



# 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 course on condominium governance.*

### **Unit 3: Association Fiscal Matters: Budgets & Reserves**

#### **Introduction to Unit 3**

In this unit, we'll explore how associations create a budget which is used to calculate the yearly assessments that each unit owner must pay for the upkeep of the common elements of the project. Also covered is the process that is required by law for an association to collect reserves to cover renovations such as painting or repaving along with the eventual replacement of major items such as elevators. Finally, we will review what rights the Association has when an owner fails to pay the amounts that are assessed. Some basic definitions to keep in mind for this unit:

- 1 - Budget:** serves as a financial roadmap for estimated expenses to pay for the maintenance and repair of the common elements of the condominium project for the upcoming year.
- 2- Assessments:** monies collected from unit owners for common expenses, based on the adopted budget. These can be categorized as regular and special assessments.
- 3- Reserves:** a separate amount that is collected from the unit owners that is held in a separate account and is used to pay for major repairs and replacements of the common elements.
- 4- Mediation:** a voluntary method of resolving disputes in which a neutral third party assists the parties to the dispute in reaching a solution.
- 5- Arbitration:** a method of resolving disputes by submitting them to an impartial person who has the power to make a binding determination concerning the dispute.
- 6- Foreclosure:** the sale of a unit by the Association to pay off delinquent assessments. Foreclosures can be either judicial or nonjudicial.

#### **Lesson: The Budget and Replacement Reserves**

Every year, the Board of Directors of the Association is required to adopt a budget which will be used to determine the assessments to be paid by the unit owners. Section 514B-148(a) of the Act specifies that the budget must contain at least the following items:

- (1) The estimated revenues and operating expenses of the association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the association as of the date of the budget;
- (4) The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association;
- (5) A general explanation of how the estimated replacement reserves are computed;
- (6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves; and
- (7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).

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special needs. Please call the  
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submit your request.

# Message from the Chair

Aloha!

Our 6th Condorama was held on November 9, 2019, at the State Capitol Auditorium. One hundred and fifty people attended to listen to Gordon Arakaki, Esq., John Morris, Esq. and Rachel Glanstein, PRP, discuss practical tips for getting involved in the legislative process, legal issues relating to board meetings, and best procedural practices for effective board meetings. If you were not able to attend and would now like to take a look at the presentations, you may view any or all of it on our website, at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec).

And for those condominium unit owners residing on Maui, we will hold a Maui Condorama on Friday, January 24, 2020, at the J. Walter Cameron Center in Kahului. On-site check-in begins at 10:00 am with the first speaker at 10:30. The speakers and an informal question period will end by noon. More information regarding the speakers and their topics will be available in December, with online registration and information available at the CAI Hawaii website, [www.caihawaii.org](http://www.caihawaii.org).

The 2020 Real Estate Branch meeting calendar is included in this bulletin. Take a look at it and make plans to attend a meeting during the year. The Legislature will open its 2020 Legislative Session on January 15, 2020. The REB will have regular updates at the Condominium Review Committee meetings during the Legislative session of bills relating to the condominium community.

All of the Commissioners and staff of the REB wish you blessings and peace during this coming holiday season! We'll be back in March with reports on the legislative session and the Maui Condorama.

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



## Thinking of Buying a Condo?



### Thinking of Buying a Condo?

Excited about buying a new place? Amazed by the amenities, interior, location and view, and ready to make an offer? You may want to take a step back to consider a few issues that you may have overlooked while you were checking out the pool. Here are some of the major things to consider before buying a condominium unit.

### Declaration, Bylaws & House Rules

The Declaration, Bylaws and House Rules govern how a condominium is run and will cover issues such as how the gym is to be used, fines are assessed and voting on key management issues is done.

Request a copy of all three documents with any and all amendments to make sure there aren't any deal breakers, such as a complete ban on pets or smoking. While it is possible to change documents, it is a difficult process.

### Budget, Reserves & Audits

The budget of a condominium will show the planned spending for the year. Ask for the budget to see if management is wisely spending and saving.

A reserve study shows when important parts of the building(s) will need to be replaced and how much the condominium has saved up to pay for those replacements.

