

HAWAII CONDOMINIUM BULLETIN



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Deadbeat Parents & Spouses Beware: Your Condominium Managing Agent and Hotel Operator Registrations May Soon be in Jeopardy

Senate Bill 1266 (S.D. 2, H.D. 2, C.D. 1) relating to child support enforcement was approved by Governor Cayetano as Act 293 on June 21, 1997. Beginning on January 1, 1998, this new law authorizes the Child Support Enforcement Agency (CSEA) to certify that an individual has failed to comply with a child/spousal support order or a subpoena or warrant relating to a paternity/child support proceeding, and then direct licensing authorities to take action against the individual's driver's, recreational and professional/vocational license(s). In the condominium community, the professional/vocational licenses and registrations that may be affected by Act 293 are the Hawaii condominium managing agent and hotel operator registrations and the prerequisite real estate broker license.

Actions that may be authorized by CSEA against licensees via Act 293 are two-tiered in nature. First, a noncompliant individual's driver's and recreational licenses may be affected, and if the noncompliance persists, then the professional/vocational licenses and registrations may also be jeopardized.

Under the first tier of action, if the CSEA certifies that the individual is delinquent in child/spousal support obligations in an amount equal to or greater than the sum of **three (3) months** of the current child support amount, or is delinquent in making periodic payments on a repayment agreement with the CSEA, then the CSEA shall direct the appropriate licensing authorities to suspend, deny or refuse to renew, reinstate or restore the individual's **driver's and recreational licenses**.

Under the second tier of action, if the individual persists in noncompliance, then the CSEA shall direct the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs to take action against the individual's **professional/vocational license** based upon the following criteria:

- a. The individual's child/spousal support obligation is delinquent in an amount equal to or greater than the sum of six (6) months of the current support amount;
- b. The individual is delinquent in making periodic payments on a written repayment agreement with CSEA;
- c. The individual fails to obtain or maintain health insurance coverage as required in an order of child support; or
- d. The individual fails to comply with a subpoena or warrant relating to a paternity or child support proceeding.

Once identified using the above criteria, noncompliant individuals will be notified via regular mail of the CSEA's intent to direct the appropriate licensing authorities to take action against the individual's

driver's, recreational and/or professional/vocational licenses. Such notice will afford a noncompliant individual, who contacts the CSEA within thirty days, the opportunity to enter into a payment agreement with the CSEA, to enter into an agreement to comply with a subpoena or warrant, or to make written request for an administrative hearing. If the CSEA authorizes action against a license or registration, any fees paid by the individual to the licensing authorities will not be refunded, and the licensing authority may charge a nonrefundable fee to reinstate or restore the license.

Readers who hold a condominium managing agent and/or condominium hotel operator registration and meet the above criteria are urged to make appropriate arrangements to remedy the issue of noncompliance with the CSEA **before this program is initiated on January 1, 1998**. This article is intended only to briefly summarize Act 293; readers must consult the full text of the Act to determine its impact on their particular circumstances. For more information about the requirements of Act 293 or the status of your own CSEA account, Oahu readers may contact the CSEA at 536-7227 and neighbor island readers may call 1-800-307-7227.

Condominium Review Committee Program of Work for Fiscal Year 1997-1998

The following programs are part of the program of work for the Real Estate Commission's Condominium Review Committee (CRC). The Commission's program of work is an annual implementation of a five-year strategic plan. This article briefly summarizes selected programs administered by the CRC during fiscal year 1997-1998.

Condominium Review Committee:
A Real Estate Commission standing com-

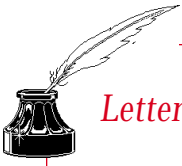
mittee which holds monthly public meetings regarding condominium and cooperative issues. Commissioners Alfredo Evangelista and Mitchell Imanaka serve respectively as the committee chair and vice chair.

Hawaii Condominium Bulletin: Produce and distribute quarterly newsletter for the condominium community.

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Letter from the Chair...

