

BASIC TRAINING MANUAL

**FOR BOARD
MEMBERS**

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WELCOME ABOARD!

**BASIC TRAINING MANUAL
FOR ASSOCIATION BOARD MEMBERS**

HAWAII EDITION

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THE PURPOSE OF AN ASSOCIATION

Condominium and community associations were first established by land developed in the United States in the mid-19th century to enable developers to increase the density of homes on land, while still retaining a suburban look. Now, associations are the fastest growing form of housing in the United States, and particularly, in Hawai'i where land is scarce.

THE "PURPOSE" OF AN ASSOCIATION DEPENDS ON WHO YOU ASK.

According to the Hawai'i statutes, the purpose of an association, through its board, is to operate the property. Operation of the property means the administration, fiscal management, and physical operation of the property, and includes the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements.¹ The association is intended to exist for the life of the project and therefore must take a long range view of all matters and problems.

Developers often create associations as a way to sell multiple homes and make a larger profit. Property managers may explain that the purpose is to provide structure and rules for owner, which in turn, helps maintain property values.

Owners have many different, and often incompatible, opinions of the purpose of an association. Many owners desire to live in a condominium association because it is less of a hassle. The exterior maintenance, utilities and amenities are handled by the association. No more worrying about mowing the lawn, cleaning the pool or replacing the roof. Associations also provide an opportunity for owners to have amenities, such as a pool or tennis court, at a more affordable price. Many owners find that the shared utilities are less of a financial burden. Some owners enjoy neighbors surrounding them for safety and a sense of community. Other owners desire a place with stringent architectural design rules to avoid devaluation of their property from a neighbor who does not care for their property. There are also owners who desire strict house rules and want an association that will enforce these rules for their peaceful enjoyment of their property. An association in Hawai'i also inevitably consists of owners who rarely come to the property, but have purchased it as an investment property and for rental income, which naturally bothers the owners who have purchased to retire and lead a quiet life. These owners may have a short term view, which can be in conflict with the association's long term view.

To be an effective Board member, it is important to appreciate the owners' differing expectations of their association. A director will not be able to please every owner because there is no one single purpose of an association.



TYPES OF ASSOCIATIONS

The two major types of common interest developments in Hawai'i are condominium associations and planned community associations. In the event of a conflict between the provisions of Chapter 414D and 514B, Chapter 514B shall supersede and control.²

CONDOMINIUMS

Condominium associations have several names. In Hawai'i, they are called Association of Apartment Owners ("AOAOs"), or more recently, Association of Unit Owners ("AOUOs"). Regardless of the name, a condominium "association" is defined as the "unit owners' association", so not surprisingly, the unit owners are the mandatory members of the association.³ Unit owners are defined as "the person owning, or the persons owning jointly or in common, a unit and its appurtenant common interest".⁴ Unit owners can also include lessees of a leasehold property.

The body of law governing AOAOs is the Condominium Property Act codified in Hawai'i Revised Statutes ("HRS") Chapter 514B. By this law, condominium associations have authority to maintain and preserve the property at the project, create and enforce rules, and provide certain utilities and services, like quasi-governments.

The property at a condominium project is classified into three types: (1) common elements, (2) limited common elements, and (3) unit (also called apartment).

The **common elements** are all portions of a condominium other than the units and any other interests in real estate for the benefit of unit owners that are subject to the declaration.⁵ The common elements are set forth in the declaration, and typically include the structural elements of the building, foundation, exterior siding, windows, roofs, landscaped areas, and recreational facilities. Each owner has a percentage of undivided interest in the common elements as identified in the declaration. The association is responsible for the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements.⁶ This work is paid for by the association from the common expenses.

