



# Hawaii Condominium Bulletin

Visit our website: [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) / Call us: (808) 586-2644

## contents

Continuation or Cancellation of Hawaii Condominium Planned Community Associations (PCA) Annual Meetings  
page 1, 2, 3, 4

Message from the Chair  
page 2

Farewell Benedyne  
page 4

Legislative Session 2024  
page 5

Mediation Case Summaries  
page 5, 6

Ask the  
Condominium Specialist  
page 7

THE AKAMAI BUYER  
What to Consider Before  
You Buy a Condo  
page 7

2024  
Real Estate Commission  
Meeting Schedule  
page 8

Funded through  
the Condominium  
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.

## Continuation or Cancellation of Hawaii Condominium and Planned Community Associations (PCA) Annual Meetings by Steve Glanstein, Professional Registered Parliamentarian



During the COVID pandemic, several attorneys, board members, and property managers requested procedural guidance regarding last minute cancellations or continuations of Hawaii Condominium and Planned Community Associations (PCA) annual meetings, jointly referred to herein as, “associations.” This need for information has continued even though the previous state and local COVID meeting restrictions are no longer in effect.

Note: There may be pending orders applicable to the county of Maui due to the Lahaina fire. Any orders must be reviewed with legal counsel to ensure that the association and their members comply with any applicable requirements.

This article will provide some procedural information for associations consistent with *Robert's Rules of Order Newly Revised* (12th ed.) (*Robert's Rules*) and based on my experience with Hawaii Condominium and Planned Community Association annual meetings. It is not meant to provide legal or tax advice. For legal or tax advice, check with an appropriately licensed attorney or CPA.

The term “governing documents” is used herein to refer to a combination of an association’s Articles of Incorporation (if any), Declaration, and Bylaws.

*Robert's Rules* is required by statute for condominium and Planned Community Association meetings. However, *Robert's Rules* is specific that it yields to any laws or governing documents.

References are made to Hawaii Revised Statutes (HRS). The most recent version of HRS may be obtained through legal counsel. The HRS posted on the state website is usually updated annually in November. The weblink is: <https://capitol.hawaii.gov/hrscurrent>.

This article will review the requirements for an annual meeting, including issues associated with scheduling, notice, continuing or cancelling a meeting, as well as a brief section on the conduct of the meeting.

### 1. Requirements for association meetings

The condominium statute HRS §514B-121(a) requires condominium associations to have an owners’ meeting at least annually.

*continued page 2*

# Message from the Chair

Aloha,

In this edition of our Condominium Bulletin, we offer you a timely piece on cancelled annual meetings by Professional Registered Parliamentarian, Steve Glanstein. This piece is especially relevant considering the Maui wildfire and the inability of some affected condominium associations to conduct their legally required annual meeting. Thanks to Steve Glanstein for bringing this issue to our attention and for contributing this piece.

Inside you'll also find our Legislative Update for the upcoming 2024 Hawai'i session, our suggestions for prospective purchasers in our Akamai Buyer article pertaining to modifications that may have been done to a unit, condominium mediation case summaries, and questions to our Ask the Condo Specialist.

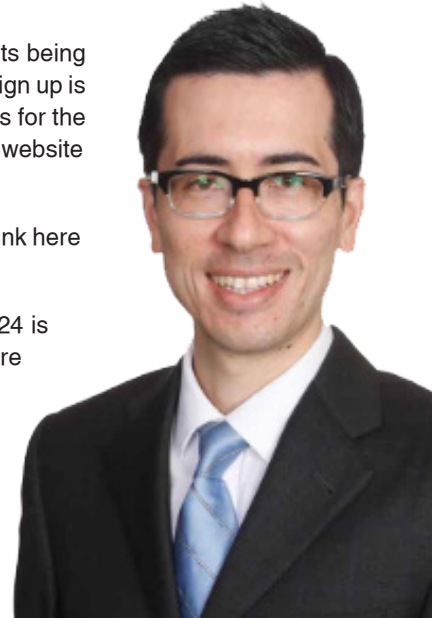
Keep up with the current condo news, issues, legislative action affecting condos, and educational events being held for the condo community by signing up for the Commission's quarterly email subscription service. Sign up is available at the following link: <http://cca.hawaii.gov/reb/subscribe>. By signing 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 our last Commission meeting of 2023 on December 15. A calendar of our meetings for 2024 is also 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/](https://cca.hawaii.gov/reb/agendas_minutes/).

Lastly, we would like to congratulate Condominium Specialist Benedyne Stone on her well deserved retirement. Benedyne Stone has been an integral part of the Real Estate Branch staff and will be missed.

John R. Love  
Chair, Condominium Review Committee



## Continuation or Cancellation of Hawaii Condominium ... (cont. from page 1)

The Planned Community Association statutes (HRS Chapter 421J) do not contain such a requirement. The nonprofit corporation statute HRS §414D-101(a), which applies to nonprofit corporations with members, requires these entities have a meeting at least annually. Many Planned Community Associations are incorporated as nonprofits so the applicability of this statute must be reviewed with counsel.

None of these statutes state what **type** of meeting is required.

*Robert's Rules* defines two major types of meetings: Regular meetings (for this purpose, usually once a year and known as Annual meetings) are where most business is conducted, and Special meetings are where business is limited to items stated on the official notice.

Properly scheduled and noticed meetings start by being called to order. They need a minimum representation of owners to transact substantive business. This minimum number is called a quorum. Regardless of whether a meeting has a quorum, it may usually be continued to another day, time, or place using a couple of specific motions in *Robert's Rules*. They are known as the motions to *Fix the Time to Which to Adjourn* and the motion to *Adjourn* (sometimes combined into one motion). Note that there are some bylaws which place a limit on how long a meeting may be continued (minimum or maximum lengths of time). The default rule in *Robert's Rules* limits the continuation of a meeting to prior to the next regular (or annual) meeting.

The continuation of the meeting is known as an "Adjourned" meeting. For example, an adjourned annual meeting is an annual meeting that was validly continued from either an annual meeting or another adjourned annual meeting. Sometimes, property management companies will use the term "reconvened" instead of "adjourned".

### 2. Requirements for notice of association meetings

The use of proxies at association meetings has been an important component of permitting owners to designate an individual or the board of directors to represent their interests. The law regarding the distribution of proxies by an association must be followed closely to minimize the possibility of a successful legal or procedural challenge to decisions made at the meeting. Legal counsel should be able to provide information about the legally required posting requirements when proxies are used.

The notice requirements for a regular (annual) or special meeting proscribed by state law and may also be prescribed in the governing documents. It is critical to comply with these requirements. Failure to comply with these requirements may invalidate the entire meeting and all its actions. Further, an adjourned meeting based upon improper notice does not validate the adjourned meeting. The proper procedure is to have valid notice sent as provided in state law and the association's governing documents.

Here are some examples of improper scheduling of an annual meeting:

- The bylaws require the annual meeting to be within three months following the end of the fiscal year. The board mistakenly attempts to schedule an annual meeting in April when the fiscal year ends in December. This occurred multiple times in 2022 and 2023.
- The bylaws require the annual meeting to be on a certain date such as the second Tuesday in March. Management ignores that requirement and schedules the meeting on some other date.
- The bylaws require association meetings to be held onsite. Management schedules it to be held at a hotel or some other offsite location.

If somehow management misses or is unable to comply with a mandated date or location for an annual meeting, the board may want to consider a special meeting if permitted in the governing documents.

The resolution of these issues can be done by proper amendment of the bylaws to provide for a reasonable time, location, and notice requirement for scheduling owners' meetings.

Here are some examples of improper or faulty notice of an annual meeting (and a special meeting):

- The bylaws require notice to be sent by certified or registered mail and the property management sends it by regular mail. (Sometimes this requirement is hidden towards the end of the bylaws!)
- The bylaws require notice to be sent no more than 25 days and the property management sends it 30 days before the meeting.
- The notice fails to have the required information. For example, some notices require a proxy form and agenda to be included. In another example, the board's proposal to amend the bylaws was inadvertently omitted from a notice of a condominium meeting.
- The notice has an invalid address or location for the meeting.
- The notice specifies a check-in time of 12:00 **a.m.** with a 1:30 **p.m.** call to order. (This may be valid, although technically the administrative staff should be on site at midnight to check people in over a 13 hour and 30-minute period!)

The notice requirements for an adjourned meeting vary, depending on the governing documents. If the governing documents are silent, then additional notice may not be needed. However, it is recommended practice to reasonably inform owners that their meeting was continued (especially if the reason for the continuation was a lack of a quorum).

### 3. Cancellation of meetings

The president and the board generally have limited authority to cancel a properly called and noticed meeting of the association.

If the meeting was not properly noticed then it would be null and void unless the governing documents contain an extraordinary exception allowing for a waiver of notice if 100% of the owners were present (note that it is extremely rare to have 100% of the ownership represented at a meeting except very small associations). In this case, the process is somewhat simpler though not necessarily pleasant. The association could send out a notice that the meeting would be invalid and is cancelled. They can then initiate the process to call and notice a meeting in the proper manner.

The condominium and PCA statutes are silent on authority to cancel a meeting. Likewise, governing documents should be checked to determine if they address this issue. Check with legal counsel with regards to more details on whether there's any legal authority to cancel a meeting and prospective liability if owners have already expended funds in reliance on the notice of an association meeting.

Meetings have been declared cancelled and "uncancelled" after different legal opinions were provided. Therefore, parliamentarians recommend that opinions from legal counsel be in writing and maintained with the association records.

*Robert's Rules* provides for a conceptual restriction of the authority to cancel a meeting. RONR (12th ed.) 25:10 states in part, "Rules protecting absentees cannot be suspended, even by unanimous consent or an actual unanimous vote, because the absentees do not consent to such suspension."

The minimum number of days' notice specified in the association's documents is present to protect absentees as well as the association. Therefore, it is procedurally possible for the entity authorized to call the meeting (usually the President or the board of directors) to cancel or reschedule a meeting provided any cancellation or rescheduling complies with the notice requirements in the law and the association's documents.

For example, with a 14-day minimum notice requirement, a board finds out that the date is no longer available 30 days before the meeting. They *may* be able to send out an amended notice provided it is sent more than 14 days before the meeting, however, they must check with legal counsel. There have been different legal opinions on this issue.



## Continuation or Cancellation of Hawaii Condominium ... (cont. from page 3)

The notice is also connected to specific on-property posting requirements if the board of directors intends to distribute proxies for use at the meeting. This follows a different timeline whereby a *notice of intent to distribute proxies* must be posted at least 21 days before the *notice of meeting* is sent to owners or members. In light of these statutorily mandated minimum notice requirements, the date of posting of a notice of intent to distribute proxies will necessarily impact the meeting date.

If the meeting is to be cancelled, it is recommended the association consult with the CPA regarding the consequences of failing to adopt a tax resolution in the current year. Inquiry should be made with the CPA to advise what corrective actions, if any, can be taken if the association does not adopt the resolution at its annual meeting. There have been differing CPA opinions, depending on the type of association and tax return.

#### 4. Conduct of meetings

Regular or Annual meetings are general in scope and there are few limits to the business that can be conducted. The general business at these meetings in Hawaii is an election of directors and adoption of a tax resolution, if mandated, to preserve the association's status.

Occasionally there may be other business items such as a Design Committee election, insurance motions, Declaration and Bylaw amendments, or even a recall and replacement election of one or more board members.

Special meetings are usually limited to items specified on the official notice.

Association meetings are generally conducted in a formal manner. For example, debate is not permitted unless a valid motion is presented for consideration. A motion that purports to violate the governing documents is usually ruled out of order without debate.

#### 5. Continuation of meetings: alternative procedure

There may be scheduling challenges that severely limit whether the prescheduled meeting site can be used on the meeting date. In extreme cases, meetings have been called to order with two people in front of the original meeting site and continued to an appropriate time, date, or location.

Should this occur, it is important to notify owners of the process that will be followed as soon as a decision is made.

Hopefully the above discussion provides some insight into the scheduling of association meetings as well as a process for responding to changes in the situation that require continuation or cancellation of an association meeting.

Steve Glanstein, PRP  
Email: [Steveghi@GMail.com](mailto:Steveghi@GMail.com)  
Phone (+1) 808-423-6766

## Farewell Benedyne

At its November 22, 2023, meeting, the Real Estate Commission bid a fond farewell to the Real Estate Branch's Condominium Specialist, Benedyne Stone, who retired on November 30, 2023. The road to retirement has been a journey for Benedyne, who first joined the Department of Commerce and Consumer Affairs as a Condominium Specialist with the Real Estate Branch 34 years ago. Benedyne had a decade break from the Department before rejoining the Real Estate Branch in November of 2007.

In her position as a condominium specialist, Benedyne focused on the registration of condominium associations and condominium hotel operators, the never ending need to educate owners, board members and the public on condominium governance, and the very time-consuming process of contracting for and assisting with the various seminars the Commission hosted such as the well regarded Condorama series. She was also the editor of the quarterly Hawaii Condominium Bulletin and author of various articles in the Bulletin as well as in external publications such as CAI Hawaii's newsletter. She authored the ARELLO education award winning submission, "Condorama – A Presentation on Condominium Governance By a Panel of Experts."

Benedyne was the recipient of many educational awards, most recently the Chapter Industry Appreciation Award from CAI Hawaii. The Commission appreciates all that Benedyne has done for the condominium community and wishes her well. She will definitely be missed but the Commission will carry on her legacy.



# Legislative Session 2024

The 2024 legislative session is coming soon with opening day on January 17, 2024. Like all legislative sessions, we're sure to see many proposed condominium bills seeking to change various aspects of development and governance of condominiums. We'll be sure to keep you updated in the next bulletin for condominium bills of interest.

Visit the Hawaii State Legislature website: (<http://www.capitol.hawaii.gov/>) for the legislative calendar, legislator contact information, citizen's guide to the legislative process, broadcasts of hearings, bill information, online bill testimony submission, and much more!

The Hawaii Legislature's website also includes an archive of Acts and bills from prior sessions (<https://www.capitol.hawaii.gov/advre-ports/main.aspx>). Users can research bills from prior legislative sessions, view their public testimony, committee reports, and various Senate and House drafts. This may be helpful in crafting legislation to address gaps in the current law or avoiding a similar fate to prior proposed bills that did not become law.

The Public Access room (<https://lrb.hawaii.gov/par>), located on the fourth floor of the Capitol building, serves to help Hawaii residents understand and participate in the legislative process.

The best time to work on new legislation is before the legislative session starts. Contact legislators in the interim between sessions to voice your concerns and see if they are willing to champion your proposed bill. There is only a short period of time for legislators to submit bills. Work with legislators to draft a bill, address concerns, and fine tune for submission during the first week of the legislative session.

## Mediation Case Summaries

From September through November 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 regarding changing the use of the common elements.	Mediated to agreement.
Owner vs. AOOU	Dispute regarding repairs to common areas.	Mediating parties agreed to continue with mediation and to pay mediator's fee privately.
Owner vs. AOOU	Issue of cable running through owners' unit and danger to disabled homeowner.	Arbitrated with agreement of all parties reached.
Owner vs. AOOU	Dispute regarding responsibility for water intrusion into owner's unit and resulting water damage.	Mediated; no agreement.
AOOU vs. Owner	Allegation of unit modifications by owner without prior required approval.	Mediated to agreement.
Owner vs. AOOU	Owner alleges improper maintenance of the property in violation of the bylaws.	Mediated to agreement.
Owner vs. AOOU	Allegation of violation of project documents regarding unit occupancy limits.	Mediated to agreement.
AOOU vs. Owner	Dispute regarding installation of a cell phone antenna near owners' unit.	Mediated to agreement.
Owner vs. AOOU	Issue of water intrusion into owner's unit and subsequent mold.	Mediated to agreement.
AOOU vs. Owner	Dispute regarding interpretation of project documents and whether pickleball is allowed on the tennis court.	Mediated; no agreement.
Owner vs. AOOU	Issue of responsibility to pay for damage from water leaks from owners' unit.	Mediated to agreement.

# Mediation Case Summaries (cont. from page 5)

Owner vs. AOUO	Issue of zoning application made by the association and whether the application was in compliance with the project's declaration.	Mediated; no agreement.
Owner vs. AOUO	Issue of 1) whether the association can replace locks on doors without owners' consent and 2) whether project bylaws were legally amended.	Mediated; no agreement.

## Mediation Center of the Pacific

AOUO vs. Owner	Dispute over interpretation of house rules and common area restrictions, specifically the parking area.	Mediated to agreement.
Owner vs. AOUO	Dispute regarding fees and penalties pursuant to bylaws and house rules. Unable to schedule mediation with the parties; case closed.	
Owner vs. AOUO	Dispute over common area and loading zone. Owner subsequently withdrew request for mediation.	
Owner vs. AOUO	Dispute regarding water damage to owner's unit.	Mediated; no agreement.
AOUO vs. Owner	Dispute over alleged failure of owner to obtain mandatory insurance coverage.	Mediated; no agreement.

