



Hawaii Condominium Bulletin

contents

Condominium Basics
Introduction to
Condominium Governance
page 1, 3

Message from the Chair
page 2

Director's Duty to
Avoid Conflicts of Interest
page 2

New HUD Guidance
on Assistance Animals
page 4, 5

He Ohana Condominium
Kākou! We are a
Condominium Family!
page 5

Ask the
Condominium Specialist
page 6

Mediation Case Summaries
page 6

2020 Real Estate Commission
Meeting Schedule
page 7

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

Condominium Basics Introduction to Condominium Governance

The uniqueness of the condominium concept of ownership has caused the law to recognize that each unit owner must give up some degree of "freedom of choice he might otherwise enjoy in separate, privately owned property." ASSOCIATION OF OWNERS OF KUKUI PLAZA, v. CITY AND COUNTY OF HONOLULU, Hawaii Intermediate Court of Appeals (1987).

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

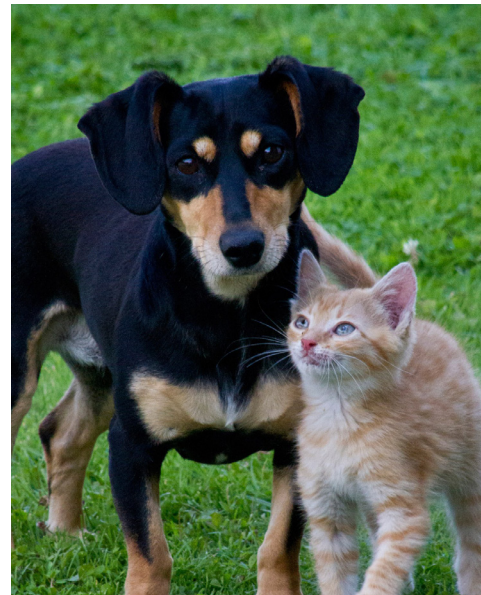
Lesson: Pets

Bylaws determine whether pets are allowed.

Whether pets are allowed at a condominium project is determined by the bylaws for the project. If there is no provision in the bylaws that prohibits pets, then the presumption is that pets are allowed. The bylaws may also provide for reasonable restrictions related to having pets at the project including prohibitions against excessive noise or other problems, including pets being unleashed in the common areas of the project.

Pet replacement, grandfathering for new prohibition provisions, and bylaw restrictions.

The Act contains a section which addresses a unit owner's right to replace a pet and the right of a unit owner's tenant to have a pet even if the bylaws are later amended to prohibit pets. These are described as follows:



§514B-156 Pets. (a) Any unit owner who keeps a pet in the owner's unit pursuant to a provision in the bylaws which allows owners to keep pets or in the absence of any provision in the bylaws to the contrary, upon the death of the animal, may replace the animal with another and continue to do so for as long as the owner continues to reside in the owner's unit or another unit subject to the same bylaws. (b) Any unit owner who is keeping a pet pursuant to subsection (a), as of the effective date of an amendment to the bylaws which prohibits owners from keeping pets in their units, shall not be subject to the prohibition but shall be entitled to keep the pet and acquire new pets as provided in subsection (a). (c) The bylaws may include reasonable restrictions or prohibitions against excessive noise or other problems caused by pets on the property and the running of pets at large in the common areas of the property. No animals described as pests under section 150A-2, or animals prohibited from importation under section 141-2, 150A-5, or 150A-6 shall be permitted.

Tenants must be afforded the same pet rights as unit owners.

§514B-156 Pets. (d) Whenever the bylaws do not prohibit unit owners from keeping animals as pets in their units, the bylaws shall not prohibit the tenants of the unit owners from keeping pets in the units rented or leased from the owners; provided that:

(1) A unit owner consents in writing to allow the unit owner's tenant to keep a pet in the unit;

Message from the Chair

Aloha!

I hope this message finds all of you safe and well. Hopefully, by the time this bulletin posts, we're making our way to a more normal way of life. It seemed a long few months distancing ourselves from our family, friends, work -place environments and social activities. But of course, in the whole scheme of things, the time we spent hunkering down is just a very small period in our lives; we'll make it through this time and come out stronger for it!

Unfortunately, educational events that had been scheduled for the condominium community, including the April 11, 2020, Condorama, were cancelled due to the pandemic and social distancing requirements. The Condorama will be rescheduled for another time, quite possibly in a new format to meet current health and safety standards due to the coronavirus; make sure to check our website at www.hawaii.gov/hirec for updates on condominium education.

Check the websites too for CAI Hawaii, www.cai.hawaii.org and the Hawaii Council of Community Associations, www.hawaiicouncil.org for updates on their educational events that were postponed during this time.

