



# 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).*

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

### **Lesson: Board of Directors' Meetings.**

Board of Directors' meetings are much less formal than a meeting of the Association. In part, this is because the size of the board is much smaller than the Association and because the Board's conduct is largely directed by the Association's bylaws rather than the Act.

Nevertheless, board meetings are important since most of the decision-making on the day-to-day operations at the project are decided at these meetings. While the board may have the right under the Act and/or its bylaws to delegate to others (such as a managing agent or the resident manager), the board is ultimately responsible and liable for the actions of these persons in addition to its own decisions, as was discussed in Unit 1.

### **Board Powers & Duties.**

The following is a typical provision of a condominium association's bylaws which describes a board's duties:

*Section \_\_xx\_\_. Powers and Duties. The Board of Directors shall have all powers necessary for the administration of the affairs of the association and may do all such acts and things therefore as are not by law, the declaration, or these bylaws directed to be exercised or done only by the unit owners.*

Often, another section will specifically outline (and sometimes limit) board powers concerning:

- Supervision of management and operation of the project
- Maintenance and repair of the common elements
- Purchase, maintenance, of any equipment and provision of all water and utility services
- Employment, supervision, and dismissal of necessary personnel
- Preparation of a proposed budget and schedule of assessments for the year
- Collection of assessments and payment of all common expenses
- Purchase of insurance
- Custody and control of all funds of the association, maintenance of books of account and records of the funds, and preparation of regular financial statements, and
- Calling association meetings and sending out notices, etc.

### **Process for Board Meetings.**

**§514B-125 Board meetings.** (a) All meetings of the board, other than executive sessions, shall be open to all members of the association, and association members who are not on the board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the board votes otherwise.

(b) The board, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters:

- 1) Concerning personnel;
- 2) Concerning litigation in which the association is or may become involved;

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# Message from the Chair

Aloha!

Thanks, as always, for keeping up with issues related to condominium living in Hawaii.

In this edition of our Bulletin we update you on some of the practical effects of recent legislation regarding proxies and non-judicial foreclosures in our "Ask the Condo Specialist" feature. Additionally, in our reprint from the Real Estate Commission's Core B class, condominium board of director's meetings and the association's duty to keep records are discussed.

Of note to developers, Act 223 (2019) extends the safe harbor provision to allow developers who still retain developer units or units which did not undergo a genuine first sale the option of transferring into chapter 514B, HRS. You'll find a description of Act 223 inside. Finally, we revisit the issue of parking stalls and the importance for prospective purchasers to confirm, by reviewing the condominium declaration and any amendments, the parking stall attached to the unit you are considering buying.

Our Committee meetings for September will be held on Kaua'i on September 11, 2019, at the Grove Farm Building Conference Room located at 3-1850 Kaunualii Hwy. The Committee meeting calendar is included as well and we remind the condominium community of our standing invitation to attend our monthly meetings.

We are planning our sixth Condorama for this Fall; as soon as details are finalized, we'll post the information up on our website, [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec). Also at this site, you'll find condominium registration and education and real estate licensing education information, including past issues of the Condominium Bulletin.

And don't forget to sign up for direct-to-you informational and educational quarterly emails at <http://cca.hawaii.gov/reb/subscribe>.

Laurie A. Lee  
Chair, Condominium Review Committee



## When Selling or Buying a Condo Unit, Be Careful About that Parking Stall

To some prospective purchasers of a condominium unit, the parking stall assigned to the unit is an important consideration in the purchase, whether it be for the size of the car versus the stall, the location of the stall, or need for additional space to get in or out of the vehicle.

When purchasing or selling a condominium unit, make sure you confirm which parking stall, if any, is attached to the condominium unit you are considering. A prospective purchaser and/or their real estate sales agent may rely on the property manager, or an onsite resident manager of a condominium association to advise them of which parking stall comes with a particular unit. The only positive way of determining what parking stall is legally attached to a unit is to review the Declaration of Condominium Property Regime (or in older buildings Horizontal Property Regime) and any amendments thereof.

