

Hawaii Condominium Bulletin

VOLUME 1 NO. 1

FALL 1991

Funded through the Condominium Management Education Fund, Hawaii Real Estate Commission, State of Hawaii

Condominiums and the Hawaii Real Estate Commission

What is the Real Estate Commission, its administrative functions, and organization?

The Real Estate Commission consists of nine Commissioners appointed by the Governor and confirmed by the Senate. A number of the Commissioners are condominium apartment owners. The Real Estate Commission has authority over real estate brokers and salespersons (Chapter 467, HRS), limited equity cooperatives (Chapter 421H, HRS), and limited authority over the condominium property regimes (Chapter 514A, HRS).

The Commission's powers and duties are very specific and do not include a number of real estate related areas such as timesharing, residential leaseholds, residential landlord-tenant code, cooperative housing corporations, single-family lots, etc.

The Commission is administratively assigned to the Department of Commerce and Consumer Affairs, and is provided with administrative support from the Professional and Vocational Licensing Division through its Real Estate Branch. The administrative support staff consists of condominium specialists, real estate specialists, executive secretaries and clerical specialists.

The Commission has three standing committees which meet monthly:

Condominium and Cooperative Review Committee,
Education Review Committee, and
Laws and Rules Review Committee.

The Condominium and Cooperative Review Committee is chaired by Commissioner Stanley Kuriyama and the vice-chair is Commissioner Carol Mon Lee. The Committee meetings are open to the public and have set agenda items. These committees are working type committees that handle all the "nuts and bolts" issues in their respective subject areas. The regular monthly Commission meeting formally decides on the recommendations from these committees and renders all other formal decisions of the Commission.

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Letter from the Chair

Welcome!

to the inaugural issue
of the **HAWAII CONDOMINIUM BULLETIN**,
a source of information for condominium associations,
boards of directors, apartment owners, condominium
managing agents, and others involved in the administra-
tion and management of condominium associations. We
will not be able to provide a copy of this Bulletin to every
condominium apartment owner, and we, therefore, rec-
ommend that you post copies of this Bulletin for the
residents to read and/or provide additional photocopies
to your apartment owners.

Because education and the availability of reference
materials are key elements to successful condominium
association management, we also recommend that you
develop a library of information and reference materials
for your condominium association that any apartment
owner can review and borrow. You might want to start
with the creation of a condominium association refer-
ence manual—a three-ring binder consisting of:

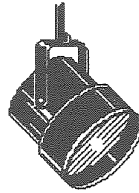
- issues of the Bulletin,
- Chapter 514A (condominium law),
- Chapter 107 (administrative rules),
- your declaration, by-laws, house rules,
- minutes of your association meetings,
- your association newsletter, and
- Real Estate Commission brochures.

Or you can develop separate binders for each set of
materials.

We welcome your written comments and suggestions,
particularly if there are any specific condominium issues
you would like to see addressed in the Bulletin. Please
call either of the Condominium Specialists for assis-
tance.

Sincerely,

Stanley Kuriyama, Chairman
Condominium & Cooperative Review Committee



Introducing

**Condominium Specialists
Real Estate Commission**

The Condominium Specialists assist consum-
ers with information, advice, and referral on
the condominium law. In practical terms, this
means responding to general questions, pro-
vide informal interpretations where appli-
cable, cite public information relevant to the
issue, etc. The Condominium Specialists will
not, however, provide legal advice.

The Condominium Specialists are also in-
volved in administering the condominium
education and research program, the associa-
tion registration program, the condominium
management education fund, and the media-
tion program. The two Condominium Special-
ists are Stephen Okumura and Lynn Petry.

Look for their column, "Ask the Condo
Specialist" in upcoming issues of the Hawaii
Condominium Bulletin. It will address ques-
tions received by the Commission's Condo-
minium Specialists or present discussions on
"hot" topics.

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legal advice or other expert assistance is required, the
services of a competent professional person should be sought.

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tion, Fund, Real Estate Commission, State of Hawaii.

Mediation

What is the Commission's mediation program?