The **limited common elements** mean a portion of the common elements for the exclusive use of one or more but fewer than all of the units. Declarations frequently identify parking stalls as limited common elements. Other limited common elements may include, but are not limited to, mailboxes, stairways, lanais, air conditioning units, windows, and doors. The limited common elements may be identified in the declaration, but if not, then Chapter 514B identifies certain components as limited common elements.⁷ All limited common element costs and expenses, including maintenance, repair, replacement, additions and improvements, are charged to the owner to which the limited common element is appurtenant, unless otherwise stated in the declaration.⁸

For many years, **units** were called "apartments" and older projects' documents still refer to the units as apartments. Whether or not called a unit or apartment, it means the physical or spatial portion of the condominium designated for separate ownership or occupancy.⁹ The portions of a unit (apartment) are identified in the declaration, and typically include everything within the perimeter walls, ceiling and floors of the unit from the drywall in. The interior space of the unit, interior non-loadbearing partitions, appliances, and other fixtures and improvements within the boundaries of a unit are part of the unit.¹⁰ Each unit owner is responsible for the maintenance, repair and replacement of the owner's unit.¹¹ Owners do not maintain the exterior of their unit. This is the responsibility of the association.



PLANNED COMMUNITY ASSOCIATIONS

A planned community association is a common interest community that is subject to a declaration. In Hawai'i, it is also called "homeowners association" or "HOA" and can include master developments. The members of an HOA are persons owning a physical portion of the community designated for separate ownership (a lot) or having the right of occupancy of a unit under a recorded lease of a term of twenty or more years.¹² Sometimes, the members can be non-owners if specified in the declaration, such as the developer even if the developer does not own a lot.

HOAS ARE GOVERNED BY HRS CHAPTER 421J, PLANNED COMMUNITY ASSOCIATIONS.

An owner's separate interest in a community association is usually referred to as a lot, which is a parcel of land. The owner of the lot owns the land and all the parts of the improvements, such as a house, on the lot.

In a community association, the **common area** is everything outside the boundaries of the lots, and is defined as real property within a planned community which is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the declaration.¹³ This often includes streets, walkways, landscaped areas, and recreational facilities. Unlike a condominium association, the common area parcels are usually deeded to the association which owns the property like any landowner, but subject to the rights and interests of the members of the association to use that property.

LEGAL AUTHORITIES

In addition to HRS Chapter 514B for condominium associations and chapter 421J for community associations, there are many other legal authorities that govern.

FEDERAL LAW

Congress has not enacted a specific chapter or body of law dedicated to condominium associations. However, several federal laws play a part in association governance. These laws include, but are not limited to, the Fair Housing Act concerning accommodation requests, Aviation Act relating to drones, Telecommunications Act for satellites, and American Disabilities Act for any public facilities. In such cases, the federal laws supersede and control over the State laws in the event of a conflict.

HRS CHAPTER 414D, HAWAI'I NONPROFIT CORPORATION ACT

Many associations have incorporated as a non-profit corporation in the State of Hawai'i by filing Articles of Incorporation. It is not mandatory to do so, but it affords several benefits. If an association is incorporated, then the association must comply with HRS Chapter 414D, the Non-Profit Corporation Act. In the event of a conflict between HRS Chapter 514B and Chapter 414D, Chapter 514B controls.¹⁴ In the event of a conflict between HRS Chapter 414D and Chapter 421J, Chapter 421J controls.¹⁵

COUNTY ORDINANCES

Four of the counties in Hawai'i — City and County of Honolulu, Maui County, Hawai'i County, and Kauai County — have enacted ordinances that impact associations. For example, some ordinances contain zoning requirements pertaining to use, such as for short-term or long-term rental requirements. There are also ordinances governing matters such as overnight parking on county streets, dog-barking, irrigation water, agricultural use, and permits.

Associations are obligated to comply with county ordinances, even if the county ordinances conflict with the association's governing documents. Condominium projects must conform to the underlying county zoning for the property and all applicable county permitting requirements adopted by the county in which the property is located.¹⁶ Associations can, however, create more restrictive covenants than the county ordinances.

Unless specified otherwise, the Hawai'i statutes supersede the county ordinances in the event of a conflict.

CASE LAW

There are published decisions of cases decided by the appellate courts of Hawai'i that contain precedent that is applicable to associations. Where a case decided by a court contains a law that is in direct conflict with a provision of the association's governing documents, the case law will prevail.

GOVERNING DOCUMENTS

The “governing documents” of an association consist of the Articles of Incorporation (if the association is incorporated), the declaration, bylaws and rules and regulations. These are the documents that obligate owners to follow covenants, conditions, restrictions and rules of the association.

