



Hawaii Condominium Bulletin

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Mandated Fire Safety Improvements: Impacts on Residential Condominium Property Insurance

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Honolulu City and County Ordinances No. 19-4 and 22-2 provide that existing high-rise residential buildings that do not to install an automatic fire sprinkler system throughout the building shall be required to undergo a fire and life safety evaluation.

The Hawai'i State Legislature recognized this past session that because of this requirement for fire safety improvements, condominium associations in Honolulu County may have faced large increases in their condominium property insurance. Senate Concurrent Resolution No. 48, SD 1 ("Resolution") seeks to look further into this issue.

The Resolution requested the Department of Commerce and Consumer Affairs ("DCCA") to survey 309 condominium associations affected by Honolulu County Ordinances 19-4 and 22-2 to determine: (1) whether the association of apartment owners has either filed a notice of its intention to install automatic fire sprinkler systems in individual units within the applicable condominium property or, before September 2022, undertaken a life safety evaluation conducted by a licensed design professional; (2) if the association of apartment owners has conducted a life safety evaluation, whether the condominium property received an acceptable score or sustained increased property insurance premiums since 2020, or both; and (3) if the association of apartment owners has filed a notice of its intention to install or retrofit sprinkler systems in individual units, whether the condominium property has sustained increased property insurance premiums since 2020.

The Resolution also requires the DCCA to provide an interim report to the Legislature containing information compiled from the survey. By letter dated May 30, 2023, from the DCCA, the survey was sent out to each of the affected 309 condominium associations in Honolulu County with requests for an electronic or mailed reply by June 30, 2023. The results will be compiled and delivered to the Legislature.

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Education Trust Fund

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 our June edition. Summertime offers us a chance to slow down a bit to enjoy the longer and warmer days. We can still take some time out for condominium education though; there's plenty on offer at our Real Estate Branch website as well as formal offerings from local organizations focusing on community association education.

Condorama X was held on April 29. We are pleased that 849 people attended virtually on that Saturday morning and took advantage of our program of free condominium education. If you missed it or would like to watch portions of it again, visit either our website for a link to the CAI page, www.hawaii.gov/hirec, or go directly to CAI Hawai'i's homepage, www.caihawaii.org. At this site, you will be asked to "register" to view the video. When you sign in to watch the video, no terms are attached to register. All previous Condoramas are also at the REB website for viewing.

Inside this edition of our Condo Bulletin, you'll find an update on the condo bills passed to the Governor from the legislature; information on the Department of Commerce and Consumer Affairs' survey relating to reported increases in condominium property insurance due to Honolulu City and County required fire safety improvements and Ask the Condo Specialist regarding what activities can take place in common areas of an association. Also take a look at our new feature, The Akamai Condo Buyer, which gives useful hints for people considering making a condominium purchase. You'll see this in every edition with practical tips for potential buyers.

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. Sign up for it at the link here, <http://cca.hawaii.gov/reb/subscribe>. By signing up you'll get the latest news for the condo community emailed directly to your inbox. The emails are also posted at the Real Estate Branch website if you prefer, including our latest from April 2023.

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

Plan to join the Commission at one of its meetings in 2023. A calendar of our meetings for this year is included inside. All are welcome and encouraged to attend any of the monthly meetings which are held on Zoom; simply go to our website and click on the agenda for the link to the Zoom meeting, here https://cca.hawaii.gov/reb/agendas_minutes/.

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

Stay informed. Thank you for your continued interest in condominium education and for taking the time to read the Condominium Bulletin.

John R. Love
Chair, Condominium Review Committee



What's Up At The Leg?

Three condo related bills were “enrolled” to Governor Josh Green by the legislature for his veto or approval. Any intent to veto a bill by Governor Green must be sent to the legislature by June 26 and vetoed by July 11. If a bill is not vetoed or signed into law by the Governor by July 11, the bill automatically becomes law.

Act 29 (SB 921, Relating to Limitations of Actions) impacts an association’s ability to sue a developer. It was vetoed by the Governor in April. The Governor’s veto was overridden by the legislature and the bill took effect on May 4, 2023.

The three bills on the Governor’s desk are SB 729, SB 855, and HB 1509.

SB 729, Relating to Board Members, requires the real estate commission to develop a curriculum for leadership training to be made available to board members of a condominium association and submit a progress report to the legislature.

SB 855, Relating to Condominium Reserve Requirements, is intended to require condominiums to include the estimated cost of fire safety equipment or installations as part of their annual update of their reserves study. It would also authorize a condominium association to use a third party to conduct a reserves study on behalf of the condominium; provide a summary of the required information in its budget; and authorize a condominium association’s reserve study to forecast a loan or special assessment to fund life safety equipment or installations for any building located in a county with a population greater than five hundred thousand.

The purpose of **HB 1509**, Relating to Common-Interest Developments, is to convene a task force to examine consolidating the oversight of common-interest developments under the Department of Commerce and Consumer Affairs.

We’ll find out the fate of these 3 bills by July 11, if not sooner.

Ask the Condominium Specialist

Q: A few owners in my condominium association have begun planting a variety of outdoor plants in our common area. Any work on or addition to our common area is clearly prohibited in our declaration. Is this something that’s allowed because “it’s just plants”?

A: What is a “common area”? The statutory definition of “common elements” commonly called common areas contained in HRS Chapter 514B states that a common area is all portions of a condominium “other than the units”, and “any interest in real estate for the benefit of unit owners that are subject to the declaration”. Common areas of a condominium association are for the use of all owners, subject to any restrictions on use as stated in the declaration.

Notwithstanding that some people may have positive views on an unpermitted activity, prohibitions in a declaration are still prohibitions. In this instance filling a common area with plants is prohibited by the condominium declaration. The board of directors has the jurisdiction to regulate the use of the common areas of the association pursuant to HRS § 514B-104 (6). It also has the authority to impose penalties for violations of the project documents, including the declaration, pursuant to HRS § 514B-104 (11). If the board refuses to enforce the common area prohibition, owners can insist that the board do its fiduciary duty and enforce the declaration.

If a majority of owner opinion is in favor of planting in the common area, another option for owners is to amend the declaration to remove the current prohibition and allow plants or planting in the common area. A major tenet of the condo law is that governance is via “majority rule” of the unit owners. Thus, a vote of the owners to amend the declaration with the vote or written consent of unit owners representing 67% of the common interest can amend the declaration to allow a previously prohibited activity in the common area.

At present, however, unless the declaration is amended, the current activity in the common area is prohibited and the board must act to stop this violation.

The information provided herein is informal and intended for general informational purposes only. Consult with an attorney familiar with the Hawai'i condominium law for specific legal advice regarding your situation.

Mediation Case Summaries

From March through May of 2023, 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.

Owner vs. AOOU	Dispute over the collection of delinquent main tenance fees as allowed by the bylaws.	Mediation; no agreement.
AOOU vs. Owner	Dispute over removal of in-unit appliances.	Mediated to agreement.
Owner vs. AOOU	Owner alleged AOOU breached its fiduciary duty to owner. Parties mediated and exchanged settlement offers.	
AOOU vs. Owner	AOOU alleged owners installed AC unit in violation of bylaws.	Mediated to agreement.
Owner vs. AOOU	Owner alleged accusations of making changes to his unit in prohibition of bylaws were false and hurt his reputation.	Mediated; no agreement
Owner vs. AOOU	Dispute over payment for injuries received in the common area.	Mediated to agreement.
AOOU vs. Owner	Issue regarding AOOU's denial of owner's request to pay off share of owners' loan amount after deadline to pay had passed.	Mediated; no agreement.
Owner vs. AOOU	Dispute involving sewage leak into owner's unit and responsibility for repairs and expenses.	Mediated to agreement.
AOOU vs. Owner	Alleged violation of noise provisions in declaration and bylaws by owner to the disturbance of surrounding unit owners. Mediation resulted in no agreement as such, but the parties agreeing to noise testing guidelines.	

