



# Hawaii Condominium Bulletin

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## Why Do People Condo?

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### What is a condominium and what can be condo-ed?

Condominium is merely a form of legal ownership. There are no state restrictions on what types or size of property can be a condominium. Condominiums can come in various forms, including residential skyscrapers, agricultural pasture land, townhouses, harbor slips, storage lockers, parking stalls, and industrial warehouses.

Condominium merely creates parts of the land (units) as exclusive to one or a few owners, parts of the land or building open to all owners and joins all the owners in a community association to manage the overall property. Owners and developers in the condominium must adhere to all county zoning, ordinances, regulations, permitting and rules in what they want to do, develop, and use on the property.

### Why do people choose to create a condo?

Anyone who chooses to create a condo becomes a developer regardless of the size of their condominium project. Developers choose the condominium path for various reasons.

Often developers want to develop a small plot of land into a few units, but because the local county will not approve a subdivision, they choose the condominium path. Creating a condominium on their land allows that developer to sell sectioned off pieces of the property known as a "unit" to buyers, achieving a goal similar to subdividing a property. Sometimes developers will sell existing homes on these units, but often will leave it to the buyers to construct a county permitted dwelling.

*continued page 3*

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to submit your request.

# Message from the Chair

Aloha,

Welcome to summer and our June edition of the Condo Bulletin. Things slow down just a bit in the summer time, so this is a good opportunity to catch up on some of the condo educational events you missed earlier this year or to view some of the Real Estate Branch's informative (and short) videos.

This year's Hawai'i legislative session has ended and on the condominium side of things, we are left with one new bill. On June 17, 2022, Governor Ige signed into law HB 2272 HD1, SD1, CD1 as Act 62. Act 62 amends many areas of the condominium law involving self-governance, including revising the percentage of owners needed to amend a declaration, requiring developers to make reserve projections based on a reserve study, and expanding when electronic meetings and electronic, machine and mail voting may be authorized. If you'd like to take a look at this bill, here's a link to it on the Hawai'i legislative website, <https://www.capitol.hawaii.gov/measure/indiv.aspx?billtype=HB&billnumber=2272&year=2022>.

Our latest Condorama was held on April 23, 2022, in conjunction with CAI Hawai'i. Over 340 people registered to attend. If you'd like to review the handouts from the speakers or watch all or part of the video, click on to the link here <http://cca.hawaii.gov/reb/condorama/>. Real Estate Branch staff have contributed a column for the June CAI Hawai'i Newsletter on reviewing the Developer's Public Report. Reviewing this document is a useful tool for learning about the project for prospective purchasers of new condominium developments as well as for interested buyers of existing condo units. The piece gives a quick look at some of the areas to review in the report and links to educational resources at the Real Estate Branch website. Watch for it when the June edition of their newsletter comes out. And for those who aren't sure what it means to be a "condominium", we have an informative piece in this edition of our Condo Bulletin on just that.

There are many condo mediations reported in this issue in our regular quarterly mediation summary. It's a reminder to us that mediation is an important tool in condominium dispute resolution. It is also the least costly means of dispute resolution. Even where the posted outcome reflects that the mediation did not result in an agreement between the parties, anecdotal evidence indicates that there is still value in these mediations. The parties can come to a mutual agreement in facilitative mediation or are given an unbiased look at their issues by a neutral mediator in the evaluative style of mediation. In evaluative mediation, the mediator often comes with a working knowledge of the subject matter as well as the relevant law and can advise the parties of the strengths and weaknesses of the case and on possible outcomes if the dispute ends up being litigated; because of this, some parties may be less inclined to pursue litigation. Considering the time and financial cost involved in a litigated case, that is certainly a good thing.

The REB is pleased to announce the addition of a new Senior Condominium Specialist. Kedin Kleinhans joined the office on May 6, 2022. He was previously with the Professional and Vocational Licensing Branch as an Executive Officer for several boards and commissions. Welcome Kedin!

Keep up with the current condo news and issues, legislative news, learn of any bills that the Commission is following, and check out educational events being held for the condo community by signing up for the Commission's quarterly email subscription service. Get it at the link here, <http://cca.hawaii.gov/reb/subscribe>.

