



Hawaii Condominium Bulletin

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New Energy Codes Keep Coming and Can Be Exceeded

Howard C. Wiig (hwiig@dbedt.hawaii.gov)

Howard Wiig is an Energy Analyst with the State Energy Office of the Department of Business, Economic Development and Tourism. He recently presented a version of this article at the Hawaii Council of Community Associations Energy Seminar on February 13, 2014.

Building energy codes are updated every three years and still fall behind rapidly improving building technologies. In 1975, Moore's Law predicted that information technology would double in capacity every 18 months and it has proven to be close to the mark. Consider that the iPhones seemingly glued to every teenager's hands didn't even exist seven years ago. Likewise, building technologies become more efficient and responsive every year. Building managers who keep up with improvements can reduce energy costs while providing high-grade lighting, cooling and water heating.

Hawaii's next building energy code will be 2012 IECC, which is 30 percent more efficient than the current 2006 IECC. By the time it's adopted, improved technology will be far ahead of code specifications. Building designers should have no problem voluntarily following and even exceeding 2012 IECC, provided they override "value engineers" seeking to eliminate high-efficiency features.

One of Hawaii's amendments to 2012 IECC does keep up with emerging technologies. Data sites (rooms that house servers) produce heat. The traditional means of cooling sites were specifying 65 degree air and low humidity levels. Companies like Amazon and Google found that servers worked fine with higher temperature and humidity settings, and focus now on exhausting the sites' "hot spots" and allowing outside air to provide the cooling. The savings is in the range of 80 percent.

Hawaii's codes also lead the nation in crediting heat-reflective walls and roofs. Titanium dioxide (TiO₂) is mixed into wall and roof coatings and paints to reflect solar heat while retaining desired colors. TiO₂ is the active ingredient in sunscreen and is the reason it's white.

Window efficiency in Hawaii is measured in Solar Heat Gain Coefficient (SHGC) which measures the amount of heat striking a window compared to how much heat enters the interior. There are now commercial windows with SHGC's as low as .20, meaning that only 20 percent of the heat enters the space. For existing windows, there are window films that deliver .20 SHGC and are hurricane resistant. The 2012 IECC specifies .25 SHGC.

While some in the lighting industry survey the onslaught of LED's and consign fluorescents to the dustbin of history, they don't track the revolutionary improvements in four-foot fluorescents, which now offer a range of CCT's (colors), have lower mercury levels, and live up to 80,000 hours. At the moment, their life cycle cost is about 10 percent that of LED four-footers, when measured by output of "kilo lumen per watt." They're definitely more cost effective for the next few years. That said:

- LED's are The (Electric) Charge of the Light Brigade. LED's are more cost effective for down lights, area lights, streetlights, and security lights—every category except linear lights. Their beams can be aimed with near-surgical precision, eliminating almost all the lumens that other sources waste. LEDs' average efficacy is now up to 69 lpw and climbing.

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Letter from the Chair



Aloha,

March brings us knee deep into the Condominium Association Annual Meeting Season and Legislative Session. The Real Estate Commission is tracking several bills related to Condo Associations and submitting testimony as needed. One that has my attention; Senate Bill 2363 proposes to amend HRS Chapter 514B by adding provisions that would, among other things, require board members and condominium managing agents to disclose potential conflicts of interest when considering contracts of \$200,000 or more. Our current statute already provides for disclosure of ANY conflicts of interest, so adding a \$200,000 minimum would actually lower the standard that already exists. Although SB 2363 was deferred in the Senate, its companion bill in the House, House Bill 2401 remains alive.

We also have information from the CAI Hawaii presentation of “Preparing for and Surviving the Annual Meeting Season” in January that should be of interest to those AOUO’s still on track for their Annual Meeting, as well as some excellent information in our Ask the Condominium Specialist section.

Aloha

Scott A. Sherley

New Energy Codes Keep Coming and Can Be Exceeded (cont. from page 1)

- LED’s are as rugged as incandescents and can be dimmed and switched on and off indefinitely. In hallways or parking garages, they can be full-on during busy hours, at half brightness during non-busy hours, and off when there’s almost no traffic. Motion sensors then switch on the fixtures necessary to illuminate the in-coming car or person. The total savings can be as high as 80 and even 90 percent.
- Only Energy Star or other lab-certified lamps should be specified—there’s still junk out there.
- Finally, “color as medicine.” In the near future, the vast range and dynamism of LED colors will create moods from calming to exciting and will be tailored to heal patients while delivering 50 percent energy savings.

A measure that didn’t make it into Hawaii’s amendments and is highly recommended involves the complete shutdown of IT equipment during off hours. When a computer (or your home TV) is “off,” it’s still consuming about 20 percent of its rated energy. Installing a master switch to shut the equipment 100 percent off is a huge energy saver—especially over weekends.

Assistance Animals and the Landlord Tenant Code

By Scott Sherley, Broker, Commissioner, Big Island

Act 206 of the 2013 Hawaii Legislative Session amends Hawaii Revised Statutes (“HRS”), Chapter 521, the Hawaii Residential Landlord-Tenant Code. Act 206 provides for security deposits that include an additional amount to pay for damages caused by any pet animal, except for assistance animals, allowed to reside in the premises pursuant to the rental agreement. The new law applies to rental agreements entered into on or after November 1, 2013.

One key to this legislation is the term “except for assistance animals”, meaning you cannot charge a security deposit for an Assistance Animal, nor can you deny occupancy of a prospective tenant with an Assistance Animal. Hawaii law is fairly liberal regarding this type of animal, but there is a need to clarify the differences since there are two Federal Laws that affect what this type of animal is.

Under the Americans with Disabilities Act (“ADA”) (Amended March 15th 2011), service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties.

Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person’s disability. Dogs whose sole function is to provide comfort or emotional support **do not qualify** as service animals under the ADA. In addition to the provisions about service dogs, the Department of Justice revised ADA regulations with a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. However, these are the rules under the ADA, which is for public accommodations such as restaurants, banks, real estate offices etc. This does not change what is allowed as an assistance animal under Federal Fair Housing law. Persons with a disability may have an “Emotional Support Animal”. The Dept. of Justice in their memo announcing the change to Service Animals in their official memo clarified that the new rules under the ADA do not change the definitions of service animals under the Federal Fair Housing Act. If a prospective tenant has a valid Emotional Support Animal, they cannot be denied a rental because of the animal nor can the landlord charge an additional security deposit as noted in ACT 206. Care should also be given on how you handle this situation should it occur. You MAY Ask:

Is this a Service Animal?

What task does this Service Animal provide?

YOU CANNOT:

- *Require special identification for the animal*
- *Ask the person’s disability*
- *Charge additional fees*
- *Refuse admittance, isolate, segregate or treat less favorably.*

A person with a disability cannot be asked to remove the service animal UNLESS:

- *The animal is out of control and the owner does not take effective action to control the animal*
- *The animal possess a **direct threat** to the health and safety of others*

You may also request verification from the tenant as to the Assistance Animal, such as a form filled out by the prospective tenant’s medical provider. Make sure you have an Office Policy in place on how to deal with these situations and request forms reviewed by your attorney. Handling the situation the correct way, and keeping up with Federal and State laws will help keep you out of trouble.

Scott A Sherley, REALTOR is a Continuing Education Instructor specializing in Fair Housing, Americans with Disabilities Act and Property Management courses. He is a broker and the Real Estate Commissioner representing the Big Island.

Ask the Condominium Specialist

Q: My condominium association will begin some long needed maintenance projects shortly. This means that our reserves will dip below the 50% mark until we build it back up to its current level. Some owners are concerned that the association will be vulnerable to regulatory sanctions from the State. We do need to keep up with our long term maintenance projects and intend to build our reserves back up and many owners do not want to delay the maintenance. Will we be subject to regulatory sanctions if our reserves fall below 50%?