Request a copy of the reserve study. If the reserve study is very old or has

# Thinking of Buying a Condo? (cont. from page 2)



never been done, the condominium may have large repairs coming due with little to no existing money to pay for it, resulting in large special assessments for all owners. Recently updated reserve studies are often signs of competent and responsive management. A well-run condominium will often have a sizable, growing reserve fund, which should buffer owners from huge special assessments. Newly built condominiums will generally not have a sizable reserve fund as they have not had the time to build reserves.

Inquire as to when the last audit occurred. Regularly scheduled audits help keep finances transparent and clean, where infrequent or no audits for lengthy periods may raise concerns and red flags.

## Board Minutes & Board Cooperation

The Board of Directors is the elected leadership of an Association that manages a condominium. They hire managing companies, decide repairs and improvements, and enforce the rules. Boards are required by law to meet regularly and keep track of what was discussed via the minutes.

Request the recent minutes to see what the major issues are that the board is discussing. If the seller refuses to give you a copy or if no minutes are taken, that may suggest instability, hidden issues and other major concerns. Some condominiums freely post their minutes publicly online.

If possible, via a limited power of attorney or proxy, request to attend a board or association meeting to see how the meetings are run and how many owners attend. Well-run Boards allow members to voice their concerns, address those concerns and generally treat everyone with respect.



## Management Company

Find out who the managing company and agent/account executive are and how long they've been managing the condominium. A long time company and agent/account executive may suggest stability whereas rapid turnover of both may suggest instability. Also an agent who has managed the condominium for years may be more knowledgeable and responsive about the issues than constantly changing staff. Be aware that some condominiums self-manage and thus do not have a managing company.

## Litigation

Is the association being sued or suing? About what? Pending litigation may cause special assessments, as well as suggest bigger problems with the project, inhabitants or management.



## 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](http://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 associate?
- 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](mailto:hirec@dcca.hawaii.gov) Web: [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec)

# Condominium Basics

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

### Replacement reserves.

“Replacement reserves” are defined as funds for the upkeep, repair, or replacement of those parts of the property, including but not limited to roofs, walls, decks, paving, and equipment, which the association is obligated to maintain. (§ 514B-148 (h)). The Act contains specific requirements pertaining to replacement reserves. It states:

**§514B-148 Association fiscal matters; budgets and reserves.** (b) The association shall assess the unit owners to either fund a minimum of fifty per cent of the estimated replacement reserves or fund one hundred per cent of the estimated replacement reserves when using a cash flow plan; provided that a new association need not collect estimated replacement reserves until the fiscal year which begins after the association’s first annual meeting. For each fiscal year, the association shall collect the amount assessed to fund the estimated replacement for that fiscal year reserves, as determined by the association’s plan.

(c) The association shall compute the estimated replacement reserves by a formula that is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the property. The estimated replacement reserves shall include: (1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and (2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed \$10,000. Parts of the property for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

Reserves are monies that the Association collects regularly from the unit owners to pay large, future expenses which result from the deterioration of the condominium project over time – for example, the costs of repairing or replacing the roof, elevators or any other common area.

Insufficient reserves can lead to special assessments, borrowing of funds, or deferring necessary repairs or maintenance of the common areas. A board that does not assess the owners regularly for reserves must make periodic special assessments for money to pay for large expenses. This may pose a financial hardship to some owners who must pay a special assessment in addition to monthly maintenance fees.

Reserves are usually determined as a result of a “reserve study” which is usually prepared by the Association’s managing agent or a professional who specializes in this area. The study usually focuses on the following areas: (i) which parts of the property are the association’s responsibilities; (ii) how long will the parts last; and (iii) how much will it cost to maintain, repair, or replace.

The Hawaii Chapter of the Community Association Institute has published a report which contains more detail on this process which can be accessed here: <http://www.caihawaii.org/ResourceCenter/249/Resource-Center>.

### Definitions related to fiscal matters.

Section 514B-148(h) of the Act also contains the following definitions:

- **Capital expenditure:** an expense that results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset that extends the life of an existing asset for a period greater than one year.
- **Cash flow plan:** a minimum 20-year projection of an association’s future income and expense requirements to fund fully its replacement reserves requirements each year during that 20-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that 20-year period, except in an emergency.
- **Emergency situation:** any extraordinary expenses: (1) Required by an order of a court; (2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered; (3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; (4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or (5) Necessary for the association to obtain adequate insurance for the property which the association must insure.
- **Major maintenance:** an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year.

