PRESENT:

CONDORAMA

A Free Education Program for Condominium Owners

Topics

Condominium Insurance

Do’s and Don’ts of Association Contracts

Communications, Meetings and Volunteerism

Saturday, November 4, 2017
Program: 9:00 a.m. to 11:00 a.m.
State Capitol Auditorium
<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
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</thead>
<tbody>
<tr>
<td>8:30 a.m. – 9:00 a.m.</td>
<td>Registration</td>
</tr>
<tr>
<td>9:00 a.m. – 9:10 a.m.</td>
<td>Welcome and Introductions</td>
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<tr>
<td>9:10 a.m. – 9:40 a.m.</td>
<td>Do's &amp; Don'ts of Association Contracts – Lance Fujisaki, Esq.</td>
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<tr>
<td>9:40 a.m. – 10:10 a.m.</td>
<td>Communications, Meetings &amp; Volunteerism – Kanani Kaopua, PCAM</td>
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<tr>
<td>10:10 a.m. – 10:40 a.m.</td>
<td>Insurance – How Much is Enough – Sue Savio</td>
</tr>
<tr>
<td>10:40 a.m. – 10:55 a.m.</td>
<td>Questions &amp; Answers</td>
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<tr>
<td>10:55 a.m. – 11:00 a.m.</td>
<td>Evaluations &amp; Adjournment</td>
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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 are intended to provide general education and information and are not intended as 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.

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Speakers

Milton Motooka, Moderator, 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.

Lance S. Fujisaki, born and raised in Honolulu, received his Bachelor of Arts degree from the University of California, Berkeley, and his Juris Doctor degree from Hastings College of the Law. A partner at Anderson Lahne & Fujisaki LLP A Limited Liability Law Partnership, he has been a member of the Hawai`i State Bar Association and the American Bar Association since 1986 and is licensed to practice in all courts of the State of Hawai`i, as well as the U.S. District Court, District of Hawai`i. Much of his practice involves assisting community associations with contract negotiations and documentation for renovation projects.

Kanani Kaopua, PCAM® is Vice President and Sr. Property Manager at Hawaiian Properties, Ltd. with an extensive background in AOAO residential communities. She joined Hawaiian Properties as a Principal Account Executive for several large-scale master planned communities. She served as a Board/Developer liaison for residential, commercial, and resort developments across the island, and provided training and educational seminars for owners new to the association lifestyle. Public speaking and presentations highlighting Board responsibility, covenants enforcement, and creating a fiscally sound budget are among the many values she brings to Hawaiian Properties. Kanani is an honors graduate in Business Management from the University of Phoenix. She volunteers her time as a Court Appointed Special Advocate (CASA) for the State Judiciary. You may reach Kanani directly at 808-539-9501, or email kananik@hawaiianprop.com.

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.
Renovations, Governing Documents and Contracts

The discussion herein is general in nature and offered for informational purposes only. Nothing herein is intended to, nor shall it constitute, legal advice. Attendees should consult with their own Association attorney if they are seeking or are in need of legal advice. Depending upon the facts, circumstances, and situation, provisions or exceptions found in the law and the governing instruments, different from those discussed in this presentation, may apply.

Lance S. Fujisaki | Anderson Lahne & Fujisaki LLP A Limited Liability Law Partnership | 733 Bishop Street Suite 2301, Honolulu, Hawaii 96813, Ph. (808)697-6005
I. Repairs, Replacements, Alterations and Additions

A. What will be repaired or altered?

Three Categories of Components of Condominium Projects

<table>
<thead>
<tr>
<th>Components</th>
<th>Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Elements</td>
<td>Owners jointly</td>
</tr>
<tr>
<td>Limited Common</td>
<td>Owners jointly, subject to easement rights for individual owners</td>
</tr>
<tr>
<td>Elements</td>
<td></td>
</tr>
<tr>
<td>Apartments</td>
<td>Individual apartment owners</td>
</tr>
</tbody>
</table>

- A common problem in condominium documents is vagueness in the descriptions of the components of the project and whether they are common elements, limited common elements or part of the apartments, particularly exterior windows and doors.

- Sample provision:

  The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter or party walls or interior load-bearing walls, the floor and ceiling surrounding each apartment, or any pipes, wires, conduits, or other utility or service lines running through such apartments which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall be deemed to include all fixtures originally installed therein, the lanai air space, all the walls and partitions which are not load bearing within its perimeter or party walls, the inner decorated or finished surfaces of all walls, floors and ceilings, doors and door frames, windows and window frames and lanais.