Dear Condominium Owners:

The Committee members and I enjoyed meeting those of you who attended the October 8, 1997 Condominium Review Committee meeting at the **Aston Wailea Hotel on Maui**. Twice a year the Real Estate Commission participates in the "**Neighbor Island Outreach**" program in which the Commissioners and staff bring a regularly scheduled Condominium Review Committee meeting to a pre-selected neighbor island site to encourage participation by neighbor island condominium communities. During fiscal year 1997-1998, Maui and Kauai have been selected as Neighbor Island Outreach sites. We are looking forward to meeting with the **Kauai condominium community during May or June 1998**. Please watch for the Real Estate Commission meeting notice announcing the exact date and location of the Kauai Neighbor Island Outreach approximately one month prior to the meeting.

This issue of the Hawaii Condominium Bulletin contains several important articles for the condominium community. The possible impact of **Act 293** on condominium managing agents and hotel operators is discussed in the article **regarding the Child Support Enforcement Agency's authority to direct licensing authorities to take action beginning January 1, 1998 against an individual's driver's, recreational and professional/vocational licenses for failure to comply with an order of support or a subpoena or warrant relating to a paternity or child support proceeding**. Also, this edition contains an outline of the **Condominium Review Committee Program of Work for fiscal year 1997-1998**. An article discussing the **two planned Board of Directors' Guides regarding an introduction to condominium living and antidiscrimination in Hawaii condominiums** is included. Finally, our regularly featured column "Ask the Condominium Specialists" contains pertinent information about the **law that governs condominiums in Hawaii, whether the board of directors may use the association's replacement reserves for other than the stated purpose of the fund and whether condominium occupants are required to allow association personnel access to their units**.

Wishing you a wonderful holiday season and best wishes for 1998!

Alfredo G. Evangelista, Chair
Condominium Review Committee

Ask the Condominium Specialists

Q. May the board of directors use the association's replacement reserves for other than the stated purpose of the fund?

A. Generally, no. Replacement reserves are funds which an association is required by law to collect regularly from owners to pay for large, future expenses which result from the deterioration of the condominium project over time, such as the cost to repair or replace the roof, elevator, driveway, and termite damage, etc. The purpose of collecting statutory replacement reserves is to avoid only penalizing those who own units at the time repairs or replacements must be done via large special assessments. The rationale behind statutory replacement reserves is that all owners should pay for the gradual deterioration of the condominium project throughout the period that they own their unit.

Hawaii Administrative Rules (H.A.R.) Section 16-107-66(c) states: "The association board shall use replacement reserves allocated to a particular fund only for the stated purpose of that fund..." However, H.A.R. Section 16-107-66(c)(1) lists exceptions to the general rule. In an emergency, as defined below, the board may use replacement reserves for legitimate association purposes if the board passes a resolution containing: written findings stating the necessity of using the replacement reserves for other than their designated purpose, the necessity of the expense and why the expense could not have been reasonably foreseen in the budgeting process. Also, the resolution must be distributed to all association members.

The board may use replacement reserves only in an "emergency" as defined by H.A.R. Section 16-107-62 which states that "emergency" has the same definition as "emergency situation" in Hawaii Revised Statutes (H.R.S.) Section 514A-83.6(j). H.R.S. Section 514A-83.6(j) defines "emergency situation" as any extraordinary expenses: (1) Required by an order of a court; (2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered; (3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; (4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or (5) Necessary for the association to obtain adequate insurance for the property which the association must insure.

In summary, the board may use the association's replacement reserves for other than the stated purpose if it passes a resolution that complies with the requirements of H.A.R. Section 16-107-66(c)(1) and if an emergency situation exists as defined by H.R.S. Section 514A-83.6(j).

Q. Must condominium occupants allow association personnel access to their units?

A. It depends on the reason personnel require access to units. H.R.S. Section 514A-82(b)(6) states that the bylaws shall provide that "the apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency

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Program of Work from pg 1

Condominium Board of Directors' Guides: Produce and distribute guides on various topics to assist in the management of condominium associations. Antidiscrimination in Hawaii condominiums and an introduction to condominium living guides are scheduled for production and distribution during fiscal year 1997-1998.

Five Year Education & Research Plan: Research, exchange and develop rollover fifth year on five year education and research plan for condominiums.

Condominium Seminars: Sponsor, subsidize, assist or co-sponsor the production of seminars for the condominium community.

