

Realities of Condo Ownership

Hawaii has one of the largest concentrations of condominiums in the country. However, most condominium owners rarely get involved in their condo's operations and keep to themselves until a problem arises. Then, human emotions, misunderstandings and personality issues, along with a lack of basic condo knowledge, can result in unnecessary dissatisfaction, conflicts and disputes. Education on condo issues can help and is readily available but few take advantage of it.

The Hawaii Real Estate Commission, along with the Community Associations Institute and Hawaii Council of Community Associations, sponsors many public educational forums and seminars for condo owners, their boards and managing agents. However, it is estimated that *fewer than 10% of Hawaii condo owners have ever attended*. The Commission also produces pamphlets on various condo subjects, publishes a quarterly condominium bulletin and regularly conducts outreach.

For more information on condominiums, please visit the Real Estate Branch's website at www.hawaii.gov/hirec

The realities of condo ownership can be different from the perceptions. This disclosure is intended to help prospective condo buyers understand some of the fundamental realities of condo ownership.

I. What do you own?

When purchasing a condo unit, you typically own what is inside the walls of your unit (paint in), a percentage of the condo project's common elements and the use of your limited-common elements. You automatically are a member of the condo's association and agree to abide by its governing documents and rules.

Realities of Condo Ownership

II. Common and Limited Common Elements:

The parts within a condo project that are outside the paint on your walls are usually common or limited common elements.

Common elements are part of the condo project for the *common use of all units*. These may include building structures, yard areas, hallways, elevators, lobbies, trash chute and rooms, internal roads, landscaped areas, walkways, pools, common pipes and electrical systems.

Limited common elements are also a part of your condo project and may be for the exclusive use of a single unit or group of units. (parking stalls, storage lockers, etc.)

III. Key Condo Documents:

It is imperative to read your condo documents and understand what they contain as they govern the ownership and use of your condo unit.

Declaration (also called declaration of condominium or horizontal property regime), is the document that legally establishes the condo project, its association, common and limited common elements, individual-unit ownership and parking stalls.

Bylaws, establish how the condominium project is governed, including elections and responsibilities of the condo's Board of Directors.

House Rules, which must be based upon provisions in the bylaws or the declaration, establish how residents are to conduct themselves in the condo project. They can also establish fines and penalties for noncompliance.

Realities of Condo Ownership

IV. Board of Directors:

Condo associations are governed by a Board of Directors that makes decisions on rules, policy and finances (budgets, maintenance fees, reserves) for all owners in the condo association. Condo boards have full authority to make decisions, including the power to assess owners (maintenance fees and special assessments).

Shortcomings. Condo association boards are comprised of current owners who are elected by the association members. There are no qualifications required and any owner can seek election to be a board member. There are no term limits and relatively few owners volunteer to serve. As such, an owner can be reelected to their condo board for many years.

V. Managing Agent (“account executive”):

Most condo associations employ a managing agent to manage the operation of the property. A managing agent’s responsibilities and duties can vary dramatically based upon the agreement with the board. Some managing agent agreements include the handling of essential management services, advising the condo’s board, levying and collecting fines, fiscal and accounting services, supervising common-area issues and board/association meeting support. However, a managing agent’s duty could be limited to just bookkeeping, it depends on the association.

VI. Resident Manager (if living on site or “site manager” if not):

Most medium to large condo associations employ a resident manager to manage on-site matters and handle day-to-day operations. The resident manager is an employee of the condo association. Smaller condo associations may not have a resident manager and must instead rely on owner cooperation.

Realities of Condo Ownership

VII. Maintenance Fees:

Maintenance fees cover the cost of common and limited common area maintenance, management, insurance, utilities and contributions to reserves.

Maintenance fees are set by the condo's board and realistically should increase annually to keep pace with inflation.

Shortcomings. The most disliked and complained-about occurrence in condo operations are maintenance fee increases, no matter how necessary or justified. Fiscal responsibility in condo associations is often compromised by boards not wanting to act in an unpopular manner. The result is that many condo associations are under-funded, suffer deferred maintenance and/or lack some basic services.

For more information on condominiums, please visit the Real Estate Branch's website at www.hawaii.gov/hirec

VIII. Budgets and Reserves:

A condo's board is required to adopt an annual budget and establish adequate reserve (future savings) funds. The budget is for anticipated operating expenses while the reserves are set aside for future use to cover the cost of repair and replacement of the parts of the property that will exceed \$10,000. Insufficient reserves can result in the levying of special assessments on the owners.

IX. Limitation of Freedoms:

Condominium living is "communal" in that the rules and obligations that must be followed by all owners for the enjoyment of everyone. When purchasing a condo unit, you agree to be bound by those rules. Because the rules restrict certain individual freedoms, living in a condominium offers less freedom than living in a single-family house. Adherence to rules, a get-along attitude and understanding basic realities of condo ownership will help to avoid unnecessary conflict.

Realities of Condo Ownership

X. Regulatory Framework: The basis of the Hawaii Condominium Law, Chapter 514B, Hawaii Revised Statutes, is self-governance of condo associations with minimal government intervention. The Chapter provides a legal framework for the creation, operation, and management of condo projects and their associations. When disputes occur that cannot be resolved by the parties, the law provides several methods for resolution.

Dispute Resolution. Hawaii Revised Statutes, 514B-161 and 162 mandate mediation and arbitration of condo-owner disputes. The Hawaii Real Estate Commission supports and subsidizes *mediation and voluntary binding arbitration* of condo disputes which have been successful in resolving many conflicts. If all else fails, there is *litigation* which can be lengthy as well as financially and emotionally draining.

Resources for Condominium Owners:

The Hawaii Real Estate Commission hosts a large amount of educational material, ranging from brochures, to video series of condominium issues such as insurance, pets, meetings, budgets and reserves, and other topics. Please find our YouTube channel and much more at:

<https://cca.hawaii.gov/reb/resources-for-condominium-owners>

Office Location and Hours:

We are located at 335 Merchant Street, Room 333, Honolulu Hawaii, 96813, open from 7:45 AM to 4:30 PM, by phone at (808) 586-2644 or by email at hirec@dcca.hawaii.gov, Monday through Friday, except for holidays.

Hawaii Real Estate Commission
335 Merchant Street, Room 333, Honolulu Hawaii 96813
www.hawaii.gov/hirec