In 1990, the Commission contracted with the Neighborhood Justice Center (NJC) for a mediation program for condominium governance disputes utilizing the condominium management education fund. The Legislators and the Commission find that mediation can resolve many condominium dispute more quickly and inexpensively than litigation and arbitration, the two methods of dispute resolution currently provided for in the condominium law.

The NJC mediation program includes the development of a training manual for condominium mediators, a training program for condominium mediators, and financial support for condominium governance mediations. The mediation program is available only for owners or board members of condominium associations registered with the Commission, concerning issues relating to the association's declaration, bylaws, and house rules, and Chapter 514A and its rules. Each party in a mediation request pays a \$10 filing fee to participate in the mediation service, and the balance of the cost of the mediation is paid for by the fund.

Mediation has proven:

- (i) that outside assistance is needed for parties to mediate their disputes; and
- (ii) parties to a dispute who are willing to sit down and discuss their disputes can usually resolve them as effectively as any judge or arbitrator.

Mediation is very effective in settling disputes before they escalate to the point of arbitration or litigation. By solving problems informally, the parties in condominium conflicts can salvage damaged relationships and save them-

selves and their associations money, and aggravation. Personal relationships and effective communication issues are particularly critical in condominiums since people live in close proximity and unresolved conflicts can seriously affect the quality of life.

Unlike judges and arbitrators, a mediator does not impose a solution on the parties. Instead, the mediator attempts to help the parties reach their own solutions. The mediator's function is to keep the parties' focus on issues not personalities, and on solutions not fault.

Since mediation relies on mutual agreement among the parties, the parties cannot be forced into an agreement against their will. Even in those cases where mutual agreements cannot be reached, mediation will help the parties defuse some of the hostility and clarify the issues and interests at stake. The parties to mediation retain all rights to pursue any other dispute resolution option that is available, including arbitration or litigation. All matters discussed in mediation are maintained in confidence by the mediators and the NJC.

Mediation is not just for resolving disputes. It can also serve as an educational tool. For example, board members may know that the law supports their position or prevents them from negotiating a different outcome to dispute. Under those circumstances, board members may see no reason to mediate or even communicate with owners. Nevertheless, mediation can help explain the board's decision or the legal restrictions on its freedom of action. A few hours spent in mediation may prevent many more hours of bitter dispute.

New Legislation

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ACT 132
Relating to
Condominium Association
Budgets and Reserves
House Bill No. 666 Signed 22 May, 1991

The condominium law, Chapter 514A, Hawaii Revised Statutes, entrusts the lives and property of thousands of condominium owners to their boards of directors. Originally, condominium owners and boards were left to run their own projects. The democratic process of Condominium governance was supposed to ensure that the owners' wishes and decisions were translated into practice, and that the owners and boards would act in their own best interests.

Gradually, it became apparent that uncontrolled self-governance was not working. Not all condominium owners could be left to run their own associations, without some guidance from the state. Therefore, recent statutory amendments have shifted that statute's emphasis to setting basic standards of self-governance. The 1991 legislative session focused on reserves and audits.

Some associations do not prepare adequate budgets or establish reserve accounts for major expenses such as painting, re-roofing, or re-paving. In some cases, owners have had to pay thousands of dollars in special assessments because their condominium association lacked adequate reserves for those projects. Assessments of \$2,000-\$3,000 are not uncommon.

One association assessed its owners about \$9,000 each over two years for painting, re-roofing, termite treatment and repairs. The association had relatively low monthly assessments and few, if any, special assessments in the 15 years since it was built. Some owners had only bought into the association 8-10 months

before the assessments began and thus were paying for years of deferred maintenance.

Another association will have to assess its owners \$10,000-\$15,000 each to repair/replace plumbing and wiring. Five years ago the association was advised of the impending problem and decided to defer action.

Act 132 imposes basic, mandatory requirements to improve the solvency and financial planning of condominium associations. The bill:

- (i) requires an association board to adopt a budget, distribute it to the owners, and follow it, except in emergencies (see below);
- (ii) requires the budget to state the association's existing reserves;
- (iii) requires the association to calculate how much it should have in reserves ("a reserve study"); and
- (iv) requires the association to assess owners and establish the proper amount of reserves, subject to limited exceptions (see below).