Mediation Center of the Pacific, Inc.

Owner vs. AOOU	Owner alleged property manager and board were ignoring house rule and bylaw violations.	Unable to schedule mediation. Case closed.
Owner vs. AOOU	Owner alleged violation of bylaws in board and property manager not providing notice of board meetings. Owner withdrew request for mediation after discussion with parties and settling dispute.	
Owner vs. AOOU	Owner alleged board not following bylaws in determining dollar amount for damages to owner's unit. Owner subsequently withdrew request for mediation with MCP; said it would use another mediation provider.	
Owner vs. AOOU	Owner alleged violation of the bylaws regarding the discussion of the association's budget at meetings. Parties did not agree to meet for mediation.	

Mediation Case Summaries

Lou Chang, A Law Corporation

Owner vs. AOUO

Issues involved allegations of improper association management, improper use of funds and alleged discrimination against owner. After mediating, several issues were resolved, but no overall agreement reached. Evaluative assessment was provided to the owner.

To consult with any of our subsidized private mediation services, contact one of the following providers:

Oahu

Mediation Center of the Pacific, Inc.

245 N. Kukui Street, #206
Honolulu, HI 96817
Tel: (808) 521-6767
Fax: (808) 538-1454
Email: mcp@mediatehawaii.org

Maui

Mediation Services of Maui, Inc.

95 Mahalani Street, Suite 25
Wailuku, HI 96793
Tel: (808) 244-5744
Fax: (808) 249-0905
Email: info@mauimmediation.org

West Hawaii

West Hawaii Mediation Center

65-1291 Kawaihae Road, #103B
Kamuela, HI 96743
Tel: (808) 885-5525 (Kamuela)
Fax: (808) 887-0525
Email: info@whmediation.org

East Hawaii

Ku'ikahi Mediation Center

101 Aupuni St. Ste. 1014 B-2
Hilo, HI 96720
Tel: (808) 935-7844
Fax: (808) 961-9727
Email: info@hawaiiimmediation.org

Kauai

Kauai Economic Opportunity, Inc.

2804 Wehe Road
Lihue, HI 96766
Tel: (808) 245-4077 Ext. 229 or 237
Fax: (808) 245-7476
Email: keo@keoinc.org

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Member, National Academy of Arbitrators
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Email: louchang@hula.net
Website: www.louchang.com

Charles W. Crumpton

Crumpton Collaborative Solutions LLLC
TOPA Financial Center, Suite 702
745 Fort Street, Honolulu, Hawaii 96813
Tel: (808) 439-8600
Email: crumpton@chjustice.com
Websites: www.acctm.org; www.nadn.org;
www.accord3.com; and www.mediate.com

Dispute Prevention and Resolution

1003 Bishop Street, Suite 1155
Honolulu, HI 96813
Tel: 523-1234
Website: <http://www.dprhawaii.com/>

THE AKAMAI BUYER

What to Consider Before You Buy a Condo

Before you make the leap and purchase a condominium unit, check to see whether pets are allowed. If your family unit includes a pet or pets, you'll need this information. Check the bylaws of the association and the house rules for any prohibitions on keeping pets. For example, while pets may be allowed, size and number restrictions are common in associations that allow pets. Is your pet too large? Do you have more than the accepted number of pets?

Also, is smoking allowed in the building in the open common areas? Is smoking allowed in the individual units? Do you have a health condition where it's important to avoid secondhand smoke? Disputes over secondhand smoke are common. Check the bylaws and house rules for any smoking prohibitions. Even if smoking is allowed in individual units only, in some buildings secondhand smoke seeps through to adjacent units.

Knowledge and information are the best tools that a potential buyer can have.



2023 Real Estate Commission Meeting Schedule

Real Estate Commission – 9:00 a.m.

Friday, July 21, 2023

Friday, August 25, 2023

Friday, September 22, 2023

Friday, October 27, 2023

Friday, November 17, 2023

Friday, December 15, 2023

All Real Estate Committee Meeting items will be discussed at Real Estate Commission Meetings until further notice.

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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