It should be pointed out that the Act protects those who participate in the calculation of replacement reserves. It states, “No association or unit owner, director, officer, managing agent, or employee of an association who makes a good faith effort to calculate the estimated replacement reserves for an association shall be liable if the estimate subsequently proves incorrect.” (§514B-148(d)) Also, any unit owner whose association board fails to comply with the Act’s provisions relating to replacement reserves may enforce compliance by the board and in any proceeding to enforce compliance, a board that has not prepared an annual operating budget and reserve study shall have the burden of proving it has complied. The Association’s board must adopt the budget once it is prepared. (§514B148(g)).

### **Adoption of the annual operating budget.**

**§514B-148 Association fiscal matters; budgets and reserves.** (e) Except in emergency situations or with the approval of a majority of the unit owners, a board may not exceed its total adopted annual operating budget by more than twenty per cent during the fiscal year to which the budget relates. Before imposing or collecting an assessment under this subsection that has not been approved by a majority of the unit owners, the board shall adopt a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

Once the budget has been prepared and all of the items that the Act requires are included, it must be adopted by the Association's board and then made available to the owners. Deviations from the budget in excess of 20% are not allowed except in emergency situations.

The Real Estate Branch of the Department of Commerce and Consumer Affairs has an extensive discussion on condominium association budgets and reserves that is presented in a simple to read question and answer format. This can be accessed here: [http://cca.hawaii.gov/reb/faqs/condo\\_faqs/faq\\_budg/](http://cca.hawaii.gov/reb/faqs/condo_faqs/faq_budg/).

### **Lesson: Assessments & Nonpayment**

#### **How assessments are allocated.**

Section 514B-144 of the Act requires assessments to be based on a budget adopted and distributed or made available to unit owners at least annually by the board. These assessments are allocated amongst the unit owners at the project in proportion to the common interest appurtenant to their respective units, unless otherwise provided in the declaration or bylaws. There are a few exceptions to this rule with the most common one being that if any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against such owner's unit. {§514B-144(d)} The Association is also entitled to collect interest up to 18% per year on any unpaid assessments.

**NOTE:** The board, either directly or through its managing agent or resident manager, must notify the unit owners in writing of maintenance fee increases at least 30 days prior to such an increase. {§514B-144(h)}

#### **Withholding assessments is not allowed when there is a dispute.**

**§514B-146 Association fiscal matters; lien for assessments.** (c) A unit owner who receives a demand for payment from an association and disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
  - (2) The amount of any penalty or fine, late fee, lien filing fee, and any other charge included in the assessment; and
  - (3) The amount of attorneys' fees and costs, if any, included in the assessment.
- (d) A unit owner who disputes the information in the written statement received from the association pursuant to (c) may request a subsequent written statement that additionally informs the unit owner that:
- (1) Under Hawaii law, a unit owner has no right to withhold common expense assessments for any reason;
  - (2) A unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's common expense assessment; provided the unit owner immediately pays the assessment in full and keeps assessments current;
  - (3) Payment in full of the common expense assessment shall not prevent the owner from contesting the common expense assessment or receiving a refund of amounts not owed; and
  - (4) If the unit owner contests any penalty or fine, late fee, lien filing fee, or other charges included in the assessment, except common expense assessments, the unit owner may demand mediation as provided in subsection (g) prior to paying those charges.

#### **Unit owners' right to dispute assessments with options such as filing a claim or requesting mediation or arbitration.**

The Act gives unit owners who pay their assessments certain rights if they want to dispute those fees.

**§514B-146 Association fiscal matters; lien for assessments.** (d) A unit owner who pays the full amount claimed by the association may file suit in small claims court or require the association to mediate in order to resolve any disputes concerning the amount or validity of the association's claim. If the unit owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration; provided that a unit owner may only file for arbitration if all amounts claimed by the association are paid in full on or before the date of filing. If the unit owner fails to keep all association assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the unit owner pays all association assessments within thirty days of the date of

# Condominium Basics

## Introduction to Condominium Governance (cont. from page 5)

suspension, the unit owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all association assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The unit owner shall be entitled to a refund of any amounts paid to the association which are not owed.

