

# Hawaii Condominium Bulletin

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Senior Condominium Specialist  
at (808) 586-2643 to  
submit your request.

## Three Points to Keep in Mind

By Agnes Sykes, CMCA®, AMS®, PCAM®, Sr. Property Manager, Hawaiian Properties

The following are three points to be kept in mind by Board members in service to their Association:

### 1. Fiduciary Duty to the Association

The fiduciary duty is based on two concepts: the duty of care and the duty of loyalty.

A homeowner elected to the Board of Directors is charged with the fiduciary duty. This means they are required to care for the Association entrusted to them as they would treat something of value that is their own personal asset. This only makes sense since they are part of the Association, and immediately benefit by improvements to the condition of the Association. Unfortunately, it is sometimes counterintuitive. An example is in the decision to raise maintenance fees at budget time – as an owner, you never want maintenance fees to increase, but as a Board member, you understand why it may have to happen. The fiduciary duty means that Board members will treat the Association as carefully and conservatively as they would as if it were their own private property.

The duty of loyalty means that the Board member would show a strong feeling of support or allegiance to the Association. They should put their own interests aside, and consider the interests of the Association first. A Board member should always act in support of the Association and not try to go against what is best for the Association, keeping in accordance with the law and governing documents.

### 2. Good Business Judgement Rule

The Good Business Judgement Rule is a valuable support to the decision-making process required of Board members. From time to time, Board members will be called upon to make decisions on important matters affecting the Association which are outside of their regular sphere of expertise. It is the role of the management team (resident or site manager and property manager in consultation with the Board) to exhaust every avenue of research to deliver information to the Board to assist them in the decision-making process. Even so, mistakes occur and decisions made with the best information and intention may produce unintended results. The Good Business Judgment Rule dictates that decisions made by Board members, following steps which would be regarded as reasonable by other members of the business community, are appropriate and are generally afforded a level of protection under the law. Be reasonable!

### 3. Directors and Officers Insurance

Members of the Board of Directors, as individuals and as a group, are covered by a type of insurance known as the D&O policy. This covers them for decisions that are made in the course of their service as Board members. Board members are charged to be reasonable in their service to the Association. Generally, the D&O policy will not cover matters involving negligence. Once a matter of liability is made known to the Board, they must take action as soon as possible to correct it or they could be considered negligent.

By keeping these three points in mind at all times, a Board member, acting reasonably, and in accordance with the law and the Association's governing documents, will be of good service to the Association and an asset to their community.

# Message from the Chair

The year is moving quickly! As I write this message, the legislature has about six weeks left in this 2017 session. In the session so far, the legislature has managed to introduce over 130 bills having something to do with condominiums. Many of those bills have since died; however we will continue to follow closely those bills that affect our mandate in the Real Estate Branch. For a rundown of this session so far and bills that affect the condominium community, read our discussion of the 2017 Legislature in this Condominium Bulletin.

We are happy to announce that with the generous assistance of CAI Hawaii, a free condominium educational seminar will be held on Saturday morning, April 8, 2017 at the State Capitol Auditorium from 9:00 – 11:30 a.m. Professionals involved in condominium related issues in Hawaii will present twenty-minute sessions on condominium governance, property management and condominium insurance. Come listen to John Morris, Esq., Jane Sugimura, Esq., Keven Whalen, PCAM, Milton Motooka, Esq., and insurance professional Sue Savio discuss topical issues and answer your questions. Register at the CAI Hawaii website [www.caihawaii.org](http://www.caihawaii.org) or that morning at the seminar site. Pre-registration is not required to attend this free event.

Also in this issue, if you haven't signed up for our periodic educational email blasts, here's your chance to do so now at the link included inside this edition. You'll be kept up to date on the laws, educational events and useful information relevant to condominium living in Hawaii.

And continuing along the subject of condominium education, check out the website of the Hawaii Council of Community Associations, <http://www.hawaiiCouncil.com/> for their educational offerings to condominium owners. Both CAI Hawaii and HCCA seek to bring the knowledge and expertise of industry experts to Hawaii condominium owners.

We'll provide a final legislative update in our June issue. In the meantime, take note that both CAI Hawaii and HCCA will have legislative updates in the early summer.

Aloha,

Laurie Lee, Condominium Review Committee Chair



## Email Subscription Link

Towards the goal of increasing awareness of as well as offering a wider distribution of condominium educational materials, the Real Estate Commission has created a link to relevant condominium educational materials. Periodically, information on topics such as condominium governance and updates on the current condominium law are emailed to subscribers of this educational email. Click on to the link below to sign up for these educational updates.  
<http://cca.hawaii.gov/reb/subscribe/>



# 2017 Legislature

On January 18, 2017, the 29th legislature convened its regular session. Among the myriad of bills introduced were over 130 bills regarding some aspect of condominiums.

This plethora of condo bills was unlike prior legislative sessions, and the Real Estate Branch promptly focused on tracking, monitoring, and testifying on various proposed measures.

While no bills involved developer's public reports and association registration and few bills addressed the creation of condominiums, certain topic trends were noticeable.