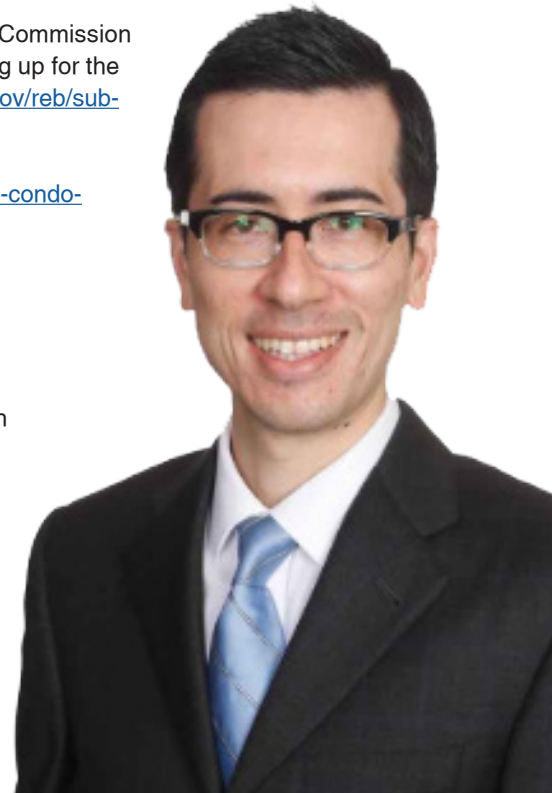
To view any of our 15 educational videos, click the link here <https://cca.hawaii.gov/reb/hawaii-condo-living-guide/>.

All are welcome to attend the monthly Real Estate Commission meetings which are held on Zoom; let us know you'll be attending by calling our office at 808.586.2643, or emailing us at [hirec@dcca.hawaii.gov](mailto:hirec@dcca.hawaii.gov), and we'll send you a link to join in.

In conformance with the latest pandemic protocols, the DCCA building is now open to all with no vaccine or masking requirements.

Stay safe everyone, enjoy the summer and thank you for taking the time to read the Condominium Bulletin.

John R. Love  
Chair, Condominium Review Committee



# Why Do People Condo? (cont. from page 1)

Developers also use this in estate planning, creating units on a property that their children will inherit, and thereby avoiding some conflict over what to do with the land after the developer's passing.

Big developers will utilize condominiums to create developments or buildings with hundreds of units, ranging from skyscraping residential and commercial towers, to sprawling rows of townhomes surrounding retail establishments.

## What Are the Basics of the Process?

Developers should consult with their legal counsel and with their local permitting and zoning county office to understand what is allowed on their property before they decide to condo their property.

A condominium is first created by the recording of the declaration, bylaws, map and deed at the Bureau of Conveyances or Land Court. This legally creates the condominium. You can learn more about these various documents at the Real Estate Branch's website: [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec)

Should a developer wish to sell units they must first file a "Developer's Public Report" with the Hawaii Real Estate Commission." This report details all the key facts of the project so that prospective buyers are aware of important aspects of the project such as amenities, the monthly maintenance costs, the usability of the buildings, pet policies, and unit sizes. The preparation and review of this report can take upwards of six months as it requires a great deal of documentation.

After the Developer's Public Report is determined to have met the disclosure requirements, including having complied with all county requirements, developers are free to sell units. Should a developer change something about the project, they are required to file an amendment to the Developer's Public Report detailing the changes. Developers are also required to file annual reports with the Real Estate Commission until every unit is sold.

## Where Can I Find More Information?

Please read more about the process with the "So You Want To Go Condo" brochure located in the developer's section of the Real Estate Branch's website, here <https://cca.hawaii.gov/reb/resources-for-condominium-developers-hotel-operators/>, under the "Condominium Project Registration" link.

# As Good As Gold

There are numerous references in the condominium and non-profit corporations laws to a condominium director's "fiduciary duty". HRS § 514B-106 (a) says that a board "may act in all instances on behalf of the association", and in doing so owes the association a "fiduciary duty" to the association consistent with that required by the Hawai'i Nonprofit Corporations Act. The Nonprofit Corporations Act sets this standard out in HRS § 414D-149 (a). (And no, associations are not required by law to incorporate. Board members, however, are guided by the standards of behavior set out in the nonprofit corporations law.) In addition, HRS § 514B-125 (g) states clearly that a director may not vote at any board meeting on any issue in which the director has a conflict of interest.

How to keep all this straight and do your duty as a condo board director? We'll keep it simple. Remember the acronym **GOLD**.

**GOOD FAITH** Directors must have a reasonable belief that their actions serve the best interest of the association owners considering all the facts and circumstances presented.

**OBEDIENCE** Board members must comply with the law, the project documents and house rules and all duly adopted decisions by the condo board.