**NOTE:** The Act specifically provides that a unit owner may not exempt themselves from liability for their contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit owner's unit. (§514B-144(g)).

### **Lesson: Association Lien for Assessments**

**§514B-146 Association fiscal matters; lien for assessments.** (a) All sums assessed by the association but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on the unit with priority over all other liens, except:

- (1) Liens for real property taxes and assessments lawfully imposed by governmental authority against the unit; and
- (2) Except as provided in subsection (j), all sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the association, and costs and expenses including attorneys' fees provided in such mortgages; provided that a lien recorded by an association for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided further that the expiration of a recorded lien shall in no way affect the association's automatic lien that arises pursuant to this subsection or the declaration or bylaws. Any proceedings to enforce an association's lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of a unit subject to a lien of the association files a petition for relief under the United States Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for instituting proceedings to enforce the association's lien shall be tolled until thirty days after the automatic stay of proceedings under section 362 of the United States Bankruptcy Code (11 U.S.C. §362) is lifted.

In summary, the Act gives the Association an automatic lien against the owner's unit for any unpaid common expense assessments. This lien has priority over all other liens covering the unit except for real property taxes and mortgages, including attorneys' fees and legal expenses related thereto, which are recorded prior to the Association's lien. Note, that while the Association's lien is automatic, the statute still requires the Association to record a notice of its lien in order to establish priority over mortgages which may affect the unit. Also, the Act provides that the Association's lien will expire six years from the date of recordation unless the Association commences proceeding to enforce its lien prior to this date.

### **Lesson: Foreclosure**

The Association has the right to institute foreclosure proceedings against the unit and unit owner in order to enforce its lien. The Association has the option to pursue either judicial or nonjudicial foreclosure. However, nonjudicial foreclosure cannot be used in those cases where the Association's lien against any unit arises solely from fines, penalties, legal fees, or late fees. (§514B-146(a))

During the foreclosure process, the Association, through its managing agent or board, may bid on the unit at foreclosure sale, and acquire and hold, lease, mortgage, and convey the unit. Remember that any such foreclosure by the Association would not have priority over mortgages recorded prior to the Association's lien. So, if the Association acquires title to the unit and/or then conveys the unit to a subsequent owner, the unit will still be subject to the interest of the mortgage that was recorded prior to the Association's lien that was foreclosed.

### **Subsequent owner's liability for unpaid assessments.**

In the case of a voluntary conveyance of a unit which is liable for unpaid assessments, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments for the grantor's share of the common expenses up to the time of the grant or conveyance. However, the grantee has the right to recover from the grantor the unpaid amounts. The Act states that the Grantee is entitled to a statement from the board, either directly or through its managing agent or resident manager, setting forth the amount of the unpaid assessments against the grantor, and the grantee is not liable for, nor is the unit conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount contained in the statement. (§514B-144(f)).

In the case where a unit is conveyed as a result of a foreclosure, the Act specifies that if the mortgage of record or other purchaser of a unit obtains title to the unit, the acquirer of title and the acquirer's successors and assigns shall not be liable for the unpaid assessments chargeable to the unit that became due **prior** to their title acquisition. Instead, these amounts are deemed to be common expenses collectible from all of the unit owners, including the acquirer and the acquirer's successors and assigns. (§514B-146(b)) However, the Act provides an exception to this general rule by authorizing the board to specially assess the amount of any unpaid regular

# Condominium Basics

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

monthly common assessments against a mortgagee or other purchaser who purchases a delinquent unit in a judicial or nonjudicial foreclosure, provided the total amount assessed does not exceed the total amount of unpaid regular monthly common assessments during the six months immediately preceding the completion of the judicial or nonjudicial foreclosure. (§514B-146(k)).

