

HAWAII CONDOMINIUM BULLETIN



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Excerpts From the 1997 Annual Report

The *1997 Annual Report* summarizes the activities of the Real Estate Commission (Commission) and its three standing committees during the fiscal period July 1, 1996 through June 30, 1997. In an effort to reduce printing and distribution costs, the full text of the *1997 Annual Report* was published in the December 1997 edition of the State of Hawaii Real Estate Commission *Bulletin*, which is distributed to all real estate licensees. The following condominium-specific excerpts from the *1997 Annual Report* are reprinted here for the benefit of condominium associations, board members and other interested persons who may not receive the Real Estate Commission *Bulletin*.

The Chair's Message by Commission Chair Alvin Imamura reported that the last *annual* registration for condominium associations occurred on December 31, 1996. Following an interim registration at the end of fiscal year 1997, in which 1,277 associations containing 106,052 units were registered, *biennial* association registration will now occur at the end of odd-numbered fiscal years. In addition, the Commission issued effective dates for 180 developer's public reports (125 final, 43 supplementary and 12 preliminary), and there were 37 new residential condominium project filings. Finally, the Condominium Management Education Fund (CMEF), which depends on fees from association and project registrations, had a balance of \$806,786 at the end of the fiscal year. Due to the change from annual to biennial association registration, the CMEF will not receive any significant revenues until 1999.

The Condominium Review Committee Report stated that in fiscal year 1997, the Committee was absorbed with implementing legislative changes and redrafting amendments to Hawaii Administrative Rules (H.A.R.) Chapter 107. In addition, the Committee continued the implementation of ongoing programs such as the following:

Condominium Project Registration: Developers of condominium projects are required by law to file public reports with the Commission and to receive an effective date for final public reports prior to conducting sales to the public. Public reports prepared by the developer must disclose to prospective purchasers material information about the condominium project. Act 135 (SLH 1997) amended Hawaii Revised Statutes (H.R.S.) Chapter 514A regarding project registration requirements by easing the hurdles in developing condominium housing while preserving existing buyer protections, and by allowing developers to conduct binding sales utilizing a contingent public report.

Condominium Mediation: Since 1990, the Commission has contracted with outside organizations to provide mediation services and training as an expeditious and inexpensive means of resolving condominium-related disputes. In 1997, the Neighborhood Justice Center (NJC) and Mediation Services of Maui, Inc. (MSM) provided these mediation services. NJC received 27 cases, 14 of which were closed without mediation, 13 which were mediated and 10 which reached an agreement. The NJC also reported that there ap-

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Ex Parte Communications with Commissioners are Unlawful

Developers, condominium association members, managing agents and hotel operators, and those persons having a pending or future matter which may be addressed by the Real Estate Commission are prohibited from communicating privately with individual Commissioners regarding the merits of the matter or to seek to influence the Commissioner's judgment pursuant to Hawaii Administrative Rules (H.A.R.) Section 16-201-25. Such communications are known as "ex parte communications" which are unlawful whether contact with the Commissioner is made in person or via telephone, letter, fax, e-mail or through a third party.

The nine member Real Estate Commission ("Commission") is a quasi-judicial body which is only authorized to act, decide or render opinions/interpretations as a group at a lawfully convened public meeting. As individuals, the Commissioners lack authority to act on behalf of the Commission, and they are not authorized to receive information regarding pending or future Commission matters. Typical Commission matters include: condominium and real estate-related applications for licensure

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Letter from the Chair...

