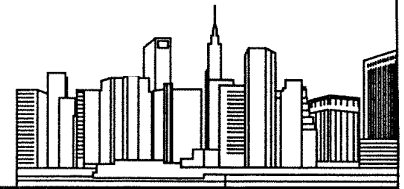
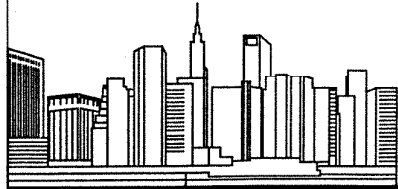


HAWAII CONDOMINIUM BULLETIN



VOLUME 5 NO. 2

SUMMER 1996

Funded through the Condominium Management Education Fund

Selected Acts from the 1996 Legislature

The following discussion in this section highlights only some of the statutory amendments and readers are advised to obtain and read the full text of the Acts. In addition, this section is not and should not be construed as legal advice, readers are also advised to seek the services of competent professionals should they need answers as to how the new laws may apply to their particular circumstances.

Act 106 (HB 3101 HD2 SD2 CD1) Effective June 12, 1996

This act amends Chapter 514A, HRS, by clarifying and expanding on a number of provisions relating to the: management of the condominium property (prior to and after the organization of the association of apartment owners); registration of condominium managing agents; and registration of association of apartment owners.

Registration of Condominium Managing Agents

The Act changes the annual registration of condominium managing agents to a **BIENNIAL** registration system. The new biennial registration period begins December 31, 1996 and terminates on December 31, of an even-numbered year. The Act also allows the Real Estate Commission to set a filing deadline date prior to the registration termination date for the submission of a completed re-registration application,

payment of fees, and other required information. It has been suggested that the **filing deadline** date be **November 30, 1996**. Managing agents who fail to register by the deadline date are required to begin the registration process again as a new applicant and meet all the requirements for an initial registration. The Act also makes it clear that when a managing agent fails to obtain or maintain the required fidelity bond such will result in non-registration or automatic

continued on pg. 7

Arbitration Study Now Being Conducted

The condominium law requires that any dispute concerning or involving one or more apartment owners, and an association of apartment owners, its board, managing agent, or one or more other apartment owners, at the request of any party, be submitted to arbitration (section 514A-121, Hawaii Revised Statutes (HRS)). The dispute must relate to the interpretation, application or enforcement of chapter 514A, HRS or the association's declaration, by laws, or house rules.

Anytime within one year after an arbitration decision is awarded and

served on the parties to the arbitration, any party to the arbitration can apply to the circuit court for an order confirming the award. The court must grant an order confirming the award, unless the award is vacated, modified, or corrected as provided by law **or a trial de novo is demanded** or the award is appealed successfully.

When a demand for a "trial de novo" is made it must be in writing and made within ten days after the service of the arbitration award. A demand for a "trial de novo" simply means that the requesting party desires that the whole

dispute be decided over again as a new matter. This time the dispute is presented before and decided by a circuit court judge in the location where the condominium

is situated. In effect a demand for a trial "de novo" makes a mandated arbitrated decision non binding and non final.

During the past legislative session, the Hawaii Senate, passed Senate Resolution 54, S.D. 2, and requested that the Legislative Reference Bureau conduct a study of the current state of arbitration of condominium disputes.

Among other issues, the Senate requested that the report of the study discuss: the effectiveness of non-binding arbitration to resolve disputes; whether the "trial de novo" feature for arbitrated condominium disputes should be deleted; whether changes could be made to make non-binding arbitration more meaningful by assessing the losing party at a "trial de novo" with all fees and costs incurred at the "trial de novo," as permitted by the Hawaii court rules of civil procedures;

See Arbitration on pg. 2

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Letter from the Chair...

Dear Condominium Owners,

The May Condominium Review Committee meeting was held in Wailuku, Maui and was well attended. Thanks to Committee Vice-chair, Michael Ching, who chaired the meeting while I attended the Community Associations Institute (CAI) 40th National Conference in New Orleans.

