

HAWAII CONDOMINIUM BULLETIN



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Registration Required by January 1, 1996 for Condominium Associations, Condominium Managing Agents and Condominium Hotel Operators

Condominium associations with six or more apartments, condominium managing agents, and condominium hotel operators are reminded that state law requires them to register each year with the Real Estate Commission. The laws, as stated in sections 514A-95.1, 514A-95, and 467-30, Hawaii Revised Statutes, requires registration by January 1 of each year.

Registration forms together with instructions for completing them were mailed to those previously registered with the Real Estate Commission. Unregistered condominium associations, may request forms and instructions by

telephoning 586-2644 (or from the Neighbor Islands, 1-800-468-4644, extension 6-2644). Condominium managing agents, and condominium hotel operators may request forms and instructions by telephoning 586-3000 (or from the Neighbor Islands, 1-800-468-4644, extension 6-3000).

Section 514A-95.1, Hawaii Revised Statutes, requires that all condominium associations with six or more apartments register with the Real Estate Commission. The section further provides in pertinent part that: "... Any association which fails to register as required by this section or whose regis-

tration is rejected or terminated shall not have standing to maintain any action or proceeding in the courts of this State until it registers..."

This means that an unregistered association does not have standing to file any lawsuit in any state court, for example, against an owner to comply with the bylaws or to pay delinquent maintenance fees. In addition, an unregistered association may be subject to imposition of a late registration fee or a fine of \$10,000 or less.

Finally, associations should be aware that their association registration may be at risk if their condominium managing agent is not registered.

Abbreviated Procedure Available for 1996 Registration for Condominium Managing Agents and Condominium Hotel Operators

In order to provide better service and to respond to requests regarding the registration process, a streamlined procedure has been developed for 1996. The abbreviated procedure can be used by any registrant which can answer "NO" to the question, "Has ANY of the information which the [condo-

minium managing agent or condominium hotel operator] filed last year changed or is not the same, including all answers to questions?" More detailed information is available in the materials sent to each registrant.

If you did not receive re-registration materials for your condominium

managing agent or condominium hotel operator re-registration, please call 586-3000 to obtain a duplicate set.

Register early to avoid the year end crunch. More than 10,000 other applications for many other licenses are expected by December 31st.

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What is a Condominium Hotel Operator?

Any person(s) or entity providing transient lodging in condominium apartments for periods of less than 30

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Letter from the Chair. . .

Dear Condominium Owners:

Before the new year comes, please be sure that your association has submitted its annual registration application. (As described elsewhere in this issue, registration every two years may be in the future. Please mail in your comments.)

Congratulations to the first five associations to register for 1996! They are: Namahana Terrace, MJJ Apartments, Makua Shores, Punahoa Beach Apartments, and Kahana Reef.

All associations of six apartments or more are encouraged to register as early as possible so that copies of the Hawaii Condominium Bulletin may be sent to the contact persons designated by that association. Please don't forget to send notices of address or name changes.

Subscriptions to the Hawaii Condominium Bulletin are now available from the Hawaii Real Estate Research and Education Center (2404 Maile Way, Honolulu, Hawaii, 96822).

Meanwhile, work continues on the plan to recodify the condominium statute, Chapter 514A, Hawaii Revised Statutes.

Other suggestions for the coming year:

- *Be a good leader (Establish clear goals, articulate them, ask for input, make decisions, do what is correct not merely popular, plan and save for the future)*
- *Develop a successful budget (Ask for input, be realistic, raise maintenance fees if necessary, plan for the future)*
- *Purchase your own subscription to the Hawaii Condominium Bulletin*
- *Browse the home page of HREREC on the Internet's World Wide Web at www.cba.hawaii.edu/rec.*

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 Review Committee*

Ask the Condominium Specialists

Q. I live in a condominium association with townhouse style architecture. Most of the buildings have two, four or six apartments. I have noticed that many of the open air lanais have been fenced off, some lanais even have walls and roofs. I have also heard that some owners have divided up rooms to make another bedroom. Is this permitted?

A. It depends. Some owners may have obtained necessary approvals. However, approvals by the board, the association, or other entities may be required. Although the use of the lanai area may be exclusive to the owners of a particular apartment, it is still subject to any regulation provided in the project documents.

According to section 514A-89, Hawaii Revised Statutes, in pertinent part: "... additions to or alterations of an apartment made within such apartment or within a limited common element ... shall require approval ... by the board of directors ... and such percentage ... apartment owners as may be required by the declaration or bylaws...."

Furthermore, section 514A-88, Hawaii Revised Statutes, provides, in pertinent part: "Each apartment owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto ... and with the covenants, conditions, and restrictions set forth in the declaration. Failure to comply ... shall be ground for an action ... by the manager or board of directors on behalf of the association of apartment owners or, in a proper case, by an aggrieved apartment owner. ..."

Legislative History of Hawaii's Condominium Statute¹

July 1996 will mark the 35th anniversary of this State's Condominium Statute. Indeed, Chapter 514A, Hawaii Revised Statutes, is approximately 34 years old. However, the condominium concept can be traced back to the Hebrews more than twenty five hundred years ago.² Originally, Chapter 514A, Hawaii Revised Statute, was enacted as Act 180 of the 1961 Session Laws of Hawaii, of the First State Legislature, and designated as the "Horizontal Property Act (HPA)." Act 180 added a new chapter to the Revised Laws of Hawaii 1955. The Act was introduced as H.B. 1142 (1961) and approved as Act 180 on July 10, 1961. The Revisor of Statutes designated the new chapter the "Horizontal Property Regimes."³

Standing Committee Report 622, House Journal 937, 938 (Housing) approved the purpose and intent of Act 180, H.B. 622 (SLH 1961) and recommended its passage on Third Reading with certain amendments. The committee report stated the purpose and intent of HB 622 as providing an enabling act in connection with condominium projects. The committee reported further that it deleted considerable portions of the bill relating to details which could more properly be included in by-laws to be passed by the council of co-owners. Reasons given for the deletions included: the deleted details might have been contrary to the Federal Housing Administration's (F.H.A.) regulations, or to the lending institutions' policies; making it impossible for prospective purchasers to obtain financing.

The report also described the following events as providing substantial impetus for the bill and its amendments.

The citizens of Honolulu have suffered during the past one or two years several unfortunate experiences in cooperative apartment buying. When several millions of dollars were lost through loose handling of funds representing down-payments on individual apartment units, it became clear that controls had to be developed in order (a) to protect the buying public, and (b) through a bolstering of public confidence, to create for the developer a better reception for his product. Your Committee has therefore added a new part, number part IV, which provides that a developer shall be required to register his project with the Real Estate License Commission prior to his offering it for sale.

A 1963 law review article⁴ reported that Hawaii was the first state to enact statutory provisions enabling the creation of condominiums. Hawaii like most other early enactments of condominium statutes were based on the Puerto Rican condominium statute.⁵ The original condominium statute as well as the statute in force today aims to protect the consumer in the purchase of a condominium unit. However, unlike the original enabling statute, today's Chapter 514A, Hawaii Revised Statutes provide expanded details for the management of the condominium project. Such details were deleted from the original enabling statute.⁶

Act 180, HB.1142, H.D. 1 (SLH 1961), was substantially modeled after the condominiums laws of Puerto Rico and organized into four parts. Senate Committee Report No. 1043 described the four parts as follows:

Part I... sets forth the definition of various terms applicable to condominium plans and application of the substantive law relative to ownership.

Part II... sets forth the requirements in the registration of pertinent deeds, plans and other documents in the creation of horizontal regimes.

The internal administration of this property concept is covered under Part III thereof.

Part IV... provides for the regulation by the Real Estate License Commission prior to the offering of the project or any part thereof for sale. (p. 1025).

Highlights of Major Amendments to the Condominium Statute Following Enactment of the Condominium Enabling Statute in 1961

1963

It appears that the first major expansion of the condominium statute occurred in 1963. According to the Senate Standing Committee Report No. 340 Senate Journal 281-283 (1963), S.B. 340 (Act 101 (SLH 1963)) amended Part I, II, and III of the Horizontal Property Act, originally enacted as the condominium enabling act.⁷ The amendments incorporated into Hawaii's Horizontal Property Act most of the provision recommended by the Federal Housing Administration condominium model state statute as well as recommendations from New York legislation on the subject. The amendments also corrected statutory deficiencies of the HPA and provided expanded details for the administration of the condominium and the rights and obligations of apartment owners.

