



Hawaii Condominium Bulletin

Condominium Basics Introduction to Condominium Governance

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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 on condominium governance.

Lesson: Board Eligibility Limitations

§514B-107 Board; limitations. (a) Members of the board shall be unit owners or coowners, vendees under an agreement of sale, a trustee of a trust which owns a unit, or an officer, partner, member, or other person authorized to act on behalf of any other legal entity which owns a unit. There shall not be more than one representative on the board from any one unit.

(b) No resident manager or employee of a condominium shall serve on its board.

(c) An owner shall not act as an officer of an association and an employee of the managing agent retained by the association. Any owner who is a board member of an association and an employee of the managing agent retained by the association shall not participate in any discussion regarding a management contract at a board meeting and shall be excluded from any executive session of the board where the management contract or the property manager will be discussed.

Who may be a board member?

In a nutshell, here is who can be a board member:

- Unit owners/co-owners
- Vendees under an agreement of sale
- A trustee of a trust that owns a unit
- A party authorized to act on behalf of a legal entity owning a unit (i.e. an officer of a corporation which owns the unit).
- A condominium project's resident manager and any other employees of the Association are not allowed to serve on the board. And in the event a unit owner is also an employee of the project's managing agent, the owner may serve on the board but cannot be an officer of the Association.

NOTE: Only one representative per unit may serve on the board.

Other key points related to board powers and limitations.

- Directors can only be reimbursed for travel and other expenses out of Associations funds if a majority of the board approves it
- Reimbursements must be described in detail including the items and amounts of the reimbursements in the board meeting minutes
- Board members must be given copies of the condominium project documents along with a copy of the Act at Association expense, and
- Training/education expenses, including economy travel expenses, may be allotted for directors in the annual operating budget but must be shown as separate line items.

Lesson: Amendment of Bylaws

§514B-108 Bylaws. (e) The bylaws may be amended at any time by the vote or written consent of at least sixty-seven per cent of all unit owners. Any proposed bylaws together with the detailed rationale for the proposal may be submitted by the board or by a volunteer unit owners' group. If submitted by that group, the proposal shall be accompanied by a petition signed by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board. The vote or written consent, to be valid, must be obtained within three hundred sixty-five days after mailing for a proposed bylaw submitted by either the board or a volunteer unit owners' group. If the bylaw is duly adopted, the board shall cause the bylaw amendment to be recorded. The volunteer unit owners' group shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within three hundred sixty-five days after the original petition was submitted to the board.

Message from the Chair

Aloha!

The regular legislative session of 2019 is well underway and staff at the Real Estate Branch have been tracking bills related to condominium project development and governance.

SB 551, SD1, which clarifies that a condominium association may exercise nonjudicial or power of sale foreclosure remedies regardless of the presence or absence of power of sale language in an association's governing documents is still alive as of the time of this writing, as well as a senate bill, SB 269, that enables condominium associations to adopt rules and regulations that require unit owners to prohibit smoking inside a condominium unit as part of a lease agreement and prohibit smoking on a lanai of a condominium unit and in all common elements.

HB 61, HD1, authorizes condominium boards to create a written policy in cases where excess amounts are received for maintenance fees and to specify in that policy that any excess amounts may be applied to fines, legal fees, late fees, and interest. To view these and other bills, visit the legislature's website at www.capitol.hawaii.gov.

On April 13, 2019, the Real Estate Commission and CAI Hawaii will be presenting Condorama V at the State Capitol Auditorium. The program will run from 9:00 – 10:30 am. Topics to be discussed are the recent non-judicial foreclosure decision, covenant enforcement, how to make your condo meetings more effective and selecting the right insurance for your association. Visit our website at <http://cca.hawaii.gov/reb/resources-for-condominium-owners/> where you can link up to the registration page at CAI Hawaii to register to attend.

If you've signed up for the Real Estate Branch Email Subscription, a new issue is coming in March; if you would like to read prior editions or to subscribe, click on the link here <http://cca.hawaii.gov/reb/prior-direct-emails/>.

Have a great spring and we'll catch up with the activities at the legislature in our June edition.

Laurie A. Lee
Chair, Condominium Review Committee



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

This subsection shall not preclude any unit owner or volunteer unit owners' group from proposing any bylaw amendment at any annual association meeting.

