



Hawai'i Condominium Bulletin

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Insufficient Condominium Reserves By The Hawaii Real Estate Branch Condominium Section Staff

The Hawai'i Real Estate Commission is increasingly concerned about the number of condominium associations of unit owners ("AOUO") that lack sufficient funds or reserves to properly maintain the common elements and areas of their respective condominium developments.

This article will detail the negative impacts of insufficient reserve funds, describe the typical causes of insufficient reserve funds, and offer suggestions for evaluating the financial health of an AOOU.

Negative Impacts of Insufficient AOOU Reserve Funds

Insufficient reserve funds can create a negative cascading impact for a condominium project. Low reserve funds can impair the ability of an AOOU to obtain insurance coverage, compelling the association to turn to the excess/surplus insurance market, which is largely unregulated by the State. Low reserve funds often signal to insurance carriers that the property is not being properly maintained, which can lead to a high number of claims. This can contribute to dramatic increases in premiums, where some AOOU's reporting insurance costs rising by 500% to 1,000%. Higher insurance expenses consequently reduce available resources to rebuild reserves, creating a vicious cycle that depletes the finances of both the AOOU and its owners.

Property values may decline when the AOOU cannot afford to replace or repair common elements, reducing the quality of living in the condominium. If the property falls into significant disrepair, it may pose health risks to those living at and visiting the property. In severe cases, boards may close recreational areas, such as tennis courts or pools, further reducing the value of the property.

Alternatively, boards may resort to levying emergency special assessments to pay for repairs. While no Hawai'i condominium has yet emulated the widespread size of assessments seen at Boston's Harbor Towers Condominium, where every owner in November of 2007 faced assessments ranging from \$70,000 to \$400,000 per unit, no owner wants a sudden, five-figure bill. Large special assessments may force owners who cannot pay to sell their units, often at a reduced price, as buyers will factor the assessment into what they are willing to pay.

Some boards may choose to finance necessary repairs through borrowing, which increases overall costs due to interest payments.

Consequences can also extend to mortgage lending. The Veteran's Administration, Federal Housing Administration, Freddie Mac, and Fannie Mae approved lenders may either refuse to lend, or only offer less favorable loan terms, for properties in AOOU's with insufficient reserve funds. Severely underfunded condominium associations run the risk of being unsellable to all but cash buyers.

To avoid these outcomes, boards seeking to rebuild the condominium's reserves often have no choice but to significantly increase maintenance fees.



Message from the Chair

Aloha,

It's been a busy 2025. Summer's over, but the recent legislative session brings new help to address the ongoing insurance and reserves crisis.

In this Fall edition of our Condominium Bulletin, we've included an update of the 2025 legislative session with the condominium bills enacted into law by the Governor. These new Acts may significantly impact condominium governance regarding insurance, electronic document availability, and budget disclosures. Additionally, developers should also take note of changes to wastewater infrastructure requirements. Staff from the Real Estate Branch have written an article about the risks of insufficient condominium reserves, the potential damage they can cause, and how prospective buyers, current owners, and board members can evaluate an association's reserve health.

The "Ask the Condo Specialist" discusses concerns over association fining processes, and how to ensure they comply with Chapter 514B, Hawaii Revised Statutes (HRS). It also covers a recent legal case where an association's fining policy was deemed unenforceable, resulting in thousands of dollars being awarded to the fined owner.

The Akamai Buyer reminds prospective buyers to review the Developer's Public Report, which provides a wealth of disclosures over the material and pertinent facts, ensuring that they are fully aware of what they are buying.

