

**Board of Directors' Guide**

**An Introduction to  
Condominium Living in Hawaii**

**March 1998**

## Notice

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Condominium law is based upon principles of self-governance, owner enforcement, voluntary and mandatory mediation, mandatory arbitration and limited government intervention only as specified in Hawaii Revised Statutes (H.R.S.) Sections 514A-46, 47 and 48. The limited authority of the Real Estate Commission to receive, investigate and prosecute complaints has been delegated to the Regulated Industries Complaints Office (RICO) pursuant to H.R.S. Section 26-9(m). Thus, neither the Real Estate Commission nor its staff receives, investigates or prosecutes alleged violations of H.R.S. Chapter 514A or H.A.R. Title 16 Chapter 107.

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# Board of Directors' Guide: An Introduction to Condominium Living in Hawaii

## INTRODUCTION

This guide is designed to introduce you to condominium living in Hawaii. Condominium living provides many advantages which may include attractive locations, extensive recreational facilities, well-landscaped open spaces and no direct responsibility for maintaining the common areas. Shared ownership of common areas may also allow you to enjoy facilities in a location that ordinarily might be too expensive for individual owners.

Obligations are also a part of condominium living such as the mandatory payment of maintenance fees and special assessments, following your condominium's rules and regulations, compliance with the State's condominium statutes and rules, and cooperation regarding the joint operation and management of your condominium. Readers are encouraged to consider for themselves whether the many benefits of condominium living outweigh mandatory obligations before making a first-time commitment to condominium living in Hawaii.

Four main sections comprise this introductory guide: Section I describes the basics of condominium ownership. Section II discusses how condominiums are governed and managed. Other factors to consider prior to purchase are covered in Section III. Finally, Section IV contains a listing of useful information sources.

## I. BASICS OF CONDOMINIUM OWNERSHIP

### A. What is a Condominium?

Contrary to common perception, the term "condominium" does not refer to the outward appearance of a structure such as a tall building consisting of many individual residences. Condominiums come in many shapes and have varying uses. Rather, the term "condominium" refers to a form of real property ownership consisting of both *individual and common ownership interests*.

#### 1. The Individual Ownership Interest

The *individual ownership interest* consists of an exclusive right of possession and ownership of a particular condominium unit. Each unit may be mortgaged, is separately assessed for taxes and has an individual deed or lease.

#### 2. The Common Ownership Interest

The *common ownership interest* includes a percentage of undivided interest in the **common elements** as well as any designated interest in the **limited common elements**. Generally, **common elements** are those portions of the land and structures jointly owned and utilized by all unit owners such as the land, foundations, main walls, roofs, recreational facilities, etc. **Limited common elements** typically consist of those common elements reserved for the exclusive use of specific units such as private lanais or assigned parking stalls. Your condominium's "Declaration of Condominium Property Regime" filed at either the Bureau of Conveyances or at the Land Court will delineate the common and limited common elements in your project.

The common ownership interest distinguishes condominium living from traditional forms of home ownership. Characteristics of common ownership include:

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- Unit owners automatically become members of the condominium association which manages the operation of the condominium on behalf of all owners.
  - Unit owners are required to pay maintenance fees and special assessments for the upkeep of the common elements.
  - Unit owners have rights and obligations which are defined in their condominium project documents and in the condominium law, Hawaii Revised Statutes (H.R.S.) Chapter 514A and Hawaii Administrative Rules (H.A.R.) Title 16 Chapter 107.

## **B. Land Ownership - Leasehold or Fee Simple?**

In Hawaii, condominiums are available for purchase in **leasehold (L)** or **fee simple (FS)**. The purchaser of a **fee simple** condominium acquires ownership of the land as well as ownership of a particular condominium unit. Fee simple ownership is the highest or most complete form of ownership as reflected by the typically higher prices paid for fee simple condominiums versus leasehold condominiums.

The buyer of a **leasehold** condominium (the lessee) does not own the land but obtains the right to use the land for the duration of the ground lease, subject to any restrictions contained in the lease, in exchange for paying lease rent to the landlord (the lessor). Upon termination of the ground lease, the use of the land returns to the lessor via a process known as “reversion.” Ground leases usually contain “surrender clauses” which determine what happens to the condominium units and improvements such as garages, roads, pools, etc., when the land reverts to the lessor. Generally, surrender clauses fall into three categories. The most common form of surrender clause specifies that upon termination of the ground lease, the condominium units and other improvements automatically become the property of the lessor. Another type of surrender clause allows lessees to retain their condominium units, however the lessees must return the land to its original condition and are thus responsible for paying proportionate costs to demolish or remove condominium units and/or improvements. A third type of surrender clause provides that the lessor may purchase the condominium units and improvements from the lessees.

In Hawaii, the seller of a residential leasehold condominium unit must furnish the buyer with a copy of the master lease and any amendments, the apartment lease and any amendments, or the condominium public report and any amendments which provide the major provisions of the lease (H.R.S. Section 516D-11(a)). The buyer should review these documents carefully prior to purchasing leasehold property and determine important information such as:

***Lease term:*** Who is the lessor? What is the length of the lease? On what date does the lease expire? Does the lease contain provisions to allow the lease to be extended? If the purchase of the condominium will be financed, how do the lease terms affect financing ability? Will the lease expiration date affect ability to sell the condominium unit in the future?

***Lease rent:*** How much is the lease rent? When is it due? Do the maintenance fees include the lease rent? What are the penalties for late payment? If the lease rent adjusts periodically (typically every 10 or 15 years after an initial fixed rent period of 25-30 years), when does the rent adjust and to what amount?

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**Lease rent renegotiation:** If the lease rent adjusts periodically to an amount that must be renegotiated, how are subsequent lease rents determined? Will the rent renegotiation date affect ability to sell the condominium unit in the future? Does the lease contain a provision for the mandatory arbitration of renegotiated rent if the lessor and the lessee cannot agree upon a new lease rent? If not, H.R.S. Section 516D-12(b) specifies that the renegotiated rent shall be determined by three impartial arbitrators/recognized real estate appraisers (one selected by each party and the third selected by both parties) whose decision shall be final, conclusive and binding on both parties.

**Surrender clause:** What happens to lessee condominium units when the ground lease terminates and the land reverts to the lessor? On what date does the surrender clause take effect? Do other options exist for lessees to take upon expiration of the lease such as negotiation of a new ground lease or extension of the ground lease?