**LOYALTY** Directors must serve the interests of ALL condo owners and avoid conflicts of interest.

**DILIGENCE** Directors must prepare for their board meetings! Read reports and research on the subjects at hand. Seek the advice of professionals and experts in the field. Talk to the association attorney and property management.

Keep the abbreviation GOLD in mind to remind you of the fiduciary duties and loyalties demanded of you as a director on your condominium board.

# Ask the Condominium Specialist

**Q:** I'm a new member on my condominium board. The board sometimes meets online, with no other owners present, just board members. These meetings include voting on decisions affecting the association. Are our votes on these measures valid?

**A:** Meeting in this manner is contrary to the statutory mandate set forth in HRS § 514B-125 to (1) conduct meetings that are open to all members of the association, (2) allow all owners to participate in discussions other than executive session deliberations and (3) fully notice all board meetings 72 hours before the meeting (or simultaneously with notice to the board). For board meetings to be legal, and by extension for votes taken at these meetings to be valid, by law they must be open to all association owners. Additionally, consult with Robert's Rules of Order, Newly Revised for all procedural matters (also required by statute). Consult with your association attorney to assure that going forward, all meetings comply with the legal standard for condominium association board meetings.

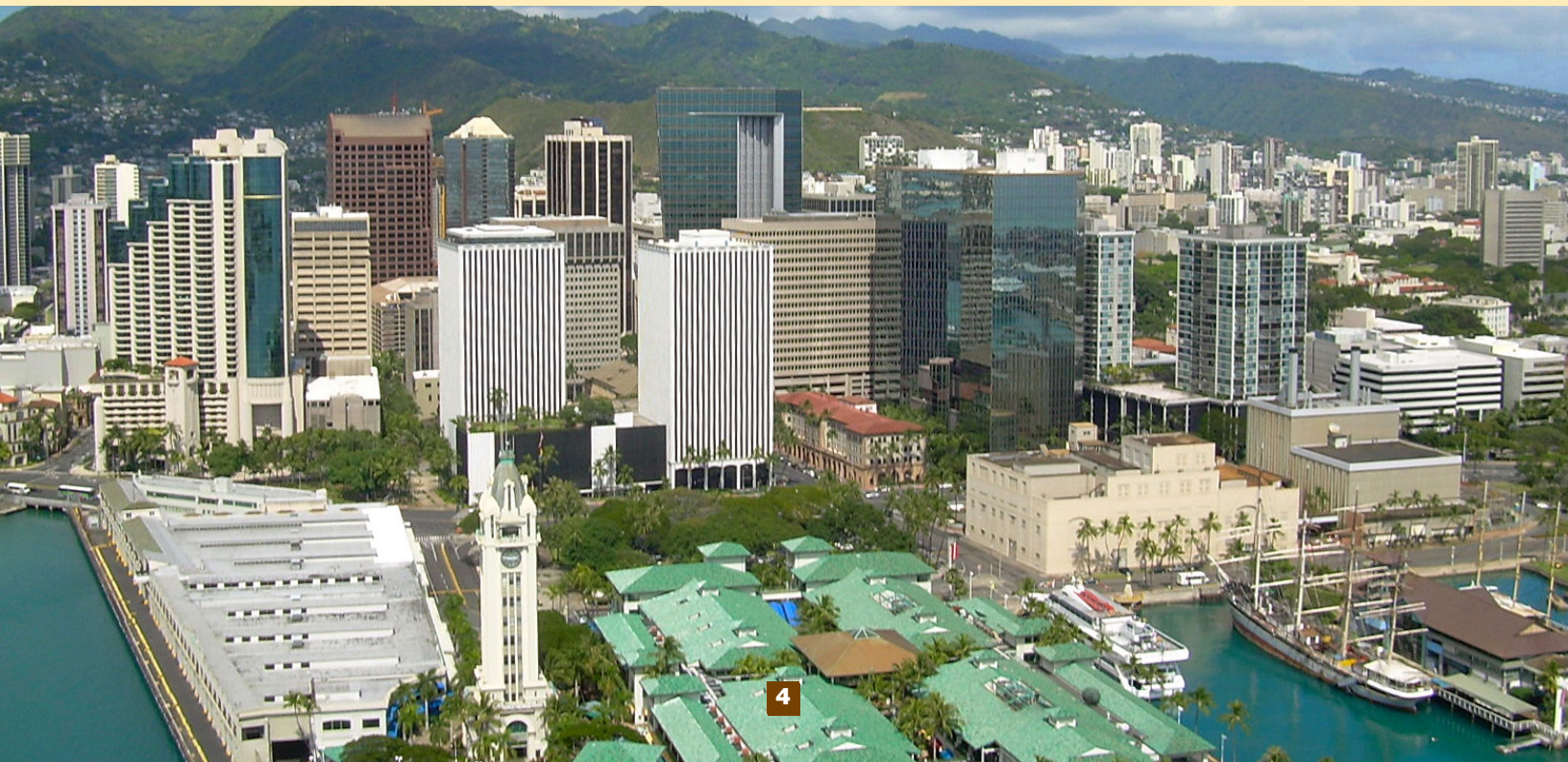
**Q:** I requested certain financial documents from my condo association. I am being told that unless I provide an affidavit promising certain things regarding use of the information, I won't get what I'm asking for. Can they deny me if I don't provide an affidavit?