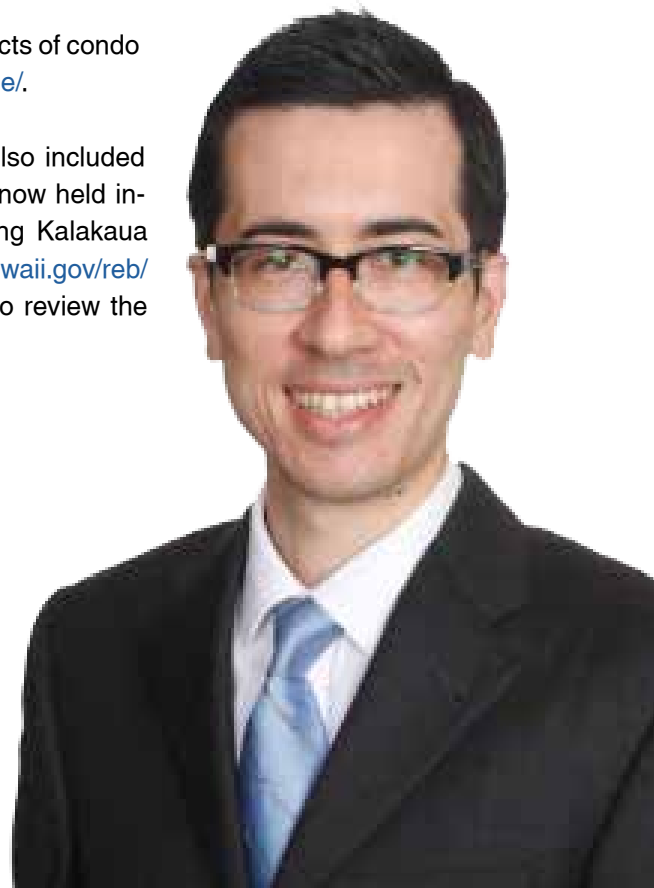
We've also included summaries of condominium mediations that were conducted in the last few months.

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: <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.

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



Mediation Case Summaries

From March of 2025 through May 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 governing documents regarding plant height	No Agreement
Owner vs AOOU	Dispute over the interpretation of the governing documents regarding damage and reserves	No Agreement, Owner Passed Away
Owner vs AOOU vs Owner	Dispute over the interpretation of the governing documents regarding board's failure to enforce house rules harassment	Owners mediated to agreement, No agreement with AOOU
AOOU vs Owner	Dispute over the interpretation of the governing documents regarding lanai water damage and leaks	Mediated to agreement
Owner vs AOOU and Owner	Dispute over the interpretation of the governing documents regarding water intrusion and repairs	No Agreement
Owner vs AOOU	Dispute over the interpretation of the governing documents regarding water damage, board minutes, and mistreatment	No Agreement
AOOU vs Owner	Dispute over the interpretation of the bylaws and house rules regarding aggressive pets	No Agreement
Owner vs AOOU	Dispute over the interpretation of the declaration and bylaws for unit access regarding health and safety	Mediated to agreement

Mediation Center of the Pacific

AOOU vs Owner	Dispute over the interpretation of the governing documents regarding parking	No Agreement - Parties did not respond
Owner vs AOOU	Dispute over the interpretation of the governing documents regarding pest control, health, and safety	No Agreement - Owner did not respond

Maui Mediation Services

Owner vs AOOU	Dispute over the interpretation of the governing documents regarding plumbing and attorney fees	No Agreement
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Mediation Case Summaries (cont. from page 3)

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

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

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

Dispute Prevention and Resolution

1003 Bishop Street, Suite 1155

Honolulu, HI 96813

Tel: (808) 523-1234

Website: <http://www.dprhawaii.com/>

Insufficient Reserves (cont. from page 1)

Common Causes of AOOU Reserve Underfunding

The most common cause of insufficient reserve funds is a board's attempt to keep maintenance fees low, often in response to pressure from the owners. While low maintenance fees are attractive to buyers, investors renting out their properties, and owners on limited incomes trying to make ends meet, every AOOU will eventually face significant repair and replacement costs. Board members have a fiduciary duty to act in the best interests of the association and should resist pressures that undermine long-term stability. Board members should also understand that deliberately underfunding reserves or failing to disclose insufficient reserves when selling a unit, may expose them to personal liability.

Another cause of insufficient reserves is unpaid maintenance fees and their related foreclosures. Delinquent unit owners reduce both the operating budget and reserve contributions for an AOOU. Over time, widespread delinquencies can deplete reserve levels. While AOOU's can place liens against a delinquent owner's property for non-payment of assessments, the foreclosure process can be lengthy, and the sale proceeds of the property may not be sufficient to pay off other liens against the property, leaving little for the AOOU to recover. Furthermore, an AOOU is limited to special assessing a buyer of a foreclosed unit no more than six months of the unpaid regular monthly common assessments, pursuant to [§514B-146\(k\), Hawai'i Revised Statutes \("HRS"\)](#), further limiting recovery.

A third reason for insufficient reserves is poor planning by the board when assessing and reassessing the condition of the condominium's common elements. Under [HRS §514B-148\(a\)\(5\)](#), AOOU's are required to have their reserve studies reviewed at least once every three years by an independent reserve study preparer. Not all boards comply and some fail to integrate the findings of their reserve study into the budgeting process. Reserve studies are important tools to help boards plan and determine repair and replacement costs for major components, such as spalling, roofs, and elevators. They should be regularly reviewed and updated to account for cost increases, changes in technology, and the existing conditions of common elements. Failing to incorporate a recent reserve study and its projected costs into the budget can lead to inaccurate expectations of how large the reserves should be and how much the board should be budgeting.

How Do I Evaluate the Reserve Health of an AOOU?

- As a buyer, request a copy of the reserve study, financial statements, and audit from the seller or seller's agent. The reserve study will show how much money the AOOU projected for future repairs and replacements. Compare that to the audit report and financials for a quick reference to determine whether the board is collecting adequate amounts.
- As an owner, regularly review the annual budget, audit, and reserve study. Advocate for the reserve study to be reviewed at least once every three years. Some projects, particularly residential high rises, should consider having their studies done more frequently as they typically have more common elements. Owners have the legal right to examine many documents, including but not limited to, current financials, budgets, contracts, and the audit, pursuant to the records request sections in chapter 514B, HRS. Exercise this right to stay informed and hold the board accountable.
- As a board member, review delinquencies on a regular basis and work with delinquent owners to restart payments, or begin the foreclosure process within the statutory requirements to minimize damage to the association's finances. Have the reserve study reviewed at least once every three years or more frequently, as needed. Conduct a physical audit of the common elements to assess their conditions and adjust the repair and replacement budget, as necessary. Be prepared to raise maintenance fees annually to maintain adequate reserves.

The issues raised in this article, along with the quick tips, can help you as a buyer, owner, or board member avoid the problems of insufficient or underfunded association reserves. Every condominium project in Hawai'i has their own set of circumstances and unique traits; however, they all face the same impacts from the sun and sea wearing down paint, roofs, and pipes. Sooner or later, every AOOU will need sufficient resources to repair and replace these assets. It is up to you to perform your due diligence as a buyer, owner, or board member.

2025 Legislative Session Acts

The 2025 legislative session adjourned with several condominium bills enacted into law. Please consult with legal professionals regarding these new laws. The following descriptions are summarizations of a few Acts meant to provide only general information.

House Bills:

[Act 157, SLH 2025](#), requires budget summaries to contain all the information specified in §514B-148(a), HRS, without referring readers to other portions of the budget. Allows unit owners to seek injunctive relief to enforce compliance.

[Act 224, SLH 2025](#), makes changes to infrastructure requirements, potentially impacting condominium developers. Individual wastewater systems are now limited to serving up to five bedrooms regardless of how many dwellings, dwelling units, or accessory units are connected to the system. Condominium developers should take this law into consideration in planning any upcoming condominium developments.

Senate Bills:

[Act 161, SLH 2025](#), requires associations to provide electronic copies of the governing documents, as amended or restated, upon request to the owner or owner's agent at no cost. Governing documents are defined in the law as the declaration, bylaws, covenants, conditions, restrictions, and house rules. Limits administrative fees that associations may charge to requesting owners or their agents, aside from costs for duplication, postage, and stationery costs.

[Act 296, SLH 2025](#), is the highly anticipated Legislative solution to condominiums' difficulty in obtaining affordable property and hurricane insurance. The Act expands the powers of the Hawai'i Property Insurance Association and reactivates the Hawai'i Hurricane Relief Fund authorizing these entities to provide insurance coverage in certain scenarios. The law also provides for coverage caps, geographic eligibility, limitations of coverage not to exceed five years, and procedures including inspections of the condominium property.

Coverage may be denied on maintenance issues that materially affect the insurability of the condominium. Applications are **now** being accepted. For more details, coverage, and how to apply, visit <https://cca.hawaii.gov/ins/hhrf/>.

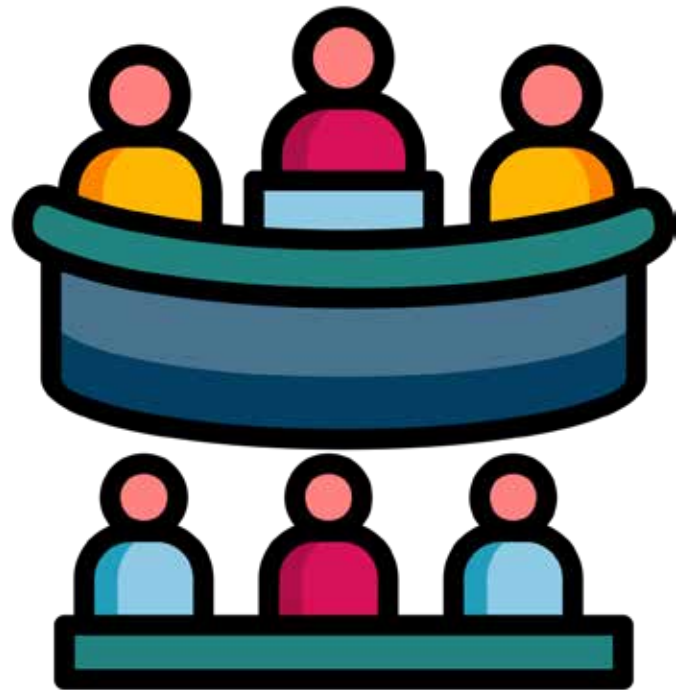
The Act also creates a Condominium Loan Program to assist condominium associations with obtaining financing or refinancing for installation of fire safety equipment, pipe repair, roof repair, and other maintenance and repairs deemed necessary. This loan program will be administered by the Hawaii Green Infrastructure Authority.

Please note that the Condominium Loan Program will take time to setup and start the issuance of infrastructure and repair loans.

Legislative Process:

Are you interested in the legislative process? A key part is to understand the deadlines during the session. The legislative session normally starts in January and closes in May annually. See the [legislative calendar \(https://www.capitol.hawaii.gov/docs/sessioncalendar.pdf\)](https://www.capitol.hawaii.gov/docs/sessioncalendar.pdf) for more legislative deadlines and dates.

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.



Ask the Condominium Specialist

Q: My association's fining policy either doesn't exist or may not comply with chapter 514B, HRS, what are the risks of this?

A: Chapter 514B, HRS, requires a board to have clear policies regarding its fining capacity, either in its governing documents or through a board resolution and meet certain requirements. If these policies do not exist, or are missing key language, an association can face significant legal trouble when attempting to fine owners.

In *Pendleton v. The Association of Apartment owners of Kahala Towers*, the Intermediate Court of Appeals affirmed the district court's ruling that association's fining policy was invalid and unenforceable. This was because the policy lacked the required language stating that if a fine is paid, the owner has the right to an appeal and access to dispute resolution.

The case arose from a dispute over a plaintiff's door, which led to a common area roof. The association warned the plaintiff that they would be fined if they did not replace the door with louvered windows. The plaintiff paid the fines under protest. The plaintiff then filed a complaint that the fine policy does not comply with chapter 514B, HRS, and thus is not valid or enforceable.

On March 6, 2023, the Intermediate Court of Appeals affirmed the district court's decision that the association pay \$600 in damages and awarded the plaintiff attorney's fees and costs of \$16,000 based on the actions of the association and its agents in their inability to substantiate its claims pursuant to [§514B-157\(a\), HRS](#).

This should be a wakeup call to condominium associations to ensure that their fining policy, either dictated in the bylaws or by a board resolution, complies with [§514B-104\(a\)\(11\), HRS](#), in allowing an appeal and access to alternative dispute resolution pursuant to [§§ 514B-161](#) and [162, HRS](#).

THE AKAMAI BUYER

Developer's Public Report

The developer's public report is the mandatory disclosure document that developers must provide to buyers for nearly all initial legal sales of condominium units. It details the pertinent and material facts about the condominium units. Prospective buyers looking to purchase from developers should spend significant time reading this document before making an offer or closing. Secondary buyers, those buying from regular unit owners, may sometimes find important facts left out of the disclosure documents required by [chapter 508D, HRS](#). Some important items to look for are, for example, which units have building rights, any agricultural dedications, expenses owners will be responsible to pay for through maintenance fees, limitations on home businesses, and any requirements to install infrastructure such as septic tanks.

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



2025 Real Estate Commission Meeting Schedule

Real Estate Commission – 9:00 a.m.

Friday, September 26, 2025

Friday, October 24, 2025

Friday, November 21, 2025

Monday, December 22, 2025

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

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