CAI will hold its next spring conference on May 1-3, 1997, here in Honolulu at the Hilton Hawaiian Village. CAI last held a conference in Hawaii in 1990 and had a record attendance of over 800 people at its Community Association Day. The next spring conference will also have an international component which I am helping to coordinate. You will be hearing more in the months ahead. So mark your calendars now to attend this most important gathering of community association industry representatives from all over the nation and the world.

In this issue, the Reference File features selected highlights from the most recent chapter of the Board of Directors Guide on insurance.

Due to budgetary constraints, each registered condominium association and condominium managing agent is being sent one copy of this booklet. Associations are encouraged to place these booklets in a three-ring binder and be part of the association's reference library. Any apartment owner or director should have access to these materials for review. In addition, each registered association is permitted to make additional copies for its members, and if necessary, to charge for the cost of copying. Additional copies are available for sale from the Hawaii Real Estate Research and Education Center.

Very truly yours,

*Carol Mon Lee, Chair
Condominium Review Committee*

Ask the Condominium Specialists

Q. The board of directors at my association is dominated by an owner who regularly collects more than 50 per cent of the proxies. (The owner also engages in managing and selling apartments within the project.) Through voting the proxies at the annual meeting, board members are reimbursed for three mainland round trips and per diem per year. Are these conflicts of interest?

A. The provided answer assumes the owner is duly licensed as a real estate broker or salesperson associated with a broker if the owner is engaging in managing and selling apartments with the project. *As to the owner* and the governance issue the answer is, not necessarily. Conflicts of interest are a difficult concept to apply and usually arise when a person has agreed to act for another, such as a director. However, voting at association meetings is usually by owners, and owners may each vote as they see their own best interest. Majority rule is a basic principle of the condominium law. Preventing an owner from voting the proxies he or she collects could deny the rights of those owners who gave the owner the proxies.

In addition, where applicable *Robert's Rules of Order, Newly Revised* (hereinafter "Robert's") (1990 Ed.), §44 at 402, advises that a conflict of interest exists where a member "votes on a question in which he has a direct personal or pecuniary interest **not common** to other members of the organization." (emphasis added) However, this rule does not prevent one from voting on an issue that may affect oneself along with others. Robert's concludes: "If a member could never vote on a question affecting himself, it would be impossible... for the majority to prevent a small minority from preferring charges against them and suspending or expelling them."

As to the directors, in allowing the owner to dominate and possibly control their decisions, it could be viewed that the directors may have breached their fiduciary duty to the association of apartment owners. Section 514A-82.4, Hawaii Revised Statutes provides that each director in performing their responsibilities owes a fiduciary duty to the association of apartment owners. Fiduciary duty includes but is not limited to, in arriving at decisions, the conduct of reasonable research and investigation of all matters, as well as a director's exercise of discretion in the best interest of the association (not in one's own or an individual's interest).

Arbitration from pg.1

and whether if trial de novo were retained, the trial could be held in courts other than circuit court depending on the nature of the dispute and the amount in controversy.

The Legislative Reference Bureau as part of the requested study is conducting a survey. The bureau requests the cooperation and assistance of condominium associations, board members, and managing agents in responding to the enclosed survey questionnaires.

Insurance

I. Introduction

Generally, the responsibility for insuring the buildings, common elements and other common property of the condominium property regime from perils and calamities (such as fires, floods, hurricanes, and earthquakes) rests with the board of directors. Concomitantly, the responsibility for protecting the association from financial loss due to lawsuits for personal injury, bodily injury, and property damage remains with the association and its board of directors. A board may employ various measures to meet these responsibilities. These measures may include an insurance program, a risk management program and self insurance.

Surprisingly, there may not be any insurance coverage for losses caused by a board's failure to obtain and maintain adequate property and liability insurance. Directors' and Officers' liability insurance generally excludes such losses. For these reasons, board members should familiarize themselves with the subject of insurance including fidelity insurance (bonding).

