

Learn more about the Real Estate Branch (REB) of the Department of Commerce and Consumer Affairs

Check out the REB website www.hawaii.gov/hirec for more information and some frequently asked questions.

- What services does the REB provide to the condominium community?
- Where do I file a complaint against my association?
- What laws apply to my condominium association?
- How do I get a copy of my association documents?

Real Estate Branch

About Us

The Real Estate Branch, as part of the Professional and Vocational Licensing Division, assists the Real Estate Commission in carrying out its responsibility for the education, licensure and discipline of real estate licensees; registration of condominium projects, condominium associations, condominium managing agents, and condominium hotel operators; and intervening in court cases involving the real estate recovery fund.

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Contact Us

Condominium Hotline: 808-586-2644
Hours: 9:00 AM – 3:00 PM
Email: hirec@dcca.hawaii.gov
Web: www.hawaii.gov/hirec



CONDOMINIUM: BOARD OF DIRECTORS FIDUCIARY DUTY

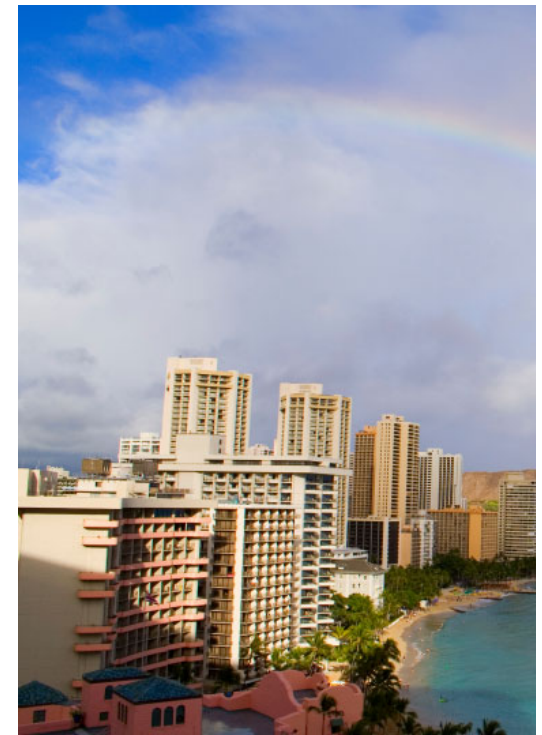
Real Estate Branch
335 Merchant Street #333
Honolulu, HI 96813

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*Real Estate Branch
Department of Commerce and
Consumer Affairs*

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Fiduciary Duty

Chapter 514B provides that every director owes the association a “fiduciary duty” in the performance of the director’s duties, to exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation (HRS § 514B-106 (a)). A fiduciary relationship is a special type of relationship which arises when the confidence, trust, and reliance of one party is placed upon the judgment and advice of another.

A fiduciary is bound to protect the interests of the parties relying on it. In exercising their fiduciary duties, board members must act in good faith in the best interests of the association consistent with the duty of loyalty, exercising the same degree of care and skill in making decisions or taking actions that would be expected of an ordinarily prudent person in a similar situation (HRS § 414D-149 (a)). As fiduciaries,

directors must always place the interests of the association above their own interests at all times.

Many people, including board members, mistakenly believe that the managing agent is solely responsible for everything relating to the management and operation of the condominium project. The managing agent, except in limited circumstances, implements the policies of the board of directors. Since most directors are unpaid volunteers, it is natural for boards to delegate some of their authority to the managing agent or association employees. An important aspect of the director’s fiduciary duty is the supervision of those persons to whom the board has delegated authority for the day-to-day operation of the condominium project. Although the board may delegate certain authority to the officers, managing agent, resident manager, or committees, the board must still ensure that association business is conducted in accordance with the law



and condominium documents. In other words, board members can delegate their authority under certain circumstances, but they cannot delegate their responsibility to operate and manage the condominium project. That means that board members can ultimately be held liable for the actions of agents and employees of the association if those agents or employees fail to carry out the board’s and their own fiduciary duties.

Excerpt from *Condominium Property Regimes: Owner Rights and Responsibilities*. The full document may be found at the REB website www.hawaii.gov/hirec

Fiduciary duty includes a duty of undivided loyalty and honesty in voting on any matter where conflicts of interest or self-dealing could arise. A director must not permit another duty or interest to prevent the director from making an independent decision based on the best interests of the association. Directors must disclose any conflict of interest prior to a vote on the matter at the board meeting, and the disclosure must be recorded in the minutes of the meeting. If a director has a conflict of interest, he or she may not cast a vote on that matter (HRS § 514B-125 (g)).