In-person Real Estate Commission and Condominium Review Committee meetings have been cancelled for now. Check our website for information on when you'll be able to participate in meetings via Zoom and when the office will be re-opened as well as updates on returning to a normal meeting schedule. Currently, our building is open to the public from 7:45 until noon and office phones answered from 7:45 – 4:30.

In this edition of our bulletin, in addition to our regular reporting on mediations conducted and Ask the Condo Specialist, you'll find two pieces on assistance animals, one from the Real Estate Commission's Core B, 2015-2016 and a recent article re-printed with permission from the author and CAI Hawai'i describing the latest federal guidance on assistance animals.

Don't forget to sign up for direct-to-you informational and educational quarterly emails at <http://cca.hawaii.gov/reb/subscribe>. It's one of the sources of information that continued through the shutdown!

Especially during this disruptive time, stay well, and thanks for taking an interest in condominium education.

Laurie A. Lee
Chair, Condominium Review Committee



Director's Duty to Avoid Conflicts of Interests

Directors shall not engage in any business activity or maintain a relationship with any company, entity or individual that would compromise the Director's duty of loyalty to members.

Situations that can constitute a conflict of interest include participating in any Board deliberation, (e.g. a disciplinary action; membership issue or dispute; or policy decision) that involves the Director, an employee or associate of the Director's company or a member of Director's family.

Directors must avoid even the appearance of a conflict of interest. To the extent a Director believes a conflict of interest may exist, Director shall inform the Board of the nature and extent of the potential conflict and develop a plan of action to address the conflict. Recusal is a typical response to a potential conflict of interest.

Condominium Basics

Introduction to Condominium Governance (cont. from page 1)

(2) A tenant keeps only those types of pets that may be kept by unit owners. The bylaws may allow each owner or tenant to keep only one pet in the unit. (e) Any amendments to the bylaws that provide for exceptions to pet restrictions or prohibitions for preexisting circumstances shall apply equally to unit owners and tenants.

(f) Nothing in this section shall prevent an association from immediately acting to remove vicious animals to protect persons or property.

Note: Even though section 514B-156(d) pertains primarily to the rights of tenants to keep pets at the project, it also specifies that the bylaws can restrict both owners and tenants to keeping only one pet per unit. Also, section 514B-156(f) explicitly authorizes the association to immediately remove vicious animals to protect persons or property, although the statute does not provide a definition of “vicious animals.”

Service, assistance and emotional support animals.

Federal and State Fair Housing laws recognize that a person with a disability can request the use of an assistance animal as a reasonable accommodation, which may involve making an exception to a “no pets” or “no animals” rule. This is because the requested accommodation may be necessary to afford the person with a disability equal opportunity to use and enjoy a housing accommodation, including public and common use areas. {§515-3(9)}. **Assistance animals** are animals that work, assist, or perform tasks for the benefit of a person with a disability, including providing emotional support. Assistance animals can include: service animals, support animals, therapy animals, and comfort animals. They are not limited to dogs and cats; birds, rabbits and other animals have been recognized as assistance animals. An assistance animal is not considered a “pet.”

Service animals, on the other hand, are covered under the Americans with Disabilities Act (ADA) which defines them as individual dogs that have been specifically trained to work with or perform specific tasks for people with disabilities including a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed by a service animal must be directly related to the handler’s disability and examples of such work or tasks include assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. {28 C.F.R. Section 35.104}.

Note: Under this definition of service animal, other species of animals, whether wild or domestic, trained or untrained, are not considered to be service animals. Also the regulations specifically state that the crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes determining whether an animal is a service animal.

If an animal can be qualified as either an assistance animal or a service animal, then they are not considered to be pets. As such, the pet provisions in either the bylaws or the Act would need to be modified to allow a resident to keep them at the unit and to access the common elements at the project although reasonable restrictions may be imposed in doing so. Also, if an animal qualifies as a service animal then the ADA specifies a person with a disability must be permitted to be accompanied by their service animals in all areas of a public entity’s facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go. {28 C.F.R. Section 35.136}.

An **emotional support animal (ESA)** is a dog or other common domestic animal that provides therapeutic support to a disabled or elderly owner through companionship. If a doctor determines that a patient with a disabling mental illness would benefit from the companionship of an ESA, the doctor would write letters supporting a request by the patient to keep the ESA in “no pets” housing or to travel with the ESA in the cabin of an aircraft. ESAs are not task trained like service dogs: little training at all is required as long as the animal is reasonably well-behaved by pet standards. This means the animal is fully toilet trained and has no bad habits that would disturb neighbors such as frequent or lengthy episodes of barking.



