



# Hawaii Condominium Bulletin

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special needs. Please call the  
Senior Condominium Specialist  
at (808) 586-2643 to  
submit your request.

## 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).*

*This is an excerpt from the Real Estate Commission's Core B 2015-2016 continuing education course on condominium governance.*

### Lesson: House Rules

The Act (section 514B-105(b)) gives the Association the authority, through its board of directors, to independently adopt rules and regulations which are usually referred to as **House Rules**. However, this authority is limited to rules that:

- 1) Prevent any use of a unit which violates the declaration or bylaws;
- 2) Regulate any behavior in or occupancy of a unit which violates the declaration or bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners; or
- 3) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in condominiums or regularly purchase those mortgages.

### Lesson: Decisions of the Association Are Binding on Unit Owners and their Tenants

**§514B-112 Condominium community mutual obligations.** (a) All unit owners, tenants of owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to this chapter are subject to this chapter and to the declaration and bylaws of the association adopted pursuant to this chapter.

(b) All agreements, decisions, and determinations lawfully made by the association in accordance with the voting percentages established in this chapter, the declaration, or the bylaws are binding on all unit owners. (c) Each unit owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the covenants, conditions, and restrictions set forth in the declaration, the bylaws, and the house rules adopted pursuant thereto. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the managing agent, resident manager, or board on behalf of the association or, in a proper case, by an aggrieved unit owner.

Under the Act, and the project's declaration and bylaws most decisions of the Association are binding on all the unit owners along with any user of the owner's unit such as tenants and guests. That is a critical principle

# Message from the Chair

Aloha!

Thanks for taking the time to read the June Hawaii Condominium Bulletin and keeping up with condominium governance issues in Hawaii.

In this edition of our quarterly online newsletter, you'll find information on the condominium-related legislation awaiting the governor's signature to sign the bill into law, discussion on the importance of condominium association house rules, as well as the association's power to make decisions and borrow money. You'll also find tips for living alongside your neighbors and ways to deal with units left in disrepair in your association.

There are opportunities available (even during the summer) for owners to educate themselves on condominium issues and the relevant laws. Take a look at CAI Hawaii's website, at [www.caihawaii.org](http://www.caihawaii.org) (they have an events calendar) and the website of the Hawaii Council of Community Associations at [www.hawaiiCouncil.com](http://www.hawaiiCouncil.com) for ways that you can participate.

The third Condorama was held in April at the State Capitol Auditorium. If you missed it or would like to watch certain portions of it over again, you can view it at <http://cca.hawaii.gov/reb/educational-video-seminars/>. The speakers at the April event were Carol Rosenberg who spoke on the Rights and Duties of Directors and Owners; Jonathan Billings speaking on the reserve requirement; Rachel Glanstein addressing the Do's and Don't's of Effective Meetings; and Sue Savio who spoke on reducing risks through your condominium insurance.

Have a wonderful summer. Our website has lots of educational information for you; the site has been updated to make it easier to navigate. In addition, you can sign up for our quarterly email blasts of timely condo news here <http://cca.hawaii.gov/reb/subscribe>. And if you're in Hilo on June 13, 2018, drop in on the Real Estate Commission's committee meetings. The meetings will be at the Hawaii Island REALTORS®, 1321 Kino'ole Street. Meetings begin at 9:30 a.m.

Until next time,

Laurie A. Lee  
Chair, Condominium Review Committee



## Avoiding Conflict with the Neighbors

We all can just get along. The key? Communication. It's often the best way to prevent and resolve conflict before it reaches the legal system. You don't have to be friends or spend time together to achieve a peaceful coexistence, but you should try to be a good neighbor and follow these tips:

**Say hello.** At the mailbox, while walking the dog or when you see a moving van arrive, introduce yourself. Learn your neighbors' names and regularly offer a friendly greeting.

**Provide a heads up.** If you're planning a construction project, altering your landscaping or hosting a big party, contact your neighbors beforehand.

**Do unto others.** Treat neighbors as you would like to be treated. Be considerate about noise from vehicles, stereos, pets, etc.

**Know your differences.** Make an effort to understand each other. Differences in age, ethnic background and years in the neighborhood can lead to different expectations or misunderstandings.

**Consider the view.** Keep areas of your property that others can see presentable.

**Appreciate them.** If the neighbors do something you like, let them know. They'll be pleased you noticed, and it'll be easier to talk later if they do something you don't like.

# Condominium Basics

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

in the governance structure of a condominium project. **Owners of units in a condominium project legally relinquish some of their traditional real property rights when they choose to live alongside others for the good of all owners at the project.**

### Lesson: The Association—Limited Oversight

Decisions by the Association generally are not subject to any direct oversight by federal, state, or county agencies. Associations are required to register with the Hawaii Real Estate Commission on a biennial basis and are required to maintain a fidelity bond covering their employees and their managing agent (if any) who disburses funds. (§514B-143(a)(3)). Owners who wish to challenge decisions of the Association or actions of its board or employees are required to pursue mediation and arbitration of the dispute. This will be discussed more later in the course.

### Lesson: Association's power to borrow money for common elements and other property.

**§514B-105 Association; limitations on powers.** (e) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to the borrowing. In connection with the borrowing, the board may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project. For purposes of this section, the financing of insurance premiums by the association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value.

For the association to borrow money for the upkeep or repair of the common elements or the project's personal property, it must notify all unit owners and then owners representing 50% of the common interest must approve the borrowing either by vote or written consent. The amount borrowed becomes a common expense which will need to be paid for by the individual owners.

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

## Avoiding Conflict with the Neighbors (cont. from page 2)

**Stay positive.** Most people don't try to create problems. If a neighbor does something that irritates you, don't assume it was deliberate.

**Talk honestly.** Tolerance is important, but don't let a real irritation go because it seems unimportant or hard to discuss. Let your neighbors know if something they do annoys.

**Be respectful.** Talk directly to your neighbors if there's a problem. Gossiping with others can damage relationships and create trouble.

**Remain calm.** If a neighbor mentions a problem they have with you, thank them for the input. You don't have to agree or justify any behavior. Wait for any anger to subside before responding.

**Listen carefully.** When discussing a problem, try to understand your neighbor's position and why he or she feels that way.

**Take your time.** Take a break to think about what you and your neighbor have discussed. Arrange to finish the conversation at another time.

# Mediation Case Summaries

From March 2018 through April 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        | Alleged violation of fiduciary duty by board in matters involving reserves and sale of association-owned unit. | Mediated to agreement.  |
| AOOU vs. Owner        | Owner served by board with alleged violation of conduct notices.   | Mediated to agreement.  |
| Owner vs. AOOU        | Alleged structural damage to units from workdone by a former owner and which had been approved by the board.   | Mediated; no agreement. |
| Owner vs. Owner/Board | Owner alleges violation of flooring standards resulting in excessive noise.                                    | Mediated; no agreement. |
| Owner vs. Board       | Removal of structure owners claim is part of their unit.   | Mediated; no agreement. |

## Mediation Center of the Pacific

|                 |  |                           |
|-----------------|--|---------------------------|
| Owner vs. Board | Dispute regarding source of water leak and who is responsible for payment for damages. | Board declined mediation. |
|-----------------|--|---------------------------|

## *Ask the Condominium Specialist*

**Q:** My condominium association has several units occupied by long-term rental tenants. The units are run-down physically (for example, clogged plumbing, torn screens, sliding doors that are jammed in place, broken air-conditioning units). While we own our unit, we are affected by the lack of maintenance provided to these rental units. Is there anything we can do to require the owners of these units to maintain their units?

**A:** Poorly maintained condominium units affect all owners and tenants, not just those residing in those units. Whether it is the unsightliness of the unit or residual effects to the common areas or other units, a poorly maintained unit can affect all living in a condominium association and have a financial impact.

In a condominium association, the board of directors have the right to physically access a condominium unit for making emergency repairs to prevent damage to the common elements of the association or to another unit. (HRS § 514B-137). You may ask your board to consider this option to remedy the situation in the units. If the deterioration to a unit is severe, the board may have the legal right to demand that the unit owner provide maintenance repairs, or to make the repairs themselves.

You may also approach this issue from the perspective of the tenant and the tenant's right under the law to live in a habitable rental unit. The Residential Landlord-Tenant Information Center of the Office of Consumer Protection operates a consumer telephone line at (808) 586-2634 for tenants of residential units. The telephone line is in operation between the hours of 8:00 a.m. to noon, Monday through Friday, except holidays. You may suggest to the tenants residing in the units you described that information on their rights to live in a habitable rental unit may be obtained from that office.

*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 situation.*



# 2018 Legislative Session Update

The 2018 Legislative Session has adjourned with several condominium bills having survived the legislative session; these bills will now go to the Governor for his signature. Please consult an attorney familiar with the condominium law regarding any new legislation. The following descriptions are summarizations of a few bills meant to provide only general information.

## House Bills:

HB 1873 modifies the foreclosure process for associations where there is an agreed upon payment plan. HB 1873 also prohibits associations from deducting late fees, legal fees, fines, and interest from common expense payments regardless of any board policy. HB 1873 ends a board's ability to change priority of payments. Owners may still not withhold any common expense payments, but may dispute other payment requests prior to payment. HB 1873 provides a detailed procedure for unit owners to contest attorneys' fees and costs, penalties or fines, lien filing fees, or any other charges except for common expense assessments in addition to providing minimum and maximum deadlines to demand mediation.

The bill also prohibits associations from attempting to collect any of the disputed charges until the association has participated in mediation. This bill significantly changes how many associations collect on non-common expense assessments. This bill is effective July 1, 2018, but sunsets on June 30, 2020.

HB 1874 expands the subsidized mediation program to include binding arbitration up to \$6,000. The bill also expands the scope of who can participate in mandatory mediation and the scope of what may be mediated.

HB 1874 also explicitly allows parties to apply to circuit court to compel mediation in certain circumstances and sets time deadlines. This bill is effective January 2, 2019, and sunsets on June 30, 2023.

## Senate Bills:

SB 2524 sought to clarify some of the requirements for agricultural land, specifically in counties that have a population of 750,000 or more, namely, Oahu. The bill also grants property owners adjacent to agricultural land to file reports of violations with the respective county which the county must investigate within thirty days.

The bill adds a requirement that an application for a registration of a condominium project in an agricultural district in a county that has a population of 750,000 or more people, may include comments on the availability of supportive infrastructure, the potential impact on environmental resources, and other requirements of county ordinances and rules. This bill takes effect on July 1, 2018.



# 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, June 13, 2018\*

Friday, June 29, 2018

Wednesday, July 11, 2018

Friday, July 27, 2018

Wednesday, August 8, 2018

Friday, August 24, 2018

Wednesday, September 12, 2018

Friday, September 21, 2018

Wednesday, October 10, 2018

Friday, October 26, 2018

Wednesday, November 14, 2018

Wednesday, November 21, 2018

Wednesday, December 12, 2018

Friday, December 21, 2018

\*This meeting will be held in Hilo, Hawaii, at the Hawaii Island REALTORS®, 1321 Kino`ole Street, and will convene at 9:30.

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.

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