Some board of directors and unit owners innocently hold some **mistaken beliefs** about insurance. Examples of some of the more common mistaken beliefs include believing that:

- any and all property and liability damages and losses¹ are automatically covered by insurance;
- insurance proceeds will provide 100% protection and provide payment to cover the entire loss.

The information set forth in this reference file illustrates for board members and owners that insurance coverage is not automatic neither is insurance coverage 100%.²

In Hawaii, the condominium law requires only that the association obtain and maintain insurance coverage for fire, flood, and fidelity bonding. Flood insurance is required only for condominiums located in identified flood hazard areas as designated by the Federal Emergency Management Agency (FEMA)³ and the National Flood Insurance Program. Exterior glass and directors' and officers' liability insurance are optional coverages. The condominium law does not require any other specific types of insurance. However, the condominium's governing documents may. In addition, other federal, state laws, county ordinances and lending institutions may impose other requirements. And in other situations, "Under appropriate circumstances, an ordinarily prudent person maintains insurance and, therefore, so must the board of directors of a community [condominium] association."⁴ Some of the condominium governing documents may be silent on the insurance subject. Some may be so detailed to include specifics on the amount of insurance and type of insurance.

This reference file discusses some of the salient features of the insurance requirements mandated by the Hawaii condominium law, Chapter 514A, Hawaii Revised Statutes. It does not contain an exhaustive discussion

of the subject. Readers are advised to consult the actual text of the law, Chapter 514A, Hawaii Revised Statute, attorneys and other competent professionals versed in condominium insurance law. A number of suggestions for establishing, maintaining, and evaluating an association's insurance program, may be found in the booklet entitled *Condominium Insurance - Including Fidelity Bond* published March 1996 and distributed to associations of apartment owners with the mail out of this bulletin.

The *Condominium Insurance - Including Fidelity Bond* booklet was produced and published for the Hawaii Real Estate Commission by the Hawaii Real Estate Research and Education Center, College of Business Administration, University of Hawaii Manoa. One copy of the booklet along with this bulletin has been sent to each condominium association. Specifically, the booklets were forwarded to the individual designated by the association on its registration form as the association's contact person. Inquiries about the availability of the booklet should be made to the contact person. To obtain a personal copy of the booklet contact the Hawaii Real Estate Research and Education Center, 2404 Maile Way, Room B 201, Honolulu, Hawaii 96822, telephone — (808) 956-7892.

The information presented herein is for educational purposes. It is not legal, or insurance advice. Such is left to competent and licensed professionals with expertise in such areas. Readers are reminded to consult with these experts as to how the information provided herein applies to their own specific factually based situation.

A. Hawaii Condominium Law — Chapter 514A, Hawaii Revised Statutes

As a first step in this process, a board should read and understand the insurance requirements set forth in the Hawaii condominium law (Chapter 514A, Hawaii Revised Statutes). The board then should obtain the required insurance coverage with the association as the name insured (premiums for certain insurance are common expenses to be paid by the owners). Specifically, the Hawaii condominium law requires the association to obtain specific types of property and employee theft insurance (namely fidelity bonding). Other statutory coverages have been made optional.

The board of directors must provide each owner in lay person's term information about the association's insurance including:

- type of policy;
- description of the coverage and the limits thereof;
- amount of annual premium;
- and renewal dates (§514A-86(b), Hawaii Revised Statutes).

The law requires the insurance carrier to agree in the insurance policy to provide the board with a written

summary of the policy in layman's term. The summary must contain the information just mentioned. Additionally, the summary must be provided at the inception of and at the anniversary date of the policy.

The mandatory specific Hawaii insurance requirements include:

1. **Fire Insurance.** Fire insurance coverage is generally provided by the association's purchase of a Commercial Property Insurance coverage form.

Section 514A-86(a), Hawaii Revised Statutes requires that the association, more specifically the board of directors, to purchase and maintain insurance coverage against loss or damage from **fire** for the common elements; all exterior and interior walls (whether or not part of the common elements); floors; ceilings; in accordance with the as-built condominium plans and specifications, in amounts sufficient to provide for the repair or replacement thereof.