**Amendments to lease:** Has the lease been amended to change the lease terms, extend the lease, etc.? (Prospective purchasers may check a recent title report for the property prepared by a licensed title company to determine this information.)

**Fee conversion:** Is there an ongoing or planned fee conversion (where the lessor offers to sell the property in fee simple to the lessees)? If yes, what are the terms and what is the current status of the offer? What have other lessees recently paid to purchase comparable property? If lessees do not accept the lessor's offer to sell, what effect might that decision have on future lease terms?

The seller or the seller's agent must provide lease documents to the buyer of a residential leasehold condominium for the buyer's approval and acceptance no later than ten days after the date that the buyer and the seller reach a final agreement for the sale of the unit (H.R.S. Section 516D-11(a)). The buyer has ten days from the date of acknowledged receipt of the final sales agreement to cancel a purchase offer without loss of deposit (H.R.S. Section 516D-11(c)). The buyer and the seller may, however, agree to reduce or extend these time periods via a standardized form (H.R.S. Section 516D-11(d)).

State law encourages negotiations for leased fee sales of condominium land between lessors and condominium associations. Condominium associations have the right of first refusal to purchase the leased fee interest in land under their project from the lessor for the same price contained in a written purchase offer from any party other than the association to whom the lessor intends to sell the leased fee interest (H.R.S. Section 514C-2). If at least 75 percent of the condominium lessees approve of the purchase, then the association may purchase the leased fee interest in land under the project (H.R.S. Section 514C-6(a)). No lessee, however, shall be compelled to participate in the land purchase, but may instead pay lease rent to the condominium association (H.R.S. Section 514C-6(c)).

Readers may contact the **Land Programs Branch of the Housing Finance Development Corporation at 587-0500** for inquiries regarding H.R.S. Chapter 514C, Right of First Refusal for Condominiums and Cooperative Housing Corporations; H.R.S. Chapter 516D, Residential Leasehold Condominiums and Cooperatives; disclosure requirements for leasehold real property transactions; and the Land Reform Act (lease to fee conversion of residential real property).

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## II. HOW ARE CONDOMINIUMS GOVERNED AND MANAGED?

### A. Condominium Associations and Management

Condominiums are governed by their own condominium association. The condominium association is a private organization that functions as a “mini government” with the condominium project documents serving as the association’s “constitution.” The Board of Directors is the governing body of the association. Board members are elected by and from among the condominium owners, and generally are not compensated for their time and effort. All meetings of the board of directors, other than executive sessions, are open to unit owners who may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the board votes otherwise pursuant to H.R.S. Section 514A-83.1(a).

Practically speaking, joint ownership and governance of a condominium project means that no individual has control over the decision-making process, and management is an essential component of condominium living. Many condominium associations hire a professional management company, although associations are not required to do so by law. Larger associations may employ a full-time resident manager, although resident managers are also not mandated by law. Smaller associations may simply utilize resident volunteers to handle management tasks. Prospective owners should inquire how the condominium project is managed and whether the current occupants are satisfied with the management services provided.

A basic responsibility of the condominium association and management is to work together to protect the investment and enhance the value of the property owned by association members. This responsibility is accomplished in many ways such as by providing for the physical maintenance and operation of the common elements, setting up an effective communication system among association members, fostering a desirable sense of community and upholding the requirements of the condominium project documents.

### B. The Importance of Condominium Project Documents

If you are considering purchasing a condominium unit, it is important to carefully review the project documents and/or have them reviewed by your legal representative because all owners, tenants and employees of owners must comply with the requirements contained in these documents (H.R.S. Section 514A-88). Project documents consist of: the **declaration of condominium property regime, the bylaws, the house rules and the master deed or lease**. If your condominium association has incorporated, then the **articles of incorporation** are also part of the project documents. H.R.S. Section 514A-84.5 requires that accurate copies of project documents be made available to owners, prospective purchasers and their prospective agents by the managing agent or a person/entity employed by the association to whom this function has been delegated.

#### 1. The Declaration of Condominium Property Regime

The **declaration of condominium property regime** is a document filed at the Bureau of Conveyances or the Land Court which contains basic information necessary to create a condominium project. H.R.S. Section 514A-11 states, in part, that the declaration shall contain such information as:



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- A description of the land, buildings and apartments;
  - A description of the common and limited common elements;
  - The percentage of undivided interest in the common elements appertaining to each unit;
  - A statement of purposes and restrictions for the use of buildings and units;
  - The method by which the declaration may be amended, provided that all condominium projects shall require a vote or written consent of 75 percent of all owners to amend the declaration, and condominiums having five or fewer apartments may require the consent of *more than 75* percent of all owners; and
  - A statement that the project complies with all zoning and building ordinances/codes *if the project contains existing structures being converted to condominium status*, including a list of variances granted and legal nonconforming uses or structures, if applicable.

## 2. The Bylaws

The **bylaws** govern the operation of the condominium project and must be recorded in the same manner as the declaration (H.R.S. Section 514A-81). Pursuant to H.R.S. Section 514A-82(b), the bylaws shall provide, in part, for the following:

- The removal of directors;
- The amendment of bylaws by the vote or written consent of 65 percent of all unit owners;
- Notice requirements for association meetings;
- Restrictions on resident manager, managing agent and director solicitation and voting of proxies;
- Director conflicts of interest;
- Access to condominium units;
- Restrictions on owners from acting as both an association officer and an employee of the managing agent;
- Restrictions on association employees from selling or renting apartments;
- Board meetings and the notice required;
- Restrictions on travel, directors' fees and per diem expenses for directors; and
- Restrictions on director education/training expenses.

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### Important Note

Although the bylaw requirements stated in H.R.S. Section 514A-82(b) apply to *all* condominium projects, the particular bylaw requirements stated in H.R.S. Section 514A-82(a) may *not* apply to condominiums already in existence when a particular subsection (a) requirement was enacted. Thus, if your bylaws do not contain a requirement stated in H.R.S. Section 514A-82(a), then that specific requirement may not apply to your condominium project.