Dear Condominium Owners and Managing Agents:

As this issue goes to print, several bills have been introduced during the current legislative session that propose to amend Hawaii Revised Statutes Chapter 514A. Thus far, the Real Estate Commission is involved with the following bills: HB 2331 balancing the privacy rights of board members of condominium associations versus the owners' right to information; HB 2369 granting limited priority to condominium association liens for unpaid common expenses, permitting a lien for costs and expenses incurred in the collection of unpaid expenses, and allowing associations to assess up to 6 months of unpaid common expenses to purchasers of foreclosed apartments, other than mortgagees; HB 3265 and SB 3195 ensuring that condominium property regimes are subject to county zoning, subdivision and development ordinances and rules; HB 3281 prohibiting condominium managing agents from providing collection services for delinquent maintenance fees on behalf of the association, and authorizing condominium boards to contract for services; HB 3287 changing the condominium property regime law to permit proxies on any form authorized by the association; HB 3499 and SB 3189 including condominiums and apartments as types of residences eligible to be used as child care facilities; SB 2327 requiring the manager or board of directors of a condominium to obtain the approval of the owners for maintenance fee increases of greater than 8% per year; SB 2491 prohibiting condominium managing agents from providing collection services for delinquent maintenance fees on behalf of the association, and authorizing use of a collection agency by condominium boards; and SB 3113 prohibiting an owner of more than one unit in a condominium from having a representative on the board of directors from every unit owned by that one owner.

Also, the Spring 1998 issue of the **Hawaii Condominium Bulletin** contains excerpts from the Real Estate Commission's 1997 Annual Report, including informative charts and financial information regarding condominium association registration, new condominium projects and the Condominium Management Education Fund. Please read the important article regarding unlawful *ex parte* communications with Real Estate Commissioners. The article explains why anyone having a pending or future matter which may be addressed by the Real Estate Commission is prohibited from communicating privately with individual Commissioners regarding the merits of the matter, or to seek to influence the Commissioner's judgment.

In addition, the Reference File contains helpful suggestions for promoting healthy communication within condominium associations. Readers are encouraged to photocopy these suggestions to distribute at upcoming association meetings. Our regular column, "Ask the Condominium Specialists," discusses whether a condominium owner may obtain a list of the condominium association members in order to communicate concerns regarding the association with the other association owners; whether an owner or an association may refuse to rent a condominium unit to a deaf person who uses a dog for assistance because the bylaws prohibit dogs from being kept in the units; and whether a condominium association has the authority to change the common interest assigned to each condominium unit. Finally, please review the Education Calendar on the back page because it contains several upcoming educational events of interest to the condominium community.

Aloha,

Alfredo G. Evangelista, Chair
Condominium Review Committee

Ask the Condominium Specialists

Q. May a condominium owner obtain a list of all the condominium association members in order to communicate concerns regarding the association with the other association members?

A. Yes, with certain restrictions. Hawaii Revised Statutes (H.R.S.) Section 514A-83.3 requires that the resident manager, managing agent or board of directors keep an accurate and current list of condominium association members and their current addresses. The statute also specifies that the list must be maintained at a place designated by the board, and a copy must be made available, at cost, to any association member as provided in the Declaration of Condominium Property Regime, bylaws or house rules. Otherwise, H.R.S. Section 514A-83.3 mandates that the association membership list must be made available, at cost, to any association member who furnishes the resident manager, managing agent or board with an affidavit stating that the list: "(1) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to association matters, and (2) shall not be used by such owner or furnished to anyone else for any other purpose." Further, it is unlawful for the board of directors to adopt any rule prohibiting condominium owners from soliciting proxies or distributing materials relating to association matters on the common elements pursuant to the above statute. The board, however, may adopt rules that regulate the reasonable time, place and manner of the solicitations and distributions, and may prohibit commercial solicitations altogether.

Q. Our bylaws do not allow dogs to be kept in the condominium units. A deaf person who uses a dog for assistance wishes to rent one of the units. Can an owner or the condominium association refuse this rental due to the dog prohibition in the bylaws?

