



Hawaii Condominium Bulletin

contents

Now That You Own It,
Don't Forget to Insure It
page 1

Message from the Chair
page 2

The Medical Marijuana Debate
page 2

Back to the Future
Owners Participating in
Annual Meetings Via Skype
page 3

Ask the
Condominium Specialist
page 4

2014 Legislative Update
page 5

Mediation Case Summaries
page 6

2014 Real Estate Commission
Meeting Schedule
page 7

Funded through
the Condominium
Education Trust Fund

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.

Now That You Own It, Don't Forget to Insure It By Sue Savio



Many Associations are securing interest in units through non-judicial foreclosure. Also we have seen a trend where more Associations are buying a unit because rates are low. Now that you own it you have responsibilities to insure it. Yes it is covered under the master policy for the "as originally built" condition but what about the AOA liability, upgrades, rental income, etc. This unit is now the responsibility of the Association. What happens inside the unit is the concern of the Association.

As you know the master policy covers the building as originally built inside and out. The master policy covers the walls, ceilings, appliances, cabinets, counter tops, electrical, plumbing etc. all as originally built. So this new unit does have some basic protection. But it is only basic protection. Just like every owner in your complex needs an H06 or its equivalent, so does the Association regardless of whether owned outright or through a non-judicial foreclosure.

You need to call your insurance agent before you buy this unit. You need to advise them that the Association has secured the interest in this unit whether an outright purchase or through non-judicial foreclosure. The master liability policy needs to be changed to cover this limited common element and the master liability policy needs to extend coverage to the inside of the unit. The Association owns or is responsible for the interior and if a tenant gets hurt inside the unit, the Association as a whole is responsible. If you fail to notify the insurance agent you may not have coverage.

So how best to cover this new asset? Assume you are like any owner who owns a unit. The H06 was designed for condominium unit owners. Buy one or at least buy its equivalent. Protect your liability, your rental income, upgrades you may make or were made by the former owner and contents if any. If this unit causes a claim, having an H06 or its equivalent will mean you have loss of rents and the Association's deductible covered, after all Associations charge the deductible back to the unit owner who caused the claim. The Association owns the unit, the Association is going to have to pay the \$5,000 deductible out of the maintenance fees of their owners if they do not buy an H06 policy to protect this asset.

The Association is the unit owner. Rather than pay a \$5,000 or larger deductible the H06 will cover the AOA master policy deductible. The H06 usually comes with a \$500 deductible. The cost of an H06 is usually approximately \$200 to \$300 a year. The cost will vary by the amount of coverage needed but please call your agent to discuss the ramifications of securing a unit.

About the author: Sue Savio is a past president of CAI Hawaii and is the President of Insurance Associates. She can be reached at 526-9271; sue@insuringhawaii.com.

Message from the Chair



Here we are half way through the year already; and not wanting to instill panic, there are only 6 more months till Christmas!

At this point in the year we also deal with the end of the 2014 Hawaii Legislative Session. In this issue of the Condominium Bulletin we summarize the bills that have been passed that may affect your condominium association.

There are technical amendments to the condominium law, Hawaii Revised Statutes Chapter 514B, as well as substantive amendments on issues regarding foreclosures, assessing unpaid common assessments and the requirement to release requested documents by owners within 30 days. It has been a busy session regarding condominium associations.

Also in this issue is an excellent article on insurance and the standard H06 policy for condominium owners. Having been a managing agent for over 20 years this is something I have had to deal with in condominium associations all too often.

I have also provided an article on the issue of medical marijuana and how it may affect an association.

It's been a busy legislative session this year, but just because it's over, doesn't mean we can rest now. Now we must review these bills to clarify their practical effect such as how associations will be affected, how new provisions will be enforced and who will enforce them.

I wish everyone a safe and happy summer.

Aloha

Scott A. Sherley

The Medical Marijuana Debate

By Scott A. Sherley, Chair, Condominium Review Committee

On May 1st the Governor signed House Bill 1503 into law with little fanfare or publicity. Now known as Act 60, HB 1503 addresses medical marijuana, tenant use of such and a landlord's right to evict a tenant. Act 60 is a change to the Hawaii Landlord Tenant Code, Hawaii Revised Statutes Chapter 521; however its implications affect condominium owners and their tenants.