If applicable, H.R.S. Section 514A-82(a) covers:

- The election, number, term, qualifications, powers/duties and compensation of the board of directors;
- Whether the board may hire and delegate powers and duties to a manager and/or managing agent;
- The method of calling association meetings and what constitutes a quorum;
- The election of a president, secretary and treasurer;
- The operation of the property;
- The payment and collection of common expenses, fees and costs;
- The designation and removal of personnel;
- The method of adopting and amending house rules;
- The restrictions/requirements regarding the use and maintenance of units and common elements;
- The first meeting of the association;
- Director proxy votes and conflicts of interest;
- The prohibition against resident managers serving on the board;
- The requirements for board and association meetings;
- The mandatory use of Robert's Rules of Order; and
- The penalties chargeable for violations of the declaration, bylaws and house rules.

### 3. The House Rules

The **house rules** provide more detailed guidelines and limitations on the use and operation of the condominium project. These rules are *not* intended as a substitute for amending the declaration and/or bylaws, and in the event of a conflict, the declaration and bylaws con-

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trol. House rules are typically designed to govern the use of common and limited common elements such as pools, recreation areas, parking garages, etc., and to protect residents and guests from bothersome actions or actions that detract from the value of the property such as excessive noise, hanging laundry in exterior visible areas, etc. The method for adopting and amending house rules is often specified in the bylaws.

### **C. State Laws and Rules**

Hawaii has also adopted laws in H.R.S. Chapter 514A regarding Condominium Property Regimes and rules in H.A.R. Title 16 Chapter 107 covering Horizontal Property Regimes which govern condominium projects. Prospective owners are encouraged to review these state laws and rules prior to purchasing a condominium in Hawaii. To obtain copies of the laws, readers may go to any public law library to make photocopies. Additionally, the Cashier's Office of the Department of Commerce and Consumer Affairs (DCCA) sells unofficial copies of both H.R.S. Chapter 514A and H.A.R. Title 16 Chapter 107 for a nominal fee. The DCCA cashier's office is located at 1010 Richards Street, Third Floor, Honolulu, and is open for business Monday through Friday from 7:45 a.m. until 4:00 p.m. Readers may call 586-2832 to verify availability and cost. Written requests for statutes and rules accompanied by the correct amount of cash or check made payable to the "DCCA" may be sent to: Cashier-DCCA, P.O. Box 541; Honolulu, HI 96809.

### **D. Voting by Owners**

Owners who participate on the board of directors generally have opportunities to vote at board meetings regarding the governance and management of the condominium project. Interested owners are encouraged to run for a director position so that they may directly participate in such decisions. Owners who are not members of the board may indirectly participate in governance and management decisions by voting at annual and special meetings.

Typically, the function of **annual meetings** is to elect association directors and to conduct business regarding matters which require a vote by the association. **Special meetings** are held to conduct business only on the issues specified in the meeting notice which generally require prompt action rather than waiting to address the issues at the next annual meeting. Pursuant to H.R.S. Section 514A-82(a)(17), all association meetings, whether annual or special, must be held at the condominium project or within the state as determined by the board. It is mandatory for notices to be sent to each association member at least 14 days prior to the meeting which contain the date, time and place of the meeting, the agenda and a standard proxy form authorized by the association as required by H.R.S. Section 514A-82(b)(3).

A proxy is a written authorization form from an owner appointing another person to represent the owner's interests via voting at a particular association meeting. According to H.R.S. Section 514A-83.2(a), to be valid a proxy must:

- Be delivered to the association secretary or the managing agent no later than 4:30 p.m. on the second business day prior to the meeting;
- At a minimum, contain the association name, the printed name, signature and apartment number of the person(s) giving the proxy, and the date that the proxy is given; and

- Contain boxes where the owner has indicated that the proxy is given either: for quorum purposes only; to an individual; to the board as a whole to vote based upon the preference of the board majority; or to the directors present at the meeting with each director receiving an equal percentage.

### Important Note

Even though the purchaser of a condominium unit under an agreement of sale which is recorded at the Bureau of Conveyances or the Land Court obtains the voting rights of an owner, the seller may retain the right to vote on matters substantially affecting the seller's security interest in the unit (H.R.S. Section 514A-83).

## E. Resolving Disputes Through Mediation, Arbitration

Due to the inherent nature of shared governance and management of condominium projects, as well as the close living proximity of residents, disputes between owners, the association, the board and the managing agent are inevitable. Condominium law is based upon principles of self-governance, owner enforcement, voluntary and mandatory mediation, mandatory arbitration and limited government intervention only as specified in H.R.S. Sections 514A-46, 47 and 48. This means that the owners, association, board and management must work together to enforce the laws and rules and to resolve disputes through discussion, mediation, arbitration and, if necessary, litigation.

The Real Estate Commission encourages the informal resolution of condominium disputes prior to taking legal action. Parties are urged to solve condominium governance and management disputes through early communication and mature discussion. Careful checking of condominium project documents as well as the state condominium laws and rules (which the Commission mails to all registered Hawaii condominium associations and managing agents) is recommended to determine if the disputed matter must be resolved according to requirements contained in these governing sources. Parties may also find it prudent to bring the dispute before the association board of directors for a decision.

### 1. Mediation

If the condominium dispute cannot be resolved among the parties, either party may request **mediation**. Mediation involves an impartial third party mediator guiding the parties through a problem-solving process to assist them in arriving at a mutually agreeable resolution. Mediation, however, is not required by law. It is only mandatory when an owner disputes the amount or validity of an association assessment, immediately pays the assessment in full and keeps assessment payments current pursuant to H.R.S. Section 514A-90(c)(5). If the owner and the association are unable to resolve an assessment dispute through mediation, either party may then file for arbitration provided that the owner may only file if all amounts claimed by the association are paid in full on or before the arbitration filing date or within thirty days of the date of suspension of arbitration due to nonpayment by the owner (H.R.S. Section 514A-90(d)).

The Real Estate Commission subsidizes mediation services for eligible parties and issues utilizing mediators specifically trained to assist in resolving condominium disputes. Statewide services are available through the Neighborhood Justice Center; 200 N. Vineyard Boulevard, Suite 320; Honolulu, HI 96817; Phone: 521-6767. Mediation services on Maui only are also

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available via Mediation Services of Maui, Inc.; Cameron Center; 95 Mahalani Street; Wailuku, HI 96793; Phone: 244-5744.

