



# Hawaii Condominium Bulletin

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## Avoiding Scams

By the Hawaii Foreclosure Information Center



Scams aren't always easy to spot – but it helps if you know the warning signs to look for. Here are six red flags to indicate that you may be dealing with a loan modification scammer:

1. A company/person asks for a fee in advance to work with your lender to modify, refinance or reinstate your mortgage. They may pocket your money and do little or nothing to help you save your home from foreclosure.
2. A company/person guarantees they can stop a foreclosure or get your loan modified. Nobody can make this guarantee to stop foreclosure or modify your loan. Legitimate, trustworthy HUD-approved counseling agencies will only promise they will try their very best to help you.
3. A company/person advises you to stop paying your mortgage company and pay them instead. Despite what a scammer will tell you, you should never send a mortgage payment to anyone other than your mortgage lender. The minute you have trouble making your monthly payment, contact your mortgage lender.
4. A company pressures you to sign over the deed to your home or sign any paperwork that you haven't had a chance to read, and you don't fully understand. A legitimate housing counselor would never pressure you to sign a document before you had a chance to read and understand it.
5. A company claims to offer "government-approved" or "official government" loan modifications. They may be scam artists posing as legitimate organizations approved by, or affiliated with, the government. Contact your mortgage lender first. Your lender can tell you whether you qualify for any government programs to prevent foreclosure. And, remember, you do not have to pay to benefit from government-backed loan modification programs.
6. A company/person you don't know asks you to release personal financial information online or over the phone. You should only give this type of information to companies that you know and trust, like your mortgage lender or a HUD-approved counseling agency.

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# Letter from the Chair



Welcome to September, and the onslaught of the Holidays just around the corner! This issue of the Condominium Bulletin is packed with useful information for condominium owners and those charged with keeping the life of the association running smoothly.

We give a warm welcome to a brand new Commissioner and new Staff in this issue. We also have updates and a synopsis of the recent CAI Seminar **Grappling with Government Controls and Regulations – Dealing with Complex and Conflicting Governmental Regulations**, some very interesting reading if you were not able to attend. As an active Managing Agent for several condominium associations, I often see firsthand boards and owners trying to make things work in their associations. Recently I had an annual meeting at one of my projects which was dealing with issues that often plague 30+ year old buildings on the ocean. Issues like concrete spalling, aging roofs, building standards that were different in the 70's as compared to today and aging pool issues, all of which were happening to this particular association. One of the bigger problems that arose however was what was deemed as lack of communication to the owners by the board and management.

Prior to the annual meeting there was a flood of miscommunication regarding what was happening to the building, so much so that owners were concerned about the integrity of the structures. As it turned out, the reason there was not a lot of information disbursed prior to the annual meeting to the owners, was because the Board and Management were still researching the problems, trying to find solutions and bring ALL the information to the owners at the annual meeting. It wasn't a matter of the board or management "keeping secrets" but a matter of "not all the information had been gathered yet". At the same time, however, the owners were feeling left out because of a perceived lack of communication from the board or management. One owner said it best; **"Even if you don't know anything yet...at least tell us that"**.

My late father Max Sherley used to teach all of us in the office to always communicate with our buyers and sellers. Even if you don't have anything to report...tell them you don't have anything to report...at least you are communicating with them. And in this day and age with all the communication tools we have, there really isn't any reason not to communicate. So the outcome of that particular annual meeting was a promise amongst everyone, board members, management team and owners to communicate a little more. Sometimes a little information can go a long way to resolving an issue that would balloon out of proportion without it. As an owner in a condominium association, you have a vested interest in the entire property - not just your unit- so it is important to understand what is going on and I encourage all owners to participate in the process of their association, and learn as much as you can from condominium seminars and this Bulletin to help keep your condominium association at peace.

Aloha

Scott A. Sherley  
Chair, Condominium Review Committee

# Avoiding Scams (cont. from page 1)

## **Phony Counseling or Foreclosure Rescue Scams**

The scam artist poses as a counselor and tells you he can negotiate a deal with your lender to modify your loan or save your house—if you pay him a fee first. The fee may be called a processing fee or administrative fee. He may even tell you not to contact your lender, lawyer or housing counselor—that he'll handle all details. He may even insist that you make all mortgage payments directly to him while he negotiates with the lender. Once you pay the fee, or a few mortgage payments, the scammer disappears with your money.

## **Fake “Government” Modification Programs**

Some scammers may claim to be affiliated with, or approved by, the government, or they may ask you to pay high, up-front fees to “qualify” for government mortgage modification programs. The scammer’s company name and Website may sound like a real government agency, but the Website may end with .com or .net instead of .gov. You may also see terms like “federal,” “HAMP,” “MHA,” “HARP” or other words related to official U.S. government programs. Contact your lender first. Your lender will be able to tell you if you qualify for any government programs to prevent foreclosure or modify your loans. And you do not have to pay to benefit from these programs.

