



Hawaii Condominium Bulletin

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

contents

Tips on Successfully Fulfilling Your Fiduciary Obligations
page 1, 3, 4

Message from the Chair
page 2

Mediation Case Summaries
page 4, 5

Ask the Condominium Specialist
page 6

THE AKAMAI BUYER Association Governance
page 6

2025 Real Estate Commission Meeting Schedule
page 7

Tips on Successfully Fulfilling Your Fiduciary Obligations By Milton M. Motooka, Esq.



Most board members understand that they serve as a fiduciary when they are elected to serve on their Association's Board of Directors. Board members, as fiduciaries, have a duty and responsibility for the decisions they make on behalf of their Association. They must be careful to assure that they serve in a manner that is consistent with their fiduciary duty. But what does it mean to be a fiduciary?

Under the law, when one person is entrusted with the responsibility to control the decisions, interests or property of another, a fiduciary responsibility arises out of this relationship. For our purposes, the board members as fiduciaries must subordinate their personal interests when taking action in connection with these matters and assuring that all of their actions are consistent with the best interest of the Association.

This fiduciary responsibility is based on the special relationship between the Board of Directors and the Association's membership. When directors exercise control over the Association's affairs, and thereby affect the lives and property of all its members, a fiduciary duty to the membership is created. The fiduciary responsibility implies a relationship of trust. In effect, the membership has decided to entrust the board with a certain amount of power to make decisions for the benefit of the entire community. The law does not diminish this responsibility simply because a member of the board is a volunteer serving without compensation.

The duties of a director or officer must be fulfilled in good faith, and in the best interest of the association, and with the kind of care, including reasonable inquiry, that a prudent person facing a similar situation would ordinarily use.

cont. page 3

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.

Message from the Chair

Aloha,

Spring is upon us, with rejuvenation, fresh air, and clear water - all great things to emulate in your condominium. This bulletin goes all-in on transparency, with topics such as fiduciary duty, board meetings, and association governance.

We're a few months into 2025, but there's no time like now to remind boards of directors of their fiduciary duty. In this bulletin, long-time condominium attorney Milton Motooka provides a refresher about the expectations for board members in fulfilling their fiduciary duty to the association.

The "Ask the Condo Specialist" discusses common concerns involving board meetings, including owner participation and whether board meetings can be conducted by email.

The Akamai Buyer reminds prospective buyers that the building itself is not the only thing you buy into. Association governance can also play a role in your overall living experience. Be informed about the association you are buying into before signing the purchase contract.

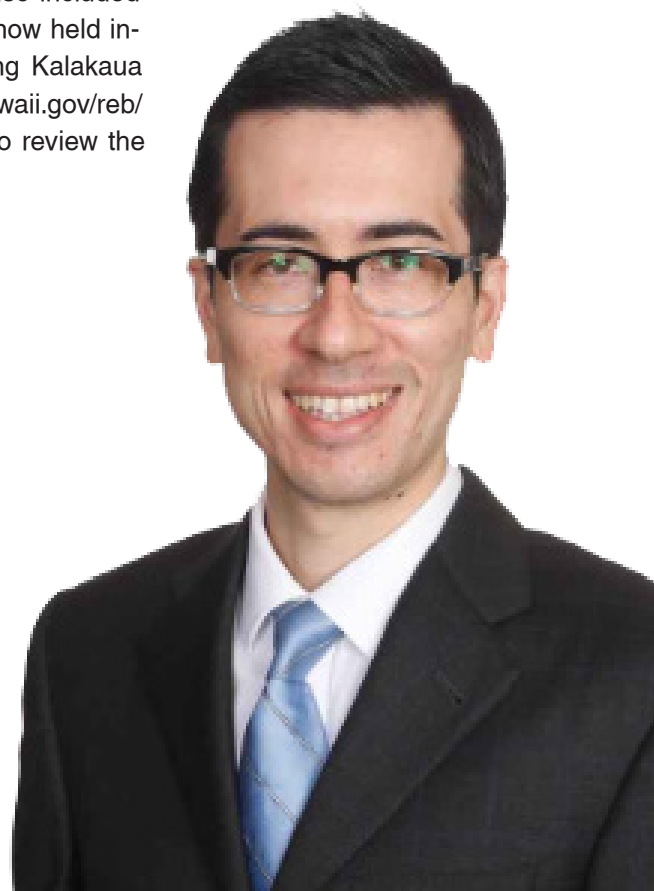
We've also included summaries of condominium mediations that were conducted in the last few months.

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: <https://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.

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/>.

A calendar of the Real Estate Commission's 2025 meeting schedule is also included inside. All are welcome to attend any of the monthly meetings which are now held in-person, primarily in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor. Click the link here https://cca.hawaii.gov/reb/agendas_minutes/ to visit our website to get the upcoming agenda and to review the minutes from prior meetings.

John R. Love
Chair, Condominium Review Committee



Tips on Successfully Fulfilling Your Fiduciary Obligations (cont. from page 1)

Board members owe an undivided duty of loyalty to the Association and its membership. A director breaches this duty when he or she acts in his or her own interest or with a conflicting interest. Acting in one's own interest does not only mean seeking a possible financial gain. It can include ego and other psychological benefits. If you believe that you cannot perform your responsibilities without an undivided loyalty to the Association, you are required by law to recuse yourself from any vote related to the issue in question. If you believe that there may be an appearance of impropriety, but no real conflict, you should disclose the circumstances of the situation on the record and then state why you believe your undivided loyalty to the Association won't be compromised.

Following are some tips on how you can be an effective board member, fulfilling your fiduciary responsibilities to your Association:

Be informed: Work hard to be informed, know your legal documents, and generally know the state and local laws. People are becoming increasingly aware that there are many laws that have been enacted to protect homeowners who live in Community Associations. The fact that complaints against Associations and their boards are on the rise has been well documented by insurance companies. There is now, more than ever, a need to be knowledgeable as a director. Your Community Association Manager is also required to have this knowledge and can guide you or suggest that a matter be referred to the Association's attorney. Courts have found boards negligent for making "unreasonable" decisions because the boards did not exercise due diligence to obtain the necessary information as part of the decision-making process.

One of the great difficulties within the Community Association industry is the development of institutional knowledge. As board members transition from year to year, it is often difficult for the Association to establish sound operating procedures. Yet part of one's fiduciary responsibility includes becoming aware of past board activity by reading past minutes, as well as staying current on the affairs of the Association. It is a good idea for the "outgoing" board to meet with the "incoming" board at least once in order to review current issues, identify current contracts, and pass on important information.

Get the facts: The issues before the board are often complicated. Board members must take the time to find out the facts before they take action. If necessary, board members must seek information from qualified professionals before making decisions. While it is always valuable to have a board member with a particular area of expertise, it is generally not a good idea for the board to task board members with service functions of a professional nature, such as legal, insurance, accounting, or engineering services. It is generally a better practice to appoint that particular board member to serve as a liaison to the professional or service provider in order to manage the relationship.

Make a decision: Inaction can create liability exposure. A failure to act can create more liability exposure than a bad decision made with proper procedure. Courts tend not to second guess business decisions of boards, even when there is evidence that the board's decision was the best decision possible. When making a decision, be sure to comply with Association documents and try to make decisions that uniformly apply to all owners in similar situations.

Maintain confidentiality: Directors should presume that some materials and information they receive through his or her office are confidential. Beware especially of openly discussing with non-board members any strategic issues in connection with litigation that may be pending or in progress, salaries, employment matters, delinquencies, or other sensitive issues involving disputes with members of the Association.

Read the minutes before approving them: It is imperative that a board carefully review the draft minutes before approving them. It is those actions that are recorded in the approved minutes that will prove or disprove that you, as a board member, fulfilled your duty of care, exercised reasonableness and good business judgment in your decisions, and complied with the Association's documents and all applicable state laws and codes. It's also important that a board never admit liability in its minutes. If someone brings a safety hazard to the attention of the board (for example, a cracked walkway), it is irresponsible for the board to record in the minutes any acknowledgment of admission of liability. There is always a more appropriate way to phrase the underlying concern. Avoid making conclusions of law.

Tips on Successfully Fulfilling Your Fiduciary Obligations (cont. from page 3)

Maintain open communication: Adopt rules and regulations in an open and deliberate manner. Investigate what owners want and need. Send questionnaires. Educate committees about rules and regulations. Seek the opinions and carefully review information from experts. Before adopting rules, hold public meetings to discuss the proposed rules. Be sure to send out the new or revised rules and regulations to every owner and resident after they have been adopted.

Remember to exercise due care and be neutral and informed: Decide whether you are acting properly by asking yourself the following question: "Would a prudent person in a similar business, under similar circumstances, and after reasonable inquiry, make the same decision or take the same action as I am making?" If the answer is not a clear and convincing "yes" go back to the drawing board and consider all the information before moving forward.

Follow these tips to demonstrate a commitment to your fiduciary duties and show respect for your Association and its residents.

NOTE: The information in this article has appeared in various CAI Chapter publications, including MN Community Living, Forum, and Quorum and a 2010 CAI Newsletter and the author granted the Real Estate Commission permission to reprint.

Mediation Case Summaries

From December of 2024 through February of 2025, 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 ("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.

Mediation exists not only to facilitate conflict resolution, but to also educate the parties involved as to the intricacies of the condominium law, their association's governing documents, and the strengths and weaknesses of their respective arguments. While the Commission strives for every mediation to resolve the conflicts, not every mediation will come to an agreement. That does not necessarily mean mediation has failed, as it also serves to reduce costly litigation.

The Commission subsidizes up to \$600 for qualified facilitative mediations and up to \$3,000 for qualified evaluative mediations for qualified associations. Should a mediation not come to an agreement once that subsidy money is exhausted, no agreement is noted in Commission records. However, the Commission is aware that parties often come to agreements through continued unsubsidized mediation.

Dispute Prevention and Resolution, Inc.

Owner vs AOOU	Dispute over the interpretation of the declaration, bylaws, and house rules regarding the parking garage	No agreement
Owner vs AOOU	Dispute over the interpretation of the declaration, bylaws, and house rules regarding common elements and repairs	No agreement
Owner vs AOOU	Dispute over the interpretation of the declaration, bylaws, and house rules regarding common element repairs	Mediated to agreement
AOOU vs Owner	Dispute over the interpretation of the house rules regarding violations and attorney fees	No agreement
Owner vs AOOU	Dispute over the interpretation of the declaration, bylaws, and house rules regarding parking	Mediated to agreement
AOOU vs Owner	Dispute over the interpretation of the declaration, bylaws, and house rules regarding discrimination, access, and harassment	No agreement

Mediation Case Summaries (cont. from page 1)

Owner vs AOOU	Dispute over the interpretation of the declaration over building repairs	Mediated to agreement
AOOU vs Owner	Dispute over the interpretation of the house rules and bylaws regarding harassment and common elements	No agreement
Owner vs AOOU	Dispute over the interpretation of the house rules and bylaws regarding improvements	No agreement

Mediation Center of the Pacific

Owner vs AOOU	Dispute over the interpretation of the declaration, bylaws, and house rules regarding repairs and water damage	No agreement
Owner vs AOOU	Dispute over the interpretation of the declaration, bylaws, and house rules regarding fees, fines, and fair debt collection	Mediated to agreement
AOOU vs Owner	Dispute over the interpretation of the declaration, bylaws, and house rules regarding fees, fines, and fair housing	Mediated to agreement
Owner vs AOOU	Dispute over the interpretation of the declaration, bylaws, and house rules regarding repairs, mold, and drainage	No agreement
Owner vs AOOU	Dispute over the interpretation of the bylaws, and house rules regarding fines and fees, tenants	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

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)
Tel: (808) 326-2666 (Kona)
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

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

Charles W. Crumpton

Crumpton Collaborative Solutions LLLC
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: (808) 523-1234
Website: <http://www.dprhawaii.com/>

Ask the Condominium Specialist

Q: Can the board restrict owners from participating in board meetings by only allowing owner input during an owner's forum at the end or after the board meeting?

A: The section in question is [§514B-125\(a\), HRS](#): "(a) All meetings of the board, other than executive sessions, shall be open to all members of the association, and association members who are not on the board shall be permitted to participate in any deliberation or discussion, other than executive sessions, pursuant to owner participation rules adopted by the board."

Limiting owner input to an owners' forum at the end or after the board meeting does not appear to comply with the statute. As the board's deliberations, discussions, and decision-making take place throughout the meeting, postponing owner input until after these actions have already passed effectively excludes owners from meaningfully participating. Boards should instead utilize their right to establish reasonable rules for owner participation during its deliberations or discussions, for example, specifying time limits for owner comments, to ensure compliance with the statute.

Q: Can the board conduct board meetings by email?

A: This is a common question and complaint. As mentioned in the previous question, [§514B-125\(a\), HRS](#), requires all board meetings, other than executive sessions, to be open to all unit owners of the association, with owners permitted to participate in the board's deliberations and discussions. In addition, [§514B-125\(d\), HRS](#), states: "All board meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other during the meeting."

It is unclear how email could meet the "simultaneously hear each other" requirement. While board members may email each other to generally discuss the meeting agenda, deliberations and decision-making should occur in board meetings open to the ownership.

THE AKAMAI BUYER

Association Governance

Buyers often give no thought to how well an association is running prior to purchasing a condominium unit. They are focused on the price, amenities, their dreams for the unit, and for many, a place to finally call home. However, far too many buyers have quickly found themselves unexpectedly living in an association with a board that refuses to listen to their concerns, has significant conflicts between members, or otherwise has a less than harmonious atmosphere.

While this may not be a deal breaker, akamai buyers should at least get the facts regarding what's happening by attending a board or annual meeting as a guest if the board will allow it, or via a limited power of attorney or proxy should the board refuse. It may be impractical for many buyers to attend or there may not be a meeting happening for months. Buyers in those cases should request and review the agenda and minutes of previous board and association meetings to see if there is a pattern of contentious actions and controversies that would affect their decision to buy. For most people, this will be the largest purchase of their life, and they should know exactly what they're buying into.

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

2025 Real Estate Commission Meeting Schedule

Real Estate Commission – 9:00 a.m.

Friday, March 28, 2025

Friday, April 25, 2025

Friday, May 30, 2025

Friday, June 27, 2025

Friday, July 25, 2025

Friday, August 29, 2025

Friday, September 26, 2025

Friday, October 24, 2025

Friday, November 21, 2025

Friday, December 19, 2025

All Real Estate Committee Meeting items will be discussed at the Real Estate Commission Meetings until further notice. Real Estate Commission Meetings will be held in-person 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.

HAWAII CONDOMINIUM BULLETIN, March 2025 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.