

Hawaii Condominium Bulletin

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contents

Reminder:

(1) Check Your Docs
(2) Check the Statute
(3) Private Dispute Resolution
page 1, 3

Message from the Chair
page 2

Judiciary Online Dispute
Resolution
page 3

Ask the
Condominium Specialist
page 4

Mediation Case Summaries
page 5

2022 Legislative Review
page 5, 6

CHO Renewals
page 6

2022 Real Estate Commission
Meeting Schedule
page 7

Reminder: (1) Check Your Docs (2) Check the Statute (3) Private Dispute Resolution



In the March issue of the Condo Bulletin, we reminded owners that in the event of a dispute to check their project documents first for any guidance, consistent with the self-governing focus of the Hawai'i condominium law. If the project documents are "silent", i.e., they say nothing about the issue in dispute, then check the governing condominium law in Hawai'i, HRS Chapter 514B. Here's a link to the law, <https://cca.hawaii.gov/reb/reb-hawaii-revised-statutes/> for your review. At that link, click on to "HRS Chapter 514B – Condominium".

Continuing this theme in the June Condo Bulletin, (you can access our previous Condo Bulletins here, <https://cca.hawaii.gov/reb/>, and click on to the "Publications" link at the top of the page) we presented another potential option for resolving disputes privately, which is by taking a vote of the owners to effect the desired change. But what if the vote doesn't pass in favor of your position?

We move on to the final level of dispute resolution - utilizing a private provider of mediation or arbitration to resolve your private dispute. Why mediation? Mediation is the least costly means of dispute resolution. Condominium associations registered with the Real Estate Branch are eligible for subsidized mediation and voluntary binding arbitration. To be eligible for subsidized arbitration through the REB, parties are required to submit their disputes to evaluative mediation first, so because of this legal requirement, our focus here will be on mediation.

There are two types of mediation, facilitative and evaluative. In facilitative mediation, mediation is provided by trained volunteers who encourage the parties to document their respective positions, in hopes of the parties coming to a mutual agreement.

continued page 3

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This material can be made
available for individuals with
special needs. Please call the
Senior Condominium Specialist
at (808) 586-2644
to submit your request.

Message from the Chair

Aloha,

Welcome to the 2022 September edition of the Condo Bulletin. Inside you'll find a summary of bills relevant to the condo community that were signed into law over the summer by the Governor. These bills will affect the condominium law by amending Chapter 514B or will have a potential impact on condominium life for all unit owners.

For those of you registered as condominium hotel operators, you'll receive reminder notices in October for the January 1, 2023 – December 31, 2024, registration period; the deadline for registering is November 30, 2022, and you will have until December 31, 2022, to successfully renew your registration. And for those registered CHOs operating on Oahu, make sure the new regulations established by the City and County of Honolulu in Ordinance 22-7 do not affect you. You'll find more details about Ordinance 22-7 and the upcoming registration in this bulletin.

Learn about the Judiciary's small claims pilot project that makes it easier for certain persons to file small claims in district court. You'll also find the last of our pieces on self-governance in this issue, focusing on private subsidized mediation as a means of dispute resolution.

The "Ask the Condo Specialist" column will offer you some practical advice on how to obtain current copies of your condo declaration and bylaws.

This fall, take advantage of Commission sponsored seminars produced by CAI Hawai'i. In September, you can learn about association delinquency collections in "Show Me the Money" and coming in October, learn about unit renovations in "What Board Members Should Know About Condominium Unit Renovation Projects".

Keep up with the current condo news and issues, legislative action affecting condos, and 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>.

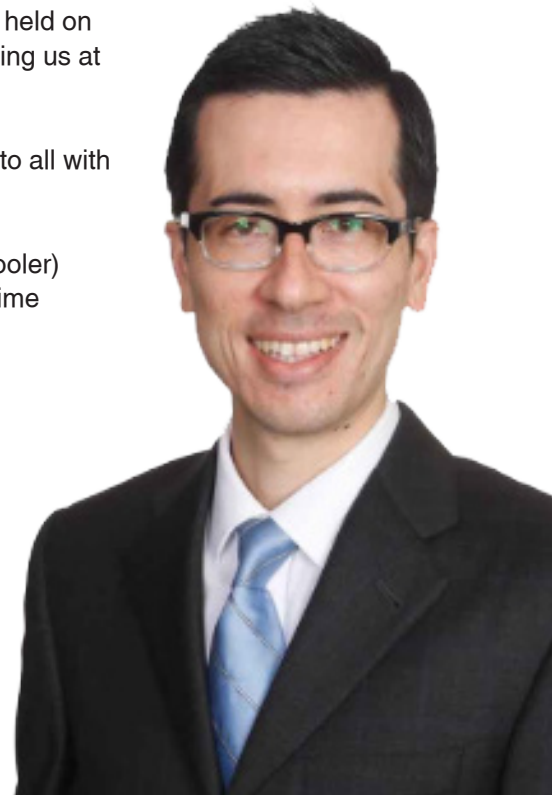
To view any of our short and informative educational videos, click the link here <https://cca.hawaii.gov/reb/hawaii-condo-living-guide/>.