A. No, with some exceptions. H.R.S. Section 515-3(8) states that it is a discriminatory practice for an owner or any other person to refuse to engage in a real estate transaction (including the sale, exchange, rental or lease of real property) with a person or to deny equal opportunity to use a housing accommodation due to a disability because the person uses the services of a guide dog, signal dog or service animal. The above statute defines "signal dog" as any dog that is trained to alert a deaf person to intruders or sounds. H.R.S. Section 515-3(8), however, allows "reasonable restrictions or prohibitions" to be imposed regarding excessive noise or other problems caused by such animals. The "reasonableness" of a restriction shall be examined by considering the needs of a reasonable prudent person in the same or similar circumstances. De-

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Suggestions For Promoting Healthy Communication

This information appeared in Appendix C to the Real Estate Commission's *Board of Directors' Guide: Sense of Community*. Condominium directors, resident managers and managing agents may find the following suggestions for promoting healthy communication helpful to photocopy and distribute at upcoming association meetings:

Schedule, where permitted, different types of meetings for different purposes. For example, schedule a "town hall meeting" designed to obtain direct input from owners and to promote interaction between owners and the board, or schedule an informational meeting to work out the scope of an agenda prior to a duly noted board or membership meeting. At the informational meeting, problems which may require some emotional airing can be dealt with, leaving the real issues for decision making at a duly noted regular or special meeting.

Caveat

Hawaii Revised Statutes (H.R.S.) Section 514A-82(b)(3) requires that notices of association meetings, whether annual or special, be sent to each association member at least 14 days prior to the meeting, and contain at least the date, time and place of the meeting, the agenda items and a standard proxy form, if any. H.R.S. Section 514A-82(b)(9) requires, whenever practical, that notices of board meetings be posted in prominent locations within the project 72 hours prior to the meeting, or simultaneously with the notice to the board of directors. It appears that town hall or informational meetings, where no association business is transacted and no decision is required by the board or membership, do not constitute an association meeting or a board meeting. Nevertheless, mailing notices of informational and town hall meetings to owners and board members is recommended to promote a spirit of open communication and to foster a sense of community.

Associations should consider adopting a communication agreement whereby members agree to conduct association communications based upon principles that facilitate communication. Sample principles may include the following from Shaffer, Carolyn R. and Kristin Anundsen. 1993. *Creating Community Anywhere: Finding Support and Connection in a Fragmented World*. (New York: The Putnum Publishing Group, 253):

- Take responsibility for your own feelings. Do not expect others to read your mind. Use the "I" statement and refrain from blaming.

- Communicate directly (either orally or in writing) with the person or persons involved in an issue. Do not work through go-betweens or serve as a go-between for others. If someone asks for information about an issue with which you are not directly involved, direct the person to the proper source.
- Refrain from speaking critically about others behind their backs unless you voice the same criticisms to their face. To avoid speculation, give specific names when you make a critical comment in a meeting.
- State your position or concern before asking how others feel about an issue. Do not set someone up to give a "wrong" answer. Be courageous and put yourself on the spot first.
- Practice active listening. Listen silently and carefully until the speaker has finished. Then restate what the speaker has said and ask for a confirmation, i.e., "Did I get that right?"
- Provide continual feedback. Do not allow resentments to build up and do not forget to give positive strokes.
- Respect and validate others' feelings. If you do not agree or do not support another's statement, acknowledge what has been said, and then make your point.
- Use humor softly, not sharply.

Strive to educate all occupants, including absentee owners and renters, about the association's communication agreement. Post the agreement. Publicize it in the association's bulletin or newsletter. Pass out the communication agreement prior to the start of all association-related meetings.

Create a procedures manual or other written material setting forth how routine association occurrences, such as moving procedures, are to be handled. For example, post a sign that a move is scheduled and post the necessary procedures involved in moving such as reserving an elevator, moving only within specified hours, etc.

Keep owners informed about the activities and accomplishments of the association through some form of written communication, such as a regular newsletter, an annual report and an annual fact sheet. Also provide information regarding the association's rules, policies

See Healthy on next page

Healthy from previous page

and expectations which delineates the association's and the owners' responsibilities.

Provide owners with complaint forms for use as needed. Establish a standard procedure for complaints to be reviewed, investigated and addressed.

Respond quickly to owner inquiries. A response may include a short letter thanking the owner for comments and informing them what actions are being considered to address their concerns. If more time is needed to respond to an owner's inquiry, acknowledge receipt of the inquiry and inform the owner that the matter is being investigated.

Lastly, provide ample time in board meetings to address questions from owners. Non-director members of the asso-

ciation who take the time to attend board meetings should be given the opportunity to ask questions.

To obtain the full text of the *Board of Directors' Guide: Sense of Community*, interested readers may ask their condominium association or managing agent to borrow the copy that the Real Estate Commission mailed to all registered condominium associations and managing agents in April 1995 when the guide was first published. In the alternative, readers may visit a Hawaii State library branch or the reference library of the DCCA Real Estate Branch located at 250 S. King Street, Room 702; Honolulu, HI to view this guide. Lastly, the Hawaii Real Estate Research & Education Center (HREREC) sells copies of the Board of Directors' Guide series. Readers may contact HREREC from Oahu at 956-7892 or toll free from the neighbor islands at 1-800-642-4756.

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pending on the circumstances, a reasonable restriction may require the owner to observe leash and pick-up laws, assume responsibility for damage caused by the dog, or require that the disabled person have the unit cleaned upon vacating by fumigating, deodorizing or professional carpet cleaning (H.R.S. Section 515-3(8)). Readers may contact the **Hawaii Civil Rights Commission at 586-8640** with questions regarding discrimination in real property transactions.

Q. Our condominium association wants to change the common interest assigned to each condominium unit. Does the association have the authority to do this?

A. No. Associations lack unilateral authority to change the common interest assigned to each condominium unit. H.R.S. Section 514A-13(b) states that each unit's common interest "shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amended declaration duly recorded, except as provided in Section 514A-11(12)."

H.R.S. Section 514A-11(12) mandates that amendments to the declarations of all condominium projects existing as of May 22, 1991, and all condominium projects created thereafter, require a vote or written consent of 75% of all the owners, except as otherwise provided in Chapter 514A, and further provided that condominium projects having five or fewer units may allow amendments to the declaration by a vote or written consent of *more than 75%* of all owners.

Further, pursuant to H.R.S. Section 514A-13(b), an amendment to the declaration which subdivides or consolidates units and reapportions their common interest shall, to the extent provided in the declaration, require the vote or written consent of only the owners of the subdivided or consolidated units, their mortgagees, AND such other percentage of owners as the declaration may provide. In general, the common interest shall not be separated from each unit, and shall be deemed to be conveyed or encumbered with the unit even though the common interest is not expressly mentioned or described in conveyance documents (H.R.S. Section 514A-13(b)).

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and registration (including condominium project registration and issuance of an effective date for a public report); complaints; disciplinary actions; recovery fund actions; litigation; contracts for goods or services; declaratory rulings and requests for interpretations/opinions regarding the laws and rules which fall under the jurisdiction of the Real Estate Commission.

Readers having a pending or future matter which may be addressed by the Real Estate Commission should *not* communicate with individual Commissioners regarding the matter. Ex parte communications may disqualify Commissioners from hearing, discussing, decision-making or voting on a matter if Commissioners have obtained personal knowledge of disputed evidentiary facts which will prevent a fair hearing pursuant to H.A.R. Section 16-201-20(a)(4).

If you need assistance with a Commission-related matter, please contact the Real Estate Branch staff at (808) 586-2643. Neighbor islands readers may call toll free as follows:

- Kauai** 274-3141 ext 6-2643;
- Maui** 984-2400 ext 6-2643;
- Hawaii** 974-4000 ext 6-2643;
- Molokai & Lanai** 1-800-468-4644 ext 6-2643.

Although the staff will not be able to tell you how the Commission may vote, they may be able to provide helpful general information, historical information regarding past decisions, information regarding possible alternatives and procedural information. The Real Estate Commission staff is also the proper channel to submit any pertinent information and supporting documents for the Commission's review.

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peared to be an increase in mediation referrals from condominium managing agents. Although MSM received no condominium mediation cases during the fiscal year, MSM did receive mediation training provided by the NJC in October 1996.

