



Real Estate Commission & CAI Hawaii

PRESENT:

CONDORAMA

A Free Education Program for
Condominium Homeowners



**Saturday, April 8, 2017
9:00 a.m. to 11:30 a.m.
State Capitol Auditorium**

AGENDA
CONDORAMA
April 8, 2017

9:00 a.m. – 9:10 a.m.	Welcome and Introductions
9:10 a.m. – 9:30 a.m.	Rights & Duties of Directors – John Morris, Esq.
9:30 a.m. – 9:50 a.m.	Rights & Duties of Owners – Jane Sugimura, Esq.
9:50 a.m. – 10:10 a.m.	Reserves – What the law requires & why it is important – Keven Whalen, PCAM®
10:10 a.m. – 10:30 a.m.	Do's and Don'ts of Effective Rule Making – Milton M. Motooka, Esq.
10:30 a.m. – 10:50 a.m.	How to Reduce Risks – the ABCs of Condominium Insurance – Sue Savio
10:50 a.m. – 11:20 a.m.	Questions & Answers
11:20 a.m. – 11:30 a.m.	Evaluations & Adjournment

This educational effort is entirely or partly funded by funds from the Condominium Education Trust Fund (CETF), Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii for condominium unit owners whose associations are registered with the Real Estate Commission.

The materials and information provided in this educational effort is intended to provide general education and information and is not a substitute for obtaining legal advice or other competent professional assistance to address specific circumstances. The information contained in this presentation is not an official or binding interpretation, opinion or decision of the Hawaii Real Estate Commission (Commission) or the Department of Commerce and Consumer Affairs

Additionally, the Commission's CETF funding of this educational effort shall not be construed to constitute the Commission's approval or disapproval of the information and materials discussed in this educational effort; the Commission's warrant or representation of the accuracy, adequacy, completeness, and appropriateness for any particular purpose of the information and or of any forms included in this educational effort; or the Commission's judgment of the value or merits of this educational effort.

Speakers

Milton Motooka, a partner in the firm of Motooka & Rosenberg, has been practicing law in Hawaii for more than 35 years. His practice is devoted almost exclusively to the representation of community associations. He is a member of the Charter Class of the College of Community Association Lawyers. The College is comprised of attorneys who have distinguished themselves in the field of community association law and community service. Only 26 community association attorneys nationwide were selected for induction into the Charter Class. Milton Motooka was the only attorney selected from Hawaii. He was the recipient of the Richard M. Gourley Distinguished Service Award in 1997 for his contributions to Hawaii's community association industry in law. He is one of the three founders of the Hawaii Chapter of the Community Associations Institute. His firm currently represents more than 275 condominiums, cooperatives, and community associations statewide.

John Morris, a partner in the firm of Ekimoto & Morris, first became involved with condominiums and homeowner associations when he served for three years as the first condominium specialist for the Hawaii Real Estate Commission. He has spoken and written articles about homeowner associations and legislation affecting them. He is the author of the "Director's Guide to Hawaii Community Association Law," a handbook for directors which includes the condominium law and an analysis of the legal requirements relating to the management and operation of homeowner associations in Hawaii. The Director's Guide is a resource used by many managers and directors throughout the State. He is a past president of the Hawaii Chapter of CAI and a former member and co-chair of its Legislative Action Committee. He annually participates in legislative hearings on changes to the condominium law .

Sue Savio has been president and owner of Insurance Associates since 1975. Insurance Associates specializes in providing insurance services for Condominiums, Cooperatives, Homeowners Associations and similar developments. Insurance Associates today represents over 1,000 community associations throughout Hawaii. Ms. Savio has served as President of the Hawaii Independent Insurance Agents Association (HIIA), is a past President of Community Associations Institute (CAI) Hawaii, and current Treasurer on the CAI Hawaii Board; she has served on the board in different capacities since 2000. She was awarded the Gourley Award for distinguished service to CAI Hawaii. She currently serves on the boards of three condominium associations.

Keven Whalen is the Vice President of Touchstone Properties, Ltd. and has been in the Community Association Management industry for 13 years. He is the past president of the CAI Hawaii Chapter. Mr. Whalen also sits on several committees for CAI Hawaii. Keven holds the Certified Manager of Community Association (CMCA®), Accredited Management Specialist (AMS®), and the prestigious Professional Community Association Manager (PCAM®) designations. He also has a real estate broker's license. He was awarded CAI's Committee Chair of the Year award in 2015 and the Richard M. Gourley Distinguished Service Award in 2016 for his contribution to community association industry in management. Mr. Whalen has a bachelor's degree in Finance from the University of Hawaii at Manoa. Keven was drafted by the World Champion Kansas City Royals.

Jane Sugimura, a partner in the firm of Bendet Fidell & Sugimura has been practicing law since 1978. Ms. Sugimura is the President of the Hawaii Council of Association of Apartment Owners and has served as its President since 1994. She has been actively involved in legislation affecting condominiums with the Legislature and the City Council. Ms. Sugimura has served on The Bougainville Board, since 1986 and the Pearl One Board since 1998 and was its President in 2013. She has also served on numerous task forces involved in condominium community issues such as the Blue Ribbon Recodification advisory Committee, which assisted in drafting Chapter 514B of the Hawaii Revised Statutes. She is current the Co-Host of "Condo Insider" - weekly live-streaming videos on condo issues on Think Tech Hawaii and You Tube. Ms. Sugimura was also a member of the Mortgage Foreclosure Task Force.

RIGHTS AND DUTIES
OF CONDOMINIUM DIRECTORS

John A. Morris
Ekimoto & Morris, LLC

RIGHTS AND DUTIES OF CONDOMINIUM DIRECTORS

John A. Morris

Fiduciary Duty. The starting point for the analysis is fiduciary duty: every condominium director and officer owes the association a fiduciary duty in performing the director's responsibilities. Section 514B-106(a). The condominium statute does not define fiduciary duty directly but refers to the nonprofit corporations law, Chapter 414D. Section 414D-149 (attached) provides a road map for fulfilling the requirements of a director's or officer's fiduciary duty.

The fiduciary duty arises because, by electing a director, the owners place their confidence and trust in the director and rely on the director to act in their best interests. As fiduciaries, directors must act in good faith and put the interests of the other owners ahead of their own individual interests.

Being a volunteer does not excuse the director from the director's fiduciary duty. A director's fiduciary duty includes:

Duty of Diligence. Act as a reasonably prudent person under similar circumstances – be informed, research complex issues, ask if you don't know. Monitor what is going on – don't delegate and forget about it. Implement controls and checks and balances which will keep you informed.

