



**Real Estate Commission &  
CAI Hawaii**

**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**



**AGENDA**  
**CONDORAMA**  
November 4, 2017

8:30 a.m. – 9:00 a.m.	Registration
9:00 a.m. – 9:10 a.m.	Welcome and Introductions
9:10 a.m. – 9:40 a.m.	Do's & Don'ts of Association Contracts – Lance Fujisaki, Esq.
9:40 a.m. – 10:10 a.m.	Communications, Meetings & Volunteerism – Kanani Kaopua, PCAM
10:10 a.m. – 10:40 a.m.	Insurance – How Much is Enough – Sue Savio
10:40 a.m. – 10:55 a.m.	Questions & Answers
10:55 a.m. – 11:00 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 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 AOA 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](mailto: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, Hawai'i 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

Components	Ownership
Common Elements	Owners jointly
Limited Common Elements	Owners jointly, subject to easement rights for individual owners
Apartments	Individual apartment owners

- 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.

Brown v. Brent, Nos. CAAP–14–0001379, CAAP–14–0001381, CAAP–14–0001384, slip op. at 7, 138 Hawai'i 140, 377 P.3d 1058 (Haw. June 17, 2016) (summary disposition order).

## 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 <b>unit</b> ,
Common element	and all other portions of the walls, floors, or ceilings, are a part of the <b>common elements</b>
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 <b>limited common element</b> 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 <b>common elements</b>
Unit	all spaces, interior non-loadbearing partitions, and other fixtures and improvements within the boundaries of a unit are a part of the <b>unit</b> ;
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



	boundaries, are <b>limited common elements</b> appurtenant exclusively to that unit
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## B. Who must approve the work?

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

Description of Work	Approval Requirements
Work by owners that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, as reasonably determined by the Board	Prohibited
Material addition or alteration, or excavate an additional basement or cellar	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
Proposed addition or alteration that the board reasonably determines could: <ol style="list-style-type: none"> <li>1. jeopardize the soundness or safety of the property,</li> <li>2. impair any easement, or</li> <li>3. interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the property</li> </ol>	May be disapproved by the Board
Nonmaterial additions to or alterations of the common elements or units, including, without limitation, additions to or alterations of a unit made within the unit or within a limited common element appurtenant to and for the exclusive use of the unit	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



Description of Work	Approval Requirements
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**Installation of solar energy devices on single-family residential dwellings or townhouses**

Approval pursuant to the provisions in HRS Section 196-7

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

### **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

consent of the owner of the unit to which the limited common element is appurtenant.

## **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<br>Condominiums |
| 2. HRS Chapter 414D   | Nonprofit corporations              |
| 3. HRS Chapter 197  | Energy resources                    |
| 4. HRS Chapter 515  | Discrimination                      |
| 5. Declaration  |                                     |
| 4. By-Laws  |                                     |
| 5. House Rules  |                                     |
| 6. Design Committee Rules   |                                     |
| 7. Robert's Rules of Order<br>Newly Revised (11 <sup>th</sup> ed) |                                     |

### 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.**



**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



### The Board's Voice



**NO POOPING!!! DO NOT LET YOUR DOG POOP ON OTHER PEOPLE'S YARDS. IT IS RUDE. IF YOUR DOG IS CAUGHT, YOU WILL BE IN VIOLATION OF HOUSE RULE 1.1 SECTION 2. VIOLATORS WILL RECEIVE A \$500.00 FINE.**

**Last Friday  
OUTDOOR  
MOVIE NIGHT**

BRING YOUR OWN CHAIRS AND YOUR OWN FOOD. DO NOT ENCROACH ON OTHER SPACES!


**BOD MEETING**

Next week Friday at 6:30  
Same place as last meeting.

Owners are to limit their speech and not hold others hostage with long-winded soap box speeches!

Design Review Meetings

THIS FRIDAY 10/15/17  
Applications are NOT accepted after 10/1/2017.



ALL DRIVERS IN THE COMMUNITY WILL RECEIVE A TICKET FOR SPEEDING NO EXCEPTIONS. WE ARE WORKING WITH THE POLICE DEPARTMENT AND HAVE STRONGLY URGED THEM TO TICKET ANY VEHICLES GOING OVER 5 MPH.

OUR SAFETY WILL NOT BE IGNORED.

SIGNS WILL BE WAIVED BY HOMEOWNERS IN THE CORNERS OF PARADISE AND ALOHA LANE DO NOT HONK AT THEM AS IT IS A DISTRACTION.

SLOW THE HECK DOWN!!!!!!!!!!!!

**BOARD OF DIRECTORS**

Duane Jonson  
Channing Tatum  
Beccassy Knowls  
Jonathan Cena  
Nikole Bellah  
RESIDENT MANAGER  
Gene Kelley  
PROPERTY MANAGER  
Oprah Windfree


**EMERGENCY**

POLICE, FIRE, AMBULANCE  
911

TRASH/BULKY

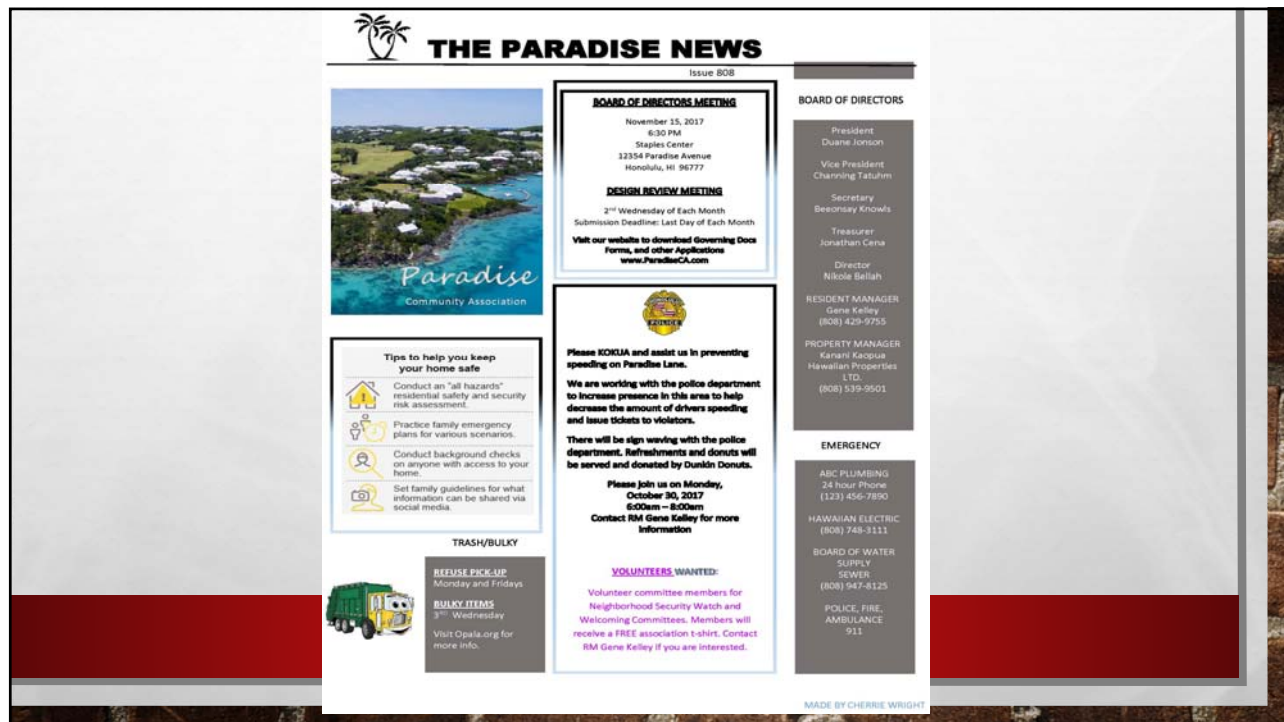
**REFUSE PICK-UP**  
Monday and Fridays.