Thus, owners must pay for both the short-term and the long-term expenses of operating their condominium project. If the reserves are properly calculated, each owner's share should only be what the owner ought to be putting aside each month for the true cost of operating their project. Owners will no longer be able to take value out of condominium property by under-funding reserves, selling-out, and leaving subsequent purchasers to pay for the under-funding.

Note: The Act does not go into effect until January 1, 1993. This means that the reserve study will have to be prepared in that year and incorporated into the 1994 budget, not the 1993 budget.

Associations coming into existence after January 1993 need not collect reserves until the fiscal year following the association's first annual meeting.

Associations existing as of the effective date will have five years to bring their reserves up to the required level (i.e., as indicated by their reserve study).

Associations who deplete their reserves in an emergency will have 2 years to bring their reserves up to the required level.

The Act has a good faith exemption for owners, directors, officers and managing agents who prepare the study. (i.e., no liability if a good faith effort to calculate reserves subsequently proves wrong.)

The board must adopt the budget. The association members may not waive the reserve requirement.

The board must not exceed the budget it adopts by more than 20-percent, except in emergency situations (defined as payment which must be made because of:

- (i) court order;
- (ii) a condition on the property which threatens personal safety; or
- (iii) for expenses which the board could not have reasonably anticipated when preparing the budget).

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Act 282
Relating to
Condominium Disputes
House Bill No. 1989 signed by the Governor
June 18, 1991

Act 282 provides a simple, inexpensive way to resolve disputes about small amounts claimed by the association. In the past, small amounts owed to the association have ballooned into large amounts and created unnecessary litigation.

The first part of Act 282 expressly:

- (i) informs owners of the reality of the existing law: owners may not withhold assessments claimed by the association; and
- (ii) entitles an owner to a clear statement of how much is owed to the association and the types of claims comprising the debt.

If the owner pays what is demanded, he or she may file in small claims court or require the association to mediate to determine whether the association's claim is valid. The owner also has the option arbitration if mediation cannot resolve the dispute.

The Act also addresses a related area. Under the present law an owner is not liable for an association's attorneys' fees if the owner files an action against an association and loses, although, the association is liable under the same circumstances. Unfortunately, the present law has sometimes encouraged owners to file frivolous or ill-founded suits because they have nothing to lose but their time. Although the suits may ultimately be dismissed, they can cost the association large amounts to defend.

The Act makes the apartment owner liable for reasonable attorneys' fees if the owner files a suit without first making a good faith effort to resolve the dispute through mediation, arbitration or small claims court. This requirement should also help owners evaluate the merits of their complaints before they file an expensive lawsuit.

Finally, under the present law many dues are excluded from arbitration because they concern money and may result in a lien or foreclosure. The bill allows arbitration of disputes if the owner first pays the association the full amount owed, subject to refund, and keeps all payments current during the arbitration.

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ACT 124
Relating to
Condominium Declaration
Amendments
House Bill No. 114 signed by the Governor
May 22, 1991

Some associations face problems with making much needed amendments to their declarations. The associations find themselves locked into their declarations by unrealistically high amendment percentages. Under the present law, declarations may require as much as 100 percent of owners to approve declaration amendments. Associations who can barely obtain 75 percent owner approval, they lack the flexibility to adapt their declarations to new situations.

This Act reduces the percentage of owners required to amend a condominium declaration to no more than 75 percent, except for projects with five or less units which may set higher requirements. Certain amendments (e.g. change in common interest) may still require more than 75 percent approval.

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ACT 195
Relating to
Condominium Audits
 Senate Bill No. 2097 signed by the Governor
 May 24, 1991

The Act requires associations with 20 or more apartment owners to have an annual audit and cash verification. Those associations can no longer waive the audit and verification by a majority vote of the owners. The Act also permits an owner to request a copy of the audit, or a copy of the associations year-end financial statement, by so indicating on the association's proxy form.

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Act 6
Relating to
Small Claims
 Senate Bill No. 83 signed
 by the Governor April 6, 1991

Under the prior law, cases filed in small claims court could be removed to district court at the option of the plaintiff or defendant. Often, association attorneys removed cases to court to take advantage of more formal procedures and the right of appeal permitted in district court. Act 6 precludes the defendant from removing a case from small claims court without the approval of the plaintiff (except in cases not within the jurisdiction of small claims).

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Act 44
Relating to
Condominium Public Reports
 Senate Bill No. 388 signed
 by the Governor April 26, 1991

Formerly, the Real Estate Commission reviewed proposed condominium projects prior to sale and issued a public report on the project. The report provided prospective purchasers with all material information about the project. Sales could not be made until a public report was issued.

Act 44 requires the developer of the project to issue a public report on the project after the Commission has reviewed the public report to ensure it provides prospective purchasers with all material information about the project.

The Act also clarifies the information which a developer must provide concerning variances and non-conforming uses affecting an existing structure being converted to condominium status.

Finally, the Act increases penalties for violation of certain provisions of Chapter 514A from \$2,000 to \$10,000.

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ACT 276
Relating to
Residential Lease Disclosure
 House Bill No. 1985, signed by
 the Governor June 17, 1991

Last year, new legislation required that a seller of a leasehold condominium must provide a prospective purchaser with general information about leasehold and a summary of the lease terms of the unit being sold. The leasehold summary typically costs \$300-\$400 and is very detailed to ensure compliance with the law.

Act 276 permits, but does not require a seller to provide a standard disclosure about a unit, in a form similar to that outlined in the Act. The Act also:

- (i) includes a \$1,000 civil penalty for violation of the disclosure requirements;
- (ii) increases from 5 to 10 days the time for prospective purchasers to review the lease information provided;
- (iii) made changes relating to the receipt for leasehold information signed by a purchaser;
- (iv) exempts court ordered sales and transfers between related parties from the leasehold disclosure requirements; and
- (v) allows buyers, other than natural persons, to waive the disclosure requirements.

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Winter Watch . . .

Look for a discussion on the Reserve Study issue in the upcoming Winter 1991 issue of the Hawaii Condominium Bulletin

What are the Commission powers, duties, and administrative functions with respect to condominiums?

The powers, duties, and administrative functions of the Commission in the area of condominiums are divided into two phases in the life of a condominium project. Again, the law provides for specific and limited authority of the Commission in both phases. The first phase includes registration of condominium projects by developers, submission of information and project documents for review, issuance of developer public disclosure reports which provides material fact information to the purchasers, owner occupant sale, and payment by developers into the condominium management education fund, and its enforcement. In the second phase, the Commission is involved in condominium governance and management areas in a very specific and limited capacity, as follows:

- The registration of, and payment into the Condominium Management Education Fund by all condominium associations with six or more apartments.
- The initiation and administration of a condominium management education and research program.
- The registration of all condominium managing agents.
- The providing of information, advice, and referral on condominium issues including complaints.
- The administration of a dispute resolution mediation program through the Neighborhood Justice Center
- The enforcement through the Regulated Industry Complaints Office (RICO) and the Attorney General's Office of very specific areas set forth in Sections 514A-46, -47, -48, H.R.S.
- The provision, where applicable, of informal interpretation on Chapter 514A and its rules, Chapter 107.

Why doesn't the Real Estate Commission administer the enforcement of violations of condominium by-laws, house rules, and all the provisions of Chapter 514A?

The condominium law is based on the principles of self-governance and self-enforcement. As a result, condominium associations and apartment owners normally are required to enforce themselves, the provisions of their declarations, bylaws, and house rules, and to resolve their own disputes. The Real Estate Commission has limited authority over only certain provisions of Chapter 514A, H.R.S., as specified in Sections 514A-46, -47, and -48, H.R.S. The condominium law has provisions for the arbitration of certain types of condominium governance disputes. Some of the key Commission's enforcement authority includes the association's failure to provide information, the mishandling of association funds, and the regulation of condominium managing agents. All complaints relating to areas over which the Commission has jurisdiction, are received, investigated, and where appropriate, prosecuted by the Regulated Industries Complaint Office (RICO), or by the Attorney General's Office, which is a separate office from the Commission.

What are the purposes of the Condominium Management Education Fund?