**A:** At the board's discretion, and to protect the interests of the association and its members, a "duly executed and acknowledged affidavit" may be required of an owner requesting association financial documents. If an affidavit is required and not provided by the requesting owner or owner's agent, the association is not required to provide the requested documents.

The documents, records and information required to be made available to unit owners or their agents, including any affidavit or fee requirement are set forth in HRS § 514B-154.5.

Where you've met the conditions of the law, i.e. you've provided an affidavit if required and paid any fees, and still haven't received the requested documents, you may make a complaint at RICO, the Regulated Industries Complaints Office. RICO is the agency with investigative and enforcement authority over the production of documents to condominium unit owners. RICO has a complaint form available online at <https://cca.hawaii.gov/rico/file/>.

*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 2022, through May 2022, the following condominium mediations or arbitrations were conducted pursuant to Hawai'i Revised Statutes §§ 514B-161 and 514B-162.5 and subsidized by the Real Estate Commission for registered condominium associations. The Mediation Center of the Pacific conducted additional condominium mediations through the District Courts while mediation providers conducted community outreach in their respective communities.

## Dispute Prevention and Resolution, Inc.

AOUO vs. Owner	AOUO alleges owners installed hardwood flooring without prior approval; owners claim approval was given before installation of the new flooring. Owners and AOUO have agreed to conduct acoustical testing to address complaints from a neighboring unit owner.
Owner vs. AOUO	Owner alleges AOUO initiated construction projects in violation of the declaration. Parties continue to mediate beyond REB subsidization.
Owner vs. AOUO	Owner alleges that AOUO is obligated, under the governing documents, to maintain/repair owner's unit. Parties came to certain agreements pursuant to a verbal settlement after meeting with the mediator.
Owner vs. AOUO	Owner asserts AOUO converted common area to illegal and unpermitted short-term rentals. No agreement was reached at the REB subsidy cap, however the parties continue to discuss ways to reach agreement.
Owner vs. AOUO	Owner challenges the validity of a restated condominium declaration and the denial of owner's request for documents. Mediated; no agreement.
Owner vs. AOUO	Owner alleges ongoing harassment and threats by board members. Case mediated and the parties settled.
Owner vs. AOUO	Owner asserts violation of condo docs in charging owner for work and repairs done on the common area sprinklers and alleges approval for installing windows rescinded after windows installed. Mediated with no agreement.
AOUO vs. Owner	Owner alleges that a structure in one of owner's parking stalls pre-dated current ownership and therefore is now a fixture that is grandfathered in. Mediated, with no agreement.
AOUO vs. Owner	AOUO alleges unpermitted modifications to owner's unit. Mediated to agreement.
AOUO vs. Owner	AOUO asserts that owner was keeping and feeding feral cats in the common areas of the association, resulting in pests, waste and noxious odors throughout the building. Mediated, no agreement reached but parties continue to mediate beyond the REB subsidy cap.
Owner vs. AOUO	Owner demanded reimbursement for alleged negligence by board and managing agent including costs to repair unit, refund of maintenance fees, increased insurance premiums and attorney's fees. Mediated, owner's attorney withdrew and case did not settle.
Owner vs. AOUO	Owner alleges ten violations of the governing documents by the board and managing agent, including failure to comply with the governing documents, failure to maintain and repair the common areas, improper meeting notice and board members making decisions outside of board meetings. Mediated, no agreement, but parties continue to mediate beyond REB subsidy cap.
Owner vs. AOUO	Dispute over bylaw provision regarding renovations to owner's unit. Mediated to agreement.
Owner vs. AOUO	Owner alleges association is not enforcing numerous provisions of the governing documents relating to controlling an owner's behavior on association property and against other owners including allegations of harassment of other owners, vandalism and violation of a court-ordered TRO. This mediation did not result in an agreement between the owner and the association.

# Mediation Case Summaries

## Lou Chang, a Law Corporation

Owner vs. AOOU	Owner alleged denial of access to records and documents and disputed association practice of paying board members for participation in association meetings. Issue of access to records and documents resolved via mediation by the parties; issue of payments to board members was not resolved.
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## The Mediation Center of the Pacific, Inc.

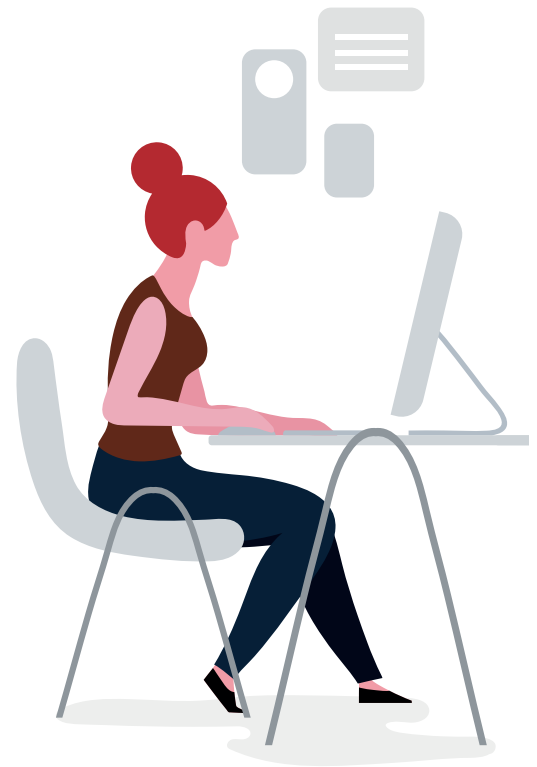
AOOU vs. Owner	Alleged violation of bylaws and house rules regarding noise complaints against a unit owner. Mediated to agreement.
Owner vs. AOOU	Owner presented issues regarding the alleged violation and interpretation of house rules regarding window repairs and installation of air conditioning unit. After contact with all parties in preparation for mediation, parties resolved the dispute.
Owner vs. AOOU	Mediation regarding alleged pet house rule violations and fines. Mediated, with no agreement reached.
Owner vs. AOOU	Mediation of issues regarding the interpretation of bylaws and house rules concerning water damage and repairs and insurance fees. Mediated, with no agreement reached by the parties.

## Reminder: Check Your Docs Check the Statute

Last Bulletin, we advised you about the notion of the self-governing Hawaii condominium law and said your condo docs were the first place to go if you have a question involving your condominium association. Check your declaration, bylaws and house rules before you go further. For current amendments to these documents, go to the Hawai'i Bureau of Conveyances, [www.dlnr.hawaii.gov/boc/](http://www.dlnr.hawaii.gov/boc/), or check with a board member or property manager for the most current copy of the house rules.

If your condo docs are "silent", i.e., they don't address the question you have, then check the governing law, **Hawai'i Revised Statutes Chapter 514B**. It may have a provision applicable to your question. If so, and you believe you have a case to pursue based on the existing law, "self-governing" means that in most cases, you are left to resolve your question through private means such as mediation or arbitration, or through civil litigation with a private attorney of your choosing. You can find an online unofficial copy of the law here, [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec).

"Majority owner rule" is the second basic tenet of the Hawai'i condominium law. Perhaps your issue can be resolved by making a change through a vote of the owners with a majority agreeing with you. If a vote on your issue is allowed, attempt a vote of the owners first, before you attempt private dispute resolution.



# 2022 Real Estate Commission Meeting Schedule

## **Real Estate Commission – 9:00 a.m.**

Friday, June 24, 2022

Friday, July 22, 2022

Friday, August 26, 2022

Friday, September 23, 2022

Friday, October 21, 2022

Friday, November 18, 2022

Friday, December 16, 2022

Until further notice, Laws & Rules Review Committee, Condominium Review Committee, and Education Review Committee Meeting items will be discussed at Real Estate Commission Meetings.

Real Estate Commission Meetings will be held online via the Zoom platform until the Department resumes in-person meetings. Thereafter, 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](http://www.hawaii.gov/hirec) or call the Real Estate Commission Office at (808) 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 (808) 586- 2643 to submit your request.

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