### **Lesson: Collection of Unpaid Assessments from Tenants or Rental Agents**

Section 514B-145 states that if the owner of a unit rents or leases the unit and is in default for 30 days or more in the payment of the unit's share of the common expenses, the board, for as long as the default continues, may demand in writing and receive each month from any tenant occupying or rental agent renting the unit an amount sufficient to pay all sums due from the unit owner to the association, including any interest, but the amount must not exceed the tenant's rent due each month. However, this right is limited and may not apply if the unit is either in the possession of a commissioner or mortgagee as a result of a foreclosure or the tenant has been served with a court order directing payment to a third party.

**NOTE:** The Association's right to collect rent from a tenant under this section may only be exercised if the board adopts a written policy approved by a majority vote of the unit owners approving this process. (§514B-145(g)).

### **Powers related to common expense payments and unpaid fees.**

**§514B-105 Association; limitations on powers.** (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).

If a unit owner has a late fee assessed against them but has neglected to pay it and they have made the payment due for their monthly assessment, an association cannot take a portion of this payment and apply it to the late fee.

### **Lesson: Attorneys' Fees & Legal Costs**

#### **Attorney's fees & Legal Costs Incurred by the Association**

**§514B-157 Attorneys' fees, delinquent assessments, and expenses of enforcement.** (a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association for:

- (1) Collecting any delinquent assessments against any owner's unit;
- (2) Foreclosing any lien thereon; or
- (3) Enforcing any provision of the declaration, bylaws, house rules, and this chapter, or the rules of the real estate commission; against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property, shall be promptly paid on demand to the association by such person or persons; provided that if the claims upon which the association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the association, shall be promptly paid on demand to such person or persons by the association.

If the Association incurs legal fees and costs as a result of a delinquency, these amounts can be collected by the Association from anyone who uses the unit. However, the Association may be responsible for these amounts if the owner can show that the Association's claim is not "substantiated."

### **Association fiscal matters: Audits and audited financial statements.**

#### **§514B-150 Association fiscal matters; audits, audited financial statement.**

(a) The association shall require an annual audit of the association financial accounts and no less than one annual unannounced verification of the association's cash balance by a public accountant; provided that if the association is comprised of less than twenty units, the annual audit and the annual unannounced cash balance verification may be waived at an association meeting by a vote of a majority of the unit owners.

(b) The board shall make available a copy of the annual audit to each unit owner at least thirty days prior to the annual meeting which follows the end of the fiscal year. The board shall not be required to submit a copy of the annual audit report to an owner if the proxy form issued pursuant to section 514B-123(d) is not marked to indicate that the owner wishes to obtain a copy of the report. If the annual audit has not been completed by that date, the board shall make available:

- (1) An unaudited year-end financial statement for the fiscal year to each unit owner at least thirty days prior to the annual meeting; and
- (2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, but not later than six months after the annual meeting.

# Board Responsibility

Condominium and Community Associations are more than just a neighborhood. In many ways, it's a lot like a business. Collectively, the regular annual assessments amount to tens of thousands of dollars that need to be budgeted carefully and spent wisely. And neighbors who have volunteered and been elected to serve on the association's board are responsible for making critical decisions—on everyone's behalf—about managing the community and the community's money.

Boards also develop long-range plans—like when the parking lot will need to be repaved and when the elevators will need to be replaced—about the parts of the community that are shared property. The board must set aside funds so that these kinds of projects can be accomplished on schedule or even ahead of schedule in the event there's an unexpected breakdown.

The board also sends out requests for bids and contracts with vendors to do the work necessary to maintain shared amenities. Board members decide who will do the best job of replacing the roof at the best price or who will be the most reliable company to hire to mow the grass and remove dead tree limbs.

The board's decisions can have a significant impact on the community's appearance and, consequently, on property values. Regardless of a professional manager, the board ultimately is responsible for overseeing association operations. Owners should be sure to communicate with the board regularly, and may want to observe board meetings, and attend annual meetings to elect responsible board members and to participate in the conversations about significant community issues.

This piece was previously published by CAI.



## *Ask the Condominium Specialist*

A common complaint to the Condominium Specialist involves assertions by an owner that a condominium managing agent (“CMA”) is engaging in improper or illegal behavior affecting the association. These assertions include failing to respond to owner inquiries, failing to provide documents, complaints surrounding the collection and billing of maintenance fees, exhibiting bias at board meetings, failure to timely repair an owner's unit, and many others.

All CMAs hold a Hawaii real estate broker's license and are thus governed by the real estate licensing law, Hawaii Revised Statutes (“HRS”) Chapter 467. The responsibilities of a CMA vary by contractual agreement according to association and to CMA. CMAs may handle anything from accounting for an association, paying utilities, landscaping, attending or running meetings, or a variety of other jobs necessary to keep an association up and running, all depending upon the agreed upon contract with the association.

While it is important to remember that the CMA is hired by and works on behalf of the board, the Regulated Industries Complaints Office (“RICO”) has investigative and enforcement authority over all real estate licensees, thus, RICO has jurisdiction over investigating allegations of wrongdoing by CMAs.

RICO's website, [cca.hawaii.gov/rico](http://cca.hawaii.gov/rico) has a complaint form which can be completed online. Include all relevant information, including any allegation regarding a specific violation by the CMA of HRS Chapter 467, and any documentation you may have pertaining to the allegations to assist RICO in making a determination on a complaint.

*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 your situation.*



# Mediation Case Summaries

From September through November 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 designation of owners' parking stall.	Mediated; no agreement.
AOOU vs. Owner	Alleged non-permitted uses being conducted in owners' two units.	Mediated; no agreement.
Owner vs. AOOU	Owner alleges defamation and conspiracy by the board and managing agent.	Mediated; no agreement.
Owner vs. AOOU	Issue of flooding into unit allegedly caused by a common element.	Mediated to agreement.
Owner vs. AOOU	Dispute over parking stalls, use and usage.	Mediation ongoing.
AOOU vs. Owner	Alleged wrongful foreclosure on unit. While this case was in mediation, it was placed on hold awaiting action by the legislature; during this period, the case was heard in a court proceeding. The court dismissed the case upon motion by the AOOU.	
Owner vs. AOOU	Owner alleges violation by the board of election guidelines, improper special assessments and failure to provide documents as allowed for in project documents.	Mediated to agreement.

## Mediation Center of the Pacific

Owner vs. AOOU	Alleged violation of house rules and bylaws and resulting fines.	Mediated; no agreement.
Owner vs. AOOU	Alleged violation of bylaws regarding property damage and safety issues.	Mediated; no agreement.
Owner vs. AOOU	Alleged violation of bylaws relating to property damage, health and safety.	Mediated to agreement.
Owner vs. AOOU	Dispute over fees and fines related to alleged violation of house rules and bylaws.	Mediated to agreement.
Owner vs. AOOU	Dispute regarding fines over alleged violation of house rules.	Mediated to agreement.

## West Hawaii Mediation Center

Owner vs. AOOU	Dispute regarding maintenance fees and lien on unit.	Mediated; no agreement.
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## Maui Mediation Services

Owner vs. AOOU	Dispute regarding term limits and house rule relating to noise.	Owner withdrew request for mediation.
Owner vs. AOOU	Owner disputes citations received for alleged house rule violations.	Owner withdrew request for mediation.

## Kaua'i Economic Opportunity, Inc.

Owner vs. Managing Agent	Dispute over the safety of tree trimming; falling branches falling on vehicles.	Resolved after contact with managing agent.
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# 2019/2020 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, December 11, 2019

Wednesday, January 8, 2020\*

Wednesday, February 12, 2020

Wednesday, March 11, 2020

Wednesday, April 8, 2020

Wednesday, May 13, 2020

Wednesday, June 10, 2020

Wednesday, July 8, 2020

Wednesday, August 12, 2020

Wednesday, September 9, 2020

Wednesday, October 7, 2020

Wednesday, November 4, 2020

Wednesday, December 9, 2020

Friday, December 20, 2019

Friday, January 24, 2020

Friday, February 28, 2020

Friday, March 27, 2020

Friday, April 24, 2020

Friday, May 29, 2020

Friday, June 26, 2020

Friday, July 24, 2020

Friday, August 28, 2020

Friday, September 18, 2020

Friday, October 23, 2020

Friday, November 20, 2020

Friday, December 18, 2020

\*The January 8, 2020, meeting will be held at the UHMC Moloka'i Education Center, 375 Kamehameha V Highway, Kaunakakai, Moloka'i. 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 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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