## **Forensic Loan Audit**

The scammer who may be called a forensic or mortgage loan “auditor” offers to review your mortgage loan documents to determine whether your lender complied with state and federal mortgage lending laws. The scammer will usually require that you pay a fee to start the process. The scammer may say you can use the audit report to avoid foreclosure, accelerate the loan modification process, reduce your loan principal, or even cancel your loan.

There is no proof that a forensic loan audit can save your home from foreclosure although it’s conducted by a licensed, legitimate and trained auditor, mortgage professional or lawyer. Even if you sue your lender and win, your lender is not required to modify your loan to make it more affordable. If you cancel your loan, you will have to return the borrowed money, which may result in you losing your home.

## **Mass Joinder Lawsuit**

The scam artist, usually a lawyer, law firm or a marketing partner will promise that they can force your lender to modify your loan. They will tell you that by joining other homeowners in a mass joinder lawsuit against a particular lender, you will be able to stop a foreclosure, reduce your loan balance or interest rate, receive monetary damages, or even receive title to your house free and clear. Mass joinder lawsuits can be used legitimately; these lawyers are usually paid *after* the lawsuit is over, on a contingency basis. However, mass joinder lawsuit scammers will try to “sell” you participation in a lawsuit against your mortgage lender, claiming that you cannot participate in the lawsuit until you pay some type of fee.

Source: NeighborWorks America

HFIC.hawaii.gov

To report a scam: (808) 587-3222 / 1-800-394-1902

Department of Commerce and Consumer Affairs

335 Merchant Street

Honolulu, HI 96813

# Ask the Condominium Specialist

**Q:** A group of owners in my condominium association disagree with certain actions of the board regarding purchasing the lease fee interest of the underlying land. May we submit our concerns to a government agency for resolution of our concerns?

**A:** The requirements and procedures for purchasing the leased fee are outlined in HRS, Chapter 514C. This law is not within the jurisdiction of the Real Estate Branch and is a self-enforcing law, i.e., no government agency has jurisdiction over disputes that arise over the purchase of leased land. Disagreements over the fee purchase may be submitted to mediation or arbitration or to a private attorney in the litigation process.

**Q:** I conduct a child care business from my condominium unit. I own this unit. I have been fined by the board of directors for conducting business from my unit. May the board prohibit an owner from conducting a lawful business from the owner's unit?

**A:** Whether one can lawfully conduct a business from his condominium unit is determined by the applicable county zoning restrictions and the permitted uses stated in the condominium declaration. An association may prohibit or limit business activity within the association even if business activity is permitted by county zoning regulations. Moreover, a board may have the additional ability to impose monetary sanctions for prohibited activity as expressed in the association's bylaws. Check your condominium declaration for prohibited uses of your unit and your condominium bylaws for information on monetary sanctions.

**Q:** Must a board of directors of a condominium association provide bid information, preliminary to entering into a contract for work done at the association, to a requesting owner? We have provided the owner paper work pertaining to the winning contract but have not made public bids that were submitted prior to awarding the contract.

**A:** HRS § 514B-154 (b) provides that contracts of an association shall be available for examination by unit owners provided that unit owners meet certain conditions that may statutorily be imposed by the board. There is no reference to an owner's right to receive bid information prior to the awarding of a contract. Consult with your association attorney with regard to this type of request for information from a unit owner.

*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.*

## We Welcome a New Commissioner and REB Staff



The Real Estate Commission welcomes its newest Commissioner, Laurie Lee. She is an O'ahu broker, and, since 2005, the principal broker of Pacific Island Realty, LLC, which is the exclusive broker for Stanford Carr Development, LLC. Her real estate experience includes general brokerage, developer sales, and sales management of new home communities. Her term is effective July 2, 2013, to June 30, 2017. Welcome Commissioner Lee!

On June 3, 2013, the Real Estate Branch welcomed Dorothy Aquino as the Condominium Association Clerk. She joins us after 13 years at Moanalua Middle School, where she was an Office Assistant/Meal Tracker. She is new to the world of real estate and condominiums and is learning quickly. Ms. Aquino will be responsible primarily for processing the condominium association biennial registration applications for the REB. We are very happy to have her with us.

Welcome to Marilyn Antolin, who joins the REB as its Secretary. This is a homecoming of sorts for her. Ms. Antolin was a legal steno at the Regulated Industries Complaints Office before coming to us from the Attorney General's Office, Criminal Justice Division where she was a legal clerk for six years.