In 1989, the Legislature, by Act 285 (SLH 1989), created the Condominium Management Education Fund and placed the fund under the administration of the Real Estate Commission. The purpose of the fund includes the financing or promotion of:

- (1) Education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public and those required to be registered under Chapter 514A,
- (2) The improvement and more efficient administration of condominium associations, and
- (3) Expedient and inexpensive procedures for resolving condominium association disputes.

Directory of Services

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| <p>Chapter 514A, HRS and Chapter 107 Copies DCCA Cashier586-2832 Available by mail or over the counter from the cashier. No telephone requests. Call only to verify availability or latest cost. Requests in writing or in person, must be accompanied by a check for the correct amount, made payable to Commerce and Consumer Affairs. Mailing Address: Cashier — DCCA, Post Office Box 541 Honolulu, Hawaii 96809 Office Address: 1010 Richards Street, Third Floor, Honolulu</p> | <p>Toll Free State Government Number From the Neighbor Islands, dial the toll free number and request to be connected to state government offices on Oahu 1-800-468-4644</p> |
| <p>Complaints Regulated Industries Complaints Office (RICO) Filing complaints against real estate licensees, condominium managing agents, condominium hotel operators, specific provisions of condominium property regime (CPR), time share and unlicensed or unregistered regulated areas 587-3222 History and information about complaints against real estate licensees, condominium managing agents, and condominium hotel operators 586-2677 Office and mailing address: 828 Fort Street Mall, Suite 600A Honolulu, Hawaii 96813</p> | <p>Landlord-Tenant Code Office of Consumer Protection586-2634 Landlord-tenant inquiries, complaints, and requests for copies of the landlord-tenant handbook. Office & mailing address: 828 Fort Street Mall, Suite 600B Honolulu, Hawaii 996813</p> |
| <p>Condominium Arbitration Service American Arbitration Association 531-0541 Inquiries and requests for arbitration service Office and mailing address: 810 Richards Street, Suite 641 Honolulu, HI 96813</p> | <p>Leasehold Disclosure Housing Finance Development Corporation..543-2900 Inquiries about leasehold disclosure or requests for leasehold disclosure booklet should be directed to Land Programs Section. Office & mailing address: Seven Waterfront Plaza, Suite 590 500 Ala Moana Boulevard Honolulu, Hawaii 96813</p> |
| <p>Condominium Mediation Service Neighborhood Justice Center521-6767 Inquiries and requests for mediation service Office & mailing address: 547 Halekauwila St., Suite 202 Honolulu Hawaii 96813</p> | <p>Licensing Branch, DCCA586-3000 Verification of license or registration status of real estate licensees, condominium managing agents, and condominium hotel operators Mailing address: Post Office Box 3469 Honolulu, Hawaii, 96801. Office address: 1010 Richard Street, First Floor, Honolulu</p> |
| <p>Housing Discrimination Hawaii Civil Rights Commission586-8636 Inquiries and complaints of discrimination in real property transactions. Office & mailing address: 888 Mililani Street, Second Floor Honolulu, Hawaii 96813 Housing & Urban Development (HUD)...541-1328 Inquiries and complaints of discrimination in real property transactions. Office & mailing address: Seven Waterfront Plaza, Suite 500 500 Ala Moana Boulevard Honolulu, Hawaii 96813</p> | <p>Real Estate Branch Condominium Specialists586-2646 Condominium governance/management inquiries, Chapter 514A, Condominium & Cooperative Review Committee Condominium Specialists586-2644 Condominium project registration/public reports, association registration, managing agent registration, applications/forms Office and mailing address: 828 Fort Street Mall, Suite 600 Honolulu, Hawaii 96813</p> |
| <p>This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.</p> | <p>Small Claims Court: Inquiries about filing claims should be directed to the district court in your area. Consult the Hawaii State Government section of the telephone directory under the heading: "Courts — District" Time Sharing Inquiries and registration 586-2709 Uniform Land Sales Practice Act (Subdivision), or Appraiser Registration, Certification, and Licensing586-2704 Mailing address: Post Office Box 3469 Honolulu, HI 96801</p> |