Of significance, the enabling condominium statute required that the administration of every horizontal property regime be governed by by-laws approved and adopted by the council of co-owners. Legislation in this year include amendments replacing the term "council of co-owners," with "association of apartment owners;" and specified that the by-laws include certain requirements.⁸

1968

In this year the condominium statute designated and numbered as Chapter 170A, Revised Laws Hawaii was redesignated as Chapter 514, Hawaii Revised Statutes.

The redesignation was made pursuant to Act 16 (SLH 1968). This Act enacted the Revised Statutes of Hawaii as the Hawaii Revised Statutes.⁹

1977

It appears in this year without making any substantive changes, the legislature undertook a major effort to codify and reorganize Chapter 514.¹⁰ Although, the Chapter was enacted as Chapter 514, Hawaii Revised Statute, the Revisor of Statutes redesignated chapter 514 as 514A to avoid confusion with the former provisions.¹¹ The format of today's condominium statute resembles the 1977 version.

1988

In 1988 Act 65, S.B. No. 2064 (SLH 1988) re-named the chapter as the Condominium Property Act.

1995

Currently, section 4 of Act 185 (SLH 1995) requires the Real Estate Commission to establish a plan for recodifying chapter 514A, Hawaii Revised Statutes to make it easier to understand and follow. Act 185 requires the Commission to submit to the Legislature a report on the plan twenty days prior to the convening of the regular session of 1996. Notably, this request comes approximately 18 years since the statute was last codified by Act 98 (SLH 1977).

Endnotes

¹ Chapter 514A, Hawaii Revised Statutes.

² *State Savings & Loan Association v. Kauaian Development Company, Inc., Kauaian Land Company, Inc.* 50 Hawaii Report 540, 546, 445 P2d 109 (Hawaii 1968). William Kerr, author of the 1963 St. John's Law Review article entitled "Condominium-Statutory Implementation," directly attributed the enactment of Section 234 of the National Housing Act effective June 10, 1961 to the advent of the condominium in the continental United States. Section 234 of the National Housing Act authorized the Federal Housing Administration to insure mortgages on individual apartments or units in multi-unit buildings. "Hawaii was ready and waiting for the passage of section 234 and ten days after its effective date it was the first state to adopt an Horizontal Property Act" (pg.5). Kerr cited other factors giving impetus to the enactment of Horizontal Property Acts include housing shortages and rent control following the First and Second World Wars.

³ The Revisor of Statutes numbered this Act as section 170A, Revised Laws Hawaii.

⁴ Kerr, *Condominium - Statutory Implementation*, 38 St. John's Law Review. 1, 5 (1963). This article also provides the backdrop of national and international events surrounding the development of Hawaii's condominium property regime.

⁵ Senate Standing Committee Report 1043, Senate Journal 1024-25 (1961) cited in *State Savings & Loan Association v. Kauaian Development Company, Inc.*, 50 Hawaii Report 540, 546, 547, 445 P2d 109 (Hawaii 1968).

⁶ House Standing Committee Report No. 622, House Journal 937 (1961).

⁷ Act 180, SB 340 (SLH 1961).

⁸ Since the enactment of the enabling statute Chapter 514A, HRS has grown from 33 sections to 135 sections. The greatest increase was to Part V of the chapter.

⁹ Hawaii Revised Statutes 1993, *Preface*, p iii -ix.

¹⁰ Standing Committee Report No. 271, Senate Journal 969,-972 (1977); Standing Committee Report No. 525, Senate Journal 1076 (1977).

¹¹ Act 98 (SLH 1977) which became effective January 1, 1978.

Amended Real Estate Commission Meeting Schedule for 1996

Laws & Rules Review Committee (9 a.m.) Condominium Review Committee (10:30 a.m.) Education Review Committee (1:30 p.m.)	Real Estate Commission (9 a.m.)
Wednesday, January 10, 1996 – Kapuaiwa Room Wednesday, February 14, 1996 – Kapuaiwa Room Wednesday, March 13, 1996 – Kapuaiwa Room Wednesday, April 10, 1996 – Kapuaiwa Room	Friday, January 26, 1996 – Kapuaiwa Room Wednesday, February 28, 1996 – Kapuaiwa Room Friday, March 29, 1996 – Kapuaiwa Room Friday, April 26, 1996 – Kapuaiwa Room

Kapuaiwa and Kuhina Nui Rooms
HRH Princess Victoria Kamamalu Bldg.
1010 Richards Street, Second Floor
Honolulu, Hawaii

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
1/11/96		HCAAO meeting		
2/3-4/96		IREM Course 500 "Problem Solving & Decision-Making for Real Estate Managers" Cost: \$940.00	Sheraton Kauilani Hotel	IREM
2/5/96		Real Estate Industry Forecast Breakfast Cost \$30.00		IREM
late March		IREM Course 855 "Challenges of Community Association Management"		IREM
4/26-28/96 & 5/3-5/96		IREM Course 101 "Successful Site Management" Cost: \$475.00		IREM

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

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days are required to register as a condominium hotel operator. "Hotel-type pools" are considered condominium hotel operators.

Any operator failing to register shall be subject to a fine not exceeding an amount equal to \$25 multiplied by the aggregate number of apartments uti-

lized as a condominium hotel. Each month or fraction of a month on non-compliance shall be deemed a new and separate violation.

Legislation and Biennial AOA and CMA Registration Bill

Unsuccessful legislative bills introduced during the 1995 legislative session are still available for consideration during the 1996 legislative session.

Last year, the Senate proposed a draft to House Bill 868 that contained a section that would have required AOAOs to register and pay required fees (including the condominium management education fund fee) biennially by June 30 of every even numbered year. Presently, AOAOs register and pay the required fees annually by December 31. In addition, the draft proposed licensing of condominium

managing agents including education and examination requirements with biennial renewals.

The proposal for the biennial AOAO registrations would provide savings of resources and budget for the AOAOs, condominium managing agents, and the Commission as the lengthy registration application would be administered only once in two years rather than the present annual administration. Material changes to the registration application would continue to be reported as they occur. The condominium management education

fund fee for each year of the two-year registration period will have to be paid at the beginning of the two-year period. Based on the Department's past experiences in changing from annual to biennial registrations, the biennial registration fee has increased modestly but not to twice the annual rate.

The Commission is requesting written comments on the proposal to change the AOAO registration from annual to biennial. The comments should be mailed to: Biennial AOAO Registration Comments, c/o Real Estate Branch, 250 South King St., Room 702, Honolulu, Hawaii, 96813.

Association's Fidelity Bond Leads to Settlement of Claim

A condominium association which suffered a financial loss allegedly due to dishonesty by its condominium managing agent was able to settle its claim through the association's fidelity bond.

According to the district court complaint filed by Association of Apartment Owners of Kanoe Resort, the association alleges that condominium managing agent and its deceased principal (sole stockholder/director) had transferred monies from association's account to defendants account. The conversion was done through fraud, misrepresentation, or deceit. The defendants include the

estate of the deceased principal, condominium managing agent (a dissolved corporation), and the trustees of the corporate dissolution.

The association was denied coverage for the loss under the required condominium managing agent's fidelity bond policy. Condominium managing agent fidelity bond normally provides coverage for dishonest acts by employees not the principals of the corporation.

Fortunately, it was reported that the association was able to reach a financial settlement on their loss through the association's required fi-

delity bond policy (required by 514A-95.1). Normally, the required fidelity bond for condominium associations will cover dishonest acts by the principals of a condominium managing agent. Thereafter, the association dismissed the district court complaint without prejudice. Note: This case reiterates the importance of the condominium association's fidelity bond and its coverage.

(Association of Apartment Owners of Kanoe Resort v. Estate of Bob L. Brock, Deceased, et al.; District Court of the Second Circuit, Civil No. W94-2131)

Summit Wins International Educational Award

The "Real Estate Summit", conceived by past Real Estate Commission Chair Marcus Nishikawa as an oppor-

tunity for condominium owners and real estate licensees to interact with government officials and to better un-

derstand the roles of various agencies in real estate regulation, recently achieved national recognition when the

Hawaii Real Estate Commission and the Department of Commerce and Consumer Affairs received a prestigious award from the Association of Real Estate Licensing Law Officials (ARELLO).

ARELLO awarded the Hawaii Real Estate Commission and the Department of Commerce and Consumer Affairs its 1995 Education Award for Post-Licensing Education Programs. ARELLO is an international organization of real estate officials from the United States and many foreign countries. As noted by ARELLO, Hawaii is one of only a few jurisdictions which continue to promote programs that "open government" to its citizens.

The summit was conducted in six sessions on five islands (Maui, Kauai, Hawaii (Hilo and Kona), Oahu and Molokai). Total attendance at the sessions was more than 660 individuals. The summit was coordinated by the Hawaii Real Estate Research and Education Center, University of Hawaii.

The purpose of the summit was to familiarize real estate licensees and condominium owners about the various agencies, branches and divisions within the Department of Commerce and Consumer Affairs, their role and responsibilities, and the various laws and rules that directly or indirectly affect real estate and the real estate profession. The presenters included officials from the department, the Professional and

Vocational Licensing Division (PVL), Regulated Industries Complaints Office (RICO), Hawaii Hurricane Relief Fund, Office of Consumer Protection, Business Registration Division (and its Securities Enforcement Unit), as well as the Hawaii Real Estate Education and Research Center.

Key note speakers included Chief Justice Ronald Moon of the Hawaii Supreme Court, Chief Judge James S. Burns of the Intermediate Court of Appeals, Nolan Kawano of the Hawaii Hurricane Relief Fund, Dr. Nicholas Ordway of the Hawaii Real Estate Research and Education Center and Paul Brewbaker, Assistant Vice President and Economist at Bank of Hawaii.

Condominium Managing Agent and Condominium Hotel Operator Registration

All registrations as condominium hotel operators and condominium managing agents expire on December 31, 1995. Any registrant who does not successfully renew their registration by that date must cease operations or be subject to disciplinary action. For condominium managing agents, this includes possible conviction of a misdemeanor, imprisonment for one year or less, a fine of \$10,000 or less, and a civil penalty of \$10,000 or less. For condominium hotel operators, disciplinary sanctions include a civil penalty of up to \$10,000

for each violation or a fine of \$25 per apartment per month.

Associations or owners who transact business with unregistered condominium hotel operators or unregistered managing agents may wish to know that they may be denied access to the Real Estate Recovery Fund which sometimes provides restitution for financial losses resulting from misconduct by real estate licensees. In addition, complaints filed against unregistered condominium

managing agents or unregistered condominium hotel operators are less likely to be resolved to the satisfaction of the complainant, especially as to restitution. This is because enforcement often focusses on the failure to register rather than on any misconduct by the unregistered party.

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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.

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A quarterly newsletter for condominium owners, association board members* and industry related businesses and organizations.

Regular Features of the **Hawaii Condominium Bulletin** include: *the Reference File*, a 4-page section with discussions on topical issues such as Proxies, Insurance, the Condominium Reference Library, etc; the **Condominium Specialists'** column in a Question and Answer format; **Directory of Services** (annual feature); **Condominium Educational Events Calendar** and more!!

For an individual subscription to the **Hawaii Condominium Bulletin**, please use the attached order form.

*Each registered condominium association (registered with the Hawaii Real Estate Commission) currently receives 11 copies of the Bulletin through their designated contact person. Please check with your condominium managing agent for your Board's copies.

SUBSCRIPTION 4 issues \$15.00

HCB Binder - A customized 3-ring binder to hold your copies of the Bulletin \$2.00

OTHER CONDOMINIUM MATERIALS

M-1 Condominium Reserves Reference Manual (1992): A reference source to assist in the development of a condominium association reserves study. (1992)

Available in: 3-ring binder – \$30.00 or Spiral Bound – \$25.00

M-1A Condominium Reserves Workbook: Includes exercises such as identifying components for the reserve study; determining "Estimated Cost of Replacement," etc. (Total of 9 exercises). (October 1992, 39 pgs) \$7.00

BOARD OF DIRECTORS' GUIDE SERIES: Series of booklets comprising the Board of Directors' Manual.

Can also be used as stand-alone booklets on the specific topics. The following are the first 4 booklets the Center has developed in this series.

M-2 FIDUCIARY DUTY (January 1994, 24 pgs.) \$3.00 ea

M-3 PROXIES (June 1994, 43 pgs.) \$4.00 ea

M-4 SENSE OF COMMUNITY (April 1995, 23 pgs.) \$3.00 ea

M- INSURANCE (Coming this fall, approx. 50 pgs., cost to be determined)

10% QUANTITY DISCOUNT: – If ordering a total of 25 or more booklets (i.e., 9 ea of M-2, M-3 and M-4 \$78.00-7.80 = \$70.20)

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2404 Maile Way, B-201
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