In summary, amendment of the Bylaws requires:

- A vote or written consent of at least 67% of all unit owners
- If the amendment is proposed by volunteer unit owners' group, it needs to include a petition signed by not less than 25% of the unit owners as shown in the association's record of ownership
- The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board to the owners at the expense of the association for vote or written consent within 30 days of the receipt of the petition by the board
- The vote or written consent must be obtained within 365 days after mailing, and
- Any unit owner or volunteer unit owners' group may propose bylaw amendments at any annual association meeting.

Lesson: Managing Agents and Resident Managers

Definition.

§514B-3 Definitions.

"Managing agent" means any person retained, as an independent contractor, for the purpose of managing the operation of the property."

"Operation of the property" means the administration, fiscal management, and physical operation of the property, and includes the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements."

Requirements of managing agents.

Section 514B-132(a) of the Act requires managing agents to be licensed as a real estate broker. If the declaration or bylaws requires a corporate managing agent, a managing agent organized as a limited liability company is permissible.

This section also requires managing agents to obtain a fidelity bond for the total number of units they'll be managing, which must be equal to \$500 multiplied by the aggregate number of units of the association managed by the managing agent (provided that the amount of the fidelity bond shall not be less than \$20,000 nor greater than \$500,000).

Managing agents are fiduciaries of the property they manage.

Section 514B-132(c) of the Act states that every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent. This means that, like a Board member, a managing agent owes the highest duties under the law to the Association and its members including the duties of obedience, diligence, loyalty and good faith.

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Condominium Basics

Introduction to Condominium Governance (cont. from page 2)

Resident managers: definition and requirements.

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Section 514B-3 of the Act defines a **resident manager** as “any person retained as an employee by the association to manage, on-site, the operation of the property.”

Requirements and limitations of resident managers.

The definitions of “managing agent” and “resident manager” are covered in the same section of the Act (514B-3) and to a certain extent overlap with each other. The primary distinction is that a managing agent is specifically identified as an independent contractor of the association. Therefore, association employees assisting the association in managing the operation of the project, such as resident or general managers, are not considered managing agents who must meet the qualifications for managing agent. Similar to the case of a managing agent, the Act specifies that the Association’s bylaws must specify which of the powers granted to the Board may be delegated to the resident manager. {Sections 514B104(a)(3) and 514B-108(b)(4)}. As such, both managing agents and resident managers:

- Are prohibited from soliciting proxies for their own use at association meetings or to cast any proxy vote at an association meeting, except to establish a quorum {514B123(i)}
- May conduct background checks of prospective association employees {514B-133}
- Must keep an accurate list of owners and make it available to other owners, with restrictions {514B-153(e)}; and
- Must notify owners in advance of any costs of providing information {514B-105(d)}.

As covered previously, resident managers may not serve on the board of directors, and as employees, they may not sell or rent apartments in the project, except association-owned units, without the prior consent of 67% of the owners {514B-133(b)}.

Background checks for association employees.

Section 514B-133(a) of the Act states that the board, managing agent, or resident manager, upon the written authorization of an applicant for employment as a security guard or resident manager or for a position that would allow the employee access to the keys of or entry into the units in the condominium or access to association funds, may conduct a background check on the applicant or direct another responsible party to conduct the check.

The background check is discretionary, not mandatory. If a background check is undertaken, it must, at minimum, require the applicant to disclose whether they have ever been convicted in any jurisdiction of a crime which would make them unsuitable for employment as an association employee with access to association funds or the keys of or entry into the units in the condominium, and the judgment of conviction has not been vacated. An applicant’s criminal history disclosure may—if the board, managing agent, or resident manager directs it—be verified by the board, managing agent, resident manager, or other responsible party using information obtained through the Hawaii criminal justice data center.

Ask the Condominium Specialist

Q: I want my condominium association to repair a crack in my window. They are so far refusing to do so. Aren’t they responsible for its repair?

A: The answer is “it depends”. First, check the declaration to your condo unit to see how your unit is delineated and described.

HRS § 514B-35 provides that “[e]xcept as provided by the declaration” (emphasis added), any window designed to serve a single unit located outside that unit’s boundaries is a limited common element (of which the association is generally responsible for maintenance). Your declaration may say otherwise however, meaning you may be responsible for the repair, i.e., a description in the declaration that the window is included as a part of your unit and thus your responsibility. Here’s a link to our website where you can look at the condominium law, HRS Chapter 514B and HRS § 514B-35, www.hawaii.gov/hirec.

