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.

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

* 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
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 fashioned 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

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**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 Realtors; 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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**Continued on next page**

1See last page of this bulletin for contact information for these various organizations.
and public access to the information is available from 9 a.m.
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 pro-
posed 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 own-
ers; 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 in-
creasing 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 follow-
ing 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 infor-
mation, 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 summa-
rized 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 AOAO’s By Size And Reserve Amount
For 1996 (as of October 2, 1996)

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

* 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. 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 made. 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 incudes 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 costs.

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).

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**Amended Real Estate Commission Meeting Schedule for 1996**

<table>
<thead>
<tr>
<th>Condominium Review Committee (10:30 a.m.)</th>
<th>Real Estate Commission (9 a.m.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wednesday, January 15 – Kapua-iwa Room</td>
<td>Friday, January 31, 1996 – Kapua-iwa Room</td>
</tr>
<tr>
<td>Wednesday, February 12, 1996 – Kapua-iwa Room</td>
<td>Friday, February 28, 1996 – Kapua-iwa Room</td>
</tr>
<tr>
<td>Wednesday, March 12, 1996 – Kapua-iwa Room</td>
<td>Tuesday, March 25, 1996 – Kapua-iwa Room</td>
</tr>
<tr>
<td>Wednesday, April 9, 1996 – Kapua-iwa Room</td>
<td>Friday, April 25, 1996 – Kapua-iwa Room</td>
</tr>
<tr>
<td>Wednesday, May 7, 1996 – Kapua-iwa Room</td>
<td>Friday, May 23, 1996 – Kapua-iwa Room</td>
</tr>
</tbody>
</table>

Kapua-iwa 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.
Registration from page 1

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

Condominium Association of Apartment Owners (AOAO)

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.

Developer or developer’s affiliate or managing agent must register an unorganized association when AOA has not had its first meeting and one year has elapsed after the recordation of the first purchase of an apartment.

Condominium Managing Agents (CMA)

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.

Condominium Hotel Operators (CHO)

Any sole proprietor, partnership, or corporation, providing apartments in a condominium for transient lodging for periods of less than thirty days.

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.

Visit the Real Estate Branch and Real Estate Commission’s homepage at: http:\www.hawaii.gov/hirec

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.

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Course Title</th>
<th>Location</th>
<th>Provider</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/9/97</td>
<td>11:30-1:30</td>
<td>HCAAO luncheon meeting - $20 per person</td>
<td>Hale Koa Hotel</td>
<td>HCAAO</td>
</tr>
<tr>
<td>2/8/97</td>
<td>8-12:00</td>
<td>Drafting personnel handbooks - $59</td>
<td>To be announced</td>
<td>Alakahi</td>
</tr>
<tr>
<td>3/13/97</td>
<td>11:30-1:30</td>
<td>HCAAO luncheon meeting - $20 per person</td>
<td>Hale Koa Hotel</td>
<td>HCAAO</td>
</tr>
<tr>
<td>4/12-18</td>
<td>N/A</td>
<td>IREM 400, Managing Real Estate as an Investment - Approximately $915</td>
<td>To be announced</td>
<td>IREM</td>
</tr>
</tbody>
</table>

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