Government and Legislative Participation: Respond, participate and provide advice and information to government officials and the legislature.

Rule Making, Chapter 107: Research, draft and develop amendments to Hawaii Administrative Rules Title 16 Chapter 107 regarding Horizontal Property Regimes.

Rule Making, Chapter 53: Review and make recommendations regarding Hawaii Administrative Rules Title 16 Chapter 53 relating to condominium fees.

Condominium Project and Public Reports: Evaluate and administer registration of condominium projects.

Condominium Association Registration: Administer registration program; initiate electronic registration processing; develop public list of registered associations.

Condominium Managing Agents Registration: Review and monitor registration program; provide listing of registered managing agents via webpage and preprinted public list.

Condominium Hotel Operator Registration: Administer registration program; provide listing of hotel operators via webpage and preprinted public list; develop start-up kits for condominium hotel operators.

Recodification of Chapter 514A: Initiate plan for recodification of H.R.S. Chapter 514A regarding Condominium Property Regimes.

Condominium Management & Education Fund (CMEF): Maintain and review budget, finance and records for CMEF; administer fund investment; review audit procedure.

Advice, Education & Referral: Provide advice, education and referrals to the condominium community, government officials and the public; amend, print and distribute copies of H.R.S. Chapter 514A and H.A.R. Chapter 107 to registered associations and managing agents; provide access to public information and records.

Condominium Mediation and Arbitration Program: Subsidize condominium governance mediation through the

Neighborhood Justice Center and Mediation Services of Maui; develop a simple brochure on mediation, arbitration and trial de novo.

Legislative Acts and Resolutions: Review and carry out responsibilities of legislative acts and resolutions; amend public copy of H.R.S. Chapter 514A.

Government and Legislative Participation and Report: Develop and distribute annual report to the Legislature on the Condominium Management Education Fund, program of work, budget and mediation program; act as resource; research and draft legislative bills and reports; submit and present testimony; respond to inquiries from elected and government officials.

Neighbor Islands Outreach: Conduct two CRC meetings at neighbor island sites during fiscal year 1997-1998; Maui and Kauai have been selected as sites for current fiscal year.

Interactive Participation with Organizations: Actively participate in local, regional, national and international organizations to exchange information and share educational and research efforts, projects, training etc.

Condominium Association Budgets and Reserves: Review, make recommendations, monitor and report on laws and rules regarding budgets and reserves.

Condominium Specialists Office for the Day: Condominium specialists set up an "office for the day" at neighbor island sites to discuss condominium issues with the public and provide training for RICO investigators upon request. Kauai, Maui and the Big Island have been selected as sites for the current fiscal year.

Condominium Speakership Program: Condominium specialists, executive officers and/or commissioners participate as speakers or resources for programs regarding condominium issues upon request and approval.

Condominium Reference Library: Provide condominium reference materials for public use through the State Library System, Real Estate Branch Office and mediation services offices; develop webpage catalog of Commission's public reference materials.

Start-Up Kit for New Condominium Associations and Managing Agents: Distribute start-up kit to new condominium associations and managing agents which includes H.R.S. Chapter 514A, H.A.R., Chapter 107, budget and reserves guide, board of directors guides and past copies of the Hawaii Condominium Bulletin.

Case Law Review Program: Monitor, collect and report on Hawaii, federal and case law from other jurisdictions regarding condominiums.

Two New Board of Directors Guides Planned for 1998

As part of its Program of Work for fiscal year 1997-1998, the Real Estate Commission's Condominium Review Committee is planning to publish and distribute two new Board of Directors' Guides regarding an introduction to condominium living and antidiscrimination in Hawaii condominiums. A brochure entitled "A Quick Guide to Condominium Living in Hawaii" is also planned for distribution along with the guides to registered condominium associations, managing agents and state libraries.

The target audience for the guide and brochure on condominium living is first-time condominium residents. It is anticipated that condominium owners and managing agents, resident managers, association board members and real estate salespersons/brokers will utilize these materials to distribute to prospective condominium purchasers. Both the guide and brochure on condominium living will present a basic overview of the advantages and disadvantages of condominium living, including Hawaii-specific applications.