**BULKY ITEMS**  
Contact the City



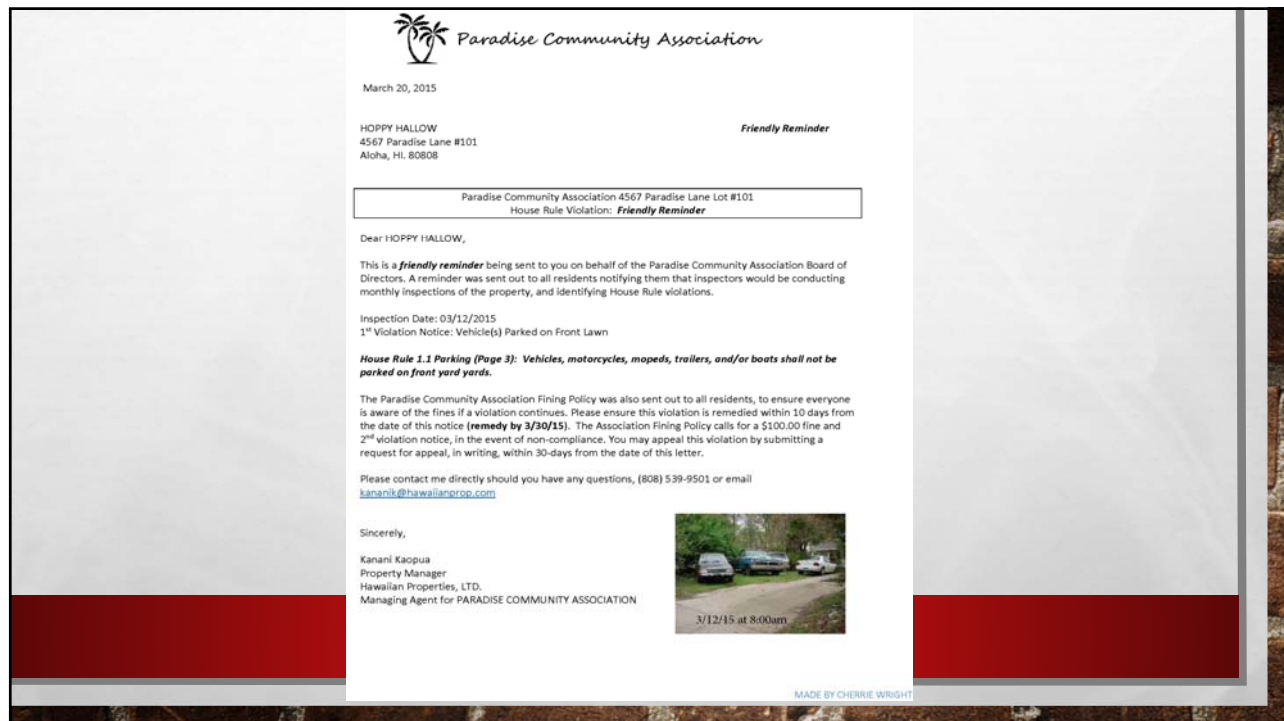
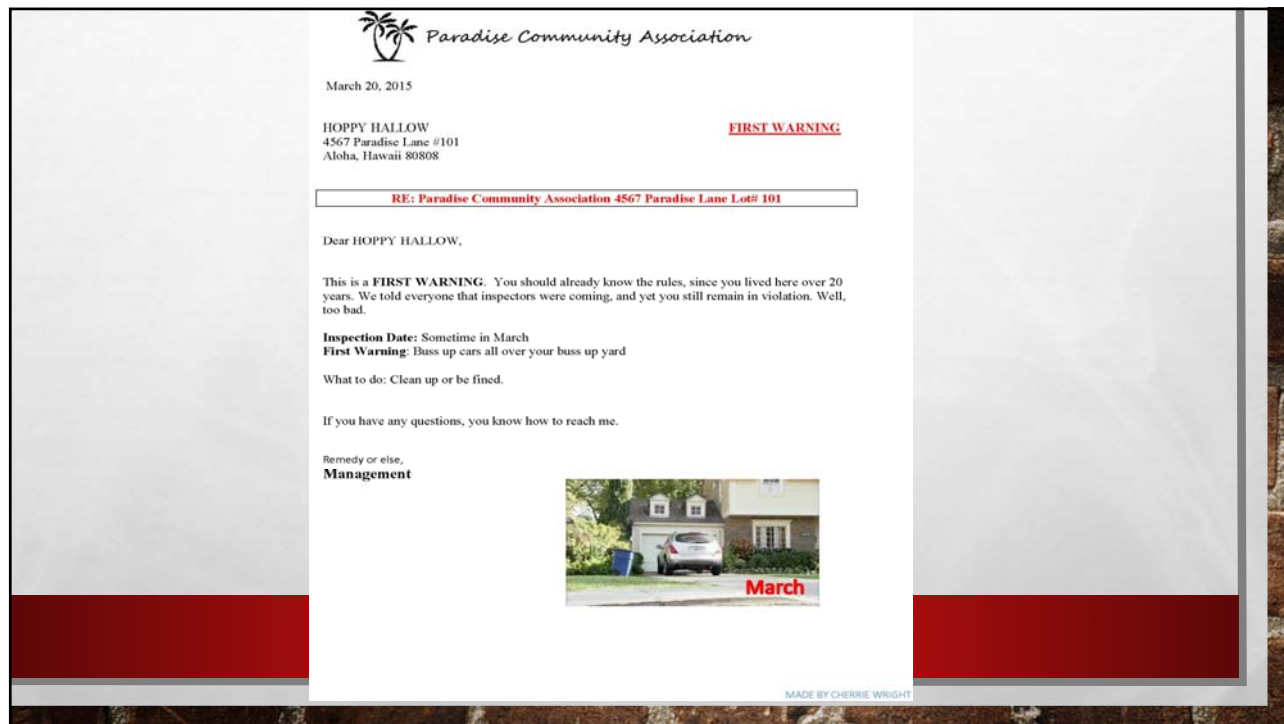
MADE BY CHERRIE WRIGHT





## COMMUNICATIONS: COVENANTS ENFORCEMENT

- Owner Buy-In
- Board Responsibility
- Be Fair & Be Consistent
- Clear and Responsive



## 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 AOA 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. AOA/O 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
- AOA 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 AOA deductible.
- Normally used only when the whole association is being assessed for an uninsured or underinsured loss.
- Recommend a limit of at least the AOA 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](http://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.