A: HRS § 514B-148 (b) provides that if a condominium association is not using the cash flow method of accounting, “the association shall assess the unit owners . . . a minimum of fifty per cent of the estimated replacement reserves”. In Hawaii, the primary enforcement burden for HRS § 514B-148 is on the owners of the association. There is no government agency with enforcement jurisdiction over this particular matter. This is consistent with the basic philosophy of the condominium law in Hawaii, i.e., self-enforcement by the owners and majority rule. In addition, the Regulated Industries Complaints Office, the enforcement arm of the DCCA, does not have enforcement jurisdiction over HRS § 514B-148. Consult with an attorney who can advise members on how to avoid or minimize liability under the law governing replacement reserves while the association is undergoing the maintenance projects. Another factor to be considered is the negative impact delaying maintenance on the association property will have on current and future owners.

Q: Must the condominium managing agent for my association be registered with the Real Estate Branch?

A: There is no registration requirement for condominium managing agents (“CMA”) unless the CMA is a trust company authorized to do business under article 8 of Chapter 412, Hawaii Revised Statutes. The applicable law provides that only licensed real estate brokers and trust companies may act as a condominium managing agent and that the registration requirement does not apply to licensed real estate brokers. All other requirements set forth in HRS § 514B-132 apply, however, and licensed real estate brokers are subject to the jurisdiction of the Regulated Industries Complaints Office regarding any alleged violations of HRS § 514B-132 or the real estate licensing law, HRS Chapter 467.

Q: We are a group of condominium owners who are unhappy about some actions taken by our condominium board. We also feel they are not giving enough attention to owners’ opinions. We want our opinions considered. What can we do?

A: You can make your thoughts known to the board in addition to asking that your opinions be considered. If this fails and owners continue to be frustrated with the direction the board is taking, owners may want to avail themselves of an important procedural mechanism in the law, set forth in HRS § 514B-121. This provision allows for special meetings of the condominium association to be called for any reason, “by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the unit owners”. Together with the majority rule concept, there is strength in numbers for owners who seek to make changes to the board membership or who simply desire a discussion of issues, either of which may take place at a special meeting. In your case, with a petition signed by at least 25 per cent of the owners, you may call a special meeting to air your concerns and make your voices heard.

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.

2014 Legislative Update

January 15, 2014, marked the opening day of the 27th legislature. This is a “carryover” session which means that some bills will be “carried over” from last year’s legislative session for further consideration. The session has gotten off to a quick start. Within two weeks of its opening date, Real Estate Branch staff was attending hearings, tracking and testifying on numerous legislative proposals that would affect the condominium community.

Senate Bill 2363 proposed to amend HRS Chapter 514B by adding provisions that would, among other things, require board members and condominium managing agents to disclose potential conflicts of interest when considering contracts of \$200,000 or more and require the Real Estate Commission to report annually on complaints and enforcement actions taken. SB 2363 generated much testimony both in support and in opposition. On February 4, 2014, SB 2363 was deferred, primarily because the bill’s requested protections already exist in the current law, and in some instances would offer condominium owners less protection than currently exists. For example, the current law provides that conflicts must be declared on any issue, regardless of monetary amount. The proposed SB 2363 would lower the standard by allowing directors to vote on matters up to \$200,000 without declaring a conflict.

State Senator Rosalyn Baker instructed the Real Estate Branch, Regulated Industries Complaints Office and CAI Hawaii to create educational materials for condominium owners. These materials will focus on educating condominium owners about the emphasis in the condominium law on the philosophy of self-enforcement by the owners with minimum government involvement; inform owners of the methods of dispute resolution available to them for the most common disputes; educate owners on the procedural means available to all owners to remove board members; emphasize the concept of “majority rule” within condominium associations; and explain the forthcoming mediation process to commence in July 2015 as a result of Act 187 (2013). HB 2401 is the companion house bill; as of March 4, 2014, HD 2 of HB 2401 was alive and had been transmitted to the Senate.

HB 2482 proposes to make technical, non-substantive amendments to Chapter 514B, HRS. HB 2482, HD 1 has passed a second reading as amended and referred to the House Judiciary Committee. As of March 4, 2014, HD 1 of this bill was transmitted to the Senate.

HB 2656 establishes provisions for condominium annual meetings and quorum requirements and proposes to allow condominium associations to call for a review and discharge of a condominium managing agent. On February 10, 2014, the measure was passed with amendments and on February 27, 2014 was transmitted to the Senate.

SB 2483 clarifies that a condominium association’s lien is subordinate to real property taxes, rather than all taxes and clarifies that a condominium association may assess unpaid common fees against a purchaser, in addition to a mortgagee who purchases a delinquent unit in a judicial or nonjudicial power of sale foreclosure. On March 4, 2014, SD 1 of this bill was transmitted to the House.

Staff will continue to follow these and other bills and in the next Condominium Bulletin, provide a report on their status.

Mediation Case Summaries

From December 2013 through February 2014, the following condominium mediations were conducted pursuant to Hawai'i Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. Mediation Center of the Pacific may have conducted additional condominium mediations through the District Court.

Mediation Center of the Pacific

Through Skype video conferencing capabilities, MCP has been conducting mediations with condominium owners who live part-time in Hawaii and are currently residing out of the state. At the end of February, MCP had nine condominium mediation cases pending and had conducted one mediation on-site at the Honolulu District Court.

Owner vs. Board	Enforcement of governing documents.	Mediated to agreement.
Owner vs. Board	Reimbursement for repair of common element.	Mediated to agreement.
Owner vs. Board	Unequal application of bylaws and house rules by board.	Request to mediate w/drawn by owner.

Mediation Services of Maui, Kaua'i Economic Opportunity, Kuikahi Mediation Center and West Hawai'i Mediation Center did not report any condominium mediations for this reporting period.

Surviving Your Annual Meeting

Kicking off the year, CAI Hawaii presented "Preparing for and Surviving the Annual Meeting Season" on January 23, 2014 at the Japanese Cultural Center. Featured speakers were M. Anne Anderson, Esq., a partner in the law firm of Anderson Lahne & Fujisaki, Jonathan Billings, property manager and Senior Vice President at Hawaii First, Inc., Lillian McCarthy, Senior Management Executive at Hawaiiiana Management Company, and Steve Glanstein, Professional Registered Parliamentarian.

The speakers highlighted for attendees measures that may be taken to help facilitate a successful annual meeting. Said measures included checking the condominium governing documents for specific provisions regarding annual meetings, complying with posting requirements, reserving a venue with adequate space and accessibility to accommodate the association's owners, verifying ownership, taking steps to ensure a quorum, inviting professionals such as attorneys, auditors, parliamentarians, and service vendors to address concerns that may be raised, and having readily available copies of the condominium governing documents and applicable state laws and administrative rules should issues arise.

CAI Hawaii seminars are partly funded by the Condominium Education Trust Fund, Real Estate Commission, Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs. See CAI Hawaii at <http://www.caihawaii.org> for a calendar of its events for 2014.

Katherine Linster, Condominium Specialist for the Real Estate Branch monitored this seminar and provided this report.

2014 Real Estate Commission Meeting Schedule

Real Estate Commission Meeting Schedule	Real Estate Commission – 9:00 a.m.
<p>Real Estate Commission – 9:00 a.m.</p> <p>Upon adjournment of Committee Meeting</p> <p>Upon adjournment of the Meeting</p>	
Friday, March 12, 2014	Friday, March 28, 2014
Friday, April 11, 2014	Friday, April 25, 2014
Friday, May 14, 2014	Friday, May 30, 2014
Friday, June 11, 2014	Friday, June 27, 2014
Friday, July 11, 2014	Friday, July 25, 2014
Friday, August 15, 2014	Friday, August 29, 2014
Friday, September 12, 2014	Friday, September 26, 2014
Friday, October 10, 2014	Friday, October 24, 2014
Wednesday, November 19, 2014	Wednesday, November 26, 2014
Friday, December 19, 2014	Friday, December 19, 2014

All meetings will be held in the 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 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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