



# Hawaii Condominium Bulletin

## Hurricane Season Preparedness

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June 1 is the start of the hurricane season in Hawaii. This is a good time to prepare for any potential natural disasters. Make sure you have supplies (water, food, medicine, pet food, etc.) and that you are aware of any plans for sheltering within your condominium association, or know the location of the nearest shelter if you must evacuate.

Experts suggest having cell phones charged and prepared to text in case voice communications are down. The Insurance Division of the DCCA reminds you to look at your home and hurricane insurance policies before a natural disaster to know what is covered.

For more emergency tips, visit <http://scd.hawaii.gov/preparedness.html> and check out the brochure attached at the end of this newsletter.

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This material can be made  
available for individuals with  
special needs. Please call the  
Senior Condominium Specialist  
at (808) 586-2643 to  
submit your request.

# Letter from the Chair



It's been a busy 1st half of 2013, with the legislative session and a multitude of Condominium related seminars.

In this issue of the Bulletin we have a Legislative Update on bills that affect condominiums, information on Condominium Association Biennial Registrations, mediation case summaries, information on Security Guard Certification and hurricane preparedness information.

Two pieces of legislation have peaked my interest; one being the Security Guard Certification and the other the ability to charge an additional Security Deposit for "Pets". The Security Guard Certification was a piece of legislation from 2010 that goes into effect July 1, 2013, to ensure that Security Guards in AOUO's and elsewhere are properly trained and certified. All security guards must have the training and certification to perform in their duties as security guards.

Senate Bill 328, Relating to Animals, allows a landlord to get an additional security deposit to pay for damages from a pet residing in the premises. Hopefully this will open up more rental properties to those tenants that are responsible pet owners. It is important to remember however, that even though the law will allow the collection of an additional deposit for pets, this does not automatically mean that pets will be allowed in all rentals. The owner of the rental still retains the choice of allowing pets or not, and there are condominiums and apartments where pets are not allowed.

Another important aspect of the legislation is that it does not affect "Reasonable Accommodations" under the Federal Fair Housing Act, whereas you cannot charge an additional deposit for a "Service Animal" which under the Federal Fair Housing Act includes "Emotional Support Animals" (See "Ask the Condominium Specialist" in this issue regarding additional security deposits for an assistance animal.) Although the Department of Justice changed the definition of "Service Animal" under the Americans with Disabilities Act effective March 15th 2011, which took out "Emotional Support Animals" as a recognized Service Animal, the Department of Justice Memo specifically stated that the change does not affect the definition under the Federal Fair Housing Act. This is because the Americans with Disabilities Act deals with Public Accommodations such as offices, banks, stores, etc., as well as transportation and not with "residential property" which falls under the Federal Fair Housing Act.

It's important for AOUOs to remember to get proper legal advice before creating rules regarding service animals in their respective Associations, otherwise you may end up violating Federal Law.

In closing I would like to say Mahalo to the REC Condominium Staff for taking the time to monitor all the great condominium seminars offered throughout the year. Their attendance helps track the quality of the programs which are partially funded by the Condominium Education Trust Fund, and help to relay the information in the Bulletin.

Aloha.  
Scott A. Sherley  
Chair, Condominium Review Committee

# Security Guard Certification

By Lillian McCarthy, CMCA®, AMS®, PCAM®

*This article is adapted from one that appeared in the February 2013 edition of the CAI Hawaii Newsletter. While the classes are no longer offered, the information on the law that takes effect on July 1, 2013, is timely and helpful to those condominium associations that employ in-house security. We thank Lillian McCarthy and CAI Hawaii for allowing us to reprint this item.*



The requirement for security guard training will be here as of July 1, 2013. If you have a private security firm providing security for your property, the security firm is responsible to ensure all of the guards on their payroll and assigned to your property are properly trained and certified.

For those properties that employ their own in-house security guards, the property is responsible to make sure all of the personnel who work as security guards are properly trained and credentialed by July 1, 2013.

Earlier in the year, Honolulu Community College and Kapiolani Community College offered training classes to satisfy conditions set forth in the new law. If you have in-house security and have not trained your security guards, you may want to contact either Honolulu Community College or Kapiolani Community College to determine if classes are still offered.

