserve Law Requirements	Call provider	The Alakahi Foundation
9/14/95	12-1:30pm	Membership Meeting	Hale Koa Hotel	HCAAO
9/23/95	8:30-4:30pm	ABC's Workshop	Japanese Cultural Center	CAI
10/2-13/95	7-8:30pm	Don't Raise Maintenance Fees - Increase Revenue & Lower Expenses Instead	Call provider	The Alakahi Foundation
10/7/95		Joint program with Bar Association	Call provider	CAI
October		Course 855; Challenges of Community Association Management	Call provider	IREM
11/9/95	12-1:30pm	Membership Meeting	Hale Koa Hotel	HCAAO
11/9-10/95		M-204, Legal Basis	Call provider	CAI

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

	Provider	Phone	Address
CAI –	Community Associations Institute Hawaii Chapter	488-1133 (Oahu)	P.O. Box 976, Honolulu, HI 96808
HCAAO –	Hawaii Council of Associations of Apartment Owners	533-2528 (Oahu)	677 Ala Moana Blvd., Suite 701, Honolulu, HI 96813
HREREC –	Hawaii Real Estate Research & Education Center	956-7892 (Oahu) 1-800-642-4756 (neighbor islands)	2404 Maile Way B-201, Honolulu, HI 96822
IREM –	Institute of Real Estate Management Hawaii Chapter No. 34	737-4000 (Oahu)	1136 12th Ave., Suite 220, Honolulu, HI 96816
REC –	Hawaii Real Estate Commission	586-2643 (Oahu)	250 S. King St. Room 702, Honolulu, HI 96813
SMCC –	South Maui Condominium Council	879-2758 (Maui)	P.O. Box 647, Kihei, HI 96753
UH-SBMP –	Small Business Management Program University of Hawaii	956-7363 (Oahu)	2404 Maile Way, Room A-202, Honolulu, HI 96822
Alakahi	The Alakahi Foundation	522-5990 (Oahu)	1142 Auahi St. Suite 1806, Honolulu, HI 96814