Unless the condominium project's declaration provides another definition of "common element", "common element" is defined by statute (§514A-3, HRS).

Note: The statute requires the associations to obtain insurance coverage for the repair or replacement of the specified property. However, "repair or replacement" has many different meanings including:

- insurance in amounts to construct at current prices a building (without deduction for depreciation) with equivalent utility in accordance with its appraisal (replacement cost);
- in amounts necessary to replace the property after depreciation (actual cash value);
- amounts without limitations to the policy limits (guaranteed replacement costs).

Boards may consider purchasing a "Building Ordinance" endorsement. This endorsement provides insurance coverage for amongst other things, the removal of the damaged building or portions of, the reconstruction of the building according to the changes in the building codes and other applicable laws, e.g. where applicable the American With Disabilities Act. **The basic insurance policy usually excludes such coverage.** Victims of Hurricane Andrew and Iniki understand full well the realities of trying to rebuild their damaged buildings with insurance proceeds limited to replacement costs coverage (with like kind and quality). The added costs of reconstructing in accordance with current building codes are generally excluded from the replacement cost coverage.

2. **Flood Insurance.** Section 514A-86(a), Hawaii Revised Statutes requires the association of apartment owners obtain and maintain flood insurance when the condominium project is located in an identified

flood hazard area designated today by the Federal Emergency Management Agency (FEMA). In addition, federally insured lending institutions and sponsored programs such as "Fannie Mae" and "Freddie Mac" require many condominiums to carry the maximum amount of National Flood insurance coverage as a condition of the loan.

As of October 1, 1994, the National Flood Insurance Program (NFIP) requires condominium associations purchasing flood insurance or renewing flood insurance to obtain flood insurance in amounts of 80% of the replacement value of the eligible property. Failure to do so results in the association payment of a coinsurance penalty. Specifically, condominium projects where 75% or more of the floor space is residential may purchase flood insurance under the new Condo Master Policy (CMP) on the *Residential Condominium Building Association Policy (RCBAP)* form. The maximum amount of *building* coverage is **\$250,000 times the number of units in the building not to exceed the buildings's replacement cost.** (44 CFR § 61.6 1/23/95) Commonly owned contents are covered to a maximum of \$100,000 per building. This coverage is available to residential condominiums in the Regular Flood Program.

All new CMPs and Dwelling Policies meeting the eligibility requirements provide replacement cost coverage on the buildings only subject to a coinsurance penalty⁵. The penalty works like this. As long as the association purchases flood insurance in an amount equal to the "lesser of 80 percent or more of the full replacement cost of the building at the time of loss or the maximum amount of insurance under the NFIP, the insured will be reimbursed fully for a loss, up to the policy limit (subject to a deductible)." ⁶ In all other cases the NFIP will pay a claim less than the full amount of the loss.

The loss standard flood deductible is generally \$750 for residential buildings located in a regular program community in a Special Flood Hazard Area. Others have a \$500.00 deductible.

Condominium projects which do not meet the 75% residential floor requirement must purchase either a Condominium Association Policy (CAP) or a Non Residential Building and Contents Policy. Both policies are issued on the General Property Form. These policies do not provide replacement cost coverage and the coverage limits are considerably lower than provided by the Residential Condominium Building Association.

In general, the law⁷ requires lenders (federally regulated, supervised, or insured institutions, or those selling loans to e.g. Fannie Mae and Freddie Mac [government related enterprises]) and servicers of mortgage loans to notify the purchaser that the property lies within a special flood zone area and to

assure that flood insurance is maintained throughout the loan. The law allows the lending institutions to purchase the required flood insurance for the owner if the owner fails to purchase the required flood insurance (force placed insurance)⁸ and mandate the escrowing of the premiums.

