



Hawaii Condominium Bulletin

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EMPLOYEES RENTING ASSOCIATION-OWNED UNITS Complying with the Condo Law is not the End of the Story

By John Morris, Esq.

Some associations find themselves in the position of renting out association-owned units. These units may be either: (i) units that were originally intended for use by a resident manager or other employees; or (ii) units acquired through foreclosure. Association boards may assume that association employees can handle the rental as long as the association complies with the condominium law. Nevertheless, boards must consider other issues, including the requirements of the real estate licensing law, Chapter 467, Hawaii Revised Statutes.

Section 514B-133(b) of the condominium law states:

(b) An association's employees shall not engage in selling or renting units in the condominium in which they are employed, except association-owned units, unless such activity is approved by sixty-seven per cent of the unit owners.

[Section 514A-82 (b)(8) has long included a very similar requirement for the same reason – to ensure that association employees devote their time to association matters unless the owners specifically decide otherwise.]

Superficially, section 514B-133(b) appears to allow association employees to rent out units owned by the association without any owner approval. Nevertheless, that section deals only with the owners' rights to control renting of units by association employees (again, so the employees do not spend all their time on rentals while being paid by the association). The section does not, for example, allow the apartment owners to exempt a resident manager from chapter 467, HRS, even if the employee only rents out association-owned units. The only exemption in the condominium law is from a vote of the owners, not from the real estate licensing law.

In fact, Section 514A-2 of the condominium law states:

§514A-2 Chapter not exclusive. This chapter is in addition and supplemental to all other provisions of the Revised Statutes; provided that this chapter shall not change the substantive law relating to land court property, and provided further that if this chapter conflicts with chapters 501 and 502, chapters 501 and 502 shall prevail. (emphasis added)

While the same statement does not appear in chapter 514B, chapter 514B gives no indication that it exempts the association from all other laws. As a result, section 514B-133(b) (and 514A-82(b)(8)) must be read in the context of other laws governing the rental of property in Hawaii. The main law relating to that issue is, again, chapter 467 HRS, specifically, section 467-7. That section requires that anyone acting as a real estate broker or salesperson must be licensed and comply with the provisions of chapter 467:

§467-7 Licenses required to act as real estate broker and salesperson. No person within the purview of this chapter shall act as real estate broker or real estate salesperson, or shall advertise, or assume to act as real estate broker or real estate salesperson without a license previously obtained under and in compliance with this chapter and the rules and regulations of the real estate commission.

(continued page 4)

Message from the Chair



The events of August bring us a reminder of preparedness during Hurricane Season (July through December). Hurricane Iselle was the strongest tropical cyclone to make landfall on the Big Island of Hawaii in recorded history. Many including myself were without power in the Puna District for a week or more. It is fortunate that the damage was centralized mostly to the east side of the Big Island with no loss of life, and not Oahu or more populated areas of our state. It's an important reminder for emergency preparedness even for those that live in condominiums. When dealing with disaster preparedness which could be a storm or a tsunami it's important to realize that it is a not only individual preparedness but group preparedness as well.

Some Specific tips for Condo Residents are:

Know your evacuation zone. Even if you live on an upper floor, you may be completely cut off from rescue if the grounds flood.

Bring all balcony furniture, potted plants and other items indoors so they won't be blown around by strong winds.

Know where your exit stairwells are located. These exits may be necessary if your building loses power, and elevators are unavailable.

Talk with the condo management group to find out about its hurricane/disaster plan for the entire facility.

3 to 56 day supply of food and water.

Some Suggestions for Management of Condominiums

Name floor captains to check on residents with special needs before and after the hurricane.

If the building is not in an evacuation zone, find a safe place for residents to take shelter. An interior hallway or other windowless room is usually safest.

Let your tenants know early of any intent to shut down the building's electricity, water or sewer services.

Set up a master supply of drinking or clean water.

Identify residents who have difficulty with mobility or are elderly. Create a plan to help them if the electricity goes out or elevator fails.

Set up a system to keep track of residents who leave the building, so everyone can be accounted for once the storm has passed.