## 2. Arbitration

Parties to condominium disputes have the right to demand **arbitration** if the dispute involves owners, boards, associations or managing agents regarding the interpretation, application or enforcement of H.R.S. Chapter 514A, association declarations, bylaws or house rules pursuant to H.R.S. Section 514A-121(a). An arbitration is similar to a court hearing because sworn testimony and discovery of evidence is permitted. The process, however, is generally more flexible and informal because the arbitrator is not bound by rules of evidence, except for provisions relating to privileged communications, and the arbitrator may restrict the scope of discovery for good cause to avoid excessive delay and costs, or refer discovery matters to the circuit court for disposition pursuant to H.R.S. Section 514A-121(a). To contact local arbitrators, parties may consult the yellow pages of the telephone book under “Arbitration Services.”

Arbitration, is not mandatory for all disputes. Disputes outlined in H.R.S. Section 514A-121(b) do *not* require arbitration if they involve:

- The Real Estate Commission;
- The mortgagee of a mortgage of record (the person that takes a mortgage);
- The developer, general contractor, subcontractors or design professionals for the project when acting in those capacities;
- Actions seeking equitable relief involving threatened property damage or the health and safety of owners and others;
- Actions to collect assessments which are liens or subject to foreclosure, provided that an owner who pays the full assessment amount shall have the right to demand arbitration;
- Personal injury claims;
- Actions for amounts in excess of \$2,500 against the association, board, directors, officers, agents, employees or other persons if insurance coverage under a policy procured by the association or board would not be available because arbitration was pursued; or
- Any cases determined to be unsuitable for disposition by arbitration.

Pursuant to H.R.S. Section 514A-127(e), any party to an arbitration may apply to vacate, modify or correct the arbitration award based upon the grounds set forth in H.R.S. Chapter 658 regarding Arbitration and Awards. Even if a dispute has been arbitrated, the submission of the dispute to arbitration shall not limit the right of a party to file for a “trial de novo” (trying the matter in court as if a decision had not been rendered previously) pursuant to H.R.S. Section 514A-127(a).

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### III. OTHER FACTORS TO CONSIDER PRIOR TO PURCHASE

#### A. Condominium Fees and Assessments

1. **Maintenance Fees:** A regularly scheduled fee that owners are required to pay for the maintenance and operation of the buildings, land and facilities. The amount each owner must pay may vary according to unit size and location. Maintenance fees typically cover expenses for water, sewage, security, upkeep and repair of common elements, association taxes/insurance and property management. The manager or association board of directors must notify the owners in writing of any maintenance fee increases at least thirty days prior to any increase (H.R.S. Section 514A-92.2).
2. **Special Assessments:** A fee collected in addition to regularly scheduled maintenance fees to fund special expenses such as improvements to the property and association legal fees and costs.
3. **Replacement Reserves:** Funds required by H.R.S. Section 514A-83.6 and H.A.R. Title 16 Chapter 107 Subchapter 6 to be collected for the upkeep, repair or replacement of those parts of the condominium project that the association is obligated to maintain. Prospective condominium purchasers should inquire about the amount of replacement reserves collected by the association to date, and the total amount to be collected annually to ascertain the likelihood of the association imposing special assessments on owners to fund insufficient replacement reserves.

#### Important note

Prior to a **unit purchase or a voluntary acquisition of title**, prospective acquirers of title are advised to request a statement from the manager or the board listing all unpaid common expenses and assessments owed by those conveying title to the unit. H.R.S. Section 514A-91 states that in a voluntary conveyance of a condominium unit, **persons acquiring title become jointly and severally liable** with persons conveying title for all unpaid common expenses and assessments owed by those conveying title up to the time of the grant or conveyance. "Joint and several liability" means that the persons acquiring title are *individually or collectively liable* with the persons conveying title for the *full* amount of any unpaid common expenses and assessments. The persons acquiring title, however, retain the right to recover the unpaid amounts from those conveying title through a separate legal action.

#### B. Owner Occupied vs Rental Units

The percentage of owner-occupants in a condominium should be considered prior to purchase. A higher percentage of owners occupying units may produce a desirable living environment because owner-occupants have incentive to improve the quality of condominium life where they reside. Further, condominium owner-occupants have added incentive to improve the long-term quality of condominium life in order to protect their investment.

#### C. Tax Treatment

The following general tax information applies to condominiums:

- Each condominium unit is subject to separate assessment and taxation, including special assessments (H.R.S. Section 514A-6).

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- State and federal income tax regulations recognize interest deductions for condominium home mortgages.
  - Owner-occupants of condominium units are eligible for county homeowner property tax exemptions.
  - Owners who rent out their condominium units must possess an excise tax license and pay excise tax on the gross rental income received from the unit.
  - Units held for investment purposes qualify for like-kind exchanges.
  - Under Paragraph 129 of the Taxpayer Relief Act of 1997, individuals may exclude from income up to \$250,000 of gain realized on the sale or exchange of a condominium used as a principal residence if the individual owned and occupied the unit for an aggregate of at least two of the five years before the sale or exchange. The amount of excludable gain is increased to \$500,000 for married individuals filing jointly, subject to restrictions specified in Paragraph 129 of the Taxpayer Relief Act of 1997.

#### **D. Liens**

H.R.S. Section 514A-90(c) states that no unit owner shall withhold any assessment claimed by the association. All unpaid common expenses chargeable to a unit constitute a **lien** on the unit which may be foreclosed by an action of the manager or the board in a manner similar to a mortgage of real property pursuant to H.R.S. Section 514A-90(a). **Note: If the person acquiring title** via a mortgage or a purchase **obtains title as a result of foreclosure**, then the acquirer of title shall *not* be liable for common expenses or assessments due prior to acquisition of title, and the unpaid common expenses or assessments shall be collectible from *all* owners, including the acquirer of title, pursuant to H.R.S. Section 514A-90(b).

#### **E. Pets**

Whenever the bylaws do not forbid *owners* from keeping pets in their unit, the bylaws shall *not* forbid *tenants* of owners from keeping pets in their unit, subject to provisions stated in H.R.S. Section 514A-82.5(a). The bylaws, however, may include reasonable prohibitions against excessive noise or problems caused by pets on the property, and may reasonably restrict or prohibit the running of pets on common areas pursuant to H.R.S. Sections 514A-82.5(a)(5), (6).