Duty of Good Faith. Honesty, fair dealing – a belief that you are acting in the best interests of the association you serve.

Duty of Loyalty. Don't use your position for your own interests--the association's interests should come first. No secret profits or personal gain; avoid even the appearance of conflict of interest.

Duty of Obedience. Know and follow the law; know and follow the association documents; don't exceed your authority. If you don't know what you can do, ask.

Business Judgment Rule. Often a director's actions are also evaluated under the standard of the "business judgment rule" – how an ordinarily prudent or reasonable person/director would act in the same circumstances. The basic standard of the business judgment rule is: An owner who challenges a non-self-dealing transaction must prove that the director or officer authorizing the transaction: (1) failed to act in good faith, (2) failed to act in a manner he/she reasonably believed to be in the best interests of the association, or (3) failed to exercise the care which an ordinarily prudent person in a similar position would use in similar circumstances.

Therefore, to fulfill their fiduciary duty and comply with the business judgment rule, directors should: 1) keep informed about the association's business and make decisions based on all relevant information reasonably available, including expert opinions, when

necessary; 2) attend and participate in meetings; 3) make sure absences and objections to any decision are recorded in the minutes; 4) act in the best interests of all owners (i.e., the association as a whole) and avoid conflicts of interest; 5) not exceed their authority under the law and the association's legal documents; and 6) act in a timely manner.

If a decision made on the basis of information reasonably obtained is subsequently found to be incorrect, the directors will usually be protected by the business judgment rule if they have met its requirements. Following the correct procedures may be more important than reaching the correct decision.

BASIC PRINCIPLES OF CONDOMINIUM GOVERNANCE FOR DIRECTORS

1. The Importance Of Procedural Requirements: Boards and associations should not overlook the importance of following proper procedures. The process a board follows in making a decision may ultimately be more important than the decision, itself. Following good procedures can protect boards from the consequences of bad decisions (the business judgment rule). Given the complexity of the problems that boards face and the general level of board expertise, bad decisions are inevitable at some time or other. This only increases the importance of following proper procedures. The basic issue is, will an outsider, seeing how you conduct yourself, conclude that you are reasonable, rational and businesslike? Protect the association and yourself from harm:

- **Boards:** Record votes in the minutes, for and against motions--an abstention may not protect as well as a "no" vote.
- Record motions and (good) deliberateness in the minutes (what and why).
- Ensure your absences from board meetings are recorded in the minutes.
- Do not say stupid things in public (discrimination law is set up to prevent people from acting on their worst instincts).
- **Employees:** Supervise them--do not just instruct and forget; provide job descriptions; keep records of employee problems/employment histories (adequate proof of violations--in writing); employment "at will" may no longer be the law; are violations consistently enforced; warnings given; previous warnings documented; was safety an issue--workplace unsafe; was an investigation made and employee allowed to respond; were you fair and shown to be fair?
- **Contracts:** Review contracts before signing them (attorney?); what will and will not be provided; automatic termination and extension provisions.
- Keep complete and accurate records of owner problems and violations. (Were notices of violations given; records of violations kept; are other records current?)

- Adopt reasonable financial controls.
- Two signatures on large checks. Regularly review financial information and other records. Request bids for large contracts.
- Hire licensed contractors.
- Consult experts (attorneys/accountants/architects/engineers) if necessary, and rely on their advice, unless clearly wrong.
- Keep written records of important actions not covered in the minutes. Otherwise, who will know 5 or 10 years from now that you did a good job? A letter is worth a thousand words--both for AND against.

Owners: Owners do not act for others, so the consequences for failing to follow proper procedures are reduced, but still important.

- Review and know the law and project documents. Boards have a lot of power. When the power is not clear, they will probably receive the benefit of the doubt.
- Follow the law and project documents.
- Follow procedures: set up a good paper trail; verbal complaint, letter to manager, letter to board, attend board meeting to discuss the issue, get a response from the board or firm date for a response, confirm the date in writing.

2. **Due Process:** American law relies heavily on a number of basic principles:

- The punishment should fit the crime.
- Before anyone is penalized, there should be notice and an opportunity to be heard; and
- People in similar circumstances should be treated in a similar way (to avoid claims of selective enforcement).

How does all this work in a specific situation, for example, adopting a rule: 1. Do you have the power to act? (Check the declaration or bylaws.) 2. Was the procedure adopting the rule reasonable? 3. Is the content of the rule reasonable? 4. Is the rule applied reasonably?

Boards and associations sometimes overlook those principles, particularly with respect to: (i) fines and procedures requiring a graduated response to a problem; (ii) money (collections and fines); and (iii) self-help. It is not what you do, it is the way that you do it.

Fines or penalties for rule violations:

Prerequisite: The board needs the power to fine, probably in the DCCRs or bylaws. Otherwise, the board must follow the law (Section 514B-104(a)(11)). Check with your association's attorney.

- Clear notice of what the penalty will be. (How much should it be? No clear answer exists, except that it should fit "the crime." Procedures should permit a graduated response: e.g., avoid a one hundred dollar (\$100) fine for a first offense with no right to appeal the fine. The purpose of a fine is to get someone's attention, not finance the association, so be willing to compromise on the fine, if appropriate.)
- Followed by: Warning notice by board/ manager/ managing agent, giving a chance to respond or possibly suggesting mediation; fine (\$25) still allowing response or suggesting mediation; bigger fine (\$50); lien, if documents allow; arbitration or court to collect.

Collection process:

- Clearly state the association's collection policy; due date, grace period, late fee (which should not be a penalty but should be tied to the cost of processing the late payment or lack of it), first letter (16 days), second letter (46 days), attorney demand letter, lien filed, foreclosure or lawsuit.
- Remember, Section 514B-144(h) requires 30 days written notice prior to an increase in assessments.

Self-Help:

Be very cautious about self-help. It is too similar to the law of the jungle for courts to be very comfortable with it. Self-help too often leads to a breach of the peace. The party resorting to self-help will usually be the one with the "burden of proof" if a fight breaks out.

Boards and associations sometimes overlook those principles, particularly with respect to: (i) money (collections and fines); (ii) procedures requiring a graduated response to a problem; and (iii) self-help. It is not what you do, it is the way that you do it.

3. Public Relations: Directors are elected officials and should try to have some kind of "bedside manner" for dealing with owners. Directors should not tell owners, "We do not have to listen to you" or "We do not care what you think," even if it is true. That attitude only creates problems and directors can be (and often are) removed by disgruntled owners. At least listen. If it is a bad idea, you do not have to agree.