If there are conflicts between the documents, the priority of the controlling document is as follows: (1) declaration, (2) bylaws, and (3) rules and regulation (“House Rules”). Therefore, if the Board promulgates a rule in the House Rules that conflicts with the declaration, the rule is invalid because the declaration supersedes the House Rules.

In the event of a conflict between the State law and the governing documents, generally the State law will control. There are, however, exceptions in the State law when the statute will defer to the governing documents. For example, HRS § 514B-104(a) states “subject to the provisions of the declaration and bylaws the association, even if unincorporated, may...” This statute language requires that the declaration and bylaws will control if there is a conflict between this statute and the declaration or bylaws.

DECLARATION

A developer creates a condominium project by recordation with the State of Hawai’i of the **Declaration of Condominium Property Regime**, which may also be called the Declaration of Horizontal Property Regime in older projects. A community association is formed by recordation of a **Declaration of Covenants, Conditions and Restrictions** (also called “CC&Rs”), which occurs before any individual lots are sold.

The condominium declaration sets forth certain provisions as required by Chapter 514B, such as a description of the land, buildings, units, common elements, and the percentage common interest each unit has in the common elements.¹⁷ The community association declaration imposes obligations on the owners of the units with respect to maintenance or operational responsibilities for the common area, architectural control, maintenance of units, or restrictions on the use of lots.¹⁸

The approval of the owners of at least 67% of the common interest shall be required for all amendments to the condominium declaration, except as otherwise specifically provided in Chapter 514B.¹⁹ Sixty-seven percent approval is required, even if the declaration has a different voting requirement.²⁰ This approval of the owners can be obtained either by vote at a meeting or by written consent.

To amend a community association declaration, it requires the percentage identified in the declaration. Whenever an association document provides that it may be amended by the vote of association members at a meeting, the association document may also be amended by the written consent of the same percentage of association members without a meeting.²¹

It is not enough for owners to simply vote to amend the declaration. The amendment will not “count” or be effective against owners unless it is recorded with the State of Hawai’i Bureau of Conveyances (“Bureau”) or the State of Hawai’i Office of Assistant Registrar (“Land Court”).

The declaration can also be restated for three reasons. First, an association may restate the declaration to amend the declaration in order to conform with the Condominium Property Act or any other statute, ordinance, or rule enacted by any governmental authority.²² For example, if the declaration is outdated and has old provisions of Chapter 514A that are not current, the board can restate the declaration to incorporate the current provisions of Chapter 514A. Second, the association can restate the declaration to correct the percentage of common interest

for the project so it totals 100%.²³ Third, an association may restate the declaration of the association to set forth all previous amendments. If, over time, an association has had multiple amendments to the declaration, the board may desire to restate the declaration so all amendments are contained in one document for convenience.²⁴ To restate, the board should pass a resolution by majority vote of the board.

CONDOMINIUM MAP

The condominium declaration is also required to identify the number of the condominium map filed with the declaration. The condominium map is the map originally filed by the developer, and certified by an architect, engineer or surveyor. The map must be a site plan depicting the location, layout, and access to a public road, elevations and floor plans, the layout, location, boundaries, unit numbers and dimensions of the units, and parking plan.²⁵ The condominium map is often not the same as “as-built” drawings, meaning it does not necessarily show how the project was actually built.

To amend the condominium map, it typically requires the same approval as amendment of the declaration, which is 67% of the common interest, unless otherwise specified in the declaration.

BYLAWS

The **bylaws** govern the operation and management of the association. Specifically, the bylaws contain details of membership, voting procedures, directors, officers, meetings, board powers, and insurance requirements.²⁶

Condominium association bylaws are usually recorded with the State as an attachment to the declaration or as a separate document simultaneously with the declaration, and they must be recorded to be effective.²⁷ Community association bylaws do not need to be recorded to be effective.

Regardless of what the bylaws state, condominium bylaws are amended by the vote or written consent of 67% of all apartment owners.²⁸ Bylaws amendments can be made by written consent (by a mailed ballot) or by vote at a meeting in the same manner as voting on an amendment to the declaration. Community association bylaws are amended by the percentage stated in the bylaws or declaration. The bylaws can be restated in the same manner and for the same reasons as the declaration.²⁹

RULES AND REGULATIONS (HOUSE RULES)

Rules and regulations or “House Rules” are extensions of the declaration and bylaws that are usually within the authority of the board to enact, modify or repeal. They are minor procedural or behavioral regulations. A condominium association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to prevent any use of a unit which violates the declaration or bylaws, or regulate any behavior in or occupancy of a unit which violates the declaration or bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners.³⁰

ROBERT'S RULES OF ORDER NEWLY REVISED

All association owners and board meetings shall be conducted in accordance with the most recent edition of Robert's Rules.³¹ This is a book that governs meetings and parliamentary procedure.

MANAGEMENT OF THE ASSOCIATION

The owners elect a **board of directors** or “board” to represent their interests and make decisions regarding the operation and management of the condominium project. The board means the executive board or other body, regardless of name, designated in the association documents to act on behalf of the association.³²

In turn, the board elects **officers**, such as a President, Vice President, Treasurer and Secretary. Their duties are identified in the declaration and bylaws.

Occasionally, the declaration or bylaws allow the owners or the board to establish **committees**. The role of a committee is generally to assist with particular issues, investigate, and then report to the board for the board to take action. Types include executive, landscaping, legal, facilities, social, and design review committees.

The board usually hires a **managing agent**, which is any person or entity retained as an independent contractor for the purpose of managing the operation of the property. The board can contract for certain services, such as accounting, enforcement of rules, and assistance with meetings. The managing agent will visit the property, but does not work at the property and is not an employee of the association.

Depending on the size of the project, the association may hire a **manager**, which may be called a site manager, resident manager or general manager. The manager is a skilled person who can be an employee or independent contractor and tends to work, or even live, at the project. The manager performs the daily operations and management of the association.



BOARD DUTIES AND RESPONSIBILITIES

The board is the policy-making body of an association charged with the operation and management of the association. The association is a business, and the board has the same authority and responsibility as the owners of any commercial business.

FIDUCIARY DUTY

In the performance of their duties, the officers and members of the board owe the association a fiduciary duty and must exercise the degree of care and loyalty required of an officer or director of a non-profit corporation.³³ The basic idea of fiduciary duty is setting a standard of behavior for directors. These duties include:

- 1) Serving without compensation for the benefit of the entire association and striving at all times to do what is best for the association as a whole.
- 2) Exercising diligence to remain properly informed about the association's business and make decisions based on all relevant information reasonably available, including expert opinions when necessary.
- 3) Acting in good faith, with honesty and fair dealing, in the best interests of the association, and without ulterior motives.
- 4) Following the law and the association's governing documents, and not exceeding the authority granted thereby.
- 5) Behaving professionally at meetings and outside of meetings and should not defame or disparage fellow board members, association members, residents, staff members, or the manager or state misleading or false information to owners.
- 6) Disclosing conflicts of interests and abstaining from voting on the issue.
- 7) Not making unauthorized promises to a contractor, vendor or bidder.
- 8) Not spending unauthorized funds for the director's own personal use or benefit.
- 9) Not disclosing to non-board members any confidential legal, contractual, personnel, management, and/or any matters discussed in executive session.

MEETINGS

The association holds both meetings for the members called association meetings or owners' meetings and board of directors meetings. **Association meetings** are required to be held at least once a year and are intended for the election of directors, voting on matters that require member approval (such as the tax resolution) and receiving reports from the board, such as the President's report and Treasurer's report.³⁴ The **annual meeting** is one of the few times the owners are directly involved in the business decisions of the association and have an opportunity to amend the governing documents.



To serve on the board of a condominium project, the person must be a unit owner, co-owner, vendee under an agreement of sale, trustee of a trust which owns a unit, or an officer, partner, member or other person authorized to act on behalf of any other legal entity which owns a unit.³⁵ No tenant, resident manager or employee may serve on the board.³⁶ No more than one representative from any one unit may serve on the board.³⁷

The method of **electing directors** is identified in the bylaws. For example, the bylaws must specifically require cumulative voting in order to vote by cumulative voting. The bylaws will also identify the number of directors, terms of the directors and whether the terms are staggered.

The notice of any owners' meeting must be not less than 14 days in advance of the meeting. The notice must state the date, time and place of the meeting, the items on the agenda including the nature of and rationale for any proposed amendment to the declaration or bylaws.³⁸ Notice must be hand-delivered, sent prepaid by the U.S. mail to each property address as designated in writing by the property owner, or at the option of the owner, expressed in writing, by email to the email address designated by the owner.³⁹

Hawai'i allows for proxies, so the owner does not need to attend in person, but can send a proxy holder to a meeting in the owner's stead.⁴⁰ Any person, whether a member or not, can hold a proxy. The proxy holder has the same rights as an owner, such the right to make a motion, debate a motion and vote. To be valid, the proxy must be writing, state the name of the association, date of the meeting, name and signature of the owner giving the proxy, the property for the proxy, the date, and must be delivered to the secretary of the association or managing agent (if any) no later than 4:30 p.m. on the second business day prior to the date of the meeting.⁴¹ If the association sends a proxy to the owners, which is typically done when notice of the meeting is sent, there are additional statutory requirements as to the language of the proxy.

For **board meetings**, the law requires that the board meet at least annually.⁴² Most boards meet quarterly, or even monthly, depending on the extent of business to conduct. Boards must give notice of the board meetings, and for condominiums the notice must be posted in a prominent place on property at least 72 hours in advance of the meeting.⁴³ This posting requirement is in addition to any requirement of notice in the bylaws. Meetings shall be open to all members of the association, and owners are permitted to participate in any deliberation or discussion (but not allowed to vote).⁴⁴

The law intends that board decisions shall be made at open, noticed board meetings with proper agendas. Exceptions exist for decisions made in executive session, specifically for matters concerning personnel, litigation or potential litigation, protecting the attorney-client privilege of the association, or necessary to protect the interests of the association while negotiating contracts, leases and other commercial transactions.⁴⁵

Board meetings can be conducted by telephone or other means of communication as long as all participants can simultaneously hear each other (e.g., skype).⁴⁶ However, no director can vote by proxy at a board meeting.⁴⁷ If incorporated, boards can make decisions outside of a meeting by unanimous written consent, provided that the board then record its decision in the minutes at a meeting.

Board members with a conflict of interest shall not vote on any issue. A conflict of interest means an issue in which a director has a direct personal or pecuniary interest not common to other members of the association.⁴⁸

MAINTENANCE OF THE PROPERTY

One of the most important management duties performed by an association is to provide for the preservation of the property. Specifically, the board is responsible for the repairs, maintenance, improvements and replacements of the common elements of a condominium project or common areas of a community association.⁴⁹ The owner of a condominium is responsible for the maintenance, repair and replacement of the owner's unit.⁵⁰

The board has the power to access, during reasonable hours, an owner's condominium unit for the operation of the property. The board also has the power to have access to each unit at any time as may be necessary for making emergency repairs to prevent damage to the common elements or another unit.⁵¹ In community associations, whether the board has the power to enter an owner's lot to make repairs or conduct work depends on the language of the governing documents.

Although the Board is responsible for common elements and owners are responsible for their units, there is an exception for "high-risk components", which are certain objects or appliances within the units such as machine hoses, water heaters, and dryer vents that pose a particular risk of damage. The board can adopt a policy to require inspections, replacements, and repairs of these high-risk components, and if an owner fails to follow the requirements, the association may enter the unit after reasonable notice to perform the requirements and assess the cost and expenses to the owner.⁵²

Boards are also responsible for making sure owners do not harm the common elements or another owner's property. Owners are most likely to cause harm when making improvements or remodels to their properties. Most community associations have **design guidelines** or similar rules that prohibit certain improvements or at least require committee or board approval for improvements and modifications.

Condominium associations prohibit owners from performing any work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement.⁵³ For **additions or alterations** that are material, meaning it can detract from the appearance of the project, interfere with a nonconsenting owner's use or enjoyment of the property or directly affect a nonconsenting owner, it requires board approval, 67% owner approval and all directly affected owners.⁵⁴ A Hawai'i court found that painting the exterior of the building a new color was material. Any non-material alterations require board approval.

OPERATION OF THE PROPERTY

AMONG ITS MANY DUTIES, THE BOARD MUST OPERATE THE PROPERTY IN ACCORDANCE WITH THE GOVERNING DOCUMENTS AND STATUTES.

To maintain and operate the property, the board will be involved entering **contracts** with vendors, such as landscapers, plumbers, painters, architects, structural engineers and accountants. The board should always have written contracts, and should often require Hawai'i licenses and that the contractor have its own insurance. If possible, the board should obtain as many bids as possible for a project, so the board performs its due diligence in finding the best contractor for its needs. If it is a major project, it is important the association retain the right professionals to prepare the specifications for the repairs, review the contracts, prepare the bids, negotiate the contracts and supervise the work. For major projects, the board may consider hiring a project management firm for these services.

A condominium association is obligated by statute to maintain property **insurance**, commercial general liability insurance, and directors and officers' liability coverage.⁵⁵ The association's property insurance must include the units and limited common elements, but need not cover the decorating, fixtures, and furnishings installed or added to the unit by the unit owner. A majority of the owners can vote to allow the board to adopt a policy to require each owner to obtain H06 insurance to cover the unit.⁵⁶ If there is a claim for damage to the unit or common elements, the board has the option of charging the deductible as a common expense to all owners, against the owners who caused the damage or from whose units the damage originated, or against the unit owners affected.⁵⁷

Operating also includes managing association **employees**, if any. The condominium statutes have limitations on employees, including no employee may sell or rent a unit without 67% owner approval⁵⁸ and no employee shall serve on the board.⁵⁹ Management of employees can be difficult and time-consuming, and the managing agent may help with these services.

ENFORCEMENT

One of the more difficult tasks of a board member is enforcement of the governing documents against owners and issuance of **violations and fines**. Most people desire to be liked by their neighbors, thus many directors recoil at the idea of sending their neighbor a violation notice or fine. But it is essential that the association, through its board, general manager, and managing agent (if any), enforce the covenants, conditions, rules and regulations in order to maintain continuity and fairness through the community and to maintain property values. If one owner is allowed to paint her house bright pink, although the covenants prohibit pink houses, then it will lead to disgruntled owners, other owners that will likely also violate the covenants, and ultimately a lessening of property values because the uniformity of the community may be destroyed.

It is this power of the association to regulate the use of property that makes association living unique. It is also the arena that gives rise to criticism of boards as being overzealous and insensitive to owners' needs. Therefore, the board needs to timely, uniformly and fairly enforce.

Timeliness is important so the association does not lose its right to enforce the governing documents. If the board ignores specific violations for too long, then courts may find that the association has waived the right to enforce.

Uniformly and fairly means enforcement must not be arbitrary. Ignoring a violation by one owner and enforcing the same restriction against another owner will make it difficult to obtain judicial support for the association's efforts. Fairness also requests that the association follow the rules of "due process", which is giving the owner a notice and an opportunity to be heard when fining the owner for a violation. When imposing violations, boards need to exercise reasonable business judgment.

The covenants and rules may be enforced against anyone using the property. The condominium statutes provide that all unit owners, tenants, employees of owners and tenants or any other person that may use the property are subject to the governing documents and Chapter 514B.⁶⁰

A condominium association can impose fines against owners and even tenants for violations.⁶¹ A community association must look to its governing documents for language allowing the imposition of fines. Owners can demand mediation when fines are imposed, and the association is compelled to mediate.⁶²

If fines do not solve the problem, the association can demand mediation, file for arbitration or file suit against the owner seeking an injunction for failure of the owner to comply. If the association prevails, the association may seek reimbursement of its attorneys' fees and costs.⁶³



FINANCIAL MANAGEMENT

The board has an obligation to annually adopt a budget for the annual operating expenses and reserves.⁶⁴ Annual expenses include items such as management, utility payments, administrative expenses and insurance. Reserves are for capital expenditures for major repairs, such as the roof replacement, parking lot or roadway paving, or plumbing pipe replacements. Owner approval to adopt the budget is not required, unless specifically required in the governing documents. The budget must be made available to all unit owners.⁶⁵ If a condominium board needs to exceed its operating budget adopted for the fiscal year by 20%, and it is not an emergency, then it requires a majority owner approval.⁶⁶

To adequately budget for the operation, the association should hire an independent company to produce a **reserve study**. A reserve study is an investigation by an experienced professional to determine which of the association's components will require replacement in the foreseeable future. All components fitting in that description are required to be part of the association's reserve budget. The purpose is to ensure that the association is properly funded for future maintenance and repairs, and its projections are based on the reserve study. There currently is no statutory requirement to engage an independent company to prepare a reserve study, but it is highly recommended so the reserves are not underfunded.

Once the budget is determined, the regular assessments for maintenance fees and reserves to be paid by each owner are calculated. For condominium associations, all common expenses are assessed against the units in accordance with the common percentage interest assigned in the declaration.⁶⁷ In community associations, the assessments are typically spread equally, and will also be identified in the declaration. If the board needs to increase assessments, it requires at least 30 days' prior notice to the owners.⁶⁸

Boards may also impose **special assessments** in certain circumstances in accordance with the governing documents. For example, if a common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against such owner's unit.⁶⁹ Or if the association must unforeseeably spend money for a major repair not properly budgeted for, then owners may need to be specially assessed to fund the repair.

It is important to adequately budget, especially for reserve items for a couple of reasons. The longer that the association saves for eventual repairs, the lower the annual assessment will be for each owner and the less likely there will be a special assessment or bank loan. Condominium associations may not **borrow money** for the repair, replacement, maintenance, operation or administration of the common elements and personal property of the project or the making of any additions, alterations and improvements thereto, without first obtaining at least 50% of the common interest vote or consent to the borrowing of money.⁷⁰

A major part of the board's duties is **collection of maintenance fees and reserves** from the owners.⁷¹ Timely collection of fees is necessary to operate the association. Each owner is obligated to pay assessments for their share of common expenses and failure to do so constitutes a lien against the owner's property.⁷² If an owner refuses or fails to pay, the association can impose late fees, interest (not greater than 18% per year) and assess for attorneys' fees and costs incurred for the collection of the delinquent assessments.⁷³ In addition, with majority owner approval, the board can terminate services and utilities paid for by the association in owner-occupied properties and intercept rent from rental agents and/or tenants. If these remedies do not work, the association can record a lien against the property and foreclose on the lien, or sue the owner in court.

RECORDS AND DISCLOSURE

The board or managing agent of the association maintains the records of the association. These include all business records, such as contracts, invoices, ledgers, permits and meeting minutes. The records, or at least copies of all records, must be kept on the island where the project is located.⁷⁴

One of the biggest complaints about associations by owners is the failure of associations to produce records when requested. The board is required to provide to its members certain information as identified in the statutes, such as financial statements, ledgers, governing documents, contracts, insurance policies, invoices, a list of members, and meeting minutes.⁷⁵ For most documents, the owners are required to pay the cost of copying and mailing the records and administrative time exceeding 8 hours.⁷⁶ Unless court ordered, the board should never provide to an owner personnel records, medical records, records relating to transactions that are currently in negotiation, attorney-client privileged information (such as memos, letters, emails), or complaints against an individual member of the association.⁷⁷



THE CHALLENGE

New board members are often shocked upon realizing how much work is dedicated to serving the association, without pay, and how little owners appreciate it. Serving on a board may be filled with political battles, gossip, and even personal attacks or threats of litigation by owners. It is impossible to please everyone, especially when there is a hot issue, such as a major repair project requiring a special assessment.

THE FOLLOWING TIPS WILL HELP WITH THESE CHALLENGES:

1. Serve without ulterior motives or personal agendas.
2. Do what is best for the association as a whole.
3. When in need of help, ask a professional in the field.
4. Form committees to integrate owners and to help alleviate some of the work.
5. Listen to the owners, including their complaints, and if feasible, address their concerns.
6. Keep your owners apprised through newsletters, email blasts and messages posted on property.
7. Hold social functions to develop a more connected community of owners and residents.



ENDNOTES

- ¹ HRS §§ 514B-3 and 514B-137.
- ² HRS § 414D-311.
- ³ HRS § 514B-3.
- ⁴ HRS § 514B-3.
- ⁵ HRS § 514B-3.
- ⁶ HRS §§ 514B-3 and -137(a).
- ⁷ HRS § 514B-35(2).
- ⁸ HRS § 514B-41(a).
- ⁹ HRS § 514B-3.
- ¹⁰ HRS § 514B-35(4).
- ¹¹ HRS § 514B-137(a).
- ¹² HRS § 421J-2.
- ¹³ HRS § 421J-2.
- ¹⁴ HRS § 414D-311.
- ¹⁵ HRS § 414D-311.
- ¹⁶ HRS § 514B-5.
- ¹⁷ HRS § 514B-32.
- ¹⁸ HRS § 421J-2.
- ¹⁹ HRS § 514B-32.
- ²⁰ HRS § 514B-32(a)(11).
- ²¹ HRS § 421J-12.
- ²² HRS § 514B-109(b) and § 421J-7.5.
- ²³ HRS § 514B-109(b).
- ²⁴ HRS § 514B-109(a) and § 421J-7.5.
- ²⁵ HRS § 514B-33.
- ²⁶ HRS § 514B-108.
- ²⁷ HRS § 514B-108.
- ²⁸ HRS § 514b-108(e).
- ²⁹ HRS § 514B-109.
- ³⁰ HRS § 514B-105(b).
- ³¹ HRS § 514B-121 and -124; § 421J-6.
- ³² HRS § 421J-2 and § 514B-3.
- ³³ HRS § 514B-106.
- ³⁴ HRS § 514B-121 and § 421J-3.5.
- ³⁵ HRS § 514B-107.
- ³⁶ HRS § 514B-107.
- ³⁷ HRS § 514B-107.
- ³⁸ HRS § 514B-121 and § 421J-3.5.
- ³⁹ HRS § 514B-121 and § 421J-3.5.
- ⁴⁰ HRS § 514B-123 and § 421J-4.
- ⁴¹ HRS § 514B-123 and § 421J-4.
- ⁴² HRS § 514B-125.
- ⁴³ HRS § 514B-125.
- ⁴⁴ HRS § 514B-125.
- ⁴⁵ HRS § 514B-125.
- ⁴⁶ HRS § 514B-125.
- ⁴⁷ HRS § 514B-125.
- ⁴⁸ HRS § 514B-125.
- ⁴⁹ HRS § 514B-137.
- ⁵⁰ HRS § 514B-137.
- ⁵¹ HRS § 514B-137.
- ⁵² HRS § 514B-138.
- ⁵³ HRS § 514B-140.
- ⁵⁴ HRS § 514B-140.
- ⁵⁵ HRS § 514B-143.
- ⁵⁶ HRS § 514B-143.
- ⁵⁷ HRS § 514B-143.
- ⁵⁸ HRS § 514B-133.
- ⁵⁹ HRS § 514B-137.
- ⁶⁰ HRS § 514B-112.
- ⁶¹ HRS § 514B-104.
- ⁶² HRS § 514B-161 and § 421J-13.
- ⁶³ HRS § 514B-157 and 421J-10.
- ⁶⁴ HRS § 514B-144.
- ⁶⁵ HRS § 514B-106.
- ⁶⁶ HRS § 514B-148.
- ⁶⁷ HRS §§ 514B-41 and -144.
- ⁶⁸ HRS § 514B-144 and § 421J-9.
- ⁶⁹ HRS § 514B-144.
- ⁷⁰ HRS § 514B-105.
- ⁷¹ HRS § 514B-105.
- ⁷² HRS § 514B-146 and § 421J-10.5.
- ⁷³ HRS §§ 514B-104, -144, -157 and §§ 431J-10 and -10.5.
- ⁷⁴ HRS § 514B-152.
- ⁷⁵ HRS § 514B-154.5 and § 421J-7 and -8.
- ⁷⁶ HRS § 514B-154.5 and § 421J-7 and -8.
- ⁷⁷ HRS § 421J-7.