Q: I would like to submit a dispute I’m having with my association to binding arbitration. Does the Real Estate Commission subsidize this?

A: Act 196 (2018) allows parties residing in condominium associations registered with the Real Estate Branch that have attempted evaluative mediation to submit their dispute to voluntary binding arbitration for dispute resolution.

Each party to the voluntary binding arbitration pays an initial fee of \$175, and the arbitration is capped at \$6,000 which is subsidized by funds from the condominium education trust fund.

Evaluative mediation and arbitration providers are listed at the Real Estate Branch’s website here:

<http://cca.hawaii.gov/reb/resources-for-condominium-owners/>. Information and contact information for the private providers can be found at that site as well.

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.

Mediation Case Summaries

From December 2018 through February 2019, the following condominium mediations or arbitrations 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	Dispute over the violation of house rules by owners' tenants and the penalties incurred.	Mediated to agreement.
Owner vs. AOOU	Alleged discrimination by AOOU for non-payment of maintenance fees.	Mediated to agreement.
Owner vs. AOOU	Dispute over content of board meetings, executive sessions, and owners' rights to participate in board meetings.	Parties requested a written evaluation of the case at the conclusion of the mediation.
Owner vs. AOOU	Dispute over amounts alleged by owner to be owed to owner from the AOOU for improperly assessing fees.	Written evaluation provided by request of the parties at the conclusion of the mediation.
Owner vs. AOOU	Issue over board members' proper role and alleged breach of fiduciary duties by board members.	Mediated to agreement.
Owner vs. AOOU	Allegation of election fraud and breach of fiduciary duty by board members.	Mediated to agreement.
Owner vs. AOOU	Owners allege water damage to their unit from common area pipes.	Mediated; no agreement.
AOOU vs. Owner	AOOU alleges owner using parking stall without paying rent or maintenance fees for its use.	Mediated to agreement.
AOOU vs. Owner	Dispute over alleged refusal by owner to allow the installation of smoke alarms in the unit.	Mediated to agreement.
Owner vs. AOOU	Dispute regarding the renting out of parking stalls to non-owners.	Mediated to agreement.
Owner vs. AOOU	Allegation by owner that the AOOU violated the condominium documents and Chapter 514B.	Mediated; no agreement.

The Mediation Center of the Pacific

Owner vs. AOOU	Owner alleges board not complying with safety and security provisions as set forth in the project documents.	Mediated; no agreement.
Owner vs. AOOU	Noise complaint and allegation that board not enforcing house rules related to noise.	Mediated; no Agreement.
Owner vs. AOOU	Dispute regarding leak from common element and subsequent accommodation.	Mediation refused.

Maui Mediation Services

Owner vs. AOOU	Allegation that a planned fee increase did not meet required Bylaw notice provision.	Parties did not mediate.
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Creating safe and welcoming communities for people and pets

We all want safe and humane communities for our residents, human and furry alike. The key is to create an environment that meets the needs of both people with pets and those of non-pet households. Striking this balance is doable if you focus on this one central concept: Responsible pet owners make responsible neighbors.

According to Community Association Institute (CAI) data, nearly all (99 percent) of its member concerns relating to pets are connected to nuisance or lifestyle issues (e.g., not picking up pet waste, noise violations and dogs unleashed in common areas). All these concerns can be mitigated with appropriate rules and enforcement of the Covenants, Conditions and Restrictions (CCRs).

SOLUTIONS FOR MITIGATING NUISANCE/LIFESTYLE ISSUES

1. Provide ample receptacles and place them in strategic locations around the property near where pets create waste.
2. Maintain security cameras to enforce rules and hold irresponsible pet owners accountable.
3. Consider using DNA testing to identify irresponsible owners who fail to clean up after their pets.
4. Offer new residents a “welcome package” for their pets, including such things as:
 - Physically and mentally stimulating toys (Dogs often bark when they are bored.)
 - Coupons to a local pet supply shop
 - Suggested routes for walking your dog (Offer multiple options, if possible.)
 - A helpful hints handout offering practical solutions, such as: “Keep the radio or TV on while you’re out to mask outside noises that might stimulate your pet.”

The bottom line is that many of these concerns can be resolved with affordable, practical and easy-to-solve solutions, such as understanding that dogs, like their humans, need stimulation and without it can get bored and experience subsequent behavioral issues. Figuring out ways to help your residents responsibly care for their pets will benefit the entire community.

PRACTICAL TIPS FOR A SAFE AND RESPONSIBLE PET-FRIENDLY COMMUNITY

Polling has consistently found that between 80 and 90 percent of people with dogs consider their pets to be members of the family. It's no surprise then that more and more people are looking for pet-friendly communities to call home.

Comprehensive, breed-neutral rules that champion responsible pet ownership create safer and more humane communities for both people and pets.

Here are some common-sense tips to attract people to your community while promoting safety for all.

1. CCRs and/or rules should require all dogs to be on leash at all times while in common areas. This rule should be enforced for all people with pets. The best way to avoid problems is to have dogs under the control of their person.

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Communities for People and Pets (cont. from page 5)

2. CCRs and/or rules should not exclude certain breeds. There is a scientific consensus that a dog's breed (or perceived breed) is not an accurate tool for predicting behavior. That's a fancy way of saying that all dogs are individuals.
- a. The Community Association Institute (CAI) strongly recommends against arbitrary breed, weight or size limits. "Where pets are allowed, restrictions and rules should focus on pet and owner behavior, not on the height, weight or breed of the pet." (CAI "Pets in Common-Interest Communities" policy statement)
- b. Breed bans have also been challenged in court and can result in costly litigation for your association.
3. Don't impose weight limitations on pets. Every dog is different and exercise needs can vary. Some larger dogs may not require much exercise at all. And don't assume smaller dogs are less likely to bite!
4. Find an insurance carrier that will provide coverage, regardless of breed. There are options for nondiscriminatory insurance companies for your association.
5. Update your governing documents. Consult with your attorney to ensure that your documents protect your community association in the event of a dog bite or incident. Ultimately, individual dog owners should be responsible for the actions of their dogs.
6. Consult legal counsel for emotional support animal requests or service animal requests. Remember that discriminating against an owner based on the breed of their dog is a violation of federal law, not to mention bad policy. The costly litigation that is common with these requests can be avoided.
7. Listen to the experts! Organizations like the American Bar Association (ABA), the International Municipal Lawyers Association (IMLA), the Centers for Disease Control and Prevention (CDC), the National Animal Care and Control Association (NACA), the American Veterinary Medical Association (AVMA), Best Friends Animal Society and many others urge that rules and laws should be breed-neutral and behavior-based.

People with pets make up 68 percent of all U.S. households or roughly 85 million homes. **Nearly 50% are dogs and nearly 40% are cats.** Dogs and cats account for the vast majority of these pets, with nearly half of the population having a dog, nearly 40 percent having a cat, and a significant and growing percentage having both.

ADOPTION IS ON THE RISE

More than 60% of pet cats and dogs are obtained from a local animal shelter, a humane society or from some other source, such as a family member or rescue organization.

Many of the pets adopted from these sources are mixed breed, which further complicates efforts to accurately identify a dog's genetic makeup.

Studies have consistently found that it is nearly impossible to visually identify a dog's breed with any degree of accuracy. It's a guessing game!

This article was reprinted with permission from Lee Greenwood, Esq. of Best Friends – www.bestfriends.org

Condominium Association Registration 2019 – 2021 Biennium Registration Website Goes Live April 1, 2019

HRS § 514B-103 (c) requires all condominium associations with more than five units to register with the Commission every two years. The upcoming registration period for condominium associations runs from April 1, 2019 to May 31, 2019. All condominium managing agents and self-managed associations will receive notices in the mail with information necessary to register the association. The notices will be sent out in March.

The website address is aouo.ehawaii.gov.

2019 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 6, 2019

Wednesday, April 17, 2019

Wednesday, May 8, 2019

Wednesday, June 12, 2019

Wednesday, July 10, 2019

Wednesday, August 7, 2019

Wednesday, September 11, 2019

Wednesday, October 9, 2019

Wednesday, November 6, 2019

Wednesday, December 11, 2019

Friday, March 22, 2019

Friday, April 26, 2019

Friday, May 17, 2019

Friday, June 28, 2019

Friday, July 26, 2019

Friday, August 23, 2019

Friday, September 27, 2019

Friday, October 25, 2019

Friday, November 22, 2019

Friday, December 20, 2019

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.

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