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, 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 last days of summer as we head into the (hopefully cooler) fall days. Thank you for your interest in condominium education and for taking the time to read the Condominium Bulletin.

John R. Love
Chair, Condominium Review Committee



Reminder ... (cont. from page 1)

Evaluative mediation is conducted by mediators trained in the evaluative style. Evaluative mediators possess expertise in the Hawai'i condominium law and are familiar with the relevant and current case law and trends in condominium living, both locally and nationally. Most evaluative mediators are practicing or retired attorneys and retired judges.

The mediators in evaluative mediation may make settlement recommendations based on the positions of the parties and their knowledge of the current condominium and other related laws. This link will take you to the REBs full brochure on mediation, including the private providers available, <https://cca.hawaii.gov/reb/resources-for-condominium-owners/>. Click on to the "Mediation of Condominium Disputes" link from there.

The REB mediation brochure is a good place to get started on resolving your disputes. Consider the information and call and talk to a private provider of your choosing for more information and to answer any specific procedural questions you might have. Should you be interested in voluntary binding arbitration at the close of an evaluative mediation, the arbitration providers can also be reached through the providers of evaluative mediation. If you find yourself needing to discuss your situation with an attorney, call the Lawyer Referral & Information Service of the Hawai'i State Bar Association at 808.537.9140 and ask for a list of attorneys practicing condominium law in Hawai'i.

Judiciary Online Dispute Resolution

On September 1, 2022, the Hawai'i State Judiciary launched its Online Dispute Resolution Pilot Project ("ODR") on Hawai'i island. Last year, ODR commenced in Oahu and Maui county.

This new program means that beginning in September 2022, certain small claims cases on Hawai'i island will be required to file, negotiate, and attempt to resolve their small claims cases via TurboCourt, an online application website.

Data show that last year, on Oahu and Maui, 645 claimants filed their small claims cases electronically, with many of the claimants utilizing the free online negotiation and mediation tools to dispute their cases rather than heading straight to court, according to the Judiciary Communications and Community Relations Office. Users also appear to appreciate the convenience of filing claims online with ODR. Additionally, mediation through each island's community mediation provider is available to ODR participants if they are unable to resolve their disputes within the ODR portal.

More information about ODR can be found at the Judiciary's website, including eligibility requirements for the participants at <https://www.courts.state.hi.us/> under the "Self-Help" link at the top of the page, and "Small Claims".

ODR makes it easy for self-represented individual claimants (those who go to court without an attorney) to complete and file their court forms online with the guided process. All this can be done without having to take time off from work!

Note: Condo **associations** are not included in this pilot project because they are not "self-represented individuals" and as such, condo associations must follow the traditional procedures for filing small claims cases in District Court. The current pilot is **required** for: individuals involved in a dispute with just one other person and neither party is represented by an attorney; and where multi-party individuals are involved in a dispute and no party is represented by an attorney. This pilot program does not apply to businesses.



Ask the Condominium Specialist

Q: I remember receiving copies of my condo's declaration and bylaws when I purchased my unit. How do I know that the copies I have are current and that they contain any amendments that may have been made since I've received the documents?

A: HRS section 514B-154.5 (a) provides that an accurate copy of the declaration, bylaws and house rules shall be made available to any unit owner and the owner's authorized agents by the managing agent, resident manager, board through a board member, or the association's representative. Ask and (hopefully) you will receive!

If you are unable to obtain copies from any of those sources, the State of Hawai'i Bureau of Conveyances is the official record keeper of recorded real property documents. For information about obtaining documents, it's website address is <https://dlnr.hawaii.gov/boc/>, and phone number is 808.587.0147.

If a request to your managing agent does not produce the requested documents, you can make a complaint to the Regulated Industries Complaints Office about this at its website, <https://cca.hawaii.gov/rico/>.

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 June 2022, through August 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	Owner claimed to have been improperly charged for expenses incurred by AOUO in dealing with tenant.	Mediated to agreement.
Owner vs. AOUO	Dispute regarding change in designation of lanai added on to existing units.	Mediated to agreement.
Owner vs. AOUO	Owner alleged AOUO was not in compliance with financial requirements imposed by Chapter 514B.	Mediated; no agreement.
AOUO vs. Owner	Issue regarding the removal of flooring installed as an accommodation for owners; owners moved from the unit without removing the flooring.	Mediated to agreement.
Owner vs. AOUO	Owner alleges harm due to AOUO's failure to properly follow the reserve provisions of the condo minimum law. Mediated; some issues settled. Parties may agree to continue mediating outstanding issues.	

The Mediation Center of the Pacific, Inc.

Owner vs. AOUO	Dispute over interpretation of bylaws regarding monies received for water damage and insurance assessment. After contact, parties declined to mediate.
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2022 Legislative Review

This past legislative session, one bill, Act 62, made changes to the condominium law by amending HRS Chapter 514B. Other bills signed into law, while not amending HRS Chapter 514B, will nonetheless influence condominium living. Here's a review of this past legislative session's bills and how they may affect your life in a condominium association. The text of these and other bills may be found at www.capitol.hawaii.gov/.

Act 62 amended the condominium law. The purpose of the Act is to:

1. specify that a condominium declaration may be amended at any time by the vote or written consent of unit owners representing at least 67% of the common interest;
2. require the developer's public report to include annual reserve contributions based on a reserve study as part of the breakdown of the annual maintenance fees;
3. clarify time and date requirements for petitions to amend bylaws and calls for special meetings; time frame for approval of minutes; and board meeting participation;
4. clarify conditions regarding the use of electronic voting devices;
5. specify that the use of electronic meetings and electronic, machine, or mail voting are to be at the sole discretion of the board and expands the circumstances under which such use is authorized;
6. require that the reserve study be performed by an independent reserve study preparer not affiliated with the managing agent of the association and require that the reserve study be prepared or updated at least every three years; and
7. specify that an association's cash flow plan be based on a 30-year projection.

One noteworthy inclusion in Act 62 is the requirement that the developer's public report include future annual reserve contributions, based on a reserve study, as part of the breakdown of the annual maintenance fees. The developer's public report contains important information about a condominium project. It should be reviewed carefully by prospective buyers when considering a purchase before making any commitments to buy a unit. Act 62 requires that information on future annual reserve contributions be included in the developer's public report. A projection of future reserve contributions helps a prospective buyer to be fully informed of future costs before he or she buys in to the project. The more people are prepared for the social and financial realities of condo living, the greater the chance for a peaceful condominium community.

2022 Legislative Review (cont. from page 5)

While other bills signed into law did not amend Chapter 514B, they will nonetheless influence the governance decisions and life in a condominium association.

The legislature considered climate and energy conservation measures that will impact condo associations. As the legislators attempt to change public behavior in the interest of energy conservation and independence, condo owners should be prepared to adjust accordingly. It is safe to say that future legislative sessions will have a similar focus on the effects of our energy use on climate and energy conservation.

Acts 238 and 202 express this intent. In Act 238, the legislature found climate change to be “the overriding challenge of the twenty-first century”. The purpose of this bill is to establish a goal for statewide greenhouse gas emissions that is 50% below 2005 levels and to “require and appropriate” funds for the state energy office to conduct a study to determine actions needed to achieve goals for cutting greenhouse gas emissions. One of those goals is to improve energy efficiency for residential users, or in the context of condominium associations, condominium unit owners.

Act 202 expands the eligible rebate for electric vehicle charging stations to include a wider variety of electric vehicle charging systems in the hope of increasing electric vehicle use. The legislature is continually seeking ways to encourage people to “go green”, and condominium associations that can accommodate electric vehicle chargers on their properties might consider taking advantage of government-offered rebates.

Act 154, relating to fair housing and reasonable accommodations, puts into law what has been accepted practice. It 1) defines “assistance animal” in the context of existing law prohibiting discrimination in real property transactions, 2) codifies the administrative process to verify that a person requesting a reasonable accommodation through the use of an assistance animal has a disability and needs the assistance animal to alleviate symptoms of the person’s disability and 3) makes clear that the possession of a vest or other item of clothing ostensibly identifying an animal as a service or assistance animal does not constitute valid verification of the need for an assistance animal.

Act 289, relating to adult protective services, addresses various types of abuse, including self-neglect. This bill broadens the ability of the Hawai’i department of human services to enter a vulnerable adult’s premises without a warrant for the purposes of making a welfare check of an at-risk individual. With the aging of our population, condominium associations will increasingly face situations of at-risk older adults. This bill can assist associations in reaching out to the vulnerable adults in their community.

Act 310 prohibits discrimination against renters who participate in housing assistance programs such as Section 8 assistance. The legislature believes that renters who participate in housing subsidy programs should have an equal opportunity to find housing and should not be discriminated against because of this financial assistance.

This is a summary of actions taken by the legislature this year that affect condominium associations directly and indirectly. These bills will take effect at different times. Click on to the link at the beginning of this piece to review the bills and their effective dates. If you need more information on how any of these bills may affect the life of your association, consult with a condominium attorney.

CHO Renewals

If you are currently registered as a condominium hotel operator (“CHO”) with the Real Estate Branch, renewal reminders for the upcoming registration period, January 1, 2023, through December 31, 2024, will be sent out in October.

CHOs are persons or entities that do not hold a real estate license and engage in the short-term rentals (less than 30 days) of condominium units. The deadline for registering is November 30, 2022, and you must be approved for renewal by December 31, 2022, to maintain your registered status. If you fail to renew, or your registration is not successfully renewed by that time, you must immediately cease all short-term rental operations.

Persons wanting to register as CHOs for the first time may find the application information and materials at this link. <https://cca.hawaii.gov/reb/resources-for-condominium-developers-hotel-operators/>.

For those registered CHOs operating on Oahu, you are advised that City and County of Honolulu Ordinance 22-7, which establishes new regulations for short-term rentals on Oahu may affect your ability to engage in short-term rental activities. These CHOs should consult with an attorney to assure continued compliance with all City and County of Honolulu transient vacation unit requirements.

2022 Real Estate Commission Meeting Schedule

Real Estate Commission – 9:00 a.m.

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 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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