3. **Fidelity Bond.** Evidence of having a fidelity bond is required annually⁹ for condominium projects having six or more apartment units and for condominium managing agents. Basically, fidelity bonding is an employee dishonesty insurance and protects the insured against misappropriation of the association's funds by its employees. Generally fidelity bond coverage provides loss protection only in situations where there is an employer — employee relationship. Typically, the fidelity coverage does not extend to non-employees such as the association's non-salaried directors, committee members, the principals or owners of the condominium (property) managing agent company and its employees. The condominium (property) managing agent company's **own** fidelity bond generally provides coverage for any losses caused by the dishonesty or fraud of its own employees.

However, in Hawaii, the condominium law requires that the fidelity bond provide an association with protection from the fraudulent and dishonest acts **by persons** handling the association funds including any (registered) managing agent. The bond must cover the officers, directors, employees and managing agents of the association who handle the funds (section 514A-95.1, HRS).

Specifically, Hawaii Revised Statutes require among other requirements that:

- Each condominium project with six or more apartment units register annually with the Real Estate Commission and:
- secure annually through its association of apartment owners a fidelity bond in an amount equal to \$500.00 multiplied by the number of units in the project, to cover all officers, directors, employees, and managing agents of the association handling association funds (the bond must not be less than \$20,000 nor greater than \$100,000);
 - the bond must protect the association against fraudulent or dishonest acts by persons handling association's funds, including dishonest acts or fraud by any managing agent registered with the commission, (for very limited circumstances, an association which is unable to obtain a fidelity bond may seek an annual exemption from the Hawaii Real Estate Commission). §514A-95.1, Hawaii Revised Statutes. See Appendix for conditions of exemption;
- Every managing agent be licensed as a real estate broker and:

- register annually with the commission;
- provide evidence annually and at time of initial registration of a fidelity bond in amount equal to \$500.00 multiplied by the aggregate number of units covered by all of the managing agent's contract. The bond must protect the managing agent against the loss of any association money, securities or other property caused by the fraudulent or dishonest acts of the managing agent's employees (the bond must not be less than \$20,000 nor greater than \$100,000).
- act promptly to recover from the bond and apply the bond proceeds, if any, to reduce the loss sustained by the association because of the managing agent's employees dishonesty or fraud.

*Note: The required bond amount specifies a **minimum and a maximum amount**. In light of associations keeping high amounts as mandatory reserves, where possible, it may be prudent for associations to maintain the fidelity bond coverage closer to the maximum coverage.*

Fidelity insurance policies may be issued as a blanket or scheduled policy. A blanket policy covers the dishonesty of anyone handling association funds. In contrast a name scheduled policy only covers the misappropriation of named individuals.

Although the statute requires a fidelity bond, in reality the policy that is issued is a fidelity insurance policy. (A bond usually involves a surety which guarantees the performance of an act.)

Note: "In order to limit exposure to misappropriation of funds, the association should hire competent and trustworthy people who are supervised with clear lines of authority."¹⁰

At minimum, the association more specifically the board of directors should ensure that the handling and disbursement of association funds comply with the requirements of section 514A-97, Hawaii Revised Statutes. **Among other requirements, 514A-97, Hawaii Revised Statutes, mandates that the board supervise the disbursement of any association funds made by its employees and managing agents.** Funds collected by an association's managing agent or the managing agent's employees must be deposited in the managing agent's client trust account and be disbursed by the agent or its employees only under the supervision of the board of directors. The Real Estate Commission has plans to draft rules governing the handling and disbursement of condominium association funds.

4. Optional Statutory Insurance

- a. **Directors and Officers' Liability Insurance (D & O).** Section 514A-86 (b), Hawaii Revised

Statutes, gives the association the option of obtaining directors' and officers' (D & O) liability insurance in amounts as determined by the board of directors. This insurance generally provides the association, directors, and officers some financial loss coverage for damages resulting from the directors' and officers' failure to adequately perform their fiduciary duties and duty of ordinary care. Such coverage may be purchased as an endorsement to the basic policy or it may be purchased separately.