Section 514B-40, Hawaii Revised Statutes, allows a unit owner, subject to the consent of any mortgagees or lessors of that unit, to transfer or exchange a limited common element (in this instance, a parking stall) that is assigned to the unit, to another unit. Any transfer must be executed and recorded as an amendment to the Declaration. The amendment must be executed only by the owner of the unit whose limited common element is being transferred and the owner of the unit receiving the limited common element. Moreover, a copy of the executed amendment must be delivered to the association.

Unit owners, however, occasionally enter into informal agreements among themselves to use another's parking stall because it is convenient to one or the other. These informal agreements become ingrained in the life of the association, e.g., association employees or other owners get used to seeing someone park in a particular stall and wrongly assume that the stall is attached to the unit. Owners may forget, or neglect to pass on critical information regarding the informal parking arrangements. It is not enough to rely on others for information concerning parking; a prospective purchaser should follow up with a review of the condominium documents. Confusion reigns when a buyer discovers that the stall he thought was his, and indeed considered before purchasing the unit, is not. Maybe he can't get the SUV into the stall or has physical requirements which are not met by the legal parking stall.

To avoid these potential problems, and the potential for litigation, always consult the Declaration and any current amendments to it beforehand to determine which parking stall is attached to a particular condominium unit. If unsure, seek advice from your real estate agent or an attorney.



# Condominium Basics

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

### Process for Board Meetings, continued.

- 3) Necessary to protect the attorney-client privilege of the association; or
  - 4) Necessary to protect the interests of the association while negotiating contracts, leases, and other commercial transactions.
- The general nature of any business to be considered in executive session shall first be announced in open session.

**§514B-125 Board meetings.** (c) All board meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the board may require that the unit owner pay for the costs associated with the participation.

(d) The board shall meet at least once a year. Notice of all board meetings shall be posted by the managing agent, resident manager, or a member of the board, in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board.

(e) A director shall not vote by proxy at board meetings.

(f) A director shall not vote at any board meeting on any issue in which the director has a conflict of interest. A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made "Conflict of interest," as used in this subsection, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the association.

Here are the key points from this section describing Board meetings:

- The Board must meet at least once a year.
- Notice of all board meetings shall be posted by the managing agent, resident manager, or a member of the board, in prominent locations within the project 72 hours prior to the meeting or simultaneously with notice to the board.
- Board meetings must be open to all association members, who, along with the Board members themselves, may participate in any deliberation or discussion.
- Boards may go into Executive Session at which non-board members are excluded. However, these sessions are limited and may only be used to discuss and vote upon matters pertaining to: personnel; litigation in which the association is/may become involved; necessary to protect the association's attorney-client privilege; or necessary to protect the association's interests while negotiating contracts, leases, and other commercial transactions.
- Board members cannot vote by proxy at Board meetings, but they can participate in a meeting if they are not physically present so long as this is permitted by the project documents and all members participating may simultaneously hear each other during the meeting.
- A Board member shall not vote at any board meeting on any issue in which the director has a conflict of interest; if a conflict of interest exists on any issue before the board, they must disclose the nature of the conflict prior to the board's vote on that issue, and the meeting minutes must record that disclosure was made. **Conflict of interest** means an issue in which a director has a direct, personal, or monetary interest not common to other members of the association.
- All board meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

### Board meeting minutes.

Section 514B-126 of the Act sets forth the requirements pertaining to the minutes of a board meeting. It states that the minutes of meetings of the board must include the recorded vote of each board member on all motions except those voted on in executive session. The minutes must be approved no later than the second succeeding regular meeting, and must be available within seven calendar days after approval. Unapproved final drafts of a meeting's minutes must be available within 60 days after the meeting, provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of that executive session.