The majority of the proposed measures dealt with boards and associations, as well as governance and owner participation. Bill topics ran the gamut from elections (including proxies) and board member removal to qualifications and training of board members and amendment of governing documents. New measures also proposed to license resident managers, regulate management fees, and address alleged retaliation or discrimination against owners, board members, managing agents, resident managers, and association employees, as well as conflicts of interest.

A number of bills related to transparency and the availability and format of association records including financial documents, minutes, and resident manager contracts, as well as the posting of meeting agendas and on-line access to documents.

Miscellaneous project topics included smoking regulation and prompt repair of damages to common areas or elements.

Dispute resolution was the second largest category of introduced bills. Several bills were introduced relative to an additional information "hotline" and the creation of new regulatory agencies. In addition, some bills related to various aspects of alternative dispute resolution, including mandating mediation and/or arbitration, and defining the parameters of what constitutes a dispute and an assessment. Finally, of note was the introduction of legislation to repeal chapter 514A, Hawaii Revised Statutes, and require that all condominiums be governed under chapter 514B, Hawaii Revised Statutes, irrespective of creation date, and to create common interest agricultural communities.

The session is currently scheduled to adjourn on May 4, 2017, and the Real Estate Branch anticipates being thoroughly engaged in the process between now and then.

## AOUO Biennial Registration 2017 - 2019

The biennial condominium association registration for the registration period July 1, 2017-June 30, 2019 is fast approaching. Reminder notices to condominium managing agents and self-managed associations will go out in March. The online registration website will go live on April 3, 2017, and close down on June 30, 2017.

The deadline for registrations to be received so that Real Estate Branch can process all paperwork is May 31, 2017. Associations requesting a fidelity bond exemption must submit their registration applications by May 1, 2017.

# Ask the Condominium Specialist

**Q:** Security in our condominium association has asked the board to trim trees in certain areas on association property to provide a clear view of the addresses in the association. The board secured workers for the job, however tenants in one of the units became upset and asked the workers to stop the job. The workers now won't come back to finish up the trimming job because of the threatening action of the tenants. Meanwhile, security is insisting that we trim the trees so that addresses are clearly visible. What do we do?

**A:** First of all, contact the owner of the unit in which the tenants live and inform the owner of the problem. Communicate with the owner as much as possible and allow the owner to convey instructions to the tenant if the tenants are not cooperative. If there are house rules in place applicable to the tenants' behavior, remind the owner of the rules. If penalties are in place for house rule violations, give the owner notice of this. Finally, should the tenants response to the workers become threatening in nature, a police complaint may be in order. Tenants' actions should not jeopardize the health and safety of other members of the association.

**Q:** We are a new condominium association and would like to open up a bank account for our association funds. The bank told us that we must incorporate our association in order to open a bank account. Is this in the condominium law?

**A:** There is no such requirement in the condominium law, HRS Chapter 514B, that associations must incorporate, however that does not preclude a financial institution from imposing their own requirements upon potential customers. You may consider other financial institutions to see whether they also require incorporation of your association to open an account. Seek the advice of an attorney to discuss any consequences of incorporating or to draw up the incorporating documents.

*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.*

## Mediation Case Summaries

From December 2016 through February 2017, the following condominium mediations were conducted pursuant to Hawai'i Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. The mediation providers also conducted additional condominium mediations in the District Courts and community outreach in their respective communities.

### Mediation Center of the Pacific

Through Skype video conferencing capabilities, MCP can conduct mediations with condominium owners who live part-time in Hawaii and are currently residing out of the state; MCP also continues to mediate condominium disputes referred by the Honolulu District Court.

Owner vs. Board	Alleged unequal enforcement of house rules; unauthorized modification of unit.	Mediated to agreement.
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### Dispute Prevention and Resolution, Inc.

Owner vs. AOOU	Alleged violation of numerous house rules involving smoking, parking, noise and other alleged violations.	Mediated to agreement.
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Owner vs. AOOU	Dispute over AOOU repair of kitchen vent.	Mediated; no agreement.
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Owner vs. AOOU	Dispute over misuse of common area.	Mediated; no agreement.
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AOOU vs. Owner	Dispute over responsibility for lanai repair.	Mediated to agreement.
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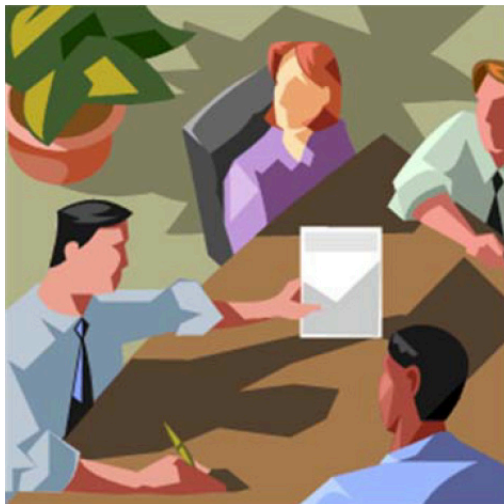
AOOU vs. Owner	Dispute over alleged modifications to unit without approval.	Mediated to agreement.
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**Real Estate Commission & CAI Hawaii  
PRESENT**

# CONDORAMA

## A Free Education Program for Condominium Owners



**Milton Motooka**, a partner in the firm of Motooka & Rosenberg, has been practicing law in Hawaii for more than 35 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. Only 26 community association attorneys nationwide were selected for induction into the Charter Class. Milton Motooka was the only attorney selected from Hawaii. 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.