As a short recap, all security guards must be at least 18 years of age, have a high school diploma or equivalent, not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to the person's performance as a guard, and shall not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the individual to act as a guard, unless the conviction has been annulled or expunged by court order.

More detail may be found in Act 208 (2010) – Chapter 463 of the Hawaii Revised Statutes.

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# Ask the Condominium Specialist

**Q: May I charge an additional security deposit for a tenant's assistance animal?**

A: No. SB 328, which awaits governor approval, allows a landlord to get an additional security for a pet animal residing in the premises, provided that no landlord shall require any additional security deposit amount for an assistance animal that is a reasonable accommodation for a tenant with a disability under HRS § 515-3 (HRS Chapter 515 is the "Discrimination in Real Property Transactions" law.)

Condominium associations must make reasonable accommodations for owners or tenants with assistance animals. Condominium associations that have "pet" policies should consult with the association attorney to understand the legal distinction between a "pet" and "assistance animal" and to assure compliance with SB 328 and all other applicable laws.

**Q: May I rent out my condominium unit while making necessary renovations?**

A: The answer is "it depends". Will the unit be habitable and livable during renovations? Will access or entry be limited by renovation construction?

The condominium statute, HRS Chapter 514B, does not address the question you raised. While consulting with an attorney in this matter is critical to ensure absolute compliance with all applicable laws, the Residential Landlord-Tenant Code, HRS Chapter 521, may provide some additional guidance. The Office of Consumer Protection is the agency responsible for providing information to the public about the Residential Landlord-Tenant Code. It offers a Landlord-Tenant Hotline that is available M-F, 8:00 – 12:00 at 586-2634. You may also go on-line at [hawaii.gov/dcca/ocp](http://hawaii.gov/dcca/ocp) for additional information and materials.

The information provided herein is informal and for general informational purposes only. Consult with an attorney familiar with the Hawaii condominium law for specific legal advice regarding a particular situation.

## AOUO Biennial Registration

If you've not yet completed your condominium biennial association registration, the current AOUO registration period ends on June 30, 2013. Registrations submitted after that date will incur statutory penalties.

HRS § 514B-103 requires all condominium associations of six or more units to register with the Real Estate Commission ("Commission"). The upcoming biennial registration period will run from July 1, 2013, through June 30, 2015. Registration information may be accessed at: [aouo.ehawaii.gov](http://aouo.ehawaii.gov).

This year's registration reflects the amendment to HAR Chapter 53 condominium fees, effective December 31, 2012, that increased the condominium education trust fund fee ("CETF"), per unit, from \$2 annually, to \$3.50, and the biennial fee from \$4 to \$7. This is the first increase in per unit CETF registration fees in twenty years.

The information collected on the registration is made available to the members of the Legislature and general public upon specific request. It is also available for public viewing at the Commission's website. Prospective purchasers and real estate licensees use the association registration information when considering condominium purchases; financial institutions utilize this information to check on the registration and financial status of a condominium association for re-financing or mortgage purposes.

Condominium unit owners should be aware that condominium associations which fail to register lack standing to maintain an action or proceeding in the courts of the State of Hawaii. Unregistered associations are also precluded from filing an action to collect delinquent maintenance fees or foreclose on a lien for the collection of common expenses.

As of the first week of June, over 1,100 associations had completed their on-line registrations.

Any questions regarding the registration process may be directed to Commission staff at (808) 586-2643.

# 2013 Legislative Update

## Hawaii Council of Associations of Apartment Owners Annual Meeting

Bills affecting condominium associations have been sent to the Governor for his signature. He has until June 24, 2013, to veto any bill sent to him and until July 9, 2013 to sign a bill; un-signed bills become law without his signature.

At the Hawaii Council of Associations of Apartment Owners Annual Meeting held on May 9, 2013, these bills were discussed by attorneys Jane Sugimura, John Morris and Chris Goodwin. During a question and answer period, they answered questions from the audience on among other things, pet vs. assistance animal policies in condominium associations, mediation as a means to resolving condominium disputes and the ability of condominium associations to proceed unimpeded with the foreclosure process.