H.R.S. Section 514A-82.6(b) states that any owner who is keeping a pet in their unit as of the effective date of an amendment to the bylaws which prohibits pets, shall *not* be subject to the pet prohibition and shall be entitled to keep the pet and acquire new pets. Further, H.R.S. Section 514A-82.6(a) allows an owner to replace the animal, upon its death, with another animal and continue to do so for as long as the owner continues to reside in the unit or another unit subject to the same bylaws. The practical effect of this law is to “grandfather in” the *owner*, rather than a pet, so that the owner may keep and continue to acquire any type of pet that the owner once rightfully kept in accordance with the bylaws, as long as the owner continues to reside in the project. Finally, it is *not* generally lawful under state fair housing law to prohibit animals in condominium projects that are used to assist the disabled such as dogs that guide blind persons and alert deaf persons to sounds, and animals trained to provide life activities (H.R.S. Section 515-3(8)).

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## **F. Parking Stalls**

Pursuant to H.R.S. Section 514A-14.5(b), the sale of residential condominium units that were newly constructed after April 29, 1986 must include ownership of a parking stall or designate a stall to be appurtenant to the unit as a limited common element, unless the units were developed under H.R.S. Chapter 356 relating to Hawaii Housing Authority low income housing, Chapter 359 relating to state housing projects, Chapter 201E relating to the Housing Finance and Development Corporation and Chapter 206E relating to certain projects by the Hawaii Community Development Authority. Where a developer or condominium association owns and rents parking stalls to the unit owners, a majority of the unit owners may request the appointment of an appraiser to establish a price for each parking stall which may then be negotiated for purchase by the owners (H.R.S. Section 514A-14.5(a)).

Unit owners also have the right to *change* parking stalls appurtenant to their units by amending the declaration of condominium property regime and unit lease or deed (H.R.S. Section 514A-14). Any amendments must be signed by the lessor (for leasehold projects) and the unit owners whose parking stalls are being changed and their respective mortgagees that took a mortgage (H.R.S. Section 514A-14). Finally, the amendments shall only be effective upon recording or filing with the Bureau of Conveyances or the Land Court (H.R.S. Section 514A-14).

## **G. Prohibitions on Work Done by Owners to Units and Limited Common Elements**

Pursuant to H.R.S. Section 514A-89, no condominium owner shall do any work which may jeopardize the soundness or safety of the property, reduce its value, impair any easement or hereditament (things that may be inherited), add any material structure or excavate any additional basement or cellar without first obtaining the consent of 100 percent of the owners whose units or appurtenant limited common elements are directly affected, and second obtaining the consent of 75 percent of all the unit owners.

“Nonmaterial structural additions to the common elements” shall require approval only by the association board and such percentage, number or group of owners as may be required by the declaration or bylaws (H.R.S. Section 514A-89). “Nonmaterial structural additions to the common elements” is defined as a structural addition to the common elements which does not jeopardize the soundness or safety of the property, reduce its value, impair any easement or hereditament, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner (H.R.S. Section 514A-89). Examples of “nonmaterial structural additions to the common elements” include the installation of “solar energy devices” and additions/alterations made within a unit or within a limited common element designated for the exclusive use of the unit (H.R.S. Section 514A-89). “Solar energy device” is defined as any new facility, equipment, apparatus, etc. which makes use of solar energy for heating, cooling or reducing dependence upon fossil fuels, provided that if the equipment sold cannot be used as a solar device without incorporating it with other equipment, it must be installed in place and be ready to be made operational in order to qualify as a “solar energy device” (H.R.S. Section 514A-89).



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## H. Discrimination in Real Property Transactions

H.R.S. Chapter 515 governs discrimination in real property transactions in Hawaii. Pursuant to H.R.S. Sections 515-3 and 515-2, it is a discriminatory practice because of race, sex, color, religion, marital status, familial status, ancestry, disability, age or HIV infection for an owner, any person engaging in a real estate transaction, or for a licensed or unlicensed person who, for the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents or leases real property, or who negotiates/attempts to negotiate/purports to engage in these activities, or who negotiates/attempts to negotiate a loan secured by real property, or who lists real property in a publication, or who is employed by or acting on behalf of the above persons:

- To refuse to engage in a real estate transaction with a person;
- To discriminate against a person in the terms, conditions, privileges or in the furnishing of facilities/services connected with a real estate transaction;
- To refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- To refuse to negotiate for a real estate transaction with a person;
- To represent to a person that real property is not available for inspection, sale, rental or lease when it is available; or to fail to bring a property listing to the person's attention; or to refuse to permit the person to inspect real property; or to direct a person seeking to enter into a real estate transaction toward or away from real property in order to deprive them of the benefits of living in a discrimination-free environment;
- To print, circulate, post, mail; or cause a statement, advertisement or sign to be published; or to use a form of application for a real estate transaction; or to make a record or inquiry which directly or indirectly indicates an intent to make a limitation, specification or discrimination in connection with a prospective real estate transaction;
- To offer, solicit, accept, use or retain a real property listing with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of connected facilities or services;
- To refuse to engage in a real estate transaction with a person or to deny equal opportunity to use/enjoy a housing accommodation due to a disability because the person uses the services of a guide dog, signal dog or service animal. Reasonable restrictions/prohibitions, however, may be imposed regarding excessive noise or other problems caused by these animals. Reasonableness is determined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances. Depending on the circumstances, a reasonable restriction may require the owner of the service animal to observe lease and pick-up laws, to assume responsibility for damage caused by the animal, or to fumigate, deodorize, conduct professional carpet cleaning or other appropriate cleaning methods upon vacating a unit;
- To solicit or require that the buyer, renter or lessee be tested for HIV infection as a condition of engaging in a real estate transaction;

- To refuse to permit, at the expense of a person with a disability, reasonable modifications to be made to existing premises occupied by the person if modifications may be necessary to afford the person full enjoyment of the premises. If reasonable, the licensed or unlicensed person who receives a consideration for listing, selling, purchasing, exchanging, renting or leasing real property, or who negotiates/attempts to negotiate/purports to engage in such activities, or who negotiates a loan secured by real property, or who lists real property in a publication, or who acts on behalf of the above, may condition permission for modifying the premises on the disabled person agreeing to restore the interior premises to the pre-modification condition, reasonable wear and tear accepted;
- To refuse to make reasonable accommodations in rules, policies, practices or services when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation;
- When designing and constructing covered multifamily housing accommodations for first occupancy after March 31, 1991, to fail to have at least one accessible entrance, unless that is impractical because of terrain or unusual site characteristics. For housing accommodations with an accessible building entrance, the public and common use portions must be accessible/usable by disabled persons; include doors allowing passage by persons in wheelchairs; contain an accessible route into and through the housing accommodation; contain light switches, electrical outlets, thermostats and other environmental controls in accessible locations; contain reinforcements in bathroom walls to allow installation of grab bars; and contain kitchens and bathrooms accessible by wheelchair; or
- To discriminate against or deny a person access, membership or participation in any multiple listing service or other service, organization, or facility involved directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership or participation.

#### Important Note

Pursuant to H.R.S. Section 515-2, "familial status" is defined as the status of a parent having legal custody and domiciled with a minor child/children; a person domiciled with a minor child/children and who has written or unwritten permission from the legal parent; a person who is pregnant; or any person who is in the process of securing legal custody of a minor child/children.

Pursuant to H.R.S. Section 515-4, the above does *not* apply to: the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other if the lessor resides in one of the housing accommodations; to the rental of up to four rooms in a housing accommodation by an individual if the individual resides there; or to housing for older persons as defined by 42 U.S.C. Section 3607(b)(2).

Restrictive covenants and conditions in oral agreements or written instruments relating to real property are *void* if they purport to forbid or restrict the conveyance, encumbrance, occupancy or lease to individuals because of race, sex, color, religion, marital status, familial status, ancestry, disability, age or HIV infection (H.R.S. Section 515-6(a)). Every condition, restriction or prohibition, including a right of entry or possibility of reversion, which directly or indirectly limits the use or occupancy of real property on the basis of race, sex, color, religion, marital status, familial

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status, ancestry, disability, age or HIV infection is *void* (H.R.S. Section 515-6(b)). However, a religious limitation on the use of real property held by a religious organization or by a religious or charitable organization operated, supervised or controlled by a religious organization and used for religious or charitable purposes is *not* void (H.R.S. Section 515-6(b)). Also, it is *not* a discriminatory practice for a religious organization or a charitable or educational organization operated, supervised or controlled by a religious organization to give preference to members of the same religion in a real property transaction, unless religious membership is restricted on account of race, color or ancestry (H.R.S. Section 515-8)).

It is a discriminatory practice for a person to represent, for the purpose of inducing a real estate transaction from which the person may benefit financially, because of race, sex, color, religion, marital status, ancestry, disability, age or HIV infection, that a change has, will or may occur in the composition of the occupants in the area in which real property is located, or that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the area (H.R.S. Section 515-7(1),( 2)). Such discriminatory practices are commonly known as “blockbusting” (H.R.S. Section 515-7).

Other discriminatory practices include *conspiracy* to:

- Retaliate, threaten or discriminate against a person because of the exercise of any right covered by H.R.S. Chapter 515, or because the person has opposed a discriminatory practice, or made a charge, filed a complaint, testified, assisted or participated in an investigation, proceeding or hearing under H.R.S. Chapter 515 (H.R.S. Section 515-16(1));
- Aid, abet, incite or coerce a person to engage in a discriminatory practice (H.R.S. Section 515-16(2));
- Interfere with any person’s exercise of any right protected by H.R.S. Chapter 515 or with the duties and powers of the Hawaii Civil Rights Commission (H.R.S. Section 515-16(3));
- Obstruct a person from complying with H.R.S. Chapter 515 or an order issued pursuant to that chapter (H.R.S. Section 515-16(4));
- Intimidate or threaten any person engaging in activities to make others aware of rights protected by H.R.S. Chapter 515 (H.R.S. Section 515-16(5)); or
- Threaten, intimidate or interfere with persons in their enjoyment of a housing accommodation because of race, sex, color, religion, marital status, familial status, ancestry, disability, age or HIV infection, or of visitors or associates of such persons (H.R.S. Section 515-16(6)).

Finally, direct or indirect *attempts* to commit a discriminatory practice constitute a discriminatory practice (H.R.S. Section 515-17).

Readers may contact the **Hawaii Civil Rights Commission at 586-8640** regarding complaints about alleged discriminatory practices in real property transactions, or for more information regarding H.R.S. Chapter 515.

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## IV. USEFUL INFORMATION SOURCES

### Important Note

To place toll free calls to state agencies from the neighbor islands, readers may dial the following toll free numbers and then the last five digits of the state agency you want to call: **Kauai** 274-3141; **Maui** 984-2400; **Hawaii** 974-4000; **Molokai & Lanai** 1-800-468-4644.

#### A. Real Estate Branch, DCCA and the Real Estate Commission

*Mailing and Office Address:* 250 S. King Street, Room 702; Honolulu, HI 96813 (located in downtown Honolulu at the mauka-ewa corner of King and Richards Streets)

*Web Site:* <http://www.hawaii.gov/hirec>

*Telephone: 586-2643* for information regarding: real estate broker and salesperson licensing laws and rules; broker corporation, partnership, limited liability company, limited liability partnership, trade name, branch office, site office; real estate recovery fund; restoration and reinstatement of real estate licenses; Real Estate Commission meetings and agendas; and to contact Executive Officers.

*Telephone: 586-2645* for information regarding: prelicensing and mandatory continuing education; real estate schools and instructors; broker experience certificates; educational waivers; real estate examinations; Education Review Committee and Laws & Rules Review Committee meetings and agendas; and to contact Real Estate Specialists.

*Telephone: 586-2644* for information regarding: condominium project registration and public reports; condominium association, managing agent, hotel operator and limited equity cooperative registration; condominium association and CPR registration forms; and to contact Condominium Specialists.

*Telephone: 586-2646* for information regarding condominium governance and management, H.R.S. Chapter 514A and H.A.R. Title 16 Chapter 107; Condominium Review Committee meetings and agendas; and to contact Condominium Specialists.

#### B. Licensing Branch, DCCA

*Mailing Address:* P.O. Box 3469; Honolulu, HI 96801

*Office Address:* 1010 Richards Street, First Floor (located in downtown Honolulu at the mauka-ewa corner of King and Richards Streets)

*Telephone: 586-3000* for verification of licensing status; for application forms for real estate broker & salesperson, broker corporation/partnership/branch office, change form, site office and office location & condominium hotel operator exemption forms, educational waiver, broker experience certificate, condominium hotel operator and managing agent registration; for information regarding restoration of forfeited licenses, reinstatement of suspended licenses, license renewals; for submission of application forms and general questions regarding application forms; for review or copies of licensing records, duplicates of licenses, educational waivers, experience certificates and license renewal applications.

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### **C. Cashier's Office, DCCA**

*Mailing Address:* Cashier-DCCA; P.O. Box 541; Honolulu, HI 96809

*Office Address:* 1010 Richards Street, Third Floor (located in downtown Honolulu at the mauka-ewa corner of King and Richards Streets)

*Telephone:* 586-2832 for information regarding availability and current cost of unofficial copies of Hawaii Revised Statutes and Hawaii Administrative Rules. No telephone requests for copies of laws and rules are accepted. Requests must be made in person or in writing accompanied by the correct amount of cash or check made payable to the "DCCA."

### **D. Regulated Industries Complaints Office (RICO), DCCA**

For questions regarding filing complaints against real estate licensees; condominium hotel operators and managing agents; real estate schools or instructors; unlicensed persons engaging in such activities requiring a license; and RICO's jurisdiction over H.R.S. Chapter 514A-46, 47 and 48:

*Oahu Address & Telephone:* State Office Tower; 235 S. Beretania St., 9th Floor; Honolulu, HI 96813; Consumer Resource Center 587-3222; Prior Complaints History 586-2677; Investigation Section 586-2676; Legal Section 586-2660; Administration 586-2666

*Web Site:* <http://www.hawaii.gov/dcca/rico>

*Kauai Address & Telephone:* 3060 Eiwa Street, Room 204; Lihue, HI 96766; Telephone: 274-3200

*Maui Address & Telephone:* 1063 Lower Main Street, Suite C-216; Wailuku, HI 96793; Telephone: 243-5808 or 243-5809

*Hilo Address & Telephone:* 345 Kekuaaoa Street, Suite 31; Hilo, HI 96720; Telephone: 933-8846 or 933-8847

*Kona Address & Telephone:* Keauhou Shopping Village; 78-6831 Alii Drive, Room 134A; Kailua-Kona, HI 96740; Telephone: 329-6684

### **E. Office of Consumer Protection, DCCA**

*Oahu Address & Telephone:* State Office Tower; 235 S. Beretania Street, Suite 801; Honolulu, HI 96813; Investigation and Prior Complaints 586-2630; Landlord-Tenant Code Information 586-2634; Legal Section and Executive Director 586-2636; Fax: 586-2640

*Web Site:* <http://www.hawaii.gov/dcca/ocp>

*Maui Address & Telephone:* 54 High Street; P.O. Box 1098; Wailuku, HI 96793; Telephone: 984-8244; Fax: 984-8245

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*Hawaii Address & Telephone:* 75 Aupuni Street; Hilo, HI 96720; Telephone: 974-6230; Fax: 974-6233

**F. Time Share Program and Subdivision Program, DCCA**

*Mailing Address:* P.O. Box 3469; Honolulu, HI 96801

*Office Address:* 1010 Richards Street, Room 707 (located in downtown Honolulu at the mauka-ewa corner of King and Richards Streets)

*Telephone:* 586-2709

**G. Mortgage Brokers and Solicitors Program and Real Estate Collection Servicing Agents Program, DCCA**

*Mailing Address:* P.O. Box 3469; Honolulu, HI 96801

*Office Address:* 1010 Richards Street, First Floor (located in downtown Honolulu at the mauka-ewa corner of King and Richards Streets)

*Mortgage Brokers and Solicitors Telephone:* 586-3000 (for general inquiries); 586-2702 (for specific inquiries)

*Real Estate Collection Servicing Agents Telephone:* 586-2702

**H. Hawaii Real Estate Research & Education Center (HREREC)**

*Office Address:* College of Business Administration, University of Hawaii; 2404 Maile Way; Honolulu, HI 96822

*Web Site:* <http://www.cba.hawaii.edu/rec>

*Telephone:* from Oahu 956-7892 or toll free from neighbor islands 1-800-642-4756

The following publications are available through HREREC:

- *Board of Directors Guides:* on Fiduciary Duty; Proxies; Condominium Insurance-Including Fidelity Bonds; Sense of Community; New Rights to Fair Housing in Hawaii; and An Introduction to Condominium Living in Hawaii. A guide regarding antidiscrimination in Hawaii condominiums will also be published in 1998.
- *Condominium Reserves Reference Manual:* a practical manual designed to assist condominium association boards in understanding how to: perform a reserve study; to develop a funding plan for establishing adequate replacement reserves; to create a plan to raise inadequate reserves to at least the minimum fifty percent estimated replacement reserve requirement as well as to exceed the minimum funding requirement; and to assist buyers in understanding the financial implications of the association's replacement reserve funding.

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- ***Hawaii Condominium Bulletin***: a quarterly newsletter mailed to registered Hawaii condominium associations and managing agents regarding legal and administrative issues facing condominium associations, boards, managers and managing agents. Individual subscriptions are also available for purchase from HREREC.

To obtain a Publication Description & Order Form for the above publications, readers may call HREREC or visit its website.

## **I. Condominium Reference Library**

A collection of condominium publications is available for public reference at Hawaii State library branches on all major islands. A set of condominium reference materials is also available at the Real Estate Branch, DCCA; 250 S. King Street, Room 702; Honolulu, Hawaii (located in downtown Honolulu at the mauka-ewa corner of King and Richards Streets).

## **J. Condominium Mediation Services**

The Real Estate Commission subsidizes the following statewide and Maui mediation services with mediators specifically trained to assist in resolving condominium disputes:

***Statewide Mediation Services***: Neighborhood Justice Center; 200 N. Vineyard Boulevard, Suite 320; Honolulu, HI 96817; Telephone: 521-6767; E-mail: njc@pixi.com

***Maui Only Mediation Services***: Mediation Services of Maui, Inc.; Cameron Center; 95 Mahalani Street; Wailuku, HI 96793; Telephone: 244-5744; E-mail: msm@maui.net

## **K. Condominium Arbitration Services**

To contact local arbitrators, parties to condominium-related disputes may consult the Yellow Pages of the telephone book under "Arbitration Services."