Significance of Categories

- Determines whether maintenance, repair and replacement can be performed at common expense or expense of apartment owners
- Determines who must maintain, replace and repair
- Determines whether Board can borrow funds for maintenance, replacement and repair
- Affects approval requirements for alterations and additions
- Determines who must insure the component

Definition of Units, Limited Common Elements and Common Elements

- Your governing documents will control how various components are defined, but HRS Section 514B-35 may provide some help.

| HRS Section 514B-35 states in part, except as provided in the Declaration: |
|---------------------------------|--------------------------------------------------------------------------------|
| **Unit**                        | If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings, are a part of the common elements |
| **Common element**              | **Limited common element** |
|                                 | If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element appurtenant solely to that unit, |
| **Common element**              | and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements |
| **Unit**                        | all spaces, interior non-loadbearing partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; |
| **Limited common element**      | Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but are located outside the unit’s |


B. Who must approve the work?

HRS § 514B-140 – Five categories of work by owners:

<table>
<thead>
<tr>
<th>Description of Work</th>
<th>Approval Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work by owners that may jeopardize the soundness or safety of the property,</td>
<td>Prohibited</td>
</tr>
<tr>
<td>reduce the value thereof, or impair any easement, as reasonably determined by the</td>
<td></td>
</tr>
<tr>
<td>Board</td>
<td></td>
</tr>
<tr>
<td>Material addition or alteration, or excavate an additional basement or cellar</td>
<td>Written consent of sixty-seven per cent of the unit owners, the consent of all unit owners whose units or appurtenant limited common elements are directly affected, and the approval of the board, which shall not unreasonably withhold such approval</td>
</tr>
<tr>
<td>Proposed addition or alteration that the board reasonably determines could:</td>
<td>May be disapproved by the Board</td>
</tr>
<tr>
<td>1. jeopardize the soundness or safety of the property,</td>
<td></td>
</tr>
<tr>
<td>2. impair any easement, or</td>
<td></td>
</tr>
<tr>
<td>3. interfere with or deprive any nonconsenting owner of the use or enjoyment of any</td>
<td></td>
</tr>
<tr>
<td>part of the property</td>
<td></td>
</tr>
<tr>
<td>Nonmaterial additions to or alterations of the common elements or units, including,</td>
<td>Subject to the provisions of the declaration, approval only by the board, which shall not unreasonably withhold the approval, and such percentage, number, or group of unit owners as may be required by the declaration or bylaws</td>
</tr>
<tr>
<td>without limitation, additions to or alterations of a unit made within the unit or</td>
<td></td>
</tr>
<tr>
<td>within a limited common element appurtenant to and for the exclusive use of the</td>
<td></td>
</tr>
<tr>
<td>unit</td>
<td></td>
</tr>
</tbody>
</table>
## Description of Work

<table>
<thead>
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<th>Approval Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Installation of solar energy devices on single-family residential dwellings or townhouses</td>
<td>Approval pursuant to the provisions in HRS Section 196-7</td>
</tr>
</tbody>
</table>

“Nonmaterial additions and alterations”, means an addition to or alteration of the common elements or a unit that does not:

| 1. jeopardize the soundness or safety of the property, |
| 2. reduce the value thereof, |
| 3. impair any easement, |
| 4. detract from the appearance of the project, |
| 5. interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, |
| 6. or directly affect any nonconsenting owner. |

### HRS § 514B-38 – Changes in Use of Common Elements:

- HRS § 514B-38, which is not retroactive, provides some flexibility in changing uses of common elements.

- Changing common element open spaces or landscaped spaces to other uses shall not require an amendment to the declaration.

- Minor additions to or alterations of the common elements for the benefit of individual units are permitted if the additions or alterations can be accomplished without substantial impact on the interests of other owners in the common elements, as reasonably determined by the board.

### HRS § 514B-140 – Telecommunications Equipment and Solar and Wind Energy Devices:

- Solar energy devices shall be allowed on single-family residential dwellings and townhouses pursuant to HRS § 196-7.

- The Board has the authority to install, or cause the installation of telecommunications equipment.