Hawaii Real Estate Research and Education Center (HREREC): Partly funded by the Condominium Management Education Fund (CMEF), HREREC provides condominium-related research and education, and acts as a consultant for some of the Commission's programs. HREREC is located at the University of Hawaii at Manoa, College of Business Administration. During fiscal year 1997, HREREC co-sponsored "CONDORAMA II," a half-day forum for condominium association directors, managing agents, real estate licensees and other interested persons regarding topics such as white collar crime, why boards get sued, holding association meetings, and fidelity and directors' and officers' insurance.

Advice, Education and Referral: This program provides advice, education, information and referrals to the condominium community, consumers, licensees and government officials regarding condominiums, associations, management, governance, registration, bonding, projects, public reports, mediation, arbitration, H.R.S. Chapter 514A, H.A.R. Chapter 107, education, research, complaints, public information, Commission meetings, program of work and other related areas. During fiscal year 1997, the staff responded to 30,200 condominium-related inquiries and requests for information (12,000 telephone, 1,200 walk-ins, and 17,000 written requests). The staff also printed and distributed an unofficial revised copy of H.R.S. Chapter 514A incorporating SLH 1997 to each registered condominium association and managing agent.

Finally, the following charts and financial information appeared in the *1997 Annual Report* regarding condominium association registration, new condominium projects and the Condominium Management Education Fund:

CONDOMINIUM ASSOCIATION REGISTRATION		
FISCAL YEAR	# ASSNS. REGISTERED	# UNITS REPRESENTED
1990	201	20,066
1991	809	74,916
1992	968	87,127
1993	1,049	91,424
1994	1,114	95,827
1995	999	85,296
1996	1,161	101,629
1997	1,277	106,052

NEW CONDOMINIUM PROJECTS (Number of New Projects Per Fiscal Year)					
	1993	1994	1995	1996	1997
Residential	60	52	60	37	37
Commercial & Other	6	4	17	21	18
Agricultural	29	39	25	20	32
Total Projects	95	95	102	78	87

NUMBER OF NEW RESIDENTIAL CONDOMINIUM PROJECTS (By Project Size)					
No. of Units	1993	1994	1995	1996	1997
2 or less	23	12	23	15	11
3-15	4	5	8	7	15
16-50	16	12	13	5	7
Over 50	17	23	16	10	4
Total Residential Projects	60	52	60	37	37

CONDOMINIUM MANAGEMENT EDUCATION FUND			
Fund Balance as of June 30, 1997 (Unaudited)		Expenditures & Encumbrances For the Year Ended June 30, 1997 (Unaudited)	
ASSETS		Personnel	\$ 70,301
Cash		Supplies	2,663
In State Treasury	\$712,520	Postage	4,550
Investments	100,000	Equipment Rentals/Maintenance	4,768
	\$812,520	Research & Ed Center	124,200
LIABILITIES & FUND BALANCE		Education & Research	13,549
Fund Balance		Interactive Participation with Organizations	7,841
Reserve for Encumbrances	\$ 5,734	Equipment for Office	691
Unreserved	806,786	Staff/Commissioner Development	1,188
Total Fund Balance	\$812,520	Resource Materials	202
		Dues & Subscriptions	80
		Miscellaneous	230
		Total Expenditures & Encumbrances	\$230,263

CONDOMINIUM MANAGEMENT EDUCATION FUND REVENUES & EXPENDITURES & ENCUMBRANCES (Fiscal Years 1993 - 1997) (Unaudited)					
	1993	1994	1995	1996	1997
Revenues					
Fees	\$247,892	\$270,872	\$267,716	\$265,885	\$565,060
Investment Income	0	3,389	2,856	3,943	7,582
Total Revenues	247,892	274,261	270,572	269,828	572,642
Expenditures & Encumbrances	197,400	208,645	308,551	243,883	230,263
Excess (deficiency) of revenues over expenditures & encumbrances	\$50,492	\$65,616	(\$ 37,979)	\$25,945	\$342,379

CONDOMINIUM MANAGEMENT EDUCATION FUND 1998 FISCAL YEAR BUDGET	
REVENUES	
Association & Developer Contributions	\$330,000
Interest	5,000
Total Revenues	\$335,000
EXPENDITURES	
Personnel	\$ 74,867
Supplies	5,000
Postage	5,000
Equipment Rentals/Maintenance	8,000
Contingency	750
Research & Education Center	137,375
Education and Research	42,501
Equipment for Office	1,400
Staff/Commissioner Development	1,500
Resource Materials	500
Dues & Subscriptions	500
Miscellaneous	500
Total	\$277,893

Standing Committees Will Meet in Hilo on May 8

The Real Estate Commission will convene meetings of its three standing committees at the State Office Building located in Hilo at 75 Aupuni St., Conference Room A - C on May 8, 1998 at the following times:

- 9 a.m. Laws and Rules Review Committee
- 10:00 a.m. Education Review Committee
- 1:30 a.m. Condominium Review Committee

The committee names reflect the issues considered by each committee. Although these committees have a set agenda, if you have a specific concern and would like to address the committees, please contact the Commission office by April 24th at (808) 586-2644 for condominium assistance and 586-2643 for real estate, education, or laws and rules assistance. Big Island residents are invited to attend and participate in the open forum on a first-come-first-served basis.

Education Calendar

This calendar lists upcoming educational events of interest to 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	Course Title	Location	Provider
4/16/98	11:30-2:00	Almost Free Legal Advice Panel Q&A Presenter: Steve Elisha	Hale Koa Hotel	CAI
4/19-20/98	8:00-5:00	MTN1 - Planning, Directing & Controlling Maintenance Operations.	Call for more information	IREM
5/10-11/98	8:00-5:00	HRS201 - Managing & Motivating a property team	Call for more information	IREM
5/13/98	Call	Lease Rent/Fee Negotiations Presenter: Anne Anderson	Hale Koa Hotel	CAI
5/29/98		Certified Residential Specialists - Sellabration Call for more info.	Hilton Hawaiian	IREM
6/6/98	8:30-12:00	Defending the Board Presenter: Milton Motooka	Hale Koa Hotel	CAI
6/24/98	Breakfast	Disaster Preparedness, Presenter: Caroline Bell, Anne Anderson, Mark West	Hale Koa Hotel	CAI
6/11-12/98	Call	M-205 - Risk Management	Hale Koa Hotel	CAI
Summer		Summer Classes	Call for more information	UH-SPP

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

	Provider	Phone	Address
Alakahi	The Alakahi Foundation	988-6670 (Oahu)	1142 Auahi St. Suite 1806, Honolulu, HI 96814
CAI -	Community Associations Institute Hawaii Chapter	488-1133 (Oahu)	P.O. Box 976, Honolulu, HI 96808
HAC -	Oahu ARM Committee	523-6096 (Oahu)	1571 Piikoi St. #506, Honolulu, HI 96822
HCAAO -	Hawaii Council of Associations of Apartment Owners	533-2528 (Oahu)	677 Ala Moana Blvd., Suite 701, Honolulu, HI 96813
HICLE -	Hawaii Institute for Continuing Legal Education	956-6551 (Oahu)	2515 Dole Street, Suite 203, Honolulu, HI 96822
IREM -	Institute of Real Estate Management Hawaii Chapter No. 34	737-4000 (Oahu)	1136 12th Ave., Suite 220, Honolulu, HI 96816
CCM -	Condominium Council of Maui	879-8847 (Maui)	P.O. Box 647, Kihei, HI 96753
UH-SPP-	Special and Professional Programs College of Continuing Education, University of Hawaii	956-8244 (Oahu)	2530 Dole St., Honolulu, HI 96822

**Real Estate Branch and Real Estate Commission's homepage at: <http://www.hawaii.gov/hirec>
Address: 250 S. King St., Rm. 702; Honolulu, HI 96813; Phone: 586-2643**

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