Pursuant to Act 60, "A provision in a rental agreement allowing for eviction of a tenant who has a valid certificate for the medical use of marijuana as provided in section 329-123 in any form is void, unless the rental agreement allows for eviction for smoking tobacco and the medical marijuana is used by means of smoking; provided that this section **shall not apply where the articles of incorporation, declaration, bylaws, administrative rules, house rules, association documents, or a similar document of a condominium property regime or planned community association prohibits the medical use of marijuana.**" (Emphasis added.)

The big question here is how many associations have made such an amendment in the last several years and have incorporated a "No Medical Marijuana Restriction" into their documents? How will Act 60 affect other neighboring owners in the building? These and other questions should be addressed by the association's management and legal counsel to assure the association is interpreting the law correctly and not stepping on a tenant's lawful right to use medical marijuana .

Act 60 has an effective Date of November 1, 2014, which will give some associations time to deal with the issue before the law takes effect. Act 60 and numerous other condominium related bills passed this legislative session will be keeping condominium associations busy over the next few months.

Back to the Future Owners Participating in Annual Meetings Via Skype

By Milton M. Motooka, Esq.

This article is reprinted with permission from Mr. Motooka and CAI Hawaii.

Some people have asked about owners participating in annual meetings via teleconference or Skype. The condominium statute provides, “unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other during the meeting.” The next frontier will be to permit owners to participate in annual or special association meetings via teleconference or Skype. The benefits of doing so will permit greater ownership participation at the association meetings.

It is probably just a matter of time before technology will advance to address the following obstacles to owners participating in association meetings via teleconference or Skype:

- 1. Establishing owner identification:** Only owners or their proxy holders may attend the Association meeting. Confirming that an individual is an owner and eligible to participate in the meeting will be a hurdle which must be overcome. This is crucial to establishing a quorum for the meeting.
- 2. Participation at the meeting:** Ownership participation during the meeting must be controlled by the chair of the meeting. When the owners and proxy holders are gathered in a single location, the chair can easily recognize parties wishing to speak. If the chair has the added burden of monitoring telephonic or Skype participation, maintaining order will be much more difficult and would invariably require sophisticated equipment to orchestrate multiple forms of participation in an orderly manner.
- 3. Voting:** Currently only owners and proxy holders attending the meeting may participate and vote at the meeting. To expand this to provide that owners attending the meeting telephonically or via Skype can vote electronically is problematic, because the ballots on the vote must be counted to determine whether motions passed or not. On the election of directors, most bylaws provide that the election will be by secret ballot. Technology will be able to provide for voting to be done electronically, but providing authentication of the vote so that the election can be confirmed will be difficult, and there must be a record of the vote to confirm the results. Maintaining the secrecy of an electronic ballot is balancing the need to be secret and the need to confirm the electronic ballot. Achieving both requirements will be difficult. Elections will require that the electronic votes and the ballot votes collected at the meeting be counted together to determine who won the election. Finally a record of the vote must be maintained.
- 4. Amending requirements in the project documents and statutes:** When technology advances to address the problems listed above, the project documents and statutes will need to be amended to permit participation via teleconference and Skype.

If greater participation at association meetings can be simplified through the use of technology it will ultimately benefit community associations. This will insure that anyone who wants to participate in the association meetings will be permitted to do so.

About the author: Milton Motooka, a partner in the firm of Motooka & Yamamoto, has been practicing law in Hawaii for more than 30 years. His practice is devoted almost exclusively to the representation of community associations. He is a member of the Charter Class of the College of Community Association Lawyers. The College is comprised of attorneys who have distinguished themselves in the field of community association law and community service. He was the recipient of the Richard M. Gourley Distinguished Service Award in 1997 for his contributions to Hawaii’s community association industry in law. He is one of the three founders of the Hawaii Chapter of the Community Associations Institute. He can be reached at 532-7214; email milton@myhawaiiilaw.com.

Ask the Condominium Specialist

Q: Over the years, my condominium association has been conducting business and taking action without holding meetings, which we are allowed to do under our bylaws. Our association has some three hundred units and most of the owners do not live on the property. At some point it was decided that it was easier and quicker to get business done without actually conducting a formal meeting. The association does hold an annual meeting once a year and no owners have complained about the lack of meetings otherwise. Is this legal?