New HUD Guidance on Assistance Animals

Assistance animals include service animals and emotional support animals. They are not “pets” according to the U.S. Department Housing and Urban Department (“HUD”), which is the agency that oversees the law enforcement and investigates claims of housing discrimination. So, house rules or community restrictions normally applied to pets cannot be applied to assistance animals.

In recent years, many pet owners have been abusing the system by obtaining phony certifications or letters from online therapists to avoid paying fees or to get permission to bring pets where they won’t normally be allowed. We have also read enough juicy stories in the media regarding owners of various exotic animals pushing the envelope, e.g., an emotional support peacock seeking to board on an airplane, a therapy alligator seeking entry into a senior’s center, and a comfort pig seeking admission into a restaurant.



Under the federal and state Fair Housing Act (“FHA”), condominium and community associations are obligated to provide reasonable accommodation for a person with a disability who make a request for an assistance animal. When considering such a request, the Association Board may ask two questions: (1) Does the person seeking to use and live with the animal have a disability, if it is not apparent; (2) Does the person making the request have a disability-related need for the requested assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or some symptoms or effects of a person’s existing disability? If the answers to both inquiries are “Yes”, the association has to approve the person’s request; otherwise it will face severe legal consequence for violation of the law.

To illustrate, in March of 2019, a federal court imposed a judgment of \$350,000 in compensatory damages, \$285,000 in punitive damages and awarded Mr. & Mrs. Sanzaro’s attorney’s fees and costs against their homeowners association named Ardiente in Las Vegas, Nevada, for the association’s violation of the Fair Housing Act by denying the plaintiffs the ability to bring a service dog into the clubhouse on three different occasions and subsequently harassing them after denying their request for a reasonable accommodation, including but not limited to assessing fines, sending letters, placing a lien on their unit for unpaid fines.

The challenge faced by Association directors and property managers on this issue has been the ambiguity on what constitutes proper supporting documentation for assistance animal requests. Over 30% of all FHA complaints are those involving assistance animals. On January 28, 2020, HUD issued a new guidance clarifying the step-by-step best practice for FHA compliance when assessing accommodation requests involving animals and when associations can request more information or documentation regarding a disability and disability related need for an assistance animal. Here is your readers’ digest version of the HUD notice FHEO-2020-01:

Service Animals

- When it is readily apparent that a dog is trained to do work or perform tasks for the benefit of an individual with a disability, do not make any further inquiries, because the dog is a service animal.
- When it is not readily apparent, the association may only ask two questions: (1) is the animal required because of a disability? (2) What work or task has the animal been trained to perform? Do not ask about the nature or extent of the person’s disability, and do not ask for documentation.
- If the answer to question (1) is “yes” and work or a task is identified in response to question (2), grant the requested accommodation, because the animal qualifies as a service animal.
- If the answer to either question above is “no” or “none”, the animal does not qualify as a service animal but may be a support animal which the association should further assess per the following guidance.

Assistance Animals other than Service Animals

- A request for reasonable accommodation may be oral or written; it may be made by others on behalf of the individual; it may be made either before or after acquiring the assistance animal.

New HUD Guidance on Assistance Animals (cont. from page 4)

- When the person has an observable disability or the association has information giving it reason to believe that the person has a disability, the association may request that the person requesting the accommodation provide information which reasonably supports that the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to such person's disability. The association is not entitled to know an individual's diagnosis.
- If there is no observable disability or the association has no information giving it reason to believe that the person has a disability, the association is not required to grant the accommodation unless the person requesting the accommodation provides information that reasonably supports that such person has a disability, but the association cannot deny the accommodation until the requester has been given a reasonable opportunity to do so.
- HUD takes the position that documentation from certain websites, which sell certificates, registrations, and licensing documents for assistance animals to anyone who answers certain questions or participates in a short interview and pays a fee, is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal.
- HUD also acknowledges that many legitimate, licensed health care professionals deliver services remotely, including over the internet. One reliable form of documentation is a note from a person's health care professional that confirms a person's disability and/or need for an animal when the provider has personal knowledge of the individual.
- The association is not required to grant the accommodation unless the person requesting the accommodation provides information which reasonably supports that the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to the individual's disability, but cannot deny the accommodation until the requester has been provided a reasonable opportunity to do so. A relationship or connection between the disability and the need for the assistance animal must be provided. The lack of such documentation in many cases may be reasonable grounds for denying a requested accommodation.
- The association may not insist on specific types of evidence if the information which is provided or actually known to the association meets the requirements of the HUD guidance. The association also may not require a health care professional to use a specific form to provide notarized documents, to make statements under penalty of perjury, or to provide an individual's diagnosis or other detailed information about a person's physical or mental impairments.
- If an individual is requesting to keep a unique type of animal that is not commonly kept in households, e.g., reptiles (other than turtles), barnyard animals, monkeys, kangaroos, or other non-domesticated animals, HUD emphasizes that the requester has the substantial burden of demonstrating a disability related therapeutic need for the specific animal or the specific type of animal.