### Lesson: Association's Obligation to Keep Records

#### General requirements.

Section 514B-152 of the Act requires an association to keep financial and other records that are sufficiently detailed to enable them to comply with requests for information and disclosures related to the resale of units and to make these records available according to the section stipulating examination by any unit owner and the owner's authorized agents.

#### Records to be maintained.

**§514B-153 Association records; records to be maintained.** (a) An accurate copy of the declaration, bylaws, house rules, if any, master lease, if any, a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the managing agent's office.

# Condominium Basics

## Introduction to Condominium Governance (cont. from page 3)

(b) The managing agent or board shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The managing agent or board shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

(c) Subject to section 514B-152, all records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board.

(d) The developer or affiliate of the developer, board, and managing agent shall ensure that there is a written contract for managing the operation of the property, expressing the agreements of all parties, including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract.

In summary, the records that section 514B-153 of the Act requires an Association to maintain are:

- Declaration
- Bylaws
- House rules (if applicable)
- Master lease (if applicable)
- Sample original conveyance document
- All public reports and amendments
- Receipts and expenditures related to the common elements
- All records and the vouchers authorizing the payments and statements
- Any written contract for managing the operation of the property

### List of owners.

**§514B-153 Association records; records to be maintained.** (e) The managing agent, resident manager, or board shall keep an accurate and current list of members of the association and their current addresses, and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board, and a copy shall be available, at cost, to any member of the association as provided in the declaration or bylaws or rules and regulations or, in any case, to any member who furnishes to the managing agent or resident manager or the board a duly executed and acknowledged affidavit stating that the list:

- (1) Will be used by the owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to association matters; and
- (2) Shall not be used by the owner or furnished to anyone else for any other purpose. A board may prohibit commercial solicitations.

Where the condominium project or any units within the project are subject to a time share plan under chapter 514E, the association shall only be required to maintain in its records the name and address of the time share association as the representative agent for the individual time share owners unless the association receives a request by a time share owner to maintain in its records the name and address of the time share owner.

(f) The managing agent or resident manager shall not use or distribute any membership list, including for commercial or political purposes, without the prior written consent of the board.

(g) All membership lists are the property of the association and any membership lists contained in the managing agent's or resident manager's records are subject to subsections (e) and (f), and this subsection. A managing agent, resident manager, or board may not use the information contained in the lists to create any separate list for the purpose of evading this section.

### Lesson: Records Availability, Disposal, and Prohibitions

#### Association information that must be made available.

§514B-154.5(a): Notwithstanding any other provision in the declaration, bylaws, or house rules, if any, the following documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be made available to any unit owner and the owner's authorized agents by the managing agent, resident manager, board through a board member, or the association's representative:

- (1) All financial and other records sufficiently detailed in order to comply with requests for information and disclosures related to the resale of units;
- (2) An accurate copy of the declaration, bylaws, house rules, if any, master lease, if any, a sample original conveyance document, and all public reports and any amendments thereto;

# 2019 Legislative Session Update

Of special note this past legislative session for condominium developers, attorneys, and certain unit owners was the passage of Act 223, SLH 2019.

Act 223 temporarily resurrects certain development sections of chapter 514A, Hawaii Revised Statutes (“HRS”), until July 1, 2020. This Act extends the safe harbor provision to allow developers who still retain developer units or units which did not undergo a bonafide first sale, the option of transferring into chapter 514B, HRS, via extension, supplement, or supplementary developer’s public report, as well as re-registration under chapter 514B, HRS. The Act also clarifies when a project’s report is considered a non-expiring chapter 514B, HRS, developer’s public report.

This legislative action follows the repeal of chapter 514A, HRS, on January 1, 2019, by Act 181, SLH 2017. The purpose of the repeal was to end the confusion of having two condominium chapters in the HRS. While the governance of chapter 514A, HRS, was superseded by chapter 514B, HRS, the development sections were still in effect. Accordingly, a safe harbor provision for chapter 514A, HRS, projects was included in Act 181. Condominiums created prior to July 1, 2006, that were issued an effective date could be sold on or after January 1, 2019, without revising any of the governing documents provided that the developer’s public report was active on January 1, 2019, and was accurate and not misleading. Basically, chapter 514A projects would have become chapter 514B (condominium) projects through this safe harbor provision. If any pertinent or material changes, or both, have occurred to the project, the developer had to file an amended public report superseding all prior reports prior to January 1, 2019. Act 181 did not invalidate any condominium property regime that was validly created under chapter 514A, HRS, prior to July 1, 2006.

Act 181, SLH 2017, however, did not allow for extensions, and there was concern that many projects may have missed the January 1, 2019 deadline due to circumstances beyond their control or inadvertence. Thus, Act 223, SLH 2019, grants a temporary reprieve to those projects which should be promptly taken advantage of. Please visit <http://www.hawaii.gov/hirec> for details.

The Commission reiterates that developers who did not and do not meet the safe harbor for never sold developer owned units are legally prohibited from selling chapter 514A, HRS, units until reactivated. Chapter 514B, HRS, units, however, are not impacted.



## Ask the Condominium Specialist

*These recent questions reflect changes in the law made during this 2019 legislative session.*

**Q:** How long must my association keep the proxies and ballots from a recent election?

**A:** Act 7 (2019) amended HRS § 514B-154 (c) to allow condominium associations to destroy proxies and ballots after 90 days, rather than 30 days, unless an election is contested, at which time all documents must be retained until the contested election is resolved.

Many condominium associations’ election documents are maintained by property management companies, which may digitize and archive those documents. This amendment to the law extends the period before physical election documents are destroyed to ensure ample time for an interested party to review election results without imposing an undue burden or hardship on the property management company or the association.

**Q:** I followed the condominium non-judicial foreclosure bill in the legislature this year and did try to keep up with both sides of the discussion around it. The last I saw, the Governor said he intended to veto it. Did he?

**A:** The Governor allowed the bill to become law without his signature. Act 282 (2019) confirmed that condominium associations may use the non-judicial foreclosure process to collect on unit owner delinquencies regardless of whether the association’s governing documents include a provision expressly providing such authority. It also requires the foreclosing association to offer mediation along with any notice of default and intention to foreclose, as well as prescribed procedures when mediation is chosen by the consumer.

*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.*

# Condominium Basics

## Introduction to Condominium Governance (cont. from page 4)

- (3) Detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred and monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses;
- (4) All records and the vouchers authorizing the payments and statements kept and maintained at the address of the project, or elsewhere within the State as determined by the board, subject to section 514B-152;
- (5) All signed and executed agreements for managing the operation of the property, expressing the agreement of all parties, including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments;
- (6) An accurate and current list of members of the condominium association and the members' current addresses and the names and addresses of the vendees under an agreement of sale, if any. A copy of the list shall be available, at cost, to any unit owner or owner's authorized agent who furnishes to the managing agent, resident manager, or the board a duly executed and acknowledged affidavit stating that the list:
  - (a) Shall be used by the unit owner or owner's authorized agent personally and only for the purpose of soliciting votes or proxies or for providing information to other unit owners with respect to association matters; and
  - (b) Shall not be used by the unit owner or owner's authorized agent or furnished to anyone else for any other purpose;
- (7) The association's most current financial statement, at no cost or on twenty-four-hour loan, at a convenient location designated by the board;
- (8) Meeting minutes of the association, pursuant to section 514B-122;
- (9) Meeting minutes of the board, pursuant to section 514B-126, which shall be:
  - (a) Available for examination by unit owners or owners' authorized agents at no cost or on twenty-four-hour loan at a convenient location at the project, to be determined by the board; or
  - (b) Transmitted to any unit owner or owner's authorized agent making a request for the minutes within fifteen days of receipt of the request by the owner or owner's authorized agent; provided that:
    - (i) The minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner or owner's authorized agent, if the owner or owner's authorized agent indicated a preference at the time of the request; and
    - (ii) The owner or owner's authorized agent shall pay a reasonable fee for administrative costs associated with handling the request, subject to section 514B-105(d);
- (10) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the association for the duration those records are kept by the association, and any documents regarding delinquencies of ninety days or more shall be available for examination by unit owners or owners' authorized agents at convenient hours at a place designated by the board; provided that:
  - (a) The board may require unit owners or owners' authorized agents to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the association, its members, or both; and
  - (b) Unit owners or owners' authorized agents shall pay for administrative costs in excess of eight hours per year;
- (11) Proxies, tally sheets, ballots, unit owners' check-in lists, and the certificate of election subject to section 514B-154(c);
- (12) Copies of an association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154;
- (13) A copy of the management contract from the entity that manages the operation of the property before the organization of an association; and
- (14) Other documents requested by a unit owner or owner's authorized agent in writing; provided that the board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of a request for documents pursuant to this paragraph.

### **Process to obtain information.**

Copies of the items listed in §514B-154.5 (a) must be provided to any unit owner or owner's authorized agent upon the owner's or owner's authorized agent's request; provided that the owner or owner's authorized agent pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request. {§514B154.5(b)}.

All documents, records, and information listed under §514B-154.5(a), must be provided no later than ninety days after receipt of a unit owner's or owner's authorized agent's written request, unless a lesser time is provided under the Act. {§514B-154.5(c)}.

# Mediation Case Summaries

From June through August 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 regarding issues owner alleges should have been disclosed in the association documents that affected owner's assessments. | Mediated; no agreement. |
| Owner vs. AOOU | Dispute over the definition of "short term" in the declaration.   | Mediated to agreement.  |
| Owner vs. AOOU | Dispute over water damage to unit and whether source of leak was a limited, or common element.                                    | Mediated; no agreement. |
| Owner vs. AOOU | Owner alleges violation of house rules and no follow-up by board.   | Mediated; no agreement. |
| Owner vs. AOOU | Dispute regarding payment for unit owner's damaged roof caused by a leak from a common element.                                   | Mediated to agreement.  |
| Owner vs. AOOU | Dispute over the scheduling of board meetings and the availability of association financial statements.                           | Mediated to agreement.  |
| Owner vs. AOOU | Dispute regarding the size of a parking stall and the owner's vehicle extending from it.  | Mediated; no agreement. |
| AOOU vs. Owner | Issue regarding whether appropriate reserve funds had been set aside by the board and managing agent for needed repairs.          | Mediation continuing.   |
| AOOU vs. Owner | Dispute over payment for maintenance of association property based upon provisions in the condo project documents.                | Mediated to agreement.  |
| AOOU vs. Owner | Alleged violation of project documents regarding use of association property by non-owners and non-residents.                     | Mediated to agreement.  |

## Mediation Center of the Pacific

|                |   |                        |
|----------------|---|------------------------|
| Owner vs. AOOU | Owner challenged a determination by the board of a house rules violation. | Mediated to agreement. |
|----------------|---|------------------------|

# Condominium Basics

## Introduction to Condominium Governance (cont. from page 6)

Any documents, records, and information may be made available electronically to the unit owner or owner's authorized agent if the owner or owner's authorized agent requests such in writing. (§514B-154.5(d)).

An association may comply by making the required documents, records, and information available to unit owners or owners' authorized agents for download through an internet site, at the option of each unit owner or owner's authorized agent and at no cost to the unit owner or owner's authorized agent. (§514B-154.5(e)).

Any fee charged to a unit owner or owner's authorized agent to obtain copies of association's documents, records, and information, shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per page, or portion thereof, except that the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per page. (§514B-154.5(f)).

# 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, September 11, 2019\*

Wednesday, October 9, 2019

Wednesday, November 6, 2019

Wednesday, December 11, 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.

\*The September 11, 2019, committee meeting will be held on Kaua'i at Grove Farm Building Conference Room, 3-1850 Kaunualii Highway.

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 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 586-2643 to submit your request.

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