Finally, Katherine Linster is the new Condominium Specialist. Kat's first day with us was August 21, 2013. She joins us from the Insurance Division of the DCCA where she was part of a team working on the implementation in Hawaii of the Affordable Care Act. Kat is a graduate of the University of Illinois College of Law. With Kat on board, the Condominium Section of the REB is now fully staffed. Thanks and welcome, Kat!



# 2013 Legislative Update

On June 26, 2013, Governor Abercrombie signed four bills into law that directly impact the condominium community.

**Act 196** 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 and specifies how excess rental income received by a condominium association shall be paid to existing lien holders.

**Act 197** 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. It 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. This bill took effect on July 1, 2013.

**Act 187** provides additional 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.

**Act 206** allows a landlord to get an additional security deposit to pay for damages by a pet animal residing in the premises, providing 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. Effective for rental agreements entered into on or after November 1, 2013.

## Grappling with Government Controls And Regulations – Dealing with Complex and Conflicting Governmental Regulations

Pursuant to the Commission's contract with CAI Hawaii, on August 22, 2013, CAI Hawaii presented a seminar entitled "Grappling with Governmental Controls and Regulations." Condominium board members, owners, and other interested individuals in attendance were educated about services of various state and county agencies, including the Regulated Industries Complaints Office, the Honolulu Fire Department, Hawaii Civil Rights Commission and the State Department of Planning and Permitting. The speakers highlighted some of the more salient services and shared some practical suggestions and recommendations.

Daria Loy-Goto, Esq., the Complaints and Enforcement Officer with the Regulated Industries Complaints Office discussed the 48 plus license areas for which the office receives complaints, including Real Estate and Contractors. She also described the self-help information provided by the Regulated Industries Complaints Office's intake section.

Honolulu Fire Department Battalion Chief Socrates Bratakos, informed the participants of the fire prevention, inspection, and educational services the department makes available for the condominium community.

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# Grappling with Government Controls And Regulations – Dealing with Complex and Conflicting Governmental Regulations (cont. from page 5)

William Hoshijio, Esq., Executive Director, Hawaii Civil Rights Commission, highlighted a number of government agencies that proposed administrative rules for which a public hearing was held and which were anticipated to be adopted by the end of the year.

John Morris, Esq., shared experiences he's had with the Department of Planning and Permitting including examples that suggest that the DPP appears to have no regard for an association's governing documents in matters involving the association's enforcement of requirements. However, DPP will insist that the association -rather than DPP- enforce DPP requirements against individual owners, even if those requirements contradict the association's governing document.

The seminar was moderated by Richard Ekimoto, Esq.

*Senior Condominium Specialist Cynthia Yee attended this CAI Seminar and contributed this report.*

## Mediation Case Summaries

From June 2013 through August 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 provider listed below along with Kaua'i Economic Opportunity, Mediation Services of Maui, Kuikahi Mediation Center and West Hawaii Mediation Center.

### Mediation Center of the Pacific

Owner vs. Board	Interpretation of project documents regarding water leak into unit from common area.	Mediated to agreement.
Owner vs. Board	Alleged improper assessment of legal fees to owners.	Closed; no owner response.
Owner vs. Board	Owner contesting fines imposed by board.	Closed; no board response.
Owner vs. Board	Assessment of legal fees; damage from common area water leak; imposition of lien.	Closed; board declined mediation.
Owner vs. Board	Owner access to meeting minutes; right of owner to attend meetings; repair of water damage to unit.	Mediated; no agreement reached.
Owner vs. Board	Maintenance of common area; assessment of fine.	Mediated; no agreement reached.
Owner vs. Board	Enforcement of governing documents; plumbing problem.	Closed; no owner response.
Owner vs. Board	Dispute over modification of lanai.	Closed; no owner response.

# 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, September 11, 2013

Wednesday, October 9, 2013

Wednesday, November 13, 2013

Wednesday, December 11, 2013

Friday, September 27, 2013

Friday, October 25, 2013

Wednesday, November 27, 2013

Friday, December 20, 2013

The October 9, 2013 meetings will be held in Kailua-Kona, Hawaii at the Kuakini Tower, 75-5722 Kuakini Highway, Suite 213. 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.

## Neighbor Island Committee Meetings and Condominium Specialists' Office for the Day

On June 12, 2013, the Real Estate Commission conducted its regular monthly committee meetings in Lihue, Kaua'i in the State Office Building. Three times each fiscal year, the Commission holds its committee meetings on a different neighbor island. These neighbor island meetings give the real estate and condominium communities outside of O'ahu the opportunity to meet with commissioners and take part in discussing issues of importance to them.

The neighbor island meetings also allow individuals to meet with real estate and condominium specialists to discuss questions or concerns in person. Funding for the neighbor island meetings is from the Condominium Education Trust Fund and the Real Estate Education Fund.

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