However, claims in connection with damages resulting from incorrect or omitted insurance decisions, nonmonetary claims (e.g. suits to enjoin the board or make the board enforce a rule), discrimination and civil rights are generally excluded from the D&O policy. In some instances, the association may attempt to negotiate the purchase of an endorsement to cover these exclusions and broaden coverage.

In general, D & O policies are issued as claims made policies and the costs of defense is included as part of the policy limit. The named insured on a D & O policy are the directors and officers. The association is covered only if the association is named in the suit with the directors or officers and the association has obligated itself to indemnify the directors and officers.

Typically, D & O policies narrowly define the named insured as the association's officers and directors. Some policies may extend cov-

erage to committee members, other volunteers, or employees.

- b. **Exterior Glass.** The Hawaii condominium law, namely §514A-86 (a), Hawaii Revised Statutes, gives the association of apartment owners the option of obtaining and maintaining exterior glass insurance. Generally, the association's property insurance policy provides protection for glass breakage. However coverage is normally limited to e.g. \$100.00 per pane and subject to a \$500.00 per occurrence. Associations may consider extending any limited coverage by the purchase of additional insurance.¹¹ Other laws and county codes may impose other requirements for repairing or replacing the exterior glass.

The information contained in this reference file has been limited to a general discussion of the insurance required by the Hawaii Condominium Law, Chapter 514 A, Hawaii Revised Statute. **Readers are reminded that the condominium governing documents, other Hawaii, county and federal laws, court decisions, as well as good business sense also impact on other insurance coverage that may be required. The Condominium Insurance — Including Fidelity Bonds** booklet provides further discussions on this matter as well as provide the reader with suggested checklists and forms that may be used to establish, maintain or evaluate and association's insurance program.

ENDNOTES

- ¹ Examples of such damages and losses include: vandalism of an owner's car in the condominium's parking garage; incorrect reporting that an owner is delinquent in the payment of assessments; water damage to a prized downstairs art collection from the broken dishwasher upstairs.
- ² Insurance is not automatic. Much depends on such factors including: whether the damaged property is association property covered by insurance; whether the negligent acts or inactions of the association caused the damages, or whether the specific loss is defined as a specific loss for which the insurance company and the association has agreed should be covered.
- ³ Originally, the U.S. Department of Housing and Urban Development designated an area as flood prone.
- ⁴ Clifford J. Treese, Katharine Rosenberry, "Purchasing Insurance for the Common Interest Community", *Wake Forest Law Review*, Vol.27, Number 2, p. 403 (1992).
- ⁵ A coinsurance provision is not unique only to flood insurance. The provision may be a feature in other types of insurance policies
- ⁶ National Flood Insurance Program, *Flood Insurance Manual*, p. CONDO 7 (March 1995 Revisions).
- ⁷ The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994. The 1994 Reform act made it mandatory to purchase flood insurance and to escrow the premiums. Leonard Bernstein, Philip Myers, and Daniel Steen, "Insurance Reform Engulfs Lenders," *Legal Times*, March 27, 1995 v. 17 n.45 p. S42 col 1 (53 col in).
- ⁸ Applies to all loans outstanding on or after September 23, 1994 the date of enactment of the Reform Act.
- ⁹ **Beginning June 30, 1997**, condominium projects or the association of apartment owners having six or more apartments are required to register biennially (every two years). The biennial period terminates on June 30 of an odd-numbered year. Act 106 (SLH 1996) effective June 12, 1996.
Beginning December 31, 1996, condominium managing agents are required to register biennially (every two years). The biennial period terminates on December 31 of an even-numbered year. Act 106 (SLH 1996) effective June 12, 1996.
- ¹⁰ Clifford J. Treese, Katharine Rosenberry, "Purchasing Insurance for the Common Interest Community," *Wake Forest Law Review*, Vol.27, Number 2, p. 449 (1992).
- ¹¹ Clifford J. Treese, Katharine Rosenberry, "Purchasing Insurance for the Common Interest Community," *Wake Forest Law Review*, Vol.27, Number 2, p. 418 (1992).

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This publication is an informal interpretation, pursuant to Chapter 16-201, Hawaii Administrative Rules. This publication is not an official opinion or decision, nor should it be viewed as binding on the Real Estate Commission or the Department of Commerce and Consumer Affairs.

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continued from pg. 1

termination of the registration. Similarly, the registration may be terminated when the managing agent fails to report in writing to the Commission any changes to the required fidelity bond and other submitted information. The biennial registration or re-registration fee and the compliance resolution fund fee shall not exceed twice the existing annual fee as of April 1, 1996.

Registration of Association of Apartment Owners

The Act changes the annual registration of association of apartment owners to a **BIENNIAL** registration system. The new biennial registration period begins June 30, 1997 and terminates on June 30, of an odd-numbered year. The Act also allows the Real Estate Commission to set a deadline date prior to the registration termination date for the submission of a completed re-registration application, payment of fees, and other required information. It has been suggested that the deadline date be **May 31, 1997**. According to the conference committee report, this change will save time and reduce expenditure of resources by condominium associations, condominium managing agents, and the Department of Commerce and Consumer Affairs and permit more efficient operations. Therefore, there will be a six-month registration **transition period**, associations will be required to register for the transition period from January 1, 1997 to June 30, 1997. The recommendation is that the **filing deadline** for this six-month transition period be **November 30, 1996** in which the completed re-registration application, payment of fees, and other required information will have to be submitted. In addition, it has been recommended that the reregistration application form be a short formatted type and that the longer formatted type be used for the upcoming biennial registration. The Act also clarifies the registration and fidelity bonding requirements as follows:

- requires the developer, developer's affiliate or the managing agent to register an unorganized association if:
 1. the association of apartment owners has not had its first meeting; and
 2. at least one year has passed after the recordation of the first purchase of an apartment;
- clarifies that certain information required to be submitted with the association's registration application as public and includes: evidence of and information on fidelity bond coverage; names, addresses, and phone numbers of the officers of the association of apartment owners (one of the officers must be designated as the public contact person for the association);
- requires the association of apartment owners to report in writing to the Commission any changes to the information contained in the registration or re-registration application, required fidelity bond and other information and documents requested or required by the commission. Failure to do the required reporting, may result in termination of registration

and subject the association to initial registration requirements over again.

- the biennial registration or re-registration fee and the condominium management education fund fee shall not exceed twice the existing annual fee as of April 1, 1996.

Act 107 (HB 3241 HD1 SD1) Effective June 12, 1996

This act amends the proxy provisions set forth in 514A-83.2, Hawaii Revised Statutes (HRS). Specifically the act amended the provisions of 514A-83.2, HRS by deleting the: provisions that allowed proxy forms with unmarked boxes to be considered for quorum purposes only; requirement that an owner print the name of the individual to whom the proxy is given; and moved the four proxy options from subsection (c) of 514A-83.2, HRS to subsection (a). The purpose of the move was to expressly provide that to be a valid proxy, the proxy form must set forth the four options listed in the statute.

Thus, the new law clarifies that to be a valid proxy, a proxy must contain boxes where the owner can indicate that the owner wishes the proxy to be given for a specific purpose. The required four options include the option that the proxy be given for: quorum purposes only, to an individual whose name is printed on a line next to the box, to the board as a whole to be voted by the board majority, or to the board to be shared equally among each director present at the association meeting.

Act 303 (S.B. No. 2003 SD1 HD2 CD1) Effective July 3, 1996

This act voids every recorded restriction or prohibition whether entered into by way of covenant, condition upon use or occupancy, or upon transfer of title to residential real property which restricts or prohibits family child care homes (six children or fewer) on residential real property. The restriction or prohibition **does not apply** to housing for older persons as defined by 42 United States Code section 3607 (b) (2); limited-equity housing cooperatives created by chapter 421H, HRS; cooperative housing corporation created by chapter 421 I, HRS; condominium property regimes created pursuant to chapter 514A, HRS or townhouses as defined by the Act.