Of course there are other things to do to prepare for a disaster so it is important to work with the owners and management to come up with an effective plan before the next event happens.

Aloha

Scott A. Sherley

The Commission Welcomes Michael Pang



Michael Pang has joined the Real Estate Commission as its newest commissioner. President and Principal Broker of Monarch Properties, Inc., since 1986, he has been a licensed Realtor since 1979. He has served in numerous leadership and committee roles for the Honolulu Board of Realtors and Hawaii Association of Realtors, a good portion of which involved their Professional Standards & Arbitration Committees.

Mr. Pang's real estate experience includes general brokerage, rental property management, serving as an expert witness in litigation and arbitration proceedings (Realtor standards of practice and material fact disclosure matters). Mr. Pang added leased-fee representation to his real estate practice in 1993. He currently specializes in lease-to-fee conversions, lease rent renegotiations and lease extensions representing leasehold condo and co-op projects, and several lessors, statewide.

Mr. Pang enjoys family time, traveling and fine dining. We welcome Mr. Pang to the work of the Commission.

Aleta Klein Appointed Interim Commissioner



On July 16, 2014, Governor Abercrombie appointed Aleta Klein to the Real Estate Commission on an interim basis. Ms. Klein's appointment is subject to confirmation by the Senate.

Ms. Klein has a long and illustrative career in the Hawaii real estate industry. Starting in 1978, she began her career as a real estate salesperson, obtaining her broker's license in 1979. In 2002, she opened her own office, KleinCo, LLC. Some of her activities, in addition to running her real estate office, include serving as a member of the Commission's special task forces on education and testing; board member of the Hawaii Association of Realtors; member of HAR's Standard Forms committee; and as a member of HAR and Honolulu Board of Realtors Professional Standards and Arbitration committee. Ms. Klein currently serves as a court appointed foreclosure commissioner and is a mediator for the Mediation Center of the Pacific.

Welcome, Commissioner Klein! We look forward to working with you.

EMPLOYEES RENTING ASSOCIATION-OWNED UNITS

Complying with the Condo Law is not the End of the Story (cont. from page 1)

(Emphasis added)

Section 467-1 defines a broker and salesperson as (in part):

[A]ny person who, for compensation or a valuable consideration . . . leases or offers to lease, or rents or offers to rent, or manages or offers to manage, any real estate, or the improvements thereon, for others, as a whole or partial vocation . . .

Exceptions to that licensing requirement are stated in section 467-2, including an exemption for any person who leases or rents any real estate or improvements on real estate of which the person is the “custodian or caretaker”:

§467-2 Exceptions. The provisions requiring licensing as a real estate broker or salesperson shall not apply:

* * *

(3) To any individual who leases, offers to lease, rents, or offers to rent, any real estate or the improvements thereon of which the individual is the custodian or caretaker:

Section 467-1 defines “custodian or caretaker” as (in part)

“Custodian or caretaker” means any individual, who for compensation or valuable consideration, is employed as an employee by a single owner and has the responsibility to manage or care for that real property left in the individual’s trust; provided that the term “custodian” or “caretaker” shall not include any individual who leases or offers to lease, or rents or offers to rent, any real estate for more than a single owner; provided further that a single owner shall not include an association of owners of a condominium, cooperative, or planned unit development.

(Emphasis added)

Essentially, this exemption is to allow someone acting on behalf of a single owner to rent out real estate on behalf of that owner without a license. Unfortunately, the definition of custodian or caretaker in section 467-1 specifically excludes any person who leases or rents real estate for a condominium association (apparently because the association is not considered a single owner).

In summary, notwithstanding the wording of the condominium law, an association employee – even an association employee renting out only association-owned units – who lacks a real estate broker’s or salesperson’s license cannot engage in activity that meets the definition of real estate broker or salesperson without being in violation of chapter 467. Moreover, that association employee cannot qualify for the exemption from licensing as a custodian or caretaker because the employee is working for an association. On that basis, an association that allows unlicensed employees to rent out even association-owned units is not in compliance with the real estate licensing law and could be subject to sanctions.