- The Board has the authority to install, or lease or license common elements for the installation of solar energy devices and wind energy devices on the common elements. Installations upon limited common elements require the
Approval Requirements in Governing Documents

- Governing documents may set different approval requirements for:
  1. Alterations proposed by owners
  2. Alterations proposed by the association

- Work that will be materially different from the condo map will usually require a declaration amendment approved by owners

- Most governing instruments require at least majority owner approval for any additions or structural alterations to or exterior changes of any common elements made by the Association

C. Who pays for the work?

- Owners are usually responsible for repairs and alterations to apartments
- Associations are usually responsible for repairs and alterations to common elements
- Check your governing documents to determine who pays for repairs and maintenance of limited common elements
- Governing documents may be amended to permit the association to repair and maintain portions of the apartments and limited common elements at the respective owner’s expense, or at common expense

D. How will you pay for the work?

- Regular or special assessments
- Replacement reserves
- Borrowing. Under HRS § 514B-105(e):
  - requires 50% owner vote or written consent
- for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or
- the making of any additions, alterations, and improvements thereto
- absent an amendment, you may not borrow to repair apartments
- Your governing documents may impose restrictions on spending
- Your governing documents may require amendments before proceeding with major renovation projects

II. Governing Authorities

Frequently Cited Authorities

1. HRS Chapter 421J or 514B Planned communities
2. HRS Chapter 414D Nonprofit corporations
3. HRS Chapter 197 Energy resources
4. HRS Chapter 515 Discrimination
5. Declaration
6. By-Laws
7. House Rules
8. Design Committee Rules

General Tips for Reading Chapter 514B

1. Most provisions in Chapter 514B apply retroactively to condominiums created before July 1, 2006
2. Some provisions require the vote or written consent of a majority of the owners before they become effective for condominiums created before July 1, 2006
General Tips for Reading Chapter 514B

3. Look out for provisions that use phrases such as “subject to” or “unless otherwise provided in” the declaration or by-laws

4. HRS § 514B-22(2) provides that retroactive provisions shall not invalidate existing provisions of the declaration, bylaws, condominium map, or other constituent documents if to do so would be an unreasonable impairment of contract

5. Chapter 514A is alive and well (through January 1, 2019, when it will be repealed) and certain sections apply to condominiums created before July 1, 2006

III. CLOSING THOUGHTS

Always consult a community association attorney when dealing with issues of any significance to your association.

Laws regulating and affecting community associations change frequently and may be difficult to interpret and apply.

Even seasoned community association attorneys may be challenged by the issues faced by community associations.

Failing to deal with issues up front may lead to vexing and expensive problems in the future.
WHY ARE THEY SO ANGRY?
PRESENTED BY: KANANI KAOPUA, PCAM

TOPICS TO BE DISCUSSED:
➢ TRANSPARENCY
➢ EXECUTIVE SESSION
➢ COMMUNICATIONS
➢ COMMITTEES
EXECUTIVE SESSION

**514B-125** Executive Sessions may now be held to protect attorney-client privilege of the association and to protect the interest of the association while negotiating contracts, leases, and other commercial transactions.

- Personnel Matters
- Pending/Ongoing Litigation
- Matters that involve attorney-client privilege
- Matters that require the protection of contract, lease, etc., negotiations

REMEMBER:

- The nature of business to be considered in executive session must first be announced in open session.
- Owners are not entitled to be present in executive sessions.

PERSONNEL:

- Definition:

  “People employed in an organization or engaged in an organized undertaking...”
COMMUNICATIONS: Newsletters

Maximize newsletters to include at least the following:

- Board Members’ Names and Positions (contact information is optional)
- Upcoming Community Events
- Community Phone List (site office, emergency contact, HECO, BWS, Cable, etc.)
- Articles on “Hot/Relevant Topics”
- Volunteer Corner
- Feature Item
COMMUNICATIONS: COVENANTS ENFORCEMENT

- Owner Buy-In
- Board Responsibility
- Be Fair & Be Consistent
- Clear and Responsive
March 20, 2015

HOPPY HALLOW
4567 Paradise Lane #101
Albany, NY 12208

RE: Paradise Community Association 4567 Paradise Lane Lot# 101

Dear HOPPY HALLOW,

This is a FIRST WARNING. You should already know the rules, since you have lived here over 20 years. We hold everyone that inspectors were coming, and yet you still remain in violation. Well, too bad.

Inspection Date: Sometime in March
First Warning: Dust up cars all over your lawn up yard
What to do: Clean up or be fined.

If you have any questions, you know how to reach me.

Sincerely,

Management

March 20, 2015

HOPPY HALLOW
4567 Paradise Lane #101
Albany, NY 12208

RE: Paradise Community Association 4567 Paradise Lane Lot# 101

House Rule Violation: Friendly Reminder

Dear HOPPY HALLOW,

This is a friendly reminder being sent to you on behalf of the Paradise Community Association Board of Directors. A technician was present on 4/15/15 and notified that the front yard needs to be mowed. This is your final notice. Please mow your lawn by 4/29/15. If this violation is not corrected within this timeframe, you will receive a fine.

Sincerely,

Savard Kravitz
Property Manager
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Managing Agent for PARADISE COMMUNITY ASSOCIATION

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COMMITTEES: Encourage Owner Participation

- Communicate the need
- Communicate the roles and responsibilities
- Communicate the expectations
- Let them communicate

TAKEAWAYS:

- Announce the reason(s) for adjourning into executive session (keep it general)
- Board Members are PERSONNEL too
- Use newsletters as a tool to communicate and set the tone for your association
- Be the example of good behavior, not bad behavior
- No response or unnecessary delays in response may lead to liability
- Encourage owners to join committees as a way to get their feet wet
Homeowners Insurance
for Condo Unit Owners:
The Mighty HO6

Presented by:
Sue Savio, President
Insurance Associates, Inc.
October 2017
Two Policies Necessary for Every Unit Owner

- **Master Policy:** paid for in your maintenance fees
- **HO6:** paid for by each owner to the insurance company of your choice.
The Master Policy

- Mandatory per the bylaws of 514A and 514B

- Covers the building *as originally built* at today’s replacement value.
- Is paid for in your maintenance fees.
- Has a deductible *per claim*—*not per unit*.

- Made up of two coverages
  - **Property**
    - covers all AOAO owned property “as originally built”
  - **Liability**
    - covers common & limited common areas
    - no liability coverage for the interior of any unit
HO6 and HO4

- **HO6 (Owner’s)** Covers what the master does **not**:
  1. Upgrades/Improvements
  2. Contents
  3. AOAO Deductible
  4. Loss Assessment
  5. Loss of Use
  6. Personal Liability

- **HO4 (Renter’s)** covers:
  1. Contents
  2. Loss of Use
  3. Personal Liability.
Dwelling/Building

- Upgrades/Improvements
- AOAO deductible
Contents/Personal Property

- Your “stuff”
  - Furniture
  - Clothes
  - Bedding
  - Pots and Pans
  - Dishes
  - Electronics
    - TV, Computer, Cell Phone, Tablet, etc

- RCV vs ACV
Loss of Use/Loss of Rents

- Pays the cost to live elsewhere while your unit is being repaired from an insured loss.
- Pay the loss of rents if you can’t rent your unit due to an insured loss.
- Need robust limits.
- Assume you or your tenant will be out for at least one year.
Loss Assessment

- Used by some carriers to pay the AOAO deductible.

- Normally used only when the whole association is being assessed for an uninsured or underinsured loss.

- Recommend a limit of at least the AOAO deductible.
Personal Liability

- You're covered for certain bodily injuries and property damages suffered by others in connection with your property.
- For example, you'll probably be covered if:
  - Your guest is injured when she slips and falls on your carpet
  - Your guest sits on your chair with a bad leg, falls and hurts her back
  - A neighbor gets bitten by your dog, etc.

- Minimum coverage should be $300,000
  - Most HO6 insurers now offer up to $1,000,000
Conclusion – The Mighty HO6 & HO4

- The **HO6 (Owner’s Insurance)** is small in premium
  - Large in coverage if you buy realistic limits
  - Adequate limits are **your** responsibility to purchase.

- The **HO4 (Renter’s Insurance)** is small in premium
  - Large in coverage if you buy realistic limits

- Remember mortgages, maintenance fees and rent are still due whether you can live in your unit or not.

  “**Premium is what you pay, not what you buy.**”
This free educational presentation was brought to you by the Hawaii Real Estate Commission (Commission) and the Community Associations Institute Hawaii Chapter (CAI Hawaii).

The Condominium Education Trust Fund subsidizes a select number of CAI Hawaii condominium educational events procured by the Commission.

CAI Hawaii is an organization that serves the educational, business, and networking needs of community associations in Hawaii. CAI Hawaii may be contacted at (808) 488-1133 or visit their website at www.caihawaii.org.

Please sign up for condominium educational emails from the Real Estate Commission at http://cca.hawaii.gov/reb/subscribe or contact the Real Estate Commission’s condominium hotline at (808) 586-2644, between the hours of 7:45 a.m. and 4:30 p.m., Hawaiian Standard Time, Monday through Friday.