However, the law requires the department of the attorney general in conjunction with the department of human service, the Commission on Persons with Disabilities, the Insurance Commission, and the Real Estate Commission to submit a report to the 1997 legislature. The report shall review and discuss some unresolved concerns in connection with providing child care homes in residential surroundings including tort liability, the Americans with Disabilities Act, and any constitutional concerns as they related to limited-equity housing cooperatives, cooperative housing corporations, condominium property regimes, and townhouse projects. The law also requires the department of the attorney general to make recommendations whether to continue the non application of Act 303 to condominiums, limited equity housing cooperatives, cooperative housing corporations, and townhouse projects (as defined in the new law).

Maintenance Fee Increases and the Reserves Law

It has come to the attention of the Real Estate Commission that the reserves law is being blamed for maintenance fee increases that are actually due to expenditures of reserves that are not for replacement and repairs. It is reported that a number of associations of apartment owners have been spending reserves on court orders, necessary unforeseeable legal costs, and **obtaining adequate insurance premiums**. (Such emergency expenditures are permitted by §514A-83.6, Hawaii Revised Statutes.) Then in order to replace these withdrawals and to pay additional costs for court orders, legal costs, and insurance premiums, the association is increasing maintenance fees. However, it appears that some condominium managing agents (or their employees) as well as officers of associations of apartment owners are then informing owners and representing that the increase in maintenance fees is because of the reserves law.

In prudence, condominium managing agents and officers of associations of apartment owners should disclose the actual expenditure or budget shortfall that is causing the increase in maintenance fees. If the boards have spent the reserves on any of the emergency situations then the boards (and their respective managing agents) should not say the maintenance fee increase is due to the reserves law.

In fact, without the reserves law and the use of the reserves, the boards might have had to impose a special assessment to take care of the emergency.

It is recommended that boards provide full and accurate financial disclosures to owners and that every notice of increase in maintenance fees should include a full, specific, and accurate disclosure as to why an increase is necessary.

Amended Real Estate Commission Meeting Schedule for 1996

| Condominium Review Committee (10:30 a.m.) | Real Estate Commission (9 a.m.) |
|---|---|
| Wednesday, August 14, 1996 – Kapuaiwa Room | Friday, August 30, 1996 – Kapuaiwa Room |
| Wednesday, September 11, 1996 – Kapuaiwa Room | Wednesday, September 25, 1996 – Kapuaiwa Room |
| Wednesday, October 16, 1996 – Kapuaiwa Room | Wednesday, October 30, 1996 – Kapuaiwa Room |
| Wednesday, November 13, 1996 – Kapuaiwa Room | Wednesday, November 27, 1996 – Kapuaiwa Room |
| Wednesday, December 11, 1996 – Kapuaiwa Room | Thursday, December 12, 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.

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 |
|-----------|------------|---|-----------------|----------|
| 8/17 | 9-4:30 | Community Association Legal Issues - \$99 | To be announced | Alakahi |
| 8/22 | 11:30-1:45 | Legislative and Regulatory Update | Halekoa | CAI |
| 9/14 | 9-4:30 | Community Association Administration - \$99 | To be announced | Alakahi |
| 10/19 | 9-4:30 | Community Association Communications - \$99 | To be announced | Alakahi |
| Sept 1996 | | and Resident Relations | | |
| | | Mediation Alternatives Program | Maui | CCM |
| Nov. 1996 | | Legislative Luncheon Program | Maui | CCM |
| Fall 1996 | | IREM Course 101 "Successful Site Management" Cost: \$475.00 | | IREM |

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

| | Provider | Phone | Address |
|-----------|-------------------------------------|-----------------|--|
| 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 |
| | Hawaii Chapter | | |
| HAC | Oahu ARM Committee | 523-6096 (Oahu) | 1571 Piikoi St. #506, Honolulu, HI 96822 |
| HCAA - | 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 | | |