



# Hawaii Condominium Bulletin

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## Condominium Basics Introduction to Condominium Governance

*The uniqueness of the condominium concept of ownership has caused the law to recognize that each unit owner must give up some degree of "freedom of choice he might otherwise enjoy in separate, privately owned property." ASSOCIATION OF OWNERS OF KUKUI PLAZA, v. CITY AND COUNTY OF HONOLULU, Hawaii Intermediate Court of Appeals (1987).*

Owning and living in a condominium unit is different from living in a home which is not part of a condominium project. This is because the owner of a condominium unit is part of an association consisting of other unit owners at the condominium project and it is the association that is legally responsible for operating and managing the project. However, the association's authority is not unlimited. Hawaii laws and legal documents related to the project give the association certain rights over individual owners (e.g., the authority to assess and collect fees) but also impose certain obligations on the association to act in the best interests of its unit owners. Together the actions of the association, its board of directors, and the individual unit owners will determine how a condominium project governs itself versus being regulated by any outside agency.

### Lesson: The Unit Owners' Association and its Powers The Unit Owners' Association.

The Condominium Property Act (Chapter 514B of the Hawaii Revised Statutes and hereafter referred to as the "Act") specifies that all owners of residential units at a condominium project are members of that project's unit owners' association (the "Association"). The Association has the primary responsibility for the governance of the condominium project as provided for in the Declaration of Condominium Property Regime for the project and the bylaws of the project, both of which are necessary to create a project. The Act also gives the Association specific powers as described next.

### Statutory powers.

**§514B-104 Association; powers.** (a) Except as provided in section 514B-105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

- 1) Adopt and amend the declaration, bylaws, and rules and regulations;
- 2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section 514B-148;
- 3) Hire and discharge managing agents and other independent contractors, agents, and employees;
- 4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. For the purposes of actions under chapter 480, associations shall be deemed to be "consumers";
- 5) Make contracts and incur liabilities;
- 6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- 7) Cause additional improvements to be made as a part of the common elements;

# Message from the Chair

Aloha!

Two educational events were held in February by CAI Hawaii and the Hawaii Council of Community Associations. CAI Hawaii speakers discussed various aspects of conducting and participating in annual and board meetings; HCCA's event focused on topics including legislation updates at the State and City level, and board duties and limitations. Read more about these two seminars in this edition of our bulletin.

CAI Hawaii will hold its next educational event in May; the topic will be avoiding, prosecuting and defending lawsuits. HCCA will also sponsor an event in May providing a summary of what new legislation affecting condominium associations we can expect to come out of this legislature.

The Real Estate Commission with CAI Hawaii will sponsor a free Condorama event at the Hawaii State Capitol Auditorium on Saturday, April 7, 2018. Speakers and discussion will be from 9:00 a.m. to 11:30 a.m., with registration at 8:30 a.m. For more information on the speakers and their topics visit our website at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) in the next few weeks.

In this edition of the Condo Bulletin, among other things, you'll find helpful information for condominium associations on establishing a priority of payment policy for unit owners; condominium governance basics excerpted from the Real Estate Commission 2015-2016 Core B Course; and a summary of legislation affecting condominium associations that we are following.

Our website has lots of educational information and you can also sign up for our quarterly email blasts of timely condo news here <http://cca.hawaii.gov/reb/subscribe>.

Until next time,

Laurie A. Lee  
Chair, Condominium Review Committee



## Condominium Owner Education

Community Associations Institute Hawaii held the "Planning and Executing Effective Annual and Board Meetings," seminar on February 1, 2018 at the Japanese Chamber of Commerce from noon to 1:30 PM. Attendance was high for this event; 322 registered attendees and 17 walk ins attended the educational luncheon.

Attorney Philip Lahne reviewed the statutory requirements and procedures for board meetings ("Complying with the Law"); Kanani Kaopua focused on a few common sense management styles in "Annual and Board Meeting Preparation"; and Rachel Glanstein discussed the roles of parliamentarians in community association governance in "Parliamentarians; What We Do; Meeting Disasters, Suggested Preparation".

CAI Hawaii's next educational event is on March 8, "Fire and Life Safety". Visit their website at <http://www.caihawaii.org/> for more information.

# 2018 Legislative Session

The twenty-ninth legislature regular session of 2018 is off and running. These are some of the bills that the Real Estate Commission is following this legislative session. In the next issue of the Condo Bulletin, we'll review the bills affecting condominiums that have survived.

Two companion bills, SB 2060 and HB 1874, would expand the use of the Condominium Education Trust Fund monies for voluntary binding arbitration. It would also expand the parties and issues available to subsidized mediation.

Several bills have been introduced to approach the problem of mandatory fire sprinklers in older condominiums and how to pay for them, for example using a revolving fund and making low-interest loans available. Bills to increase housing for residents have been introduced for raising the owner-occupant requirement for developers from 50% to 90% (HB 1712) and for extending the time owner-occupant units must be offered, from 30 days to 60 days (HB 2654).

SB 2121 proposes county subdivision approval prior to submitting a property to the condominium property regime; SB 2449 would require an agricultural CPR to receive prior commission approval from the Land Use Commission; SB 2524 would among other things allow the Real Estate Branch to adopt rules requiring a developer to seek county approval for significant projects; and SB 2892 requires counties to adopt supplemental rules for CPR properties.

HB 2619 considers alternative ways to amend condominium declarations and bylaws and HB 2630 looks at allowing condominium associations to install an electronic voting device for their association elections if certain requirements are met.

## Upcoming Repeal of HRS Chapter 514A

In the December 2017 issue of the Condominium Bulletin, we included questions and answers relating to the upcoming repeal of HRS Chapter 514A which is to take effect on January 1, 2019.

Governor Ige signed Act 181 into law, **effective January 1, 2019**, which will repeal HRS Chapter 514A. This law raises questions regarding the ability of developers to lawfully offer for sale and to sell condominium units created under HRS, Chapter 514A without filing new disclosure documents.

For some context, a condominium that was created before July 1, 2006, was created under HRS Chapter 514A. A condominium that was created after July 1, 2006, was created under HRS Chapter 514B. Condominium projects created under HRS 514A require an active developer's public report for developer units to be legally offered for sale.

The following situations may raise an issue necessitating professional legal advice regarding the effect of the repeal:

- The current owner of a condominium unit developed under HRS Chapter 514A received the unit as a gift or inheritance from the developer (perhaps a parent or grandparent) rather than through a sale;
- The current owner is the developer which still retains units from the initial HRS Chapter 514A registration;
- The HRS Chapter 514A project is registered with the Real Estate Commission, but the registration will expire prior to January 1, 2019;
- The project is registered with the Real Estate Commission under HRS Chapter 514A, but only has a preliminary or contingent developer's public report; and
- The project is registered with the Real Estate Commission under HRS Chapter 514A, but there have been material changes since the public report was issued and it is no longer accurate.

If a Chapter 514A project has an active and accurate developer's public report through January 1, 2019, then the repeal should not affect the project. If the project was developed under HRS Chapter 514B, then the repeal will not affect the project. If a condominium owner purchased a registered HRS Chapter 514A unit from a developer or another owner in a resale, then the repeal should not affect the unit. In other cases, however, the repeal of HRS Chapter 514A may affect the ability to sell units in the future.

If you believe you may be impacted, contact the attorney who prepared the project's developer's public report, an attorney specializing in condominium law, or the Real Estate Commission staff for additional guidance. Please note that any processing of projects with issues must be completed prior to January 1, 2019; thus, it is strongly recommended that documents be submitted by August 2018.

# Associations Need a Priority of Payment Policy

by Melanie K. Oyama, Esq.

Did you know Hawaii law requires Associations to adopt a priority of payment policy? Many owners, including Board Members, are not aware of the law or that their Association has a priority of payment policy that allows payments to be applied to maintenance fees last if the account is delinquent.

It can get frustrating for homeowners when their account becomes delinquent even though they are paying the current monthly maintenance fees. One way to ensure homeowners are aware of the policy is to provide a copy of the priority of payment policy at least annually along with coupon booklets or any other informational reminders.

However, before sending out a copy of the policy it is a good idea to check with your legal counsel to be sure the priority of payment policy follows the statutory guidelines. Hawaii Revised Statutes § 514B-105 provides as follows:

(c) *No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines, and interest) unless the board adopts and distributes to all owners a policy stating that:*

- (1) Failure to pay late fees, legal fees, fines, and interest may result in the deduction of such late fees, legal fees, fines, and interest from future common expense payments, so long as a delinquency continues to exist; and
- (2) Late fees may be imposed against any future common expense payment that is less than the full amount owed due to the deduction of unpaid late fees, legal fees, fines, and interest from the payment.

As the law states, the Association's Board of Directors can adopt a policy (via a resolution) at a regular meeting that provides how payments will be applied when an account is delinquent. Once the resolution is adopted, a copy must be distributed to all owners. Even if the Association's governing documents provide for such priority of payment policy, the law still requires the policy be **adopted** by the Board and distributed to all owners. This law applies to condominium associations governed by Hawaii Revised Statutes Chapter 514B, regardless of the Association opting-in to 514B or still governed by 514A because this particular statute is automatically applicable to all Associations falling within Chapter 514A or 514B.

One suggested priority list is to have payments made applied to: (1) legal fees and costs, (2) fines, (3) late fees, and (4) maintenance fees. It is beneficial for an Association to include that the application of payments made to a delinquent account is first applied to legal fees because this will allow the Association to pay itself back first for the out of pocket cost to the Association.

Finally, if you are wondering about Community Associations that do not fall under 514A/B but are governed by 421J, this statute is silent on the priority of payment policy but if the Association's governing documents provide for such priority of payments, then the Association has the authority to apply payments in the order stated in the governing documents. If the Association's governing documents are silent, it is recommended that the Association adopt a policy so that the owners are aware of the policy.

About the Author: Melanie Oyama is an attorney with Motooka & Rosenberg, specializing in Condo and Community Association law, including delinquency collections. She can be reached at 532-7266; email [mel@myhawaiiilaw.com](mailto:mel@myhawaiiilaw.com).

## HCCA Seminar

On February 22, 2018, the Hawaii Council of Community Associations held a seminar covering legislative bills, employment law, county fire sprinkler laws, and disaster preparedness.

Speakers included Tim Apicella, Joy Schoenecker, John Knorek, Richard Emery, and Jane Sugimura.

Tim Apicella discussed disaster preparedness in condominiums and the lack of limited shelters in the state as well as the logistical problems of losing electricity in high rise buildings. John Knorek went into extensive detail about protected classes, whistle blower laws, employment discrimination, the need to document actions by the board, and evaluations of staff. Richard Emery and Jane Sugimura primarily discussed condominium governance bills in the current legislative session while Joy Schoenecker took part in the panel of experts answering questions from the audience.

The Real Estate Commission was invited to the seminar to answer any questions and provide informational brochures relating to the repeal of HRS Chapter 514A.

# Mediation Case Summaries

From December 2017 through February 2018, the following condominium mediations were conducted pursuant to Hawai'i Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. The Mediation Center of the Pacific conducted additional condominium mediations in the District Courts and mediation providers conducted community outreach in their respective communities as well.

## Dispute Prevention and Resolution, Inc.

Owner vs. AOOU	Owner challenged the authority of the board to enter into agreements to install solar panels.	Mediated to agreement.
Owner vs. AOOU	Owner alleges numerous violations of the project documents including the inequitable distribution of electricity charges among the unit owners.	Mediated; no agreement.
AOOU vs. Owner	Dispute regarding plumbing issues and proposed changes to the unit.	Mediated; no agreement.
AOOU vs. Owner	Dispute over association loans, the hiring of contractors and conducting a reserve study.	Mediated to agreement.
Owner vs. AOOU	Dispute over the alleged mistreatment of owners by board members after owners spoke out on issues at a board meeting.	Mediated to agreement.

## Maui Mediation Services

Owner vs. AOOU	Owner alleged to have violated house rules regarding the types of plants that may be planted. Owner advised to file appeal first with the board.	No mediation occurred.
AOOU vs. Owner	Alleged violation of house rule by owner renting out condo unit.	Owner refused mediation.
Owner vs. Owner	Dispute between adjoin unit owners over alleged noise violation.	Owner w/drew request for mediation.
Owner vs. AOOU	Owner alleges financial mismanagement by condo board. requested MMS to investigate association finances. owner decided to utilize an attorney.	No mediation.

## Lou Chang, ALC

AOOU vs. Owners	Numerous issues regarding alleged house rules violations and the imposition of fines.	Mediated; no agreement.
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## Mediation Center of the Pacific

AOOU vs. Owner	Issues relating to the payment for plumbing charges and maintenance fees.	No mediation; complaint withdrawn.
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# Condominium Basics

## Introduction to Condominium Governance (cont. from page 1)

- 8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that:
- (A) Designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall require the approval of at least sixty-seven per cent of the unit owners;
  - (B) If the developer discloses to the initial buyer in writing that additional areas will be designated as common elements whether pursuant to an incremental or phased project or otherwise, the requirements of this paragraph shall not apply as to those additional areas; and
  - (C) The requirements of this paragraph shall not apply to the purchase of a unit for a resident manager, which may be purchased with the approval of the board;
- 9) Subject to section 514B-38, grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements;
- 10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section 514B-35(2) and (4), and for services provided to unit owners;
- 11) Impose charges and penalties, including late fees and interest, for late payment of assessments and levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, if the bylaws are silent, pursuant to a resolution adopted by the board that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process as provided by sections 514B-161, 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the department of commerce and consumer affairs;
- 12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, documents requested for resale of units, or statements of unpaid assessments;
- 13) Provide for cumulative voting through a provision in the bylaws;
- 14) Provide for the indemnification of its officers, board, committee members, and agents, and maintain directors' and officers' liability insurance;
- 15) Assign its right to future income, including the right to receive common expense assessments, but only to the extent section 514B-105(e) expressly so provides;
- 16) Exercise any other powers conferred by the declaration or bylaws;
- 17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, except to the extent inconsistent with this chapter;
- 18) Exercise any other powers necessary and proper for the governance and operation of the association; and
- 19) Subject to sections 514B-146, 514B-161, and 514B-162, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding.

Under the self-governance concept of the law, the Association—consisting of everyone who owns a unit in the condominium project—is responsible for operating and managing the project, like a small government.

While all owners are members of the Association, the Act and the condominium's project documents recognize that every unit owner cannot participate in the day-to-day operations of the project and instead, require all the owners to elect a smaller number of owners as a board of directors. This group makes most of the substantive decisions concerning the day-to-day operations of the project.

*The above excerpt was part of the Real Estate Commission's Core B 2015-2016, on condominium governance.*

# 2018 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 14, 2018  
Wednesday, April 11, 2018  
Wednesday, May 9, 2018  
Wednesday, June 13, 2018  
Wednesday, July 11, 2018  
Wednesday, August 8, 2018  
Wednesday, September 12, 2018  
Wednesday, October 10, 2018  
Wednesday, November 14, 2018  
Wednesday, December 12, 2018

Friday, March 23, 2018  
Friday, April 27, 2018  
Friday, May 25, 2018  
Friday, June 29, 2018  
Friday, July 27, 2018  
Friday, August 24, 2018  
Friday, September 21, 2018  
Friday, October 26, 2018  
Wednesday, November 21, 2018  
Friday, December 21, 2018

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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