HB 21, Relating to Condominiums – Permits the board of directors of a condominium association to collect a six-month special assessment from the mortgagee or other purchaser of a unit with a recorded lien for delinquent common assessments. Specifies how excess rental income received by a condominium association shall be paid to existing lien holders.

HB 25, Foreclosure Actions; Junior Lienholders; Condominium Associations – Allows a condominium association, as a junior lienholder, to commence or continue a nonjudicial foreclosure action on a property subject to a judicial foreclosure even if the lender has filed for foreclosure. Preserves the right of owner-occupants to require the foreclosing mortgagee to participate in the dispute resolution process in situations where an association forecloses on residential real property occupied by one or more owner-occupant mortgagors for whom the unit is and has been the person's primary residence for a continuous period of not less than two hundred days immediately preceding the date on which the notice is served and the mortgagee subsequently forecloses its lien on the same property. Effective July 1, 2013.

SB 505, Relating to Condominiums – Adds support for mediation of condominium related disputes as one of the educational purposes supported by the condominium education trust fund. Beginning with the July 1, 2015, biennium registration, imposes an additional annual condominium education trust fund fee dedicated to supporting mediation of condominium related disputes. Specifies the total fee payable into the condominium education trust fund. Requires the real estate commission to make adjustments to the condominium education trust fund to ensure adequate funds are available for mediation of condominium related disputes and any mediation requests are fully accommodated prior to the commencement of the additional annual condominium education trust fund fee.

SB 328, Relating to Animals – Allows a landlord to get an additional security deposit to pay for damages by a pet animal residing in the premises; provided that no landlord shall require any additional security deposit amount for an assistance animal that is a reasonable accommodation for a tenant with a disability under HRS § 515-3. This is an important piece of legislation that, if it becomes law, will allow the owners of condominium units to collect an additional security deposit for pets on rental units on an amount agreed upon by the landlord and tenant.

# Mediation Case Summaries

From March 2013 through May 2013, the following condominium mediations were conducted pursuant to Hawaii Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. Additional condominium mediations may have been conducted through the District Court process by the providers listed below along with Kaua'i Economic Opportunity, Mediation Services of Maui and Kuikahi Mediation Center.

## West Hawaii Mediation Center

PARTIES	ISSUE	DISPOSITION
Owner vs. Board	Owner not paying maintenance fees.	Mediation occurred; no agreement reached.

## Mediation Center of the Pacific

Owner vs. Board	Determine responsibility for repairs to unit from common element leak.	Mediated; no agreement.
Owner vs. Board	Owner access to association information.	Mediation declined by board.
Owner vs. Board	Board changes to and maintenance of common area and issue of owner approval.	Mediation declined by board.
Board vs. Owner	Issue of board responsibility to act in accordance with project documents.	Owner declined mediation.
Owner vs. Board	Owner's access to information; board compliance with governing documents.	Mediated; no agreement.
Owner vs. Board	Issue of owner's representatives' right to attend board meetings.	Mediated; no agreement.

# 2013 Real Estate Commission Meeting Schedule

**Laws & Rules Review Committee – 9:00 a.m.**

**Condominium Review Committee – Upon adjournment of  
the Laws & Rules Review Committee Meeting**

**Education Review Committee – Upon adjournment of the  
Condominium Review Committee Meeting**

**Real Estate Commission – 9:00 a.m.**

Wednesday, June 12, 2013

Wednesday, July 10, 2013

Wednesday, August 7, 2013

Wednesday, September 11, 2013

Wednesday, October 9, 2013

Wednesday, November 13, 2013

Wednesday, December 11, 2013

Friday, June 28, 2013

Friday, July 26, 2013

Friday, August 23, 2013

Friday, September 27, 2013

Friday, October 25, 2013

Wednesday, November 27, 2013

Friday, December 20, 2013

The June Committee meetings will be held on the island of Kaua'i in the Lihue State Office Building, 3rd Floor Conference Room at 3060 Eiwa Street. All other meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) or call the Real Estate Commission Office at (808) 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at (808) 586-2643 to submit your request.

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