Finally, an association should note that even an association employee who is licensed as a real estate salesperson cannot operate independently without a supervising real estate broker. In other words, an association employee licensed as a real estate salesperson must still be subject to the control and supervision of a real estate broker.

*About the author: **JOHN A. MORRIS** first became involved with condominiums and homeowner associations when he served for three years (1988-1991) as the first condominium specialist for the Hawaii Real Estate Commission. Mr. Morris is a co-manager of Ekimoto & Morris LLLC, which represents over 600 condominiums and other types of homeowner associations. He has spoken and written articles about homeowner associations and legislation affecting them.*

Ask the Condominium Specialist

Q: Some restructuring work needs to be done on the wood floor in my condominium unit. I believe the floor is a common area which would mean the association is responsible for paying for the work; however I have been told by the board that the floor is part of my unit in which case it is my responsibility to pay for the work. Who's right?

A: Check your condominium declaration for a description of your unit and what is included as a part of the unit. HRS § 514B-35 will give you some guidance with this. If your floor is designated as part of the unit, then it is your responsibility.

The floor may be designated a limited common element. If so, either you or your association may be responsible for maintenance costs (HRS § 514B-41); check on your association's treatment of this matter.

If the declaration supports your assertion that the floor is a common area, then the floor is the association's responsibility with all owners responsible for its maintenance.

Q: My condominium association replaced the front door of my unit. My existing screen door was removed for the work and was replaced improperly. I want the board to pay for the cost of installing the screen door properly. What should I do?

A: You can first ask the board to fix the screen door if it was damaged in the course of work sanctioned by the board.

If the board refuses, determine whether the screen door is a part of your unit, and therefore your responsibility, or outside of your unit, either a limited common element (for your exclusive use) or a common element. Check your declaration for a description of the screen door.

Associations vary in their treatment of charges for limited common elements, i.e., pursuant to HRS § 514B-41, they may charge the exclusive use owner for any costs related to the limited common element, or they may spread the charge to all owners and treat costs as they would common area costs. Check your declaration, using HRS § 514B-35 as guidance for language that shows how the screen door is designated and who is responsible for it.

Assuming you determine that the association is responsible for maintenance of the screen door, ask the board, in writing, to pay to fix it; if they agree to assume the cost of repair, it ends there for you. No matter how the screen door is designated, if the board refuses to pay for its proper replacement, you may have to pay for the cost of fixing the screen door yourself and pursue them subsequently for payment, based upon your claim that the screen door was damaged in the course of board approved work.

Seek the assistance of an attorney knowledgeable with the condominium law to determine responsibility for the screen door. If the screen door was damaged in the course of work done on the primary door, then this may affect the final determination of responsibility for payment.

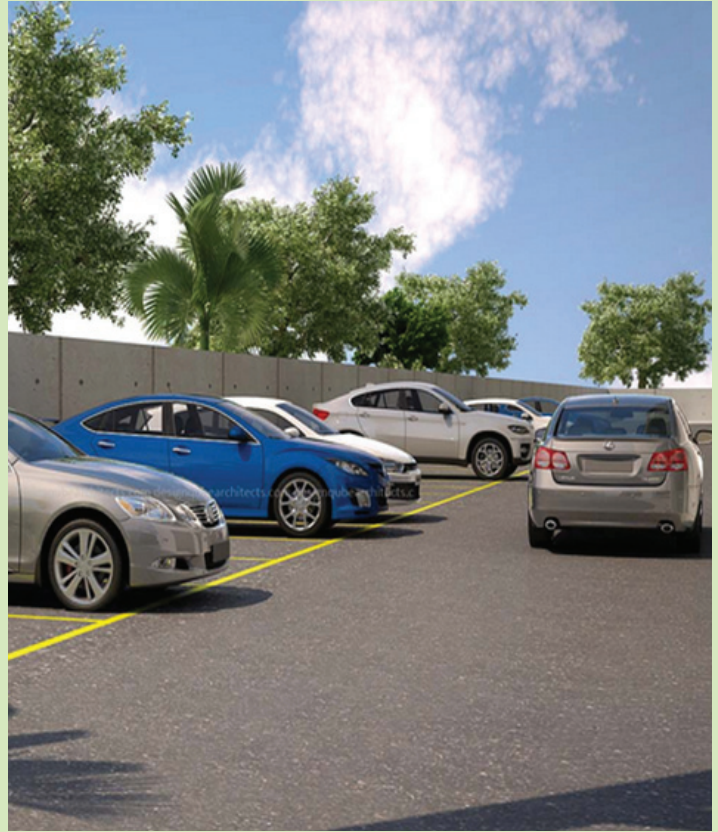
The information provided herein is informal and intended for general informational purposes only. Consult with an attorney familiar with the Hawaii condominium law for specific legal advice regarding a particular situation.

Selling or Trading a Parking Stall?

Many condominium unit owners sell or trade parking stalls, as they are allowed to do pursuant to HRS § 514B-40. Subject to the consent of any mortgagees or lessors of that unit, a unit owner may transfer or exchange a limited common element, for example a parking stall, that is assigned to that unit, to another unit. Any transfer shall be executed and recorded as an amendment to the condominium declaration and must be executed only by the owner of the unit whose limited common element is being transferred and the owner of the unit receiving the limited common element. A copy of the executed amendment shall be delivered to the association, so that while the consent of the association or board is not specifically required, the association must be notified of the change.

It is important therefore for owners to follow the correct procedure when selling or trading parking stalls. Informal arrangements are not legally binding upon subsequent purchasers and result in confusion and even hardship in the case of an owner with special parking stall needs.

Consult with an attorney to assure compliance with the statutory requirements and ensure that the amendment to the declaration has been properly recorded and the association informed.



Condominium Hotel Operator Re-registration

All condominium hotel operators (CHO) currently registered with the Real Estate Branch must re-register by November 30, 2014 to extend their current registration beyond December 31, 2014 and continue legally conducting CHO activities. All currently registered CHOs will receive re-registration materials at the end of October.

Those who fail to successfully re-register by December 31, 2014, must complete a new registration and cease all short term rental activities. Registering includes submitting a new application and a new set of project documents for each condominium association in which the CHO manages short term (less than thirty days) condominium rentals.

Condominium hotels and CHO registration are governed by HRS Chapter 467, the real estate licensing law, specifically HRS § 467-30.

Mediation Case Summaries

From June 2014 through August 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 conducted additional condominium mediations in Honolulu District Court.

Mediation Center of the Pacific

Through Skype video conferencing capabilities, MCP has been conducting additional mediations with condominium owners who live part-time in Hawaii and are currently residing out of the state

Owner vs. Board	Dispute over replacement window costs.	Mediated; no agreement.
Owner vs. Board	Dispute regarding air conditioning unit approval and fines related thereto.	Mediated to agreement.
Owner vs. Board	Issue of use and ownership of storage locker; house rule violation.	Unable to schedule meeting of the parties; closed.
Owner vs. Board	Owner contesting fines.	Board declined mediation; closed.
Board vs. Owner	Reimbursement to owner of costs for repair of structural element.	Mediated; no agreement.
Owner vs. Board	Dispute over access to documents, attendance at meetings, and fines.	Owner withdrew complaint.
Owner vs. Board	House rule violations and fines; pets.	Mediated to agreement.

West Hawai'i Mediation Center

Owner vs. Board	Dispute regarding: 1) solar panel placement and 2) damage to unit from water sprinklers.	Board did not respond to request for mediation.
Owner vs. Board	Dispute concerning common area use.	Board declined mediation.

Kuikahi Mediation Center, Mediation Services of Maui and Kaua'i Economic Opportunity did not report any condominium mediations for this period. They continue to reach out to the condominium communities to educate owners about the benefits of mediation as a dispute resolution tool.

2014 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, September 10, 2014

Wednesday, October 8, 2014

Wednesday, November 12, 2014

Wednesday, December 10, 2014

Friday, September 26, 2014

Friday, October 24, 2014

Wednesday, November 26, 2014

Friday, December 19, 2014

All 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 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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