Owners who verbally or physically abuse directors or property managers are unlikely to receive the best response or cooperation from the board.

4. **Communications:** Boards should keep owners informed about what is going on. Many owners are very ill-informed, although directors often assume that since they know what is happening, owners do too. Tell them the good news and the bad without sugar coating. Tell them the association is just about to fix the problem, if it is. Tell them the association will go broke if the assessments are not increased. Directors and owners are all in the same boat -- covering up bad news may delay, but not prevent it from sinking.

5. **Planning Ahead:** Create adequate reserves for maintaining the project. Adopt policies on important issues BEFORE they arise. Owners become very upset when the board's just adopted policy goes against the owners' interests. A board which has had a policy in place for years has a much easier time justifying it when a dispute arises. Also, continuity will be improved if succeeding boards have written policies for reference. Then, board policies should be consistent.

6. **Know What You Are Doing - Education:** The Legislature has recognized that the cost of educating directors is a legitimate association expense. (The condominium law established the Condominium Education Trust Fund, and the law includes a section on director education, Section 514B-107(f).)

As a result, condominium directors can spend association funds for their education, and the funds are not deemed compensation to the directors (important for those projects whose by-laws forbid directors from receiving "compensation"), as long as:

- a. The educational expenses are included in the budget as line items; and
- b. The funds are to educate and train the directors in subject areas directly related to their duties and responsibilities as directors,

(Since the budget must be distributed to the owners (Sections 514B-144(a) and 514B-148(a)), the requirement to include educational expenses as line items ensures that owners will be made aware of the money spent on director education.)

7. **Do Something:** Directors are elected to run the project and association. Try and fulfill that responsibility. The business judgment rule will not protect you if you fail to act. If you do nothing, it should be only because you carefully considered the issue and consciously decided to do nothing, not because you ignored the issue in the hope that it would go away. Making the wrong decision may be less damaging than making no decision at all.

Once board members know a problem exists, they should try to fix it. Don't "cheap" it out. Knowledge that a problem exists can considerably increase a board's liability under the theory of negligence. If chunks of concrete are falling off the building, have something done about it. Do not try to save money by delaying or taking the cheapest way out. Owners will only appreciate the savings when things go well, not when disaster strikes.

8. **Self-Governance**: The basic theory of the condominium law is that the owners, not the State of Hawaii, are supposed to oversee the actions of the directors. To allow owners to carry out that function, the law focuses heavily on allowing owners access to information, and the State will enforce that right.

Therefore, owners questioning what the board is doing or requesting information or documents should not necessarily be considered unusual or demanding. That is supposed to be the owners' role.

The law includes long lists of the documents that have to be provided to owners. Although the law allows certain documents to be withheld, in a close case, the principle of self-governance means that the law will almost certainly allow owners to review documents unless there is a strong and valid reason for withholding them.

ADDENDUM

§514B-106 Board; powers and duties. (a) *Except as provided in the declaration, the bylaws, subsection (b), or other provisions of this chapter, the board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.*

The statement at the end of that section is explained more fully in section 414D-149, which states as follows:

§414D-149 General standards for directors. (a) *A director shall discharge the director's duties as a director, including the director's duties as a member of a committee:*

- (1) *In good faith;*
 - (2) *With the care an ordinarily prudent person in a like position would exercise under similar circumstances;*
and
 - (3) *In a manner the director reasonably believes to be in the best interests of the corporation.*
- (b) *In discharging the director's duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:*
- (1) *One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;*
 - (2) *Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or*
 - (3) *A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.*
- (c) *A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.*
- (d) *A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.*
- (e) *A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.*
- (f) *Any person who serves as a director to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss caused by or resulting from the person's performance of, or failure to perform duties of, the position to which the person was elected or appointed, unless the person was grossly negligent in the performance of, or failure to perform, such duties. For purposes of this section, remuneration does not include payment of reasonable expenses and indemnification or insurance for actions as a director as allowed by sections 414D-159 to 414D-167.*

RIGHTS AND DUTIES OF OWNERS

Jane Sugimura, Esq.
Bendet Fidell Sugimura, AAL, ALC

Owner's Obligations/Duties

- **Need to actively participate in governance of building, e.g., vote for good Board members, attend association Board meetings and special and annual meetings.**
- **Pay maintenance fees and other assessments in a timely manner so that the project has sufficient cash flow to pay its bills.**
- **Comply with condo Declaration, By-laws, House Rules and other rules and regulations.**
- **Maintain your unit and cooperate with building inspections (high risk components 514B-138).**
- **Do not do thing in your unit or allow conduct to occur in your unit that may interfere with your neighbor's use of their unit, e.g., no loud noises during "quiet hours", no smoking marijuana on the lanai**

Owner's Rights

- **Elect and remove Board members.**
- **Request for Documents and information (514B-154 see attached)**
- **Allows unit owners to participate in Board meetings subject to time constraints to allow the Board to complete its meeting agenda ((514B-125)**
- **Requests for reasonable accommodation (for a physical or mental disability)**
- **Dispute resolution, e.g., mediation, arbitration (514B-161 and 162)**
- **Owners right to dispute rule violations**
- **Owner's right to dispute maintenance fee delinquency (514B-146)**
- **Owner's rights in foreclosure**

[\$514B-154.5] Association documents to be provided. (a)

Notwithstanding any other provision in the declaration, bylaws, or house rules, if any, the following documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be made available to any unit owner and the owner's authorized agents by the managing agent, resident manager, board through a board member, or the association's representative:

- (1) All financial and other records sufficiently detailed in order to comply with requests for information and disclosures related to the resale of units;
- (2) An accurate copy of the declaration, bylaws, house rules, if any, master lease, if any, a sample original conveyance document, and all public reports and any amendments thereto;
- (3) Detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred and monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses;
- (4) All records and the vouchers authorizing the payments and statements kept and maintained at the address of the project, or elsewhere within the State as determined by the board, subject to section 514B-152;
- (5) All signed and executed agreements for managing the operation of the property, expressing the agreement of all parties, including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments;
- (6) An accurate and current list of members of the condominium association and the members' current addresses and the names and addresses of the vendees under an agreement of sale, if any. A copy of the list shall be available, at cost, to any unit owner or owner's authorized agent who furnishes to the managing agent, resident manager, or the board a duly executed and acknowledged affidavit stating that the list:
 - (A) Shall be used by the unit owner or owner's authorized agent personally and only for the purpose of soliciting votes or proxies or for providing information to other unit owners with respect to association matters; and
 - (B) Shall not be used by the unit owner or owner's authorized agent or furnished to anyone else for any other purpose;
- (7) The association's most current financial statement, at no cost or on twenty-four-hour loan, at a convenient location designated by the board;
- (8) Meeting minutes of the association, pursuant to section 514B-122;
- (9) Meeting minutes of the board, pursuant to section 514B-126, which shall be:
 - (A) Available for examination by unit owners or owners' authorized agents at no cost or on twenty-four-hour loan at a convenient location at the project, to be determined by the board; or
 - (B) Transmitted to any unit owner or owner's authorized agent making a request for the minutes within fifteen days of receipt of the request by the owner or owner's authorized agent; provided that:

- (i) The minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner or owner's authorized agent, if the owner or owner's authorized agent indicated a preference at the time of the request; and
- (ii) The owner or owner's authorized agent shall pay a reasonable fee for administrative costs associated with handling the request, subject to section 514B-105(d);

(10) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the association for the duration those records are kept by the association, and any documents regarding delinquencies of ninety days or more shall be available for examination by unit owners or owners' authorized agents at convenient hours at a place designated by the board; provided that:

- (A) The board may require unit owners or owners' authorized agents to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the association, its members, or both; and
- (B) Unit owners or owners' authorized agents shall pay for administrative costs in excess of eight hours per year;

(11) Proxies, tally sheets, ballots, unit owners' check-in lists, and the certificate of election subject to section 514B-154(c);

(12) Copies of an association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154;

(13) A copy of the management contract from the entity that manages the operation of the property before the organization of an association; and

(14) Other documents requested by a unit owner or owner's authorized agent in writing; provided that the board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of a request for documents pursuant to this paragraph.

(b) Subject to section 514B-105(d), copies of the items in subsection (a) shall be provided to any unit owner or owner's authorized agent upon the owner's or owner's authorized agent's request; provided that the owner or owner's authorized agent pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(c) Notwithstanding any provision in the declaration, bylaws, or house rules providing for another period of time, all documents, records, and information listed under subsection (a), whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be provided no later than thirty days after receipt of a unit owner's or owner's authorized agent's written request, unless a lesser time is provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, and except as provided in subsection (a)(14).

(d) Any documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, may be made available electronically to the

unit owner or owner's authorized agent if the owner or owner's authorized agent requests such in writing.

(e) An association may comply with this section or section 514B-152, 514B-153, or 514B-154 by making the required documents, records, and information available to unit owners or owners' authorized agents for download through an internet site, at the option of each unit owner or owner's authorized agent and at no cost to the unit owner or owner's authorized agent.

(f) Any fee charged to a unit owner or owner's authorized agent to obtain copies of the association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per page, or portion thereof, except that the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per page.

(g) This section shall apply to condominiums organized under chapter 514A or 514B.

(h) Nothing in this section shall be construed to create any new requirements for the release of documents, records, or information. [L 2014, c 188, §2]

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RESOLUTION OF CONDO DISPUTES Or Why We Need To All Get Along

Scenario: An apartment owner believes that the Board is spending too much money on a landscaping contract and asks for a copy of the contract. A majority of the Board decides that the owner has no business looking at the contract or questioning their decision-making. After a furious and bitter letter-writing (or email) campaign where both sides barrage the other with nasty letters or emails, the owner gets an attorney and either demands mediation or arbitration of the dispute. Meanwhile the Board has gotten its attorney involved in the dispute.

Why should you as a unit owner or board member care about these disputes? First, because it costs the Association (and indirectly the owners) money to pay the attorneys – and the cost could easily run into the tens of thousands of dollars – and can translate into increased maintenance fees. Second, if the Board loses the dispute, the Association may have to reimburse the owner for the fees he or she incurred to “win” the dispute. Third, insurance companies may raise their premiums for the Association’s liability coverage because under some liability policies, the insurer pays for the fees and costs and possibly the award to the other side in a dispute resolution, and the increased premium means increased maintenance fees to the owners. Fourth, this type of dispute is disruptive to the Association because it distracts the board members who should be concentrating on administering the maintenance and operation of the condominium building. Finally (and to me the most serious detriment), it creates animosity and dissension among neighbors who live in the same building or complex. No one wants to live in a building where this is happening and knowledge of such disputes may likely affect the marketability of the property.

It is in everyone’s best interest – owner’s, board members, property managers, residents – to minimize disputes and, if that’s not possible, to have a means to resolve disputes quickly and cheaply so that everyone can get on with their lives.

HRS 514B¹ provide for two types of dispute resolution, e.g., mediation (514B-161) and arbitration (514-162).

There are 2 types of mediation, i.e., facilitative mediation and evaluative mediation. Evaluative mediation was implemented in July 2015 and the mediator is a retired judge or a specially trained mediator who will provide an opinion as to the merits of each side’s claim. Evaluative mediation is

¹ HRS 514A will likely be repealed so reference to the condo statute will be to Chapter 514B.

subsidized by the State of Hawaii Real Estate Commission up to \$6,000 per case. See attached flyer for more information on mediation.

The most economical method of resolving disputes is through mediation. The State has contracted with mediations companies and parties in a dispute are directed to these companies by the Condominium Specialist at the DCCA, which means that the mediations companies are being paid by the State a portion of the mediation cost to resolve condominium disputes. One draw-back of this program is that while Hawaii law makes it mandatory to mediate condo disputes, there is currently no enforcement mechanism that would require the "other side" to attend a mediation session if it didn't want to; however, there is pending legislation that might resolve this

If the parties cannot resolve their disputes through mediation, the next step is to arbitrate the dispute. (HRS 514B-162). This is cheaper and quicker than litigation but there is one draw-back. This statute provides for **de novo** review by a circuit court if the losing party is unhappy with the arbitrator's decision. This means that the circuit court can make the parties "re-do" their presentation of the evidence and reach a decision that may be different from the arbitrator's decision and this can result in huge costs to both sides.

There are bills pending in this legislative session that would allow owners and their boards (or directors and managing agents and the boards) to agree to binding arbitration without **de novo** review that would be subsidized by the condominium-education fund.



WHAT IS MEDIATION?

Mediation is an informal, inexpensive, and confidential process for resolving disputes quickly. The mediator acts as an impartial third party who assists the parties in face-to-face meetings to work out a mutually acceptable solution.

There are two types of mediation available: 1) facilitative; and 2) evaluative. In facilitative mediation, trained mediators facilitate discussions between parties and assist participants in memorializing perspectives. Evaluative mediation is a form of mediation conducted by trained mediators who possess subject matter expertise in the Hawaii condominium law and have extensive experience mediating disputes. The mediators have knowledge of the relevant case law and apply it to the facts of the mediation, providing candid and informed assessments of each party's position. The mediators facilitate discussion and assist in the parties' attempts to reach agreement by giving objective feedback and suggestions on options for resolution.

ARE THERE ADVANTAGES IN MEDIATION?

- Inexpensive;
- Expedient;
- Parties control the solutions;
- Solutions are tailored to needs of parties;
- Confidential process by mediators with knowledge of the condominium law;
- Scheduled at convenience of parties;
- Even if dispute is not completely resolved, mediation often defuses hostilities, clarifies issues, and expands options; and
- Small Claims Court, arbitration, and litigation are still options if unable to resolve dispute through mediation.



IS MEDIATION MANDATORY?

Section 514B-161, HRS, requires mediation if a condominium owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of an association's declaration, bylaws or house rules.



IS THERE A COST FOR MEDIATION?

There is a nominal fee. The Real Estate Commission (Commission) established a trust fund, the Condominium Education Trust Fund, which is used for educational purposes, including mediation. Subject to availability of these monies, subsidized mediation services are available through the mediation providers listed in this brochure for eligible parties and eligible issues.

WHO IS ELIGIBLE TO FILE FOR MEDIATION?

Owners or boards of directors of condominium associations registered with the Commission.

WHAT IS CONSIDERED AN ELIGIBLE ISSUE?

Disputes involving:

- The declaration of a registered condominium association;
- The bylaws of a registered condominium association; and
- The house rules of a registered condominium association.

ARE THERE INELIGIBLE ISSUES?

- Parties and issues involving Chapter 521, HRS, Residential Landlord-Tenant Code
- Condominium developers and construction issues

- Timeshare owners/associations and timeshare issues
- Issues concerning employees of registered condominium associations and labor law issues

WHAT IS THE PROCEDURE IN REQUESTING - SUBSIDIZED MEDIATION?

You may contact any of the Commission's mediation providers listed in this brochure. The mediation providers will explain their procedures and cost. The Commission does not conduct mediations.

MEDIATION PROVIDERS

Contact the following facilitative mediation providers directly about the procedures and cost, and arranging mediation (check www.hawaii.gov/hirec for a current list of mediation centers):

Oahu: Mediation Center of the Pacific, Inc.
245 N. Kukui Street, #206
Honolulu, HI 96817

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@mauimeditation.org

W. Hawaii: West Hawaii Mediation Center
65-1279 Kawaihae Road, #202
Kamuela, HI 96743
Tel: (808) 885-5525 (Kamuela)
Tel: (808) 326-2666 (Kona)
Fax: (808) 887-0525
Email: info@whmediation.org

(Mediation Providers continued on back)

MEDIATION PROVIDERS - CONTINUED

E. 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@hawaiimediation.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

EVALUATIVE MEDIATION PROVIDERS

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 LLC
TOPA Financial Center, Suite 702
745 Fort Street, Honolulu, Hawaii 96813
Tel: (808) 439-8600
Email: crumpton@chjustice.com
Websites: www.acclm.org; www.nadn.org;
www.accord3.com; and www.mediate.com

Mediation Center of the Pacific, Inc.
245 N. Kukui Street # 206
Honolulu, HI 96817
Tel: 521-6767
Email: mcp@mediatehawaii.org

Dispute Prevention and Resolution
1003 Bishop Street, Suite 1155
Honolulu, HI 96813
Tel: 523-1234
Website: <http://www.dprhawaii.com/>

USEFUL INFORMATION SOURCES

Department of Commerce and Consumer Affairs (DCCA) website:

<http://cca.hawaii.gov/>

Chapters 514A and 514B, HRS, and Chapter 107, HAR, regarding Condominium Property Regimes, are available online. Please refer to the following sites:

Website to access unofficial copy of laws:

www.capitol.hawaii.gov

<http://cca.hawaii.gov/hawaii-revised-statutes/>

Website to access rules:

<http://cca.hawaii.gov/hawaii-administrative-rules/>

STATE TOLL-FREE NUMBERS
From the neighbor islands:

Hawaii 974-4000 ext 62643

Kauai 274-3141, ext. 62643

Maul 984-2400, ext. 62643

Molokai & Lanai 1-800-468-4644, ext. 62643

Real Estate Branch Website:
www.hawaii.gov/hirec

REAL ESTATE COMMISSION

STATE OF HAWAII

**MEDIATION
OF
CONDOMINIUM
DISPUTES**



Department of Commerce & Consumer Affairs

**Real Estate Branch
Professional & Vocational Licensing Division
335 Merchant Street, Room 333
Honolulu, HI 96813
Telephone: (808) 586-2643**

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This printed material can be made available for individuals with special needs. Please submit your request to the Senior Condominium Specialist at (808) 586-2643.
REV 0615

D. Alternative Dispute Resolution

§514B-161 Mediation. (a) If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners' declaration, bylaws, or house rules, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless both parties agree that one party shall pay all or a specified portion of the mediation costs. If a party refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorneys' fees.

(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:

(1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;

(2) Actions to collect assessments;

(3) Personal injury claims; or

(4) Actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the parties. [L 2004, c 164, pt of §2; am L 2007, c 244, §7; am L 2008, c 205, §§2, 5; am L 2009, c 9, §2; am L 2012, c 34, §14]

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[§514B-162] Arbitration. (a) At the request of any party, any dispute concerning or involving one or more unit owners and an association, its board, managing agent, or one or more other unit owners relating to the interpretation, application, or enforcement of this chapter or the association's declaration, bylaws, or house rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the commission and of chapter 658A; provided that the rules of the arbitration service conducting the arbitration shall be used until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658A, chapter 658A shall prevail; and provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.

(b) Nothing in subsection (a) shall be interpreted to mandate the arbitration of any dispute involving:

- (1) The real estate commission;
- (2) The mortgagee of a mortgage of record;
- (3) The developer, general contractor, subcontractors, or design professionals for the project; provided that when any person exempted by this paragraph is also a unit owner, a director, or managing agent, such person in those capacities, shall be subject to the provisions of subsection (a);
- (4) Actions seeking equitable relief involving threatened property damage or the health or safety of unit owners or any other person;
- (5) Actions to collect assessments which are liens or subject to foreclosure; provided that a unit owner who pays the full amount of an assessment and fulfills the requirements of section 514B-146 shall have the right to demand arbitration of the owner's dispute, including a dispute about the amount and validity of the assessment;
- (6) Personal injury claims;
- (7) Actions for amounts in excess of \$2,500 against an association, a board, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the association or its board would be unavailable because action by arbitration was pursued; or
- (8) Any other cases which are determined, as provided in subsection (c), to be unsuitable for disposition by arbitration.

(c) At any time within twenty days of being served with a written demand for arbitration, any party so served may apply to the circuit court in the judicial circuit in which the condominium is located for a determination that the subject matter of the dispute is unsuitable for disposition by arbitration.

In determining whether the subject matter of a dispute is unsuitable for disposition by arbitration, a court may consider:

- (1) The magnitude of the potential award, or any issue of broad public concern raised by the subject matter underlying the dispute;
- (2) Problems referred to the court where court regulated discovery is necessary;
- (3) The fact that the matter in dispute is a reasonable or necessary issue to be resolved in pending litigation and involves other matters not covered by or related to this chapter;
- (4) The fact that the matter to be arbitrated is only part of a dispute involving other parties or issues which are not subject to arbitration under this section; and
- (5) Any matters of dispute where disposition by arbitration, in the absence of complete judicial review, would not afford substantial justice to one or more of the parties.

Any such application to the circuit court shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions. The prevailing party shall be awarded its attorneys' fees and costs in an amount not to exceed \$200.

(d) In the event of a dispute as to whether a claim shall be excluded from mandatory arbitration under subsection (b)(7), any party to an arbitration may file a complaint for declaratory relief against the involved insurer or insurers for a determination of whether insurance coverage is unavailable due to the pursuit of action by arbitration. The complaint shall be filed with the circuit court in the judicial circuit in which the condominium is located. The insurer or insurers shall file an answer to the complaint within twenty days of the date of service of the complaint and the issue shall be disposed of by the circuit court at a hearing to be held at the earliest available date; provided that the hearing shall not be held within twenty days from the date of service of the complaint upon the insurer or insurers.

(e) Notwithstanding any provision in this chapter to the contrary, the declaration, or the bylaws, the award of any costs, expenses, and legal fees by the arbitrator shall be in the sole discretion of the arbitrator and the determination of costs, expenses, and legal fees shall be binding upon all parties.

(f) The award of the arbitrator shall be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and shall be served by the arbitrator on each of the parties to the arbitration, personally or by registered or certified mail. At any time within one year after the award is made and served, any party to the arbitration may apply to the circuit court of the judicial circuit in which the condominium is located for an order confirming the award. The court shall grant the order confirming the award pursuant to section 658A-22, unless the award is vacated, modified, or corrected, as provided in sections 658A-20, 658A-23, and 658A-24, or a trial de novo is demanded under subsection (h), or the award is successfully appealed under subsection (h). The record shall be filed with the motion to confirm award, and notice of the motion shall be served upon each other party or their respective attorneys in the manner required for service of notice of a motion.

(g) Findings of fact and conclusions of law, as requested by any party prior to the arbitration hearing, shall be promptly provided to the requesting party upon payment of the reasonable cost thereof.

(h) Any party to an arbitration under this section may apply to vacate, modify, or correct the arbitration award for the grounds set out in chapter 658A. All reasonable costs, expenses, and attorneys' fees on appeal shall be charged to the nonprevailing party. [L 2004, c 164, pt of §2]

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Reserves

What The Law Requires and Why it is Important

Keven Whalen (R), CMCA[®], AMS[®], PCAM[®]

Touchstone Properties, Ltd.

Operating Funds vs Reserve Funds

- Operating funds cover the day to day operations
- Reserve funds are designated for capital repairs
- Reserve funds defined by law: *“Funds for the upkeep, repair, or replacement of those parts of the property, including but not limited to roofs, walls, decks, paving, and equipment, that the association is obligated to maintain”*

How to Determine Appropriate Reserve Funds?

- Reserve Study
A long term capital budget planning tool with an in-depth evaluation of a property’s physical assets.
A reserve study provides an analysis of the cost and time frame for anticipated replacement or major repairs to common areas.
A reserve study provides both a physical and financial analysis.

Hawaii Law – [HRS 514B-148]

Association Fiscal Matters; Budgets & Reserves

Budget shall include:

- The total replacement reserves as of the date of the budget
- The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association
- A general explanation of how the estimated replacement reserves are computed
- Whether computation was based on a percent funded or cash flow plan

Examples of Reserve Components

- Asphalt paving or seal coating
- Painting - wood or concrete repairs
- Window replacement
- Heat pumps or boilers
- Chiller or cooling systems
- Gates or Fencing
- Elevators
- Plumbing

Components of a Reserve Study

- Which components belong to the Association?
- When will the components need replacement?
- How much will it cost to repair or replace the components?

Which Components Belong to the Association?

- Check your project documents. Your project documents will provide a description of the common elements and a description of the apartment.
- Associations should check with their attorney when project documents are silent on components.
- Resolutions
- Common elements and limited common element. Who pays?
- Components utilized by a portion of the ownership may require a second reserve study.

When Will the Components Need Repair or Replacement?

- Manufacturer Manuals and Warranties
- History / Past Experience
- Published data
- Contractors, Architects, or Engineers.
- Comparisons

How Much Will it Cost?

- History / Past Experience
- Published data
- Contractors, Architects, or Engineers
- Comparisons

Percent Funded or Cash Flow

- Percent Funded - Fund a minimum of 50% of the estimated replacement reserves.
Example: \$100 component with 10 year life will require \$10/year for 10 years to be 100% funded. \$5/year is the minimum required by law.
- Cash Flow – Minimum 20 year projection to fund fully its replacement reserve requirements each year.

Reserve Study

- Law puts the burden of collecting reserve funds on the Board
- Hire a Reserve Specialist
- Update Annually
- Adjust for changes in interest rates and inflation
- Add details and notes
- Add contingency funds – don't fund the minimum
- Plan for cost of professional services (engineering, specs and project oversight)
- Put the time in

Preventative Maintenance

- Regular preventative maintenance can help ensure each component lasts as long as it should
- Follow a schedule and practices recommended by the manufacturer
- Example: Plan for asphalt resurface every 20-25 years. Seal coating asphalt every 3-5 years can extend life of the pavement.

Benefits of a Reserve Study

- Owners should pay their fair share
- Affect ability for owners to obtain new or refinance loans
- HUD/FHA financing have minimum reserve contribution requirements
- Impact maintenance fees and potential special assessments
- Deferred maintenance cost more in the long run
- Special Assessments and loans may affect sales, property values, and delinquencies

Benefits of a Reserve Study

- Serves as an effective communication tool
- Helps prioritize business plans and preventative maintenance needs
- Demonstrates compliance with state statute
- Provides evidence that Board members are complying with their fiduciary duty
- Minimize chance of litigation

Hawaii Law

- The reserve funding method shall not be used to circumvent the contributions required in the reserve study
- Reserve funding plan cannot reflect future loans or assessments
- No Association or unit owner, director, officer, managing agent, or employee of an association who makes a good faith effort to calculate the estimated replacement reserves for an association shall be liable of the estimate subsequently proves incorrect

DO'S & DON'TS OF EFFECTIVE RULE MAKING

**Milton M. Motooka, Esq.
Motooka & Rosenberg**

DO'S & DON'TS OF EFFECTIVE RULE MAKING

Milton M. Motooka, Esq.

Motooka & Rosenberg

INTRODUCTION

The Board is the governing body of the Association:

Executive, Legislative & Judicial Branches all rolled into you. You establish the culture for the project – with great power comes great responsibility.

Rules are sometimes called covenants. House Rules are found in the project documents and vary among communities.

1) Rules & restrictions are designed:

- a. To enhance property values and the quality of life within the community.**
- b. Provide certainty & order – you know what you can expect when you purchase into the Association & likewise you know what is expected of you**
- c. Protect the freedom & safety of residents**

2) No association sets out to make controversial or vague rules, but occasionally it happens. Board members have a responsibility to listen to owners and review the rules periodically.

BEFORE DISCUSSING WHETHER A RULE IS LEGAL, IT SHOULD BE REMEMBERED THAT THERE ARE 3 SOURCES FOR RULES & RESTRICTIONS:

Restrictions that the developer wrote in the Declaration or Proprietary Lease

Restrictions added to the governing documents by owners amending the original governing documents.

Restrictions created by the Board:

House Rules – Careful – you cannot just create a house rule w/o the basic authority in either the Declaration or Bylaws:

Example: Board passed rule prohibiting rentals for less than 30 days – but no comparable provision in the Declaration or Bylaws – rule found to be unenforceable by the Court. In general, the courts recognized six criteria for determining whether a rule is valid:

a. Is it legal? 3 sources for restrictions;

RULE IS LEGAL IF :

it does not unreasonably restrict a constitutional right

Is consistent with the project documents & federal & state & local statutes

Does not exceed the scope of the Board's rule-making authority

b. Does it have a legitimate purpose?

RULE HAS A LEGITIMATE PURPOSE IF:

It relates to the operation and mission of the Association - rule must be appropriate for the Association – such as noise rules to insure tranquility in the project.

c. Is it reasonable?

RULE IS REASONABLE IF:

Fair & sensible

Not excessive or petty: Example rule requiring residents to obtain guest parking passes 30 days in advance is an example of an unreasonable rule. Most Associations don't require parking passes for guest parking but the owner must register the car so management knows what unit the owner of the car is visiting.

d. Is it fair?

RULE IS FAIR IF:

It does not single out or discriminate against a separate class or group of people to be treated differently without reason.

Example: Rule prohibiting tenants for using the recreation room is unfair. Tenants are not a sub-class of humans.

e. Is it enforceable? RULE IS ENFORCEABLE IF:

It can be applied uniformly, rather than selectively or arbitrarily.

Example: “No unattractive yard art will be placed in the front yards.” Attorney’s delight.

f. Is it clear? RULE IS CLEAR IF:

If it is stated in a way that eliminates ambiguity and confusion to comply with.

Example: Be practical – noise rule was based on not exceeding a certain decibel level – how do you enforce that? It is clear in setting a definite noise threshold but fails in terms of practicality of enforcement.

- 3) Key point: The best practice is to consult with your association’s attorney on the validity of rules, versus relying solely on your interpretation of these criteria.**

SIMPLE TEST: ASK YOURSELF, IS THIS SOMETHING DONALD TRUMP WOULD SUPPORT – IF SO, CONSULT WITH YOUR COUNSEL.

PROCEDURE FOR DEVELOPING RULES

- 1) Identify or confirm the community's authority to make a rule on the matter: Check your project documents to insure you have the authority to adopt the rule – when in doubt , consult w/your association attorney.**

RECOMMENDATION: Boards often wish to review & update their House Rules. They often submit their proposed revisions to us for our review and comment. It is the most economical way to insure that the amendments will be valid.

- 2) Evaluate the need for the rule: Ask – Why is this rule important – avoid knee-jerk reactions to situations – the legislature will often craft new laws because a vocal minority complains to them – don't be like the legislature – fewer rules the better – only enact rules that matter – people don't like to be over regulated.**

If there is a real need for the rule – check to insure that the rule does not already exist in the other governing documents.

- 3) Consider the immediate impact and long-term implications of adopting the rule. Consider how the owners and residents will react to the rule – communication is crucial – explain to the owners the need for the rule and why it was adopted.**

EXAMPLE: No feeding of feral cat rule – explained why the Board adopted it – due to the cats urinating and defecating all over the common elements and on the cars – ruining the surface of the cars.

4) Define the scope and write a draft of the proposed rule

Keep it simple & set forth the required steps to be followed.

Enforcement procedure for violations

Penalties for violations – fining system should set forth how citations will be handled, warnings, appeal, fines.

5) Verify that the rule is valid and enforceable – check the power source

6) Give notice of the proposed rule to the owners and residents and solicit their written comments – check your Bylaws to see steps necessary in adopting the rule

7) Vote on and approve the proposed rule at the next regularly scheduled board meeting

8) Give notice of the adopted rule to all owners and residents before enforcement begins – crucial step – unless the owners & residents know about the rule, how can they comply with it.

Risk Control & Insurance

Presented by:
Sue Savio, President
Insurance Associates, Inc.
April 8, 2017

Four Major Areas of Losses

- ▶ Loss resulting from damage to AOAO property
- ▶ Loss resulting from injury for which AOAO is liable
- ▶ Loss of AOAO funds
- ▶ Loss of income



Risk Control Techniques

- ▶ Assess your exposure to property loss
- ▶ Assess your exposure to liability losses
- ▶ Assess your exposure to misappropriation of funds
- ▶ Assess your exposure to loss of income



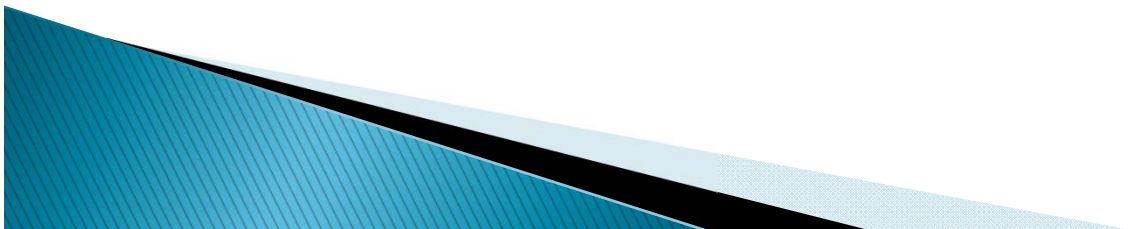
Who Insures What?