A: Chapter 514B, HRS, provides that all meetings, annual and board “shall be conducted in accordance with the most recent edition of Robert’s Rules of Order Newly Revised”. (HRS sections 514B-121 and -125) In addition, HRS section 514B-125 provides that “[a]ll meetings of the board, other than executive session, shall be open to all members of the association, and association members who are not on the board **may participate in any deliberation or discussion**”. (Emphasis added.) These sections would seem to indicate that meetings must take place under formal protocol and owners must be allowed to attend and participate. The fact that no one has complained over the years means your association is probably lucky, not necessarily that the manner of conducting business is legal. Consult with an attorney regarding this. Even if your bylaws allow this type of “meeting”, it may be in violation of Chapter 514B, HRS.

Q: I would like to install a solar hot water heater for my condominium unit. The bylaws of my condominium forbid this. Is there a Hawaii law that will allow me to install a solar device on my unit?

A: The relevant statutory provision in this instance is Hawaii Revised Statutes (“HRS”) § 196-7. In general, it provides that any person may place a solar energy device on a condominium townhouse unit provided that: (1) the solar device complies with condominium association rules (the law requires rules governing the placement of solar devices in condominium associations be in place by December 31, 2006); (2) the solar device is registered with the private entity of record within thirty days of installation; and (3) if the solar device will be placed on a common or limited common element, the owner must first obtain the consent of the association. The association must give its consent if the owner agrees in writing to (i) comply with the association’s design specifications for the installation of solar energy devices; (ii) hire a licensed contractor to install the device; and (iii) within 14 day of the association’s approval of the solar energy device, provide a certificate of insurance naming the association as an additional insured on the owner’s insurance policy. In addition, where a solar device is placed on a common or limited common element, the owner and each successive owner will be responsible for (i) any damages to the device, the common or limited common elements or to any adjacent units caused by the installation, maintenance, repair, removal, or replacement of the device, for as long as the device remains on the common or limited common elements; (ii) maintaining insurance covering those obligations, and (iii) removing the device if necessary for the repair, maintenance, or replacement of the common or limited common elements; and (4) if a roof warranty exists when the solar energy device is to be installed on a common or limited common element roof, the owner must provide the association with written confirmation from the roofing company that the installation of the solar energy device will not void the roof warranty. HRS § 514B-140 (d) (3) of the Hawaii condominium law is also intended to be consistent with HRS § 196-7.

Create a paper trail of your communication with the board and begin by asking them in writing to state the basis for denying your request to install a solar device. While a board may control the installation of solar devices, it may not lawfully prohibit it.

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.

2014 Legislative Update

On May 8, 2014, the Hawaii Council of Community Associations (www.hawaiicouncil.com) held its annual legislative update meeting, informing members of legislative actions affecting them as condominium owners. This “meet and greet” is attended by members of the Hawaii Legislature and Honolulu City Council; this year there was a large group of elected representatives from the legislature and city council who were available after the meeting to answer questions and take comments from attending constituents.

Featured speakers were Christian Porter, Esq. Porter, McGuire, Kiakona and Chow, LLP; Daria Loy-Goto, Esq. Complaints and Enforcement Officer, Regulated Industries Complaints Office; Steve Glanstein, Professional Registered Parliamentarian and President, Management Information Consultants; and Jane Sugimura, Esq., Bendett Fidell.

Of the bills that HCCA followed this past session, the following affect condominium associations and remain alive or have been signed into law by the Governor.

HB2401 HD2 SD2 Relating to Condominiums. Consolidated into one section under HRS 514B documents, records and information that must be made available to any unit owner or their authorized representative no later than thirty days after receipt of a unit owner’s written request. [Transmitted to Governor on May 5, 2014]

HB2482 HD1 SD1 Relating to Condominiums. Technical amendments. Clarifies the process of cumulative voting and confirms that interim appointees selected by the Board to fill Board vacancies shall stand for election at the next annual meeting or at a duly noticed special meeting that includes in the notice information that the election is to fill a Board vacancy and that the meeting date shall be set on a date that allows sufficient time for owners to declare their intentions to run for election and to solicit proxies for that purpose. [Transmitted to Governor on April 25, 2014]

HB2585 Relating to Foreclosures. Signed as Act 004 on April 1, 2014. Specifies parties other than unit owners who may be served notice by publication and posting of non-judicial foreclosure.

SB2483 SD1, HD, DC1 Relating to Condominium Associations. Clarifies that a condominium association may assess unpaid common fees against any purchaser who purchases a delinquent unit in a foreclosure. Transmitted to Governor on May 2, 2014.

SB2486 SD1, HD1, CD1 Relating to Private Guards. Makes registration and licensure requirements permanent for private guards and others acting in a guard capacity; requires four hours of biennial continuing education beginning in 2016; eliminates the sunset provision making the law permanent and setting the effective date to be June 29, 2014. Removed language that would have exempted loss-prevention employees from private guard registration and licensure requirements. [Transmitted to Governor on May 2, 2014]

Related Legislation:

HB1503 HD1 SD1 Relating to Residential Landlord-Tenant Code. Voids any rental agreement provision that allows for eviction of a tenant who has a valid certificate for the medical use of marijuana unless (i) the rental agreement allows for eviction for smoking tobacco and the medical marijuana is smoked; or (ii) the documents of a condominium property regime or planned community association prohibit the medical use of marijuana. Takes effect November 1, 2014; Act 60. (See description of Act 60 elsewhere in this Bulletin written by Condominium Review Committee Chair, Scott Sherley.)

HB1830 HD2 SD1 Relating to Real Estate Appraisals. Requires arbitration awards, records of awards, and related supporting materials under chapter 466K HRS to be treated as public records. Requires recordation of these decisions and awards with the Bureau of Conveyances. Clarifies that failure to comply is a violation of the real estate appraiser’s license or certification. [Act 073, signed by the Governor on April 30, 2014]

Mediation Case Summaries

From March 2014 through May 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 at 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

Owner vs. Board	Dispute over fines and lien	Owner withdrew complaint.
Owner vs. Board	Dispute regarding repairs due to water damage.	Mediated to agreement.
Owner vs. Board	Owner contesting fines and alleged lack of due process in enforcing house rules.	Board declined to mediate.
Owner vs. Board	Disagreement over the enforcement of house rules.	Mediated; no agreement.
Owner vs. Board	Alleged unequal enforcement of house rules.	Mediated to agreement.
Owner vs. Board	Contesting fines over violation of house rules regarding pet policy.	Owner did not follow up with complaint.
Owner vs. Board	Dispute regarding interpretation and enforcement of pet policy.	Owner withdrew complaint.

Kaua`i Economic Opportunity

Owner vs. Board	Allegation of an illegally placed lien.	Mediated; no agreement.
-----------------	---	-------------------------

Mediation Services of Maui, Kuikahi Mediation Center and West Hawai`i Mediation Center did not report any completed condominium mediations for this period.

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**

Wednesday, June 18, 2014

Wednesday, July 9, 2014

Wednesday, August 13, 2014

Wednesday, September 10, 2014

Wednesday, October 8, 2014

Wednesday, November 12, 2014

Wednesday, December 10, 2014

Real Estate Commission – 9:00 a.m.

Friday, June 27, 2014

Friday, July 25, 2014

Friday, August 29, 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.

HAWAII CONDOMINIUM BULLETIN, June 2014 copyright Hawaii Real Estate Commission. All rights reserved. This Bulletin, or any part thereof, may not be reproduced without the written permission of the Hawaii Real Estate Commission, except permission is granted to registered Hawaii condominium associations to reproduce and distribute copies of this entire publication, but not for profit, as an educational service. This publication is intended to provide general information and is not a substitute for obtaining legal advice or other competent professional assistance to address specific circumstances. The information contained in the Bulletin is made pursuant to Hawaii Administrative Rules Section 16-201-92 and is not an official or binding interpretation, opinion or decision of the Hawaii Real Estate Commission or the Department of Commerce and Consumer Affairs. The Hawaii Condominium Bulletin is funded by the Condominium Education Trust Fund, Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii.