

Presented by
HawaiiCouncil.org
Educating Condo & Community Association Home owners since 1975

Annual Meetings in 2021

Your Speakers:

Jane Sugimura – Attorney, Clay Chapman Iwamura Pulice & Nervell and President Hawaii Council of Community Associations (HCCA).
Yuriko (“Jane”) attended Rutgers University. After law school, she clerked for the Honorable Tohimi Sodefari in Circuit Court, State of Hawaii. Jane’s many years of practice in landlord-tenant, real estate, and commercial litigation in district, circuit, and federal courts make her a pragmatic and effective negotiator and, ultimately, problem-solver, whether vigorously representing her clients in litigation or in negotiating and closing a transaction.

Christopher Shea Goodwin, Attorney, Christopher Shea Goodwin Attorney at Law LLLC
Chris has been a licensed attorney for 34 years and attended Indiana University and South Texas College of Law Houston. He opened his own law firm in 1998, and today primarily represents condominium and community associations, as well as local small businesses in debt collection and civil litigation matters. Chris is a frequent speaker at local seminars, as well as educational and training programs addressing condominium and community association legal issues.

Steve Glanstein, Professional Registered Parliamentarian
Steve has been a Professional Registered Parliamentarian since 1994 and active with the National and Hawaii State Association of Parliamentarians. He has worked with many Condo Associations and Community Associations, assisting with their Annual Meetings and Board Meetings each year to ensure they follow proper procedure (Robert’s Rules of Order Newly Revised).

HCCA Seminars & Condo Insider videos are general in nature and offered for informational purposes only. Nothing herein is intended to, nor shall it constitute, legal, other professional advice. Board of Directors, Viewers of Condo Insider & or Readers should consult with their own attorney, or other industry related professional if they are seeking or are in need of professional advice. Professional advice may depend upon the actual facts, circumstances, and situations, as well as the requirements of applicable laws, statutes, ordinances, rules and codes and the governing documents of the specific Condo project or property

Welcome

If you have any questions, please put them into the CHAT
Everyone will be on MUTE except the speakers

Agenda January 23, 2021

Introductions & Opening Remarks	Jane Sugimura
FAQ – Why Annual Meetings	Raelene Tenno
Association Meetings	Steve Glanstein
Case Study	All
Hybrid Meetings	Christopher Shea Goodwin
Meeting Minutes	Jane Sugimura
FAQ	All
Legislative & RFSAC Update	Jane Sugimura

Frequently Asked Question

We are in an unprecedented global emergency...

Why do we need to have the Annual Meeting?

It is not the end of the world if we fail to have a meeting in a given year.

HRS §514B–121 Association Meetings (Applies to all Association Meetings)

(a) A meeting of the association shall be held at least once each year.

HRS §514B–121 Association Meetings

On April 23, 2019, the Governor approved SB1288 SD1, now known as Act 14. This Act amended HRS §514B-121, effective July 1, 2019. It added a new subsection that provided for electronic voting

The voting uses an electronic voting device, it must be at the meeting, and is restricted to a closed system with no internet access.

HRS §514B–121 Association Meetings



HRS §514B–121 Association Meetings

(new 2019 Act 014/SB1288 SD1 Governor's MSG #1115)

(b) Notwithstanding any other provision of this chapter or the declaration or bylaws of a condominium to the contrary, at any association meeting the board may direct the use of an electronic voting device regardless of whether a secret ballot is used or required. Such use shall be subject to the following:

- (1) The electronic voting device and all associated equipment shall be isolated from any connection to an external network, including the Internet;

HRS §514B–121 Association Meetings

(new 2019 Act 014/SB1288 SD1 Governor's MSG #1115)

(2) The board shall establish reasonable procedures to provide for the secrecy and integrity of the unit owners' votes, including but not limited to procedures that ensure the availability of a printed audit trail containing:

- (A) The reference number of the electronic voting device;
- (B) Each common interest voted; and
- (C) The vote that was tabulated;

HRS §514B–121 Association Meetings

(new 2019 Act 014/SB1288 SD1 Governor's MSG #1115)

(3) A copy of the printed audit trail shall be available to owners after the meeting in the same manner provided by sections 514B-154 and 514B-154.5; and

(4) A copy of the procedures established pursuant to paragraph (2) shall be available at no charge to any owner and a copy shall be available at any meeting at which the association uses an electronic voting device.

HRS §514B–121 Association Meetings

(new 2019 Act 014/SB1288 SD1 Governor's MSG #1115)

(e) All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. If so provided in the declaration or bylaws, meetings may be conducted by any means that allow participation by all unit owners in any deliberation or discussion.

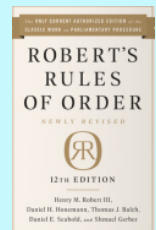
(f) All association meetings shall be held at the address of the condominium or elsewhere within the State as determined by the board; provided that in the event of a natural disaster, such as a hurricane, an association meeting may be held outside the State.

HRS §514B–121 Association Meetings

A new edition of Robert's Rules of Order Newly Revised was officially available on September 1, 2020.

A 32 page list of changes is available on the website of the Hawaii State Association of Parliamentarians. <http://www.hsap.org>

[click on "Educational Materials", then select "Notable Changes made in Robert's Rules of Order Newly Revised (12th ed.)"] http://hsap.org/docs/Changes_to_TwelfthEdition.pdf



- **Social distancing** in accordance with CDC Guidelines will be strictly enforced, and **face masks** must be worn at all times during both the check-in process and the meeting.



Step ONE

- Check your governing documents (generally found in the Bylaws) for Annual Meeting requirements
 - Is there a specified **deadline** to hold the Annual Meeting (i.e. within 90 days, 3 months or following the end of the fiscal year, or during the first quarter is common)
 - Is there a specified **date and time** (i.e. the second Tuesday in May at 7:30 p.m.)
 - Continuation of Annual Meeting requirement or limitations
 - Requirements for a "Special Meeting"
 - Is there any specific business agenda items that must be conducted at the Annual Meeting.
 - (i. e. approval of the managing agent, property management agreement, appointment of auditor, election of directors, etc.)
- Consult with the Association CPA regarding consequences of failing to adopt a tax resolution in the current year
 - Corrective action, if any, can be taken if the tax resolution is not adopted at Annual Meeting (Obtain CPA advice and/or opinions **in writing**).

HRS §514B-121 Association Meetings Subsection (c) Special Meetings

(c) Special meetings of the association may be called by the **president**, a **majority of the board**, or by a **petition** to the secretary or managing agent **signed by not less than twenty-five per cent of the unit owners** as shown in the association's record of ownership; provided that if the secretary or managing agent **fails to send out the notices for the special meeting within fourteen days of receipt of the petition**, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the association's expense in accordance with the requirements of the bylaws and of this part; provided further that a **special meeting based upon a petition to the secretary or managing agent shall be set no later than sixty days from receipt of the petition.**

Step TWO

Location of the Annual Meeting During Pandemic

- Check the governing documents for any location requirement (i.e. at the project)
- Will the Association be able to meet CDC Social Distancing guidelines at the location
- Plan for Sanitizing and Temperature checks and separate trash disposal
- Plan to supply masks and gloves
- Plan to have a ballot box to minimize touching of ballots
- No food or drinks served
- Plan for an alternative meeting site as necessary to a hold safe meeting

Cleaning and Disinfecting Your Facility

Everyday Steps, Steps When Someone is Sick, and Considerations for Employers
Updated July 28, 2020

How to clean

- **Wear disposable gloves** to clean and disinfect.
- **Clean surfaces using soap and water, then use disinfectant.**
- Cleaning with soap and water **reduces number of germs, dirt and impurities** on the surface. **Disinfecting kills germs** on surfaces.
- **Practice routine cleaning** of frequently touched surfaces.
 - More frequent cleaning and disinfection may be required based on level of use.
 - Surfaces and objects in public places, such as shopping carts and point of sale keypads should be cleaned and disinfected before each use.
- **High touch surfaces include:**
 - Tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, sinks, etc.

OneOahu.org

OR

<http://www.honolulu.gov/mayor/proclamations-orders-and-rules.html>

Step THREE

- Consult with legal counsel.
- Different islands may have different pandemic related restrictions.

Every effort must be made to comply with your governing documents and HRS Chapter 514B (condominium associations) or Chapter 421J (community and homeowner associations)

STEP FOUR

Meeting Agenda

HRS §514B-121 (b) and §421J-3.5(b) both require ...The notice of any meeting must state the date, time, and place of the meeting and the items on the agenda

- Keep it short
- Eliminate Owners Forum or have the owner submit their concerns in writing and explain that this is to keep conversation to a minimum
- Eliminate verbal reports – Use handouts
- Eliminate food and drinks

STEP FIVE

Set the date and time

- Comply with meeting notice requirements
- Include Agenda
- Note that any verbal reports with be provided via written handout at the meeting
- Polite reminder of CDC guidelines and efforts by the Association to hold the Annual Meeting as required by the Bylaws and HRS Chapter 514B or 421J
- Explanation that owners forum will be conducted in writing as much as possible to limit verbal communication which may contribute toward COVID spread

Case Study ByLaws State

Annual Meeting – The annual meeting of the voting owners shall be held on such day in the first three (3) months following the close of each fiscal year as the Board shall designate, or if the Board shall not have designated such day by the end of the second (2nd) month following the close of the fiscal year, then on such day as the president shall designate.

Case Study

- Meeting Date & Location is set as per ByLaws
- Meeting Notice, Agenda, Proxy form and other required documents mailed to each owner of record. Date is February 23, 2021
- Via an email, the board has chosen to postpone the Annual Meeting

To "sometime in June or July when the issues with COVID have substantially diminished to were it would be safer to have the Annual meeting due to COVID".

What errors did this AOA Board do?

What happens to the proxies that have already been collected?

Frequently Asked Question

What defines a Hybrid Meeting?

What is different?

HYBRID MEETING

(Note: These hybrid meeting procedures typically apply only to HRS Chapter 514B *condominium* associations, as HRS Chapter 421J *community and homeowner* associations generally may conduct Association meetings via alternative means such as web-conference and/or teleconference unless expressly prohibited in their governing documents).

Advise Owners approximately two (2) weeks before the Annual Meeting via **Memo as to Modified Procedures for Annual Meeting Due to Pandemic Restrictions**. The Memo should advise owners the Annual Meeting will **still take place as scheduled** subject to the following modified procedures:

- Owners and proxyholders who **desire to vote or otherwise participate** at the Annual Meeting **must still personally check-in** at the meeting site.

HYBRID MEETING continued

- **Social distancing** in accordance with CDC Guidelines will be strictly enforced, and **face masks** must be worn at all times during both the check-in process and the meeting.
- Owners and proxyholders must **return to the meeting site** if they wish to cast their votes on any Motion or Election, or otherwise participate
- It is not required that an owner check-in and/or attend the meeting in person, should they still desire to watch or listen to the meeting via **web-conference or teleconference**.

HYBRID MEETING continued

- **No voting, discussion or other participation is permitted via web-conference or teleconference** unless provided in the bylaws (or there is a change to current Hawaii law).
- Permissible alternative to have **candidate speeches during recess** before voting is started.
- Owners and proxyholders who have checked-in and were provided ballots will be provided instructions during the meeting as to how to cast their votes.

HYBRID MEETING continued

- Owners generally must **return** to the meeting site and turn in their completed ballots to waiting tally clerks when directed to do so **while the meeting is in session or during the voting recess**.
- Owners Forum may be conducted via web-conference or teleconference either after the Annual Meeting or during a recess (i.e. while counting votes).
- The Memo to Owners does **NOT** replace the Notice of Annual Meeting, and should not be mailed with the Notice of Annual Meeting to address any current pandemic related procedural changes which may occur prior to the meeting.

ADJOURNMENT or CONTINUATION

If you cannot have more than a limited number of persons at the meeting and need to continue it:

1. **Cancel** the meeting if legally possible
2. **Continue** the meeting
3. Call meeting to order and either:
 - a. **Adjourn** the meeting
 - b. **Continue** the meeting

ADJOURNMENT or CONTINUATION

If you are going to continue the meeting:

1. Make sure you observe any maximum continuation limit in the bylaws (such as a maximum of 30 or 60 days).
2. Consider properly noticing the meeting, informing owners of your intentions, calling the meeting to order, adopting a motion to, "continue the meeting to a fixed date, or, if not available or the emergency still exists, as scheduled by the board of directors."

Don't forget about the MINUTES! HRS §514B-122

Association meetings; minutes. (a) Minutes of meetings of the association shall be approved at the next succeeding regular meeting or by the board, within sixty days after the meeting, if authorized by the owners at an annual meeting.

If approved by the board, owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty days after approval.

(b) Minutes of all meetings of the association shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting.

(c) An owner shall be allowed to offer corrections to the minutes at an association meeting

Don't forget about the MINUTES! HRS §514B-122

What are minutes?

They are official actions, not discussion or somebody's opinion.

An article on the contents of minutes is available on the Real Estate Commission Website:

<https://cca.hawaii.gov/reb/files/2020/12/CB2012.pdf>

Condo Bulletin – December 2020

Reminder of HRS §514B-125 Board Meetings

- **Board meetings.** (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.

HRS §514B-125 continued

d) 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.**

A director participating in a meeting by this means is deemed to be present in person at the meeting.

If permitted by the board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the board may require that the unit owner pay for the costs associated with the participation.

HRS §514B-125 continued

(e) The board shall meet at least once a year. Notice of all board meetings shall be posted by the managing agent, resident manager, or a member of the board, in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board. The notice shall include a list of business items expected to be on the meeting agenda.

(f) A director shall not vote by proxy at board meetings.

HRS §514B-125 continued

(g) **A director shall not vote at any board meeting on any issue in which the director has a conflict of interest.** A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

"Conflict of interest", as used in this subsection, means an issue in which a director has **a direct personal or pecuniary interest not common to other members of the association.**

PENDING LEGISLATION

PDF is attached of pending legislation

Mahalo for your time!

Frequently Asked Question

"in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board. The notice shall include a list of business items expected to be on the meeting agenda."

If the meeting will be via ZOOM or similar, do we email the notice of meeting & agenda to all homeowners?

If the RM or the Property Manager is to provide the meeting link – often time they are not available or do not respond to phone or emails requesting the link information within the 72 hour or prior to the meeting date.

Frequently Asked Question

Can a homeowner assign a "specific power of attorney" to another individual to attend a Board Meeting and or Annual Meeting?

Frequently Asked Question