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

**Oahu**  
**Mediation Center of the Pacific, Inc.**  
1301 Young Street, 2nd Floor  
Honolulu, HI 96814  
Tel: (808) 521-6767  
Fax: (808) 538-1454  
Email: mcp@mediatehawaii.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

**Charles W. Crumpton**  
Crumpton Collaborative Solutions LLLC  
Tel: (808) 439-8600  
Email: crumpton@chjustice.com  
Websites: [www.acctm.org](http://www.acctm.org); [www.nadn.org](http://www.nadn.org);  
[www.accord3.com](http://www.accord3.com); and [www.mediate.com](http://www.mediate.com)

**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

**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

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

**West Hawaii**  
**West Hawaii Mediation Center**  
65-1291 Kawaihae Road, #103B  
Kamuela, HI 96743  
Tel: (808) 885-5525 (Kamuela)  
Tel: (808) 326-2666 (Kona)  
Fax: (808) 887-0525  
Email: info@whmediation.org

**Lou Chang, A Law Corporation**  
Mediator, Arbitrator, Attorney  
Member, National Academy of Arbitrators  
P.O. Box 61188, Honolulu, Hawaii 96839  
Tel: (808) 384-2468  
Email: louchang@hula.net  
Website: [www.louchang.com](http://www.louchang.com)

# Ask the Condominium Specialist

**Q:** Our condominium documents are from the 1960s or 1970s and haven't been updated. What are we missing and what should we do?

**A:** The first step is to review what your declaration, bylaws, and house rules, known as the governing documents, currently state and compare them to chapter 514B, HRS, to see what needs to be changed. Your association may wish to form a committee of owners and board members with the help of legal counsel to oversee this task.

Many condominiums' declaration and bylaws lack the mandatory sections that chapter 514B, HRS, currently requires. Often omitted sections are the mandatory fine appeals process, details on the fining process to allow for fining to occur (or at least a board resolution), guidance on cumulative voting, the number of board members, accurate descriptions of common elements and unit boundaries, among many others. It is vital that the governing documents have these sections to reduce conflict and clarify condominium living.

The committee and legal counsel will then draft the amendments to the governing documents that include these updates, circulate the draft documents to all unit owners, and hold a vote to amend the declaration and bylaws in a special or regular association meeting. Once the association has passed these measures by a vote, the board shall record the amendments to the declaration and bylaws at either the Bureau of Conveyances or Land Court and let the unit owners know.

*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.*

## THE AKAMAI BUYER

### What to Consider Before You Buy a Condo

An often-overlooked consideration when purchasing a condominium unit is whether the unit you are thinking of buying has been modified by a previous owner.

As you know, condominiums are subject to 1) the condominium governing documents (Declaration, Bylaws, House Rules, and Condominium Map), and 2) the condominium statute, Hawai'i Revised Statutes Chapter 514B. With regards to the law, HRS § 514B – 140 governs additions to and alterations of a condominium unit. It generally provides that no unit owners may do any work that would affect the safety of the property or reduce its value "as reasonably determined by the board". "Nonmaterial" additions or alterations require approval "only by the board", subject to any relevant provisions in the declaration. Thus, if a unit has been modified, board approval, or a reasonable determination made by the board was probably a necessary step in the modification process. If this was not received, the modifications may be illegal.

Cautionary note: Approval from the Building Department of your county is separate from any approvals that may be required by the condominium law or the project documents of the condominium; any county approval cannot substitute for requirements called for by the condominium statute or the association's documents.

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



# 2024 Real Estate Commission Meeting Schedule

## Real Estate Commission – 9:00 a.m.

Friday, January 26, 2024

Friday, February 23, 2024

Friday, March 22, 2024

Friday, April 26, 2024

Friday, May 24, 2024

Friday, June 28, 2024

Friday, July 26, 2024

Friday, August 23, 2024

Friday, September 27, 2024

Friday, October 25, 2024

Friday, November 22, 2024

Friday, December 20, 2024

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](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.

HAWAII CONDOMINIUM BULLETIN, December 2023 copyright Hawaii Real Estate Commission. All rights reserved. This Bulletin, or any part thereof, may not be reproduced without the written permission of the Hawaii Real Estate Commission, except permission is granted to registered Hawaii condominium associations to reproduce and distribute copies of this entire publication, but not for profit, as an educational service. This publication is intended to provide general information and is not a substitute for obtaining legal advice or other competent professional assistance to address specific circumstances. The information contained in the Bulletin is made pursuant to Hawaii Administrative Rules Section 16-201-92 and is not an official or binding interpretation, opinion or decision of the Hawaii Real Estate Commission or the Department of Commerce and Consumer Affairs. The Hawaii Condominium Bulletin is funded by the Condominium Education Trust Fund, Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii.