

CONDOMINIUM PROPERTY REGIME BASICS

What is a Condominium Property Regime “CPR”?

- A CPR is a legal mechanism (Hawaii Revised Statutes 514B) for dividing a single property into 2 or more separate UNITS OF OWNERSHIP, typically with attached “appurtenant” exclusive-use LIMITED COMMON ELEMENTS (yard areas).
- Each CPR unit has its own separate fee simple ownership (deed), mortgages, encumbrances, and CPR TMK NO. (which is found at the end of the property Tax Map Key No.).
- Each CPR unit is separately transferable, saleable, and leasable, and each unit’s owner(s) pay for their unit’s own insurance, property taxes, improvements, expenses, etc.
- *CPR PROHIBITED: Occasionally a property cannot be CPR’d. Usually this is due to recorded Covenants Conditions and Restrictions or “CC&Rs” of a Subdivision in which the property is located. Other factors that could delay or prevent a CPR include non-conforming structures, non-conforming uses, lack of vehicular access, lack of water sources, owner-builder permitted structures, or any other recorded agreement prohibiting CPRs.*
- *CPR REQUIREMENTS: To show that all building, plumbing, and electrical installations are permitted and conforming to code, all existing buildings in a CPR (over 1 year old) will need to pass a Miscellaneous Inspection from the County of Maui. This inspection is designed to confirm that all buildings are built as originally permitted. Unpermitted additions and nonconforming structures will need to be removed, or an after-the-fact permit and hold harmless agreement will need to be obtained, which can take several months to complete.*

What is the difference between CPR and a Subdivision?

- A CPR is NOT a Subdivision, because the underlying CPR property remains 1 SINGLE PARCEL for all State and County ZONING and BUILDING CODE purposes.
- As such, a CPR does NOT allow owners to build any additional buildings, structures, or improvements, other than those uses that are permissible under the underlying property’s zoning and building codes. For example, an agricultural CPR will need to conform with ag zoning requirements, such as the implementation and maintenance of a Farm Plan.
- *NOT A SUBDIVISION: CPR Developers, Attorneys, and Realtors should NEVER use the words “Subdivision,” “Lots,” “Parcels,” or other related terms to describe CPR Units and their appurtenant Limited Common Elements.*

How is a CPR formed and sold to the Public?

- The CPR Registration Process is typically a 6-12+ month process (usually coordinated by an attorney), by which a CPR Developer (the property owner) creates the CPR and “registers” it, for sale to the public, with the State of Hawaii DCCA Real Estate Branch.
- The CPR process is not 100% guaranteed, as it requires County certifications and inspections for compliance with zoning and building codes, and active participation by the Developer.
- Because the CPR process/requirements can be somewhat complex and cumbersome, it is helpful to simplify the legal process to 3 basic steps:

Step 1: CPR Map

- Developer and Surveyor/Architect work together to prepare a CPR Map. The CPR map typically consists of:
 1. As-Built Certificate signed and notarized by Surveyor/Engineer/Architect.
 2. Site Plan depicting the layout and location of the Units, Limited Common Elements, Common Elements, Easements, site access, and other required features.
 3. Floor Plans and 4-Sided Exterior Elevations for each existing building.
- Once a full draft CPR map is completed, the attorney will review and revise the map for statutory compliance.
- *VERIFIED AG STATEMENT: For agricultural CPRs, it is very important to remind Developers that there will be a required certification from the County of Maui that none of the CPR Documents contain any restrictions on agriculture (which are prohibited under HRS 205-4.6). As such, view planes, height restrictions, no building zones, and restrictions on roosters and the slaughtering of animals, are NOT allowed in agricultural CPR Documents.*

Step 2: CPR Formation Documents

- Client, Attorney, and Escrow Company work toward finalizing the CPR’s governing documents and recording them in the State of Hawaii Bureau of Conveyances.
 1. CPR Map (depicts CPR)
 2. CPR Declaration (describes CPR)
 3. CPR Bylaws (rules of the CPR Association)
 4. House Rules (additional CPR rules, not typically recorded or used in 2-5 unit projects)
- *CPR AMENDMENTS: The Developer or Association of Unit Owners is required by law to amend the CPR Map, Declaration, and Public Report (if applicable) every time there is a material change to the CPR project. Due to the inflexibility, timeline, and expenses of the CPR process and amendments, prospective purchasers should NOT have any input as to the CPR itself. In fact, CPR Developers are strongly advised to complete all material changes to the Property BEFORE starting the CPR Process.*

- *COUNTY CPR NO./TAX ASSESSMENT: Once the CPR formation documents are recorded, the County of Maui will assign each Unit a CPR No. and County real property taxes will be re-assessed on each unit, individually. At this point, separate financing can be obtained on each unit by the Developer, if they so choose.*

Step 3: CPR Developer's Public Report Registration

- Prior to selling, accepting ANY deposits, or signing ANY binding contract for the sale of a new CPR unit, the registration of a Developer's Public Report is required by law. The Client and Attorney work together to complete and submit the Developer's Public Report (a giant folder full of disclosure documents) for review and registration with the State of Hawai'i Real Estate Commission. The documents that make up the Developer's Public Report include:
 1. Recorded CPR formation documents
 2. Developer's Public Report forms and related disclosure documents
 3. Required County Certifications
 4. Required Developer's Certifications
 5. Required Developer CPR Agreements
 6. Required Sample Agreements
 7. Current CPR Title Report
- Upon the registration of the Developer's Public Report, the Real Estate Commission will issue a registration number and effective date. At this point, the units may be legally sold to the public.
- *DEVELOPER'S PUBLIC REPORT DOCUMENTS: When offering a condominium unit for sale, each prospective purchaser MUST be provided with a copy of the Developer's Public Report, Declaration, Bylaws, Condominium Map, and Escrow Agreement (and any amendments thereto). In addition, the Real Estate Branch's Receipt for Public Report and Notice of Right to Cancel should also be provided to each purchaser.*
- *PUBLIC REPORT EXPIRES: Once all initial CPR unit sales are completed, the Developer's Public Report is no longer required and is cancelled.*
- *SALES BROKER/ESCROW COMPANY: As part of the Developer's Public Report, the Developer must execute and submit a Sales Broker Listing Agreement and an Escrow Agreement selecting one Real Estate Brokerage and one Escrow Company to use for the listing/initial sale of ALL UNITS in the CPR. Changing the Project's Broker or Escrow Company requires voiding the original Agreement, executing a new Agreement, and filing an Amendment to the Developer's Public Report.*
- *REALTOR INVOLVEMENT IN CPR PROCESS: Realtors can often be very helpful in the CPR process, especially if they can explain the CPR process and assist Developers in obtaining the required County Inspections and Permits. Keep in mind that Attorneys typically bill CPR Clients hourly, for all time incurred on their behalf, including correspondence, so realtors should always communicate with the Developer, NOT the CPR Attorney.*

What are some of the Advantages and Disadvantages of CPRs?

Advantages:

1. Increases overall property value due to creation of 2 or more separate saleable units, on 1 property.
2. Decreases buyer's cost by giving buyers the ability to purchase 1 unit rather, than a whole undivided property
3. Allows for separate mortgages and property taxes on each unit.
4. Allows a single property to be divided among tenants in common owners, family members, or individual beneficiaries in estate planning.
5. Does not require separate water meters for each unit, as single water meter can be shared via "submeters" to measure actual use. (Note: Plumbing fixtures must be allocated.)
6. Does not necessarily require County water or fire protection.
7. Does not typically require County subdivision improvements for approval.

Disadvantages:

1. Does not increase the amount of buildings/density permitted on a property.
 2. On-going relationship between the Unit Owner, who are collectively known as the "Association of Condominium Unit Owners."
 3. Zoning and building code violations/fines of one Unit can be attributable to the Property as a whole.
 4. Possible real property tax rate increase and loss of homeowner's exemption (for more than 1 unit).
 5. Possible doubling of underlying subdivision assessment fees associated with the property.
- *TAKE AWAY MESSAGE: The CPR process can be very beneficial for Developers and their Realtors, as long as the many risks, requirements, and timeline are understood from the outset.*