

HAWAII CONDOMINIUM BULLETIN



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November 30, 1996 Was The Registration Deadline Date for Associations, Condominium Managing Agents, and Condominium Hotel Operators — Registrations Expire December 31, 1996

Associations of apartment owners, condominium managing agents and condominium hotel operators are reminded that their respective registration applications were due on November 30, 1996 to the Real Estate Commission. Registration forms, together with instructions for completing the registrations were mailed to those previously registered with the Real Estate Commission. The following chart applies to those registrations not renewed by December 31, 1996.

	Associations	Managing Agents	Hotel Operators
	Interim Registration Period Jan. 1, 1997 - June 30, 1997	Biennial Registration Jan. 1, 1997 - Dec 31, 1998	Biennial Registration Jan. 1, 1997 - Dec 31, 1998
Submit Re-Registration Form	yes	yes	yes
Submit Evidence of Fidelity Bond	current certificate of insurance if certificate expires as of Nov. 30, 1996*	certification by insurance representative or bond agent*	certification by insurance representative or bond agent*
Payment of Registration Fee	\$25.00	\$50	\$50
Payment of Registration Fee Penalty/Additional Registration Fee Penalty	\$25.00; treated as a new applicant subject to initial requirements for registration	\$50; treated as a new applicant subject to initial requirements for registration	\$50; treated as a new applicant subject to initial requirements for registration
Payment of Compliance Resolution Fund Fee	none	\$70	\$90
Payment of Non refundable application Fee	NA	\$50	\$50
Payment of Condominium Management Education Fund Fee & Penalty	\$1 for each apartment plus penalty assessment of 10% of the amount due	NA	NA
Impact of Non Registration	Cannot maintain an action in court — lack standing to collect or to foreclose any lien for common expenses etc. Subject to disciplinary action, fine, imprisonment or both, civil penalty pursuant to §514A-49, HRS	Cannot conduct managing agent activities. Subject managed association to registration process again as self managed. Subject to disciplinary action, fine, imprisonment or both, civil penalty pursuant to §514A-49, HRS	Cannot conduct condominium hotel operator activities. Subject to a fine * not exceeding an amount equal to \$25 x the aggregate number of condo hotel apartments for each month unregistered. Subject to disciplinary action.

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*The law requires the association, condominium managing agents, and condominium hotel operators to report immediately in writing to the commission any changes to the information contained on the registration or re-registration application including any renewals or non renewals of fidelity bond coverage and on any other documents submitted with the registration or re-registration; for condominium hotel operators the time for reporting any changes is ten days.

See Registration on pg. 6



Letter from the Chair...

Dear Condominium Owners:

I recently attended the Community Associations Institute's (CAI) 41st National Conference in Palm Springs. One of the most interesting sessions was "White Collar Crimes in the 90's, How Safe is Your Money???" This session covered the detection, prosecution and prevention of fraud, embezzlement and theft of funds from both management companies and common interest developments. As we know too well, loss of association funds through theft can be devastating and horror stories abound. Not only do we face new, more complicated crimes through the use of high tech, like computers and the internet, but "old fashion theft" still occurs regularly.

Our question and answer column in this issue also covers this important topic. There is also a possibility that the White Collar Crime session will be repeated at CAI's 42nd National Conference to be held here at the Hilton Hawaiian Village on May 1 to 3, 1997.

More news about the Conference: Community Association Day is scheduled for May 3, 1997. CAI is expecting attendees from all over the world. It will be a great opportunity for Hawaii condominium owners to tap into the wealth of information the conference will bring to Hawaii.

We held our October Condominium Review Committee meeting on the island of Kauai. Thanks to the many people who attended and to Commissioner Michael Ching for the arrangements.

*Very truly yours,
Carol Mon Lee, Chair
Condominium Review Committee*

Condominium Review Committee Holds Kauai Meeting

On Friday, October 25, 1996, at 10:30 a.m., the Real Estate Commission's Condominium Review Committee met in Kauai at the Lihue Public Library.

Members of the condominium community were invited to attend and participate at the public meeting. Members of the Real Estate Commission, the Commission's staff, and the staff of the Hawaii Real Estate Research and Education Center were present. The meeting was conducted pursuant to a duly filed agenda and included an open forum with those present.

Ask the Condominium Specialists

Q. Several apartment owners next door to our condominium project reported to our association that about \$40,000 of their association operating funds were diverted to an employee's business. The employee has since moved to the mainland and cannot be found. The checks were issued to the employee's business over a two year period for association's office supplies and small office equipment. Subsequently, the board discovered that the supplies and office equipment were never delivered to the association's resident manager's office. How does our board insure that this scenario does not occur in our condominium?

A. Some of the things your board can do to minimize the occurrence of such events are set forth in the Hawaii condominium law (Chapter 514A, Hawaii Revised Statutes). Other things it may do can be found by researching: the experience of other boards and their funds handling procedures; articles which have been written on the topic such as those articles published by Community Association Institute, Institute of Real Estate Management and the National Association of Realtors¹; consultation with qualified, competent, licensed professionals including but not limited to certified public accountants, attorneys specializing in condominium matters, and duly registered condominium managing agents.

The Following Are Some Things the Board Can Do To Minimize the Occurrence of The Described Events As Set Forth in the Hawaii Condominium Law:

Do Homework — Determine early if the individual handling the fund is trustworthy.

The law allows the board or the manager of a condominium project to conduct a background check of applicants for employment as a security guard or manager or for a position which would allow the employee access to the keys of or entry into the units or access to association funds. The applicant must authorize in writing the background check (§514A-82.1, Hawaii Revised Statute (HRS)). The check, at a minimum, requires the applicant to disclose whether the applicant has been convicted in any jurisdiction of a crime which would tend to indicate that the applicant may be unsuited for employment for the described positions, and that the judgement of conviction has not been vacated. The background check may be made by following the specific procedures of §514A-82.1, HRS.

The information provided by the applicant may be verified through the Hawaii Criminal Justice Data Center. The Center is located at 465 South King Street, Room 101

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¹See last page of this bulletin for contact information for these various organizations.

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and public access to the information is available from 9 a.m. to 4:00 p.m. Information provided to the REC indicate that the verification is limited to a check of convictions only.

Set up checks and balances procedures for handling of association funds.

§514A-97, HRS requires that all funds collected by an association must only be disbursed by employees of the association under the supervision of the association's board of directors. The law also requires that all funds collected by a managing agent or the managing agent's employees shall be held in a client trust account and disbursed by the managing agent or its employees under the supervision of the board of directors.

Unless indicated otherwise, the following are not specifically required by statute but have been reported to the REC as examples of reasonable board supervision: requiring two signatures for the issuance of checks, one of the signatures being that of a board member; requiring the board member with check signing authority to review the invoices presented for payment; monthly board review of bank statements; requiring that financial records and disbursements be made in accordance with generally acceptable accounting practices; placing a cap on what may be paid to and from petty cash.

Note: The Real Estate Commission is studying proposed rules to require two signatures on checks.

Ensure association compliance with the budget, reserves, handling of association funds and audit requirements of the condominium law.

These laws can be found in the following sections of Hawaii Revised Statutes:

- §514A-83.6, HRS Association of apartment owners; budgets and reserves;
- §514A-96, HRS Board of directors, audits, audited financial statement, transmittal;
- §514A-97 Association of apartment owners funds; handling and disbursement.
- Of note, pursuant to §514A-97 (f), HRS, any person who embezzles or knowingly misapplies association funds received by a managing agent or association of apartment owners is guilty of a class C felony punishable by imprisonment.

Increase insurance coverage amount to make up any potential loss of association funds by fraud or dishonesty.

§514A-95.1, HRS, requires associations to obtain and maintain a fidelity bond as a condition of registering with the Real Estate Commission. The required bond amount is \$500 multiplied by the number of apartments, provided the amount shall not be less than \$20,000 nor greater than \$100,000. The fidelity bond protects the association of apartment owners against fraudulent or dishonest acts by persons, including any managing agent handling the funds of the association. Although the law specifies a minimum and maximum bond amount, boards should consider increasing the coverage amount to cover the association's realistic potential loss of funds.

As the date approaches for requiring associations to have 25% and 50% of its full replacement reserves in a reserve account, and more monies are held in accounts, increasing the fidelity bond coverage may be prudent to cover the increase risk of potential loss.

Associations Must Collect the Mandatory Twenty Five Percent Reserve Amount Prior To The Budget Year Beginning In 1997 — Enforcement Is An Owner's Responsibility

The purpose of the reserve law¹ is to ensure that each owner in a condominium project pays a fair share of the short-term and long-term costs of operating the condominium based on the owner's period of ownership. The law requires the board of each association as part of adopting and following a budget, to conduct a reserve study, establish reserves and collect for the reserves in accordance with the study. The reserve law applies to all associations regardless of how many apartments are in the condominium project.

Time Line for Reserves

The reserve law went into effect in 1993. In that year, the law required each association via its board to complete its reserve study² and include reserves as part of the budget for 1994.

Collection of the statutory reserves³ via assessment of owners was to have begun in 1994 and annually thereafter subject to the requirements of the next paragraph.

Prior to the budget year beginning in 1997 (for some associations this means by the end of 1996), the law requires

associations to have in its reserve account 25% of the amount which the association's reserve study indicates will be a full replacement reserve for the association on January 1, 2000. Prior to January 1, 2000 the law requires to be in the reserve account, the remaining 25% of the required amount (50% of a full replacement reserve as of January 1, 2000).

Status Report on Associations' Reserve Efforts

As part of the registration process, amongst other information, associations report how much funds are in its reserve account. An examination of the reserve amounts reported in the public file for the 1,218 associations registered with the Real Estate Commission as of October 2, 1996 are summarized in the chart following. The chart summarizes the reserves reported by different associations by size and by ranges of reserve amounts. For example the chart indicates that 80 out of the 1,218 associations reported having 0 reserves. Of the 80 associations reporting 0 reserves, 57 have 6-40 units, 9 have 41-90 units, 7 have 91-174 units, 7 have 175-586+ units in the project.

See Reserves on next page

**Reserves Reported By AOA's By Size And Reserve Amount
For 1996 (as of October 2, 1996)**

Reserve Range Amounts	Number of Associations Reporting Reserve Range Amount	6 — 40 Units	41 — 90 Units	91 — 174 Units	175 — 586 + Units
\$0	80*	57	9	7	7
\$100-50,000	393	282	90	14	7
\$51,000-100,000	269	92	127	42	8
\$101,000-150,000	132	19	66	34	13
\$151,000-200,000	90	11	43	28	8
\$201,000-250,000	71	8	24	33	6
\$251,000-300,000	48	3	10	18	17
\$301,000-350,000	31	3	7	13	8
\$351,000-400,000	19	2	1	8	8
\$401,000-450,000	13	1	3	6	3
\$451,000-1,000,000	62	2	7	10	43
\$1,001,000-1,500,000	8	0	0	0	8
\$3,000,000+	2	0	0	0	2

* The condominium size reported as a range of units and reserve range amounts were pre-selected for educational and informational purposes. The size and amounts are not an opinion as to the adequacy of any reported reserve amounts for any particular condominium association. Adequate reserves are determined by a reserve study. That study pursuant to law should have been conducted and completed by each association in 1993 and reviewed and updated each year.

Importance of Adequate Reserves

Adequate reserves impact on an owner’s continued enjoyment of the purchased unit. Adequate reserves may also impact on the resale value of the unit. Lenders are concerned about the continued security of the unit and project and reserves provide an indication of this.

What should condominium owners do if they feel that their association reserves are inadequate or too much?

The condominium law, Chapter 514A, Hawaii Revised Statutes (HRS) **does not give the Real Estate Commission jurisdiction over enforcement of the reserve law.** The condominium law is based on self governance, owner enforcement, **mandatory** arbitration when one party requests such, and **limited** Real Estate Commission intervention. The Real Estate Commission’s intervention is specified in sections 514A-46, 47, and 48, HRS, which represent less than one-third of the sections in the condominium law.

Specific provisions of the condominium law (section 514A-83.6(h) and related rule section 16-107-75, Hawaii Administrative Rules) provide that an owner has the

responsibility to enforce the reserve requirements. Procedures for enforcement are set forth in section 514A-94(b), Hawaii Revised Statutes. This section provides procedures for both owners and associations to follow for enforcing any provision of the declaration, bylaws, house rules and the condominium law (Chapter 514A, HRS and related rules). This includes enforcement of the reserve law.

Basically, section 514A-94(b), Hawaii Revised Statutes provides that an owner may recover from the association the owner’s costs (including attorney fees) incurred in the successful enforcement of the reserve law provided that the owner first demands [in writing] that the board comply with the reserve law and allow reasonable time for the board to comply with the request.⁴ The section also provides that an unsuccessful owner need not pay the associations’ costs including attorneys’ fees incurred for defending any legal action for enforcing the reserve law if the owner first files the action in small claims court or utilizes mediation or arbitration prior to bringing the suit to a higher court. Thus, the law namely §514A-94, HRS appears to favor and mandates the amicable

Continued on next page

resolutions of any claims and issues with the board and its agents, if any, including any condominium managing agents.

Moreover, condominium owners should keep in mind, that the condominium law provides an association or apartment owner, director, officer, managing agent or employee of an association with limited liability from suit for calculating the reserves incorrectly if in calculating the reserve it has used good faith efforts (section 514A-83.6 (d), HRS).

Unless a condominium project's governing documents require otherwise, mediation is not mandatory. A board is not required to mediate a dispute. On the other hand, except for a few limited circumstances, arbitration is mandatory when the request for arbitration is made⁵. Nevertheless, mediation has been found helpful. Mediation services are available as follows:

On Oahu and for other neighbor islands except Maui
Neighborhood Justice Center
200 N. Vineyard Blvd. Ste 320
Honolulu, Hawaii 96817
Telephone: 521-6767

On Maui
Mediation Services of Maui
Cameron Center
95 Mahalani Street
Wailuku, Hawaii 96793
Telephone: 244-5744.

Arbitration services are available from:

American Arbitration Association, 810 Richards Street, Suite 641, Honolulu, Hawaii 96813 Tel. 531-0541

Dispute Prevention & Resolution, 1001 Bishop Street, Suite 1150, Honolulu, Hawaii 96813 Tel. 523-1234.

Be advised that an arbitration award is subject to a "trial de novo" where any party can demand after the arbitration has been completed that the dispute be heard all over again in circuit court pursuant to section 514A-127, HRS.

In the end run, when all attempts at an amicable resolution of the reserve issue prove futile, an owner may consider seeking the advice of an attorney versed in condominium law and/or consider, where appropriate, Small Claims Court.

Endnotes

- ¹ §514A-83.6, Hawaii Revised Statutes (HRS) and Subchapter 6 of Title 16, Chapter 107, Hawaii Administrative Law (HAR)
- ² A reserve study simply includes a board making a determination as to the short and long term costs for operating the condominium project and deciding how to fund for the long and short term operating costs including regular or special assessment of owners, borrowing etc. The study includes 1) determining which parts of the project the association is responsible for (e.g. common elements as walls, roofs, parking lot) 2) when the parts will need replacement, maintenance, or repair and 3) how much it will cost.
- ³ (50% of the of the full amount required for that year)
- ⁴ or demonstrate that the demand is fruitless §514A-94 (b), HRS.
- ⁵ Arbitration is mandatory when the request by any party is made and the dispute concerns or involves one or more apartment owners and an association of apartment owners, its board of directors, managing agent, or one or more other apartment owners relating to interpretation, application or enforcement of chapter 514A or the association's declaration, bylaws, or house rules. (§514A-121, HRS).

Amended Real Estate Commission Meeting Schedule for 1996

Condominium Review Committee (10:30 a.m.)

Wednesday, January 15 – Kapuaiwa Room
Wednesday, February 12, 1996 – Kapuaiwa Room
Wednesday, March 12, 1996 – Kapuaiwa Room
Wednesday, April 9, 1996 – Kapuaiwa Room
Wednesday, May 7, 1996 – Kapuaiwa Room

Real Estate Commission (9 a.m.)

Friday, January 31, 1996 – Kapuaiwa Room
Friday, February 28, 1996 – Kapuaiwa Room
Tuesday, March 25, 1996 – Kapuaiwa Room
Friday, April 25, 1996 – Kapuaiwa Room
Friday, May 23, 1996 – Kapuaiwa Room

Kapuaiwa and Kuhina Nui Rooms

HRH Princess Victoria Kamamalu Bldg., 1010 Richards Street, 2nd Floor, Honolulu, HI
Subject to change. Please reconfirm dates, times and location with commission staff. Phone 586-2643.

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Registration from page 1

As a reminder, registration with the Real Estate Commission is required of the following:

<p>Condominium Association of Apartment Owners (AOAO)</p>	<p>All condominium projects or associations of apartment owners having six or more units are required to register or re-register with the Real Estate Commission. New associations must register within thirty days of its first meeting.</p> <p>Developer or developer's affiliate or managing agent must register an unorganized association when AOAO has not had its first meeting and one year has elapsed after the recordation of the first purchase of an apartment.</p>
<p>Condominium Managing Agents (CMA)</p>	<p>Any person, partnership, corporation or other business entity employed or retained by one or more condominium projects for the purposes of managing the operation of the property.</p>
<p>Condominium Hotel Operators (CHO)</p>	<p>Any sole proprietor, partnership, or corporation, providing apartments in a condominium for transient lodging for periods of less than thirty days.</p>

Readers are advised to consult the Summer 1996 issue of the Hawaii Condominium Bulletin for specific information about the change of registration period from an annual to a biennial period for CMAs and AOAOs and the respective requirements. (Act 106, SLH (1996)).

If you did not receive re-registration materials for your condominium association please call 586-2644. If you did not receive re-registration materials for your condominium managing agent or hotel operator please call please call 586-3000. First time registrations for any of these registrations please call the same designated number.

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
1/9/97	11:30-1:30	HCAAO luncheon meeting - \$20 per person	Hale Koa Hotel - Banyan Tree Showroom	HCAAO
2/8/97	8-12:00	Drafting personnel handbooks - \$59	To be announced	Alakahi
3/13/97	11:30-1:30	HCAAO luncheon meeting - \$20 per person	Hale Koa Hotel - Banyan Tree Showroom	HCAAO
4/12-18	N/A	IREM 400, Managing Real Estate as an Investment - Approximately \$915	To be announced	IREM

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

	Provider	Phone	Address
Alakahi	The Alakahi Foundation	522-5990 (Oahu)	1142 Auahi St. Suite 1806, Honolulu, HI 96814
CAI –	Community Associations Institute	488-1133 (Oahu)	P.O. Box 976, Honolulu, HI 96808
HAC	Hawaii Chapter		
HCAAO –	Oahu ARM Committee	523-6096 (Oahu)	1571 Piikoi St. #506, Honolulu, HI 96822
	Hawaii Council of Associations of	533-2528 (Oahu)	677 Ala Moana Blvd., Suite 701,
	Apartment Owners		Honolulu, HI 96813
IREM –	Institute of Real Estate Management	737-4000 (Oahu)	1136 12th Ave., Suite 220, Honolulu, HI 96816
	Hawaii Chapter No. 34		
CCM –	Condominium Council of Maui	879-8847 (Maui)	P.O. Box 647, Kihei, HI 96753
UH-SBMP–	Small Business Management Program	956-7363 (Oahu)	2404 Maile Way, Room A-202, Honolulu, HI 96822
	University of Hawaii		

Visit the Real Estate Branch and Real Estate Commission's homepage at: <http://www.hawaii.gov/hirec>