## **L. Housing Discrimination Agencies**

***State***: Hawaii Civil Rights Commission; 830 Punchbowl Street, Room 411; Honolulu, HI 96813; Administration 586-8636; Complaints 586-8640; Fax 586-8655; E-mail: hcrc@aloha.com

***Federal***: U.S. Department of Housing and Urban Development - Hawaii State Office; Seven Waterfront Plaza, Suite 500; 500 Ala Moana Boulevard; Honolulu, HI 96813-4918; Telephone: 522-8182 ext. 269; Web Site: <http://www.hud.gov>

## **M. Bureau of Conveyances and Land Court**

Official copies of association declarations of condominium property regimes and bylaws plus any amendments are filed at either the Bureau of Conveyances or the Land Court.

***Bureau of Conveyances***: (Mail) Attention: Regular System; P.O. Box 2867; Honolulu, HI 96803; (Office) 1151 Punchbowl Street, Room 121; Honolulu, HI 96813; Telephone: 587-0134 or 587-

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0135; Fax: 587-0136; Web Site: <http://www.hawaii.gov> (then select "Department of Land and Natural Resources" or "DLNR" to access the Bureau of Conveyances)

**Land Court:** (Mail) Attention: Land Court; P.O. Box 2867; Honolulu, HI 96803; (Office) 1151 Punchbowl Street, Room 121; Honolulu, HI 96813; Telephone: 587-0138 or 587-0139; Fax: 587-0136

## **N. Legislative Reference Bureau**

**Office Address:** State Capitol; 415 S. Beretania Street, Room 413; Honolulu, HI 96813

**Web Site:** <http://www.state.hi.us/lrb/>

**Telephone:** 587-0700 for information regarding bills and acts

## **O. Housing Finance Development Corporation**

**Office Address:** 677 Queen Street, Suite 300; Honolulu, HI 96813

**Web Site:** <http://www.hawaii.gov> (then select "Hawaii State Government," "Departments and Agencies," or "Department of Budget and Finance")

**Telephone:** 587-0500 to contact the Land Programs Branch for inquiries regarding disclosure requirements for leasehold real property transactions and the Land Reform Act (lease to fee conversion of residential real property)

**Fax:** 587-0600

## **P. Condominium Education Providers**

**Alakahi Foundation:** 1142 Auahi Street, Suite 1806; Honolulu, HI 96814; Telephone: 988-6670; Fax: 528-4402; E-mail: [adtech@concentric.net](mailto:adtech@concentric.net)

**Community Associations Institute (CAI) - Hawaii Chapter:** P.O. Box 976; Honolulu, HI 96808; Telephone: 488-1133; Fax: 536-8699; E-mail: [CAIHI@gte.net](mailto:CAIHI@gte.net)

**Hawaii Council of Associations of Apartment Owners (HCAAO):** 677 Ala Moana Boulevard, Suite 701; Honolulu, HI 96813; Telephone: 533-2528; Fax: 531-2715

**Hawaii Institute for Continuing Legal Education (HICLE):** 2515 Dole Street, Suite 203; Honolulu, HI 96822-2369; Telephone: 956-6551; Fax: 946-7366

**Institute of Real Estate Management (IREM) - Hawaii Chapter No. 34:** 1136 12th Avenue, Suite 220; Honolulu, HI 96816; Telephone: 737-4000; Fax: 737-4977; E-mail: [irem@hawaiiirealtors.com](mailto:irem@hawaiiirealtors.com); National Web Site: <http://www.irem.org>



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**Condominium Council of Maui:** P.O. Box 647; Kihei, HI 96753; Telephone: 879-8847; Fax: 874-1420; E-mail: [miskae@mauigateway.com](mailto:miskae@mauigateway.com)

**Oahu Arm Committee:** 1571 Piikoi Street #506; Honolulu, HI 96822; Telephone: 523-6096; Fax: 536-8699

**Special and Professional Programs, College of Continuing Education & Community Service, University of Hawaii:** 2530 Dole Street, Sakamaki D-400; Honolulu, HI 96822; Telephone: 956-8244; Fax: 956-2194; Web Site: [www.ccecs.arthum.hawaii.edu](http://www.ccecs.arthum.hawaii.edu)

#### **Q. Hawaii Association of Realtors and Boards of Realtors**

**Hawaii Association of Realtors:** 1136 12th Avenue, Suite 220; Honolulu, HI 96816; Telephone: 737-4000; Fax: 737-4977; E-mail: [har@hawaiiirealtors.com](mailto:har@hawaiiirealtors.com); Web Site: <http://www.hawaiiirealtors.com>

**Honolulu Board of Realtors:** 1136 12th Avenue, Suite 200; Honolulu, HI 96816; Telephone: 732-3000; Fax: 732-3055; E-mail: [hbradmin.com](mailto:hbradmin.com); Web Site: <http://www.hicentral.com>

**Hawaii Island Board of Realtors:** 14 Waianucnuc Avenue; Hilo, HI 96720; Telephone 935-0827; Fax: 935-4924; E-mail: [hibr@interpac.net](mailto:hibr@interpac.net)

**Kona Board of Realtors:** 76-6225 Kuakini Highway, Suite C-106; Kailua-Kona, HI 96740; Telephone: 329-4874; Fax: 329-5191; E-mail: [konareal@gte.net](mailto:konareal@gte.net)

**Maui Board of Realtors:** 2115 Wells Street; Wailuku, HI 96793; Telephone: 242-6431; Fax: 242-5907; E-mail: [terry@mauibr.com](mailto:terry@mauibr.com); Web Site: [www.mauibr.com](http://www.mauibr.com)

**Molokai Board of Realtors:** P.O. Box 1980; Kaunakakai, HI 96748; Telephone: 553-9009; Fax: 553-9009; E-mail: [cpgroup@aloha.net](mailto:cpgroup@aloha.net)

**Kauai Board of Realtors:** 4359 Kukui Grove Street, Suite 103; Lihue, HI 96766; Telephone: 245-4049; Fax: 246-0409; E-mail: [kbr@hawaiian.net](mailto:kbr@hawaiian.net)



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