- ▶ Personal property and improvements are the responsibility of the owner
- ▶ Building *as originally built* is responsibility of the AOA



Insurance

- ▶ The policy is a contract between the insurance carrier and the association.
 - like other contracts as it is an agreement between two or more parties and is enforceable by law.
- ▶ Basic policy names the AOA and list the coverages and exclusions



Summary of Insurance

- ▶ Master property policy covers the building *as originally built* for:
 - ▶ Fire
 - ▶ Lightning
 - ▶ Windstorm
 - ▶ Vehicle Damage
 - ▶ Hail
 - ▶ Collapse
 - ▶ Water overflow sudden and accidental from a domestic plumbing system
- ▶ Master liability policy covers the common and limited common areas



Waikiki Condo, AOA
Insurance Summary
Date Prepared: December 8, 2008

Insurance Associates, Inc.
800 Bethel Street, Suite #200
Honolulu, HI 96813

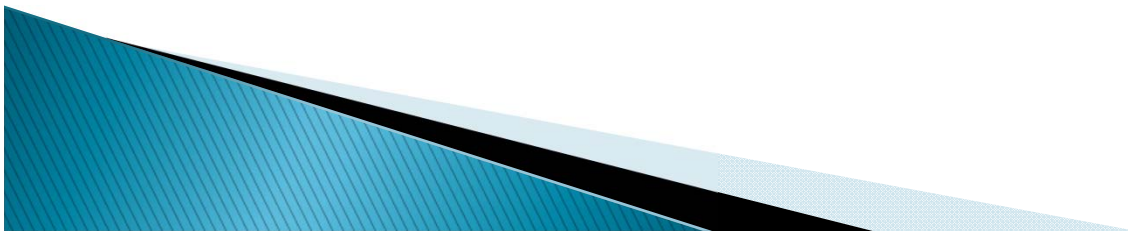
Agent: Sue Savio
Direct Line: 808-526-9267
Direct Fax: 808-792-5371
E-mail: sue@ia-hawaii.com

Coverage	Limits	Term	Policy Period	Annual Premium	Insurance Company	Comments
Property including Equipment Breakdown Building Replacement Cost Business Personal Property Building Ordinance/Increased Cost of Construction Deductible (all other perils excluding hurricane) Hurricane Deductible (2% of the building value)	\$ 149,273,275 \$ 100,000 \$ 5,000,000 \$ 5,000 \$ 2,987,465	Annual	12/10/08 – 12/10/09	\$ 129,674	First Insurance Company of Hawaii, Ltd. and Lloyd's of London	
Comprehensive General Liability General Aggregate Products and Completed Operations Aggregate Personal & Advertising Injury Each Occurrence Fire Damage (any one fire) Medical Expense (any one person) Hired/Non-Owned Automobile (occurrence)	\$ 2,000,000 Included \$ 1,000,000 \$ 1,000,000 \$ 100,000 \$ 5,000 \$ 1,000,000	Annual	12/10/08 – 12/10/09	\$ 13,315	First Insurance Company of Hawaii, Ltd.	
Commercial Umbrella Each Occurrence Liability Aggregate Limit Retained Limit	\$ 25,000,000 \$ 25,000,000 \$ 10,000	Annual	12/10/08 – 12/10/09	\$ 6,724	Great American Insurance Company	Provides coverage above the Directors' & Officers' Policy
Directors' and Officers' Liability Each Occurrence General Aggregate Deductible	\$ 2,000,000 \$ 2,000,000 \$ 2,500	Annual	12/10/08 – 12/10/09	\$ 2,041	Travelers Casualty and Surety Company of America	
Flood – Tower Building Building Coverage Contents Coverage Deductible Flood Insurance – Parking Building Building Coverage Contents Coverage Deductible	\$ 52,000,000 \$ 100,000 \$ 5,000 \$ 500,000 \$ 100,000 \$ 5,000	Annual Annual	01/16/09 – 01/16/10 01/24/09 – 01/24/10	\$ 22,828	First Insurance Company of Hawaii, Ltd.	
Fidelity Bond Deductible	\$ 110,000 \$ 1,000	Annual	12/10/08 – 12/10/09	\$ 268	First Insurance Company of Hawaii, Ltd.	
Workers' Compensation Bodily Injury (each accident) Bodily Injury (each employee) Bodily Injury (policy limit)	\$ 500,000 \$ 500,000 \$ 500,000	Annual	12/10/08 – 12/10/09	\$ 18,141	First Insurance Company of Hawaii, Ltd.	
Temporary Disability Insurance (TDI)	Statutory	Annual	Continuous until cancelled	Based on Payroll Audit	Hartford Life & Accident	

This summary is a brief outline of your insurance policies and is a matter of information only. It does not amend, extend or alter the coverage's afforded by the companies. You must refer to the provisions found in your policies for the details of your coverage's, terms, conditions and exclusions that apply.

HO6– Covers

- ▶ Personal property
- ▶ Improvements to the structure
- ▶ Loss of use/Loss of rental income
- ▶ Loss assessment
- ▶ Association deductible
- ▶ Personal liability



Conclusion

- ▶ Board Members owe a duty of ordinary care to the owners.
- ▶ This duty includes an obligation to act as reasonably prudent people in reducing the association's exposure to risk of loss.
- ▶ Board members can reduce the association's exposure to risk of loss by controlling the likelihood and extent of loss and by purchasing insurance.





2017 Calendar of Events

May 25 – Covenant Enforcement*

June 17 – Board Leadership Development Workshop (fka ABCs)*

July 20 – Legislative Update

August 24 – Dealing with the Dark Side – Criminal Elements in Associations

September 21 – iAssociations – Web Technology and Associations

October 19 – Why are They So Angry – homeowner concerns

This seminar or educational presentation is entirely or partly funded by funds from the Condominium Education Trust Fund (CETF), Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii for condominium unit owners whose associations are registered with the Real Estate Commission.