*Author: Attorney Na Lan is a director of the law firm Damon Key Leong Kupchak Hastert. She has been practicing condominium and community association law for over ten years. She served as Chair, Vice Chair and remains an active member of the CAI Legislative Action Committee, Hawaii Chapter. This article was reprinted with permission from the author and CAI Hawaii.

He Ohana Condominium Kākou! We Are a Condominium Family!

Now is a good time to get to know your neighbors in your condominium community. If you weren't familiar with them before the lockdown, or if you were not a participant in the life of the association, for example, attending annual or board meetings, now is the time to get to know those who live in your condominium association.

We work or attend classes from home; some of us have child care concerns; we may live with reduced employment or unemployment; lack routine social contacts; and to a greater or lesser extent, live with social isolation. It's the perfect time to engage in community outreach within your association and take steps to bring your community together while supporting those in need.

Reach out to your neighbors. Use a common area to post messages that include resource information for people to use during this time. You might post Handi-Van or other transportation schedules and information; or provide contact information for volunteers willing to assist residents with needed services such as pick-up and delivery of groceries. Recruit volunteers to make wellness checks or telephone calls to elderly residents who may be experiencing loneliness. Set up a table in a common area with a sign-up sheet for volunteers or residents in need of assistance.

As the state slowly re-opens, businesses and community services will begin to open with adjusted schedules to accommodate our health and safety. For example, the Hawaii State Library system is up and running in modified form for "take out" book service. Let your community know that they can reserve a book for drive-thru pick-up. Farmers markets are on reduced schedules as well, but fresh produce can be picked up during the week. As we re-open in a modified fashion, offer your neighbors suggestions for a chance to engage in some familiar activities.

In addition to creating dialogue and relationships with your neighbors, generating good relationships is the cornerstone to a healthy association.

Ask the Condominium Specialist

Q: Our annual condominium association meeting was cancelled due to the pandemic and social distancing requirements. The proxies had all been turned in. Will these proxies be valid for our rescheduled annual meeting?

A: The answer to that depends on whether your annual meeting was adjourned or cancelled outright. If the annual meeting was called to order and then adjourned, any valid proxies for that meeting will be valid for its adjournments as well.

If the meeting was cancelled, then proxies must be sent out for the new meeting date along with receive-by dates for these proxies; proxies received within this time are valid for the new meeting. See Hawaii Revised Statutes section 514B-123 (d) and (f), available at our website, www.hawaii.gov/hirec for these proxy provisions.

Additionally, for an excellent summary of what steps should be taken for adjourned or cancelled association meetings and when, please also visit the CAI Hawaii website at www.caihawaii.org for an informative guide written by Steve Glanstein, Professional Registered Parliamentarian. The link to the summary is on the homepage.

Q: I have placed my condominium unit up for sale. Are there any special guidelines I must follow during a pandemic for the sale of my condominium property? Also, I'm assuming it's okay to move forward with the sale.

A: You are not alone as it turns out. Anecdotal reports indicate many people have placed their properties up for sale during this pandemic period and have moved forward with the transactions. People also ask if there are any special protocols in place during this time. The condominium law, Hawaii Revised Statutes ("HRS") Chapter 514B and the Real Estate Licensing Law, HRS Chapter 467 do not address guidelines to be followed during a pandemic. During these times, therefore, you should look to the real estate industry groups and state and local government for any guidance that may exist. The professional industry groups may have forms available that should be reviewed and signed before showing or visiting properties for sale. Check with your attorney or real estate licensee to assure that you have taken all necessary steps to limit potential legal liability during this unprecedented time.

If your transaction will take place on a neighbor island, the mayors of the neighbor island counties have issued proclamations related to business activity during the pandemic that may affect condominium sales in those counties. Be sure to familiarize yourself with any that relate to real property sales, and again, get advice from your real estate licensee or an attorney.

As our state slowly begins to open up to various activities, we should move carefully and with awareness of the latest government protocols relating to our health and safety.

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 March 2020, through May 2020, 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. AOUO	Unit owner, an LLC, alleged a violation of the project documents in a recent election.	Mediated to agreement.
AOUO vs. Owner	Noise complaint after owner installed new flooring.	Mediated to agreement.

Lou Chang, A Law Corporation

Owner vs. AOUO	Alleged violation of house rules; harassment of AOUO staff; fines; and alleged discrimination against owner.	Mediated to agreement.
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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**

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

Real Estate Commission – 9:00 a.m.

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

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 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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