The guide on antidiscrimination in Hawaii condominiums will tentatively cover Hawaii and federal fair housing laws, the Americans with Disabilities Act, specific applications such as accommodation, aging in place, familial status, etc. and enforcement of Hawaii and federal statutory violations.

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repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.”

Thus, if the board has authorized personnel in the course of their duties to gain access to units for purposes necessary to the operation of the property, or for making emergency repairs necessary to prevent common elements damage or damage to other units, then H.R.S. Section 514A-82(b)(6) states that unit occupants must provide access during reasonable hours. The project documents (declaration, bylaws, house rules) may further define purposes “necessary for the operation of the property,” “emergency repairs” or “reasonable hours.” Of course, occupants may request that either they or their designate be present if the situation allows for scheduled access. However, there may be emergency situations that require unscheduled access such as the death of a sole occupant, flooding, fire, etc.

Q. What is the law that governs condominiums in Hawaii, and how can I obtain copies of the law?

A. In general, H.R.S. Chapter 514A regarding Condominium Property Regimes and H.A.R. Chapter 107 regarding Hori-

zontal Property Regimes govern condominiums in the State of Hawaii. Also, H.R.S. Chapter 467 and H.A.R. Chapter 99 regarding Real Estate Brokers and Salespersons impact condominiums. Other statutes, rules and case law may also affect condominium living in Hawaii, however, the Real Estate Commission is limited to providing information regarding H.R.S. Chapters 514A and 467 and H.A.R. Chapters 107 and 99. For the cost of photocopying, readers may go to any public law library such as the Hawaii Supreme Court Law Library located in downtown Honolulu or the William S. Richardson School of Law Library located in Manoa to obtain copies of the statutes.

Additionally, the Cashier’s Office of the Department of Commerce and Consumer Affairs (DCCA) sells unofficial copies of H.R.S. Chapter 514A for \$1.75 each and H.A.R. Title 16 Chapter 107 for \$1.00 each. The DCCA Cashier’s Office is located at 1010 Richards Street, Third Floor and is open for business Monday-Friday from 7:45 a.m.-4:00 p.m. Readers may call 586-2832 to verify availability or cost. Written requests for statutes/rules accompanied by cash or checks made payable to the “DCCA” may be sent to: Cashier-DCCA; P.O. Box 541; Honolulu, HI 96809.

Education Calendar

This calendar lists upcoming educational events of interest for the condominium community. The publishers express **no opinion** about the quality or content of any event they do not sponsor. This listing should not be construed as an endorsement or sponsorship of any event, unless expressly indicated. Events may be subject to change; please check directly with the provider to confirm each event.

Date	Time	Event Title	Location	Provider
11/22/97	9:00-12:45	The 25-year Old Building – How to Celebrate It’s Silver Anniversary and Not Lose Your Treasury’s Gold. Members - \$35.00, Nonmembers \$45.00 Register by 5:00pm Nov. 18th	Japanese Cultural Center	CAI
12/13/97	8:00-5:00	ABC Study Course	Alana Hotel, Naupaka Rm.	CAI

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

	Provider	Phone	Address
Alakahi CAI –	The Alakahi Foundation Community Associations Institute Hawaii Chapter	522-5990 (Oahu) 488-1133 (Oahu)	1142 Auahi St. Suite 1806, Honolulu, HI 96814 P.O. Box 976, Honolulu, HI 96808
HAC HCAAO –	Oahu ARM Committee Hawaii Council of Associations of Apartment Owners	523-6096 (Oahu) 533-2528 (Oahu)	1571 Piikoi St. #506, Honolulu, HI 96822 677 Ala Moana Blvd., Suite 701, Honolulu, HI 96813
IREM –	Institute of Real Estate Management Hawaii Chapter No. 34	737-4000 (Oahu)	1136 12th Ave., Suite 220, Honolulu, HI 96816
CCM – UH-SPP–	Condominium Council of Maui Special and Professional Programs College of Continuing Education, University of Hawaii	879-8847 (Maui) 956-8244 (Oahu)	P.O. Box 647, Kihei, HI 96753 2530 Dole St., Honolulu, HI 96822

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

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