**John Morris**, a partner in the firm of Ekimoto & Morris first became involved with condominiums and homeowner associations when he served for three years as the first condominium specialist for the Hawaii Real Estate Commission. He has spoken and written articles about the homeowner associations and legislation affecting them. He is the author of the "Director's Guide to Hawaii Community Association Law", a handbook for directors which includes the condominium law and an analysis of the legal requirements relating to the management and operation of homeowner associations in Hawaii. The Director's Guide is a resource used by many managers and directors throughout the State.

**Sue Savio** has been president and owner of Insurance Associates, since 1975. Insurance Associates specializes in providing insurance services for Condominiums, Cooperatives, Homeowners Associations and similar developments. Insurance Associates today represents over 1,000 community associations throughout Hawaii. Ms. Savio has served as President of the Hawaii Independent Insurance Agents Association (HIIA), is a past President of Community Associations Institute (CAI) Hawaii, and current Treasurer on the CAI Hawaii Board; she has served on the board in different capacities since 2000. She was awarded the Gourley Award for distinguished service to CAI Hawaii.

**Keven Whalen** is the Vice President of Touchstones Properties, Ltd. and has been in the Community Association Management industry for 13 years. He is the past presidents of the CAI Hawaii Chapter. Mr. Whalen also sits on several committees for CAI Hawaii. Keven holds the Certified Manager of Community Association (CMCA®), Accredited Management Specialist (AMS®), and the prestigious Professional Community Association Manager (PCAM®) designations. He was awarded CAI's Committee Chair of the Year award in 2015 and the Richard M. Gourley Distinguished Service Award in 2016 for his contribution to community association industry in management.

**Jane Sugimura**, a partner in the firm of Bendet Fidell & Sugimura has been practicing law since 1978. Ms. Sugimura is the President of the Hawaii Council of Association of Apartment Owners and has served as its President since 1994. She has been actively involved in legislation affecting condominiums with the Legislature and the City Council. Ms. Sugimura has served on The Bougainville Board and the Pearl One Board and was its President in 2013. She has also served on numerous task forces involved in condominium community issues such as the Blue Ribbon Recodification advisory Committee, which assisted in drafting Chapter 514B of the Hawaii Revised Statutes.

<b>9:00 a.m. – 9:10 a.m.</b>	<b>Welcome and Introductions</b>
<b>9:10 a.m. – 9:30 a.m.</b>	<b>Rights &amp; Duties of Directors - John Morris, Esq.</b>
<b>9:30 a.m. – 9:50 a.m.</b>	<b>Rights &amp; Duties of Owners - Jane Sugimura, Esq.</b>
<b>9:50 a.m. – 10:10 a.m.</b>	<b>Reserves - What the law requires &amp; why it is important - Keven Whalen, PCAM</b>
<b>10:10 a.m. – 10:30 a.m.</b>	<b>Do's and Don'ts of Effective Rule Making - Milton M. Motooka, Esq.</b>
<b>10:30 a.m. – 10:50 a.m.</b>	<b>How to Reduce Risks - the ABCs of Condominium Insurance - Sue Savio</b>
<b>10:50 a.m. – 11:20 a.m.</b>	<b>Questions &amp; Answers</b>
<b>11:20 a.m. – 11:30 a.m.</b>	<b>Evaluations &amp; Adjournemnt</b>

This seminar or educational presentation is entirely funded by funds from the Condominium Education Trust Fund (CETF), Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii for condominium unit owners whose associations are registered with the Real Estate Commission.

Register online at [www.caihawaii.org](http://www.caihawaii.org)  
[Online Registration Not Required to Attend](#)  
For more information: Phone: (808) 586-2644

This free educational program is being conducted by CAI Hawaii

#### Important Information

The State Capitol Auditorium on Saturday April 8th **will not be accessible** by the first floor elevators or stairs in the Capitol. Please enter by the 1390 Miller Street entrance near the Department of Health. Limited parking is available in the Capitol parking lot.



# 2017 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, March 08, 2017  
Wednesday, April 12, 2017  
Wednesday, May 10, 2017  
Wednesday, June 14, 2017  
Wednesday, July 12, 2017  
Wednesday, August 09, 2017  
Wednesday, September 13, 2017  
Wednesday, October 11, 2017  
Wednesday, November 08, 2017  
Wednesday, December 06, 2017

Friday, March 24, 2017  
Friday, April 28, 2017  
Friday, May 26, 2017  
Friday, June 30, 2017  
Friday, July 28, 2017  
Friday, August 25, 2017  
Friday, September 29, 2017  
Friday, October 27, 2017  
Wednesday, November 22, 2017  
Friday, December 15, 2017

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](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.

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