



Real Estate Commission &  
CAI Hawaii

PRESENT:

# CONDORAMA

A **Free** Education Program for Condominium Owners

## Topics Include:

Rights & Duties of Directors and Owners

Do's and Don'ts of Effective Meetings

Operating Budget and Reserves

Risk Control and Insurance



**Saturday, April 7, 2018**  
**Program: 9:00 a.m. to 11:00 a.m.**  
**State Capitol Auditorium**



**AGENDA**  
**CONDORAMA**  
April 7, 2018

8:30 a.m. – 9:00 a.m.	Registration
9:00 a.m. – 9:05 a.m.	Welcome and Introductions
9:05 a.m. – 9:30 a.m.	Rights and Duties of Directors and Owners – Carol Rosenberg, Esq.
9:30 a.m. – 9:55 a.m.	Do's and Don'ts of Effective Meetings – Rachel Glanstein, Registered Parliamentarian
9:55 a.m. – 10:20 a.m.	Operating Budget and Reserves – Jonathan Billings
10:20 a.m. – 10:45 a.m.	Risk Control and Insurance – Sue Savio
10:45 a.m. – 11:00 a.m.	Questions & Answers
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.***

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## Speakers

**Carol Rosenberg** is a Partner in the firm of Motooka & Rosenberg. She began her career as a civil litigator, but now focuses almost exclusively on representing condominium and community associations. Carol's practice involves helping association clients with all issues related to their operations, including general counsel, collections, and litigation for covenant enforcement and disputes with owners and vendors. She is a member of the Board of Directors of the Community Association Institute – Hawaii Chapter, currently serving as President and Co-Chair of the Programs Committee. Carol received the Hoku Award from the CAI Hawaii Chapter in 2016 in recognition of her outstanding leadership skills and interest in being a future leader with CAI Hawaii. She can be reached at (808) 532-7244; email [carol@myhawaiiilaw.com](mailto:carol@myhawaiiilaw.com).

**Rachel Glanstein, PRP** is the youngest Professional Registered Parliamentarian in the State of Hawaii. She has been a member of the National Association of Parliamentarians since 1999. She has served as either a parliamentarian or a professional presiding officer at over 300 meetings since 2004. Rachel's parliamentary specialty is in the area of condominium and community associations. She has consulted with various law firms, providing them with parliamentary terminology to protect their client's procedural rights as well as to ensure that meetings are conducted fairly.

**Jonathan Billings** is the Vice President of Operations of Touchstone Properties, Ltd. He became a member of the National Association of Parliamentarians in 2010, was awarded "Property Manager of the Year" in 2011 by the Resident Manager Association, and received the Hoku Award from CAI in 2014. Jonathan holds a Reserve Specialist designation and his PCAM® designation through CAI. Jonathan has been a frequent speaker at CAI seminars and currently serves on CAI Hawaii's Board of Directors. He has a Bachelor's of Science degree in Urban, Rural, & Environmental Planning and is fluent in Portuguese and conversational Spanish. Jonathan can be contacted by phone at: (808) 561-1429 or via email at: [jonathan@touchstoneproperties-hawaii.com](mailto:jonathan@touchstoneproperties-hawaii.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 750 community associations throughout Hawaii. Ms. Savio has served as President of the Hawaii Independent Insurance Agents Association (HIIA), is a past President and past Treasurer of Community Associations Institute (CAI) Hawaii, and is currently President-Elect on CAI Hawaii's Board of Directors. She was awarded the Gourley Award for distinguished service to CAI Hawaii. She currently serves on the boards of three condominium associations. You may reach her at (808) 526-9271 or by e-mail at [sue@insuringhawaii.com](mailto:sue@insuringhawaii.com).



# ***Rights & Duties Of Directors and Owners***

**Carol A.L. Rosenberg, Esq.  
Motooka & Rosenberg, LLC**

At the root of many of the disputes between owners and Boards of Directors is a fundamental misunderstanding of the rights and responsibilities owners and directors are entitled to. ***The following is not meant to be an all-inclusive list of the rights and responsibilities of owners and directors, but should provide a general guide for condominium Boards and owners.*** The provisions may vary for co-ops and planned community associations.

## **Owners' Rights**

- 1. Owners have the right to be treated fairly and with respect by the Board and the Association management.**
- 2. Owners may attend and participate in Board meetings, but the participation may be limited by meeting rules and/or if a majority of a quorum of the Board votes otherwise. Owners may not attend or participate in executive sessions.**
- 3. Owners are entitled to review the following records:**
  - a. Audit – If requested, the Board must send an owner a copy of the audit.**
  - b. Budget – the Board must adopt and distribute an annual budget to the owners.**
  - c. Contracts – must be available for review by owners.**
  - d. Financial Records, ledgers, invoices and delinquencies of 90 days or more must be available for review. The association's most current financial statement must be provided to any unit owner at no cost or on 24-hour loan at a convenient location designated by the Board.**
  - e. Insurance Policies – must be available for examination by owners.**
  - f. Association Minutes – shall be approved at the next regular meeting or by the board, within sixty (60) days after the**

meeting, if authorized by the owners at the annual meeting. If the minutes are approved by the Board, owners shall be given a copy of the approved minutes or notified of their availability within thirty (30) days after approval. Minutes of all meetings shall be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes shall be available within sixty (60) days after the meeting. Owners shall be allowed to offer corrections to the minutes at an association meeting.

- g. **Board Minutes** – shall be approved no later than the second succeeding regular meeting, shall be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes shall be available within thirty (30) days after the meeting. Minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session. The minutes of previous and current years, once approved, must be made available to an owner at no cost or on 24-hour loan at a convenient location at the project determined by the Board or transmitted to an owner within 15 days of receipt of the request and a reasonable fee for administrative costs associated with handling the request may be charged to the owner making the request.
- h. **Owners list** – the Board, managing agent or resident manager is charged with keeping an accurate and current list of members of the Association and their current addresses, and the names and addresses of vendors under an agreement of sale. The list shall be made available, at cost, to any owner requesting it who furnishes an affidavit which states that:

  - i. The list will only be used personally and only for the purpose of soliciting votes or proxies or for providing information to other owners with respect to association matters; and
  - ii. Shall not be used by the owner or furnished to anyone else for any other purpose.
- i. **Proxies** - after an Association meeting (not earlier) owners may examine proxies, tally sheets, owners' check-in lists and the certificate of election, if the request to examine the documents is made within thirty (30) days after the Association meeting. The Board may require the owner to furnish an affidavit stating that information is requested in good faith for the protection of the interest of the Association

or its members or both, and Owners shall pay for administrative costs in excess of 8 hours per year.

- j. Declaration, bylaws, house rules, sample original conveyance document, all public reports and any amendments to the foregoing documents must be kept at the managing agent's office and provided to owners and others at a reasonable charge.
  - k. 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.
  - l. Financial and other records needed to comply with requests for information and disclosures related to the resale of units.
  - m. All executed management agreements.
  - n. Copy of any contract, written job description and compensation between the association and any person or entity retained by the association to manage the operation of the property on-site, provided that certain information may be redacted.
4. Owners may elect new directors or recall directors who are not fulfilling their obligations.

#### **Owners' Responsibilities**

- 1. Owners should treat the Directors, Association management, Association employees and vendors fairly and with respect.
- 2. Owners should read and comply with the governing documents.
- 3. Owners should pay Association common expenses and special assessments.
- 4. Owners should attend and vote in Association meetings.
- 5. Owners should insure that their tenants are provided with copies of the governing documents so they can comply with the requirements.

## **Board's Rights**

- 1. Directors have the right to expect owners and residents to know and comply with the Association's governing documents.**
- 2. Directors have the right to expect owners to meet their financial obligations.**
- 3. Directors have the right to be treated fairly and with respect.**
- 4. Directors have the right to expect support and constructive input from the owners and residents.**
- 5. Directors have the right to their privacy at home.**
- 6. Directors have the right to take advantage of educational opportunities to better serve the Association. The Association budget should contain the educational expenses as a separate line item.**

## **Board's Duties**

- 1. Directors are tasked with running the Association. They are often vested with the combined powers of the executive, legislative and judiciary branches of government. It is important that these powers are exercised wisely.**
- 2. Directors owe a fiduciary duty to the Association. Although this is a statutory requirement, the statute does not define what a fiduciary duty is. Essentially, the Directors must act in good faith and put the interest of the owners ahead of their own. The fiduciary duty includes the duty of diligence, duty of good faith, duty of loyalty and the duty of obedience.**
- 3. Directors are often judged using the Business Judgment Rule, which is based on how an ordinarily careful or reasonable person would act in a like situation. In order for anyone to challenge the actions of the Board, they are required to demonstrate that the director:**
  - a. Failed to act in good faith**
  - b. Failed to act in the manner he reasonably believed to be in the best interests of the Association**



- c. Failed to exercise the care which an ordinarily careful person in a similar position would use in a similar situation**
- 4. Directors should conduct open meetings and encourage owners' input.**
- 5. Directors should provide the records owners are entitled to review.**
- 6. Directors should adopt reasonable financial controls. They are tasked with collecting all assessments from owners and when necessary proceed with collection actions.**
- 7. Directors should, whenever possible, solicit multiple bids and check into the record of the contractors to make sure they are properly licensed and to determine whether they have complaints filed against them by previous clients. Be sure to hire only licensed contractors.**
- 8. Directors of associations with 20 or more units must have an annual audit and an unannounced cash balance verification done. Copies of the audit should be made available to all owners.**
- 9. Directors through the Board must collect adequate reserves. They must annually collect a minimum of 50% of the amount the association reserve study shows is required or 100% of the amount if the Board is using the "cash flow" method of calculating reserves.**
- 10. Directors should invest Association funds pursuant to the requirements set forth in the statute. As directors, your primary objective should be the security of the funds as opposed to the yield.**
- 11. Directors should check on the insurance companies submitting bids to make sure that they are highly rated – again, saving on premiums with a company unable to pay off on claims is unacceptable.**
- 12. Directors should disclose any conflicts of interest and not vote on issues in which they have a conflict of interest.**



# Do's and Don'ts of Effective Meetings

Condorama

April 7, 2018

By Rachel M. Glanstein, PRP

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## Do's and Don'ts of Effective Meetings

- Topics covered:
  - Role of the Parliamentarian
  - General Issues Related to Meetings
  - Difficult Meetings
  - Warning Signs
  - Suggested Preparation
- Please hold questions to the Q&A session at the end of the seminar

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## Role of the Parliamentarian

- Definition
- Original Role as Advisor
- Evolution
  - Sword
  - Shield
  - Peacemaker
  - Pacemaker

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## General Issues Related to Meetings

- Properly Called
- Quorum
- Bylaw Requirements
- Reports
- Elections
- Minutes

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## Difficult Meetings

- What Makes a Meeting “Difficult”?
  - Developer Issues
  - Board & Member Authority
  - Personal Issues
  - Suggestions for Alleviation
    - Professional assistance
    - Open communication
    - Town hall style meetings

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## Warning Signs

- Dissident Groups
- Social Media
- Requests for Mailing Lists
- Petitions
- Proxy Solicitation
- Board Tyranny

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### Suggested Preparation

- Review State Law & Documents
- Attorney Review of Notice & Proxy
- Advanced Preparation
- Nominees & Election
- Ballot Security
- Meeting Security

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### Conclusion

- The goal is to have effective meetings (while still following the rules)
- Pay attention to warning signs
- Prepare in advance
- Mahalo!

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# Operating Budget and Reserve Study

JONATHAN BILLINGS, RS, PCAM, (RA)  
TOUCHSTONE PROPERTIES, LTD.

# BUDGET OBLIGATIONS

- ✗ Obligations defined in HRS 514B, & Hawaii Administrative Rules Chapter 6,16-107
- ✗ Governing Documents
- ✗ Budget must be prepared annually
- ✗ Budget must be distributed to all owners annually



# MINIMUM BUDGET DISCLOSURES

- ✗ Estimated revenue and expenses
- ✗ Prepared using Cash or Accrual Method of Accounting
- ✗ Total Replacement Reserves
- ✗ Estimated Replacement Reserves (ERR) or annual contributions to maintain property based on a Reserve Study
- ✗ General statement explaining how the replacement reserves are computed
- ✗ Percent Funded or Cash Flow Method used to calculate the reserve contributions.
- ✗ ZERO BASED BUDGET.

# START EARLY

- ✗ Budget Committee
- ✗ Work closely with your Community Manager
- ✗ Review Historical Information
- ✗ Review Contracts for Renewal Clauses –
  - Cable/Internet - 5 years
  - Elevator – 5 years
  - Refuse - 3 to 5 years
  - Landscaping - Annually
  - Mechanical Systems - varies

# RESERVE STUDY

A Reserve Study is:

- ✗ An essential part of the Association's annual budget.
- ✗ An estimated financial forecast of future funds required to maintain the capital components of the project.
- ✗ Road Map/Long Term Planning Tool

# RESERVE STUDY

Complete cost of running the Association.

1. Which components belong to the Association?
2. When will the components need replacement?
3. How much will it cost to repair or replace the components?

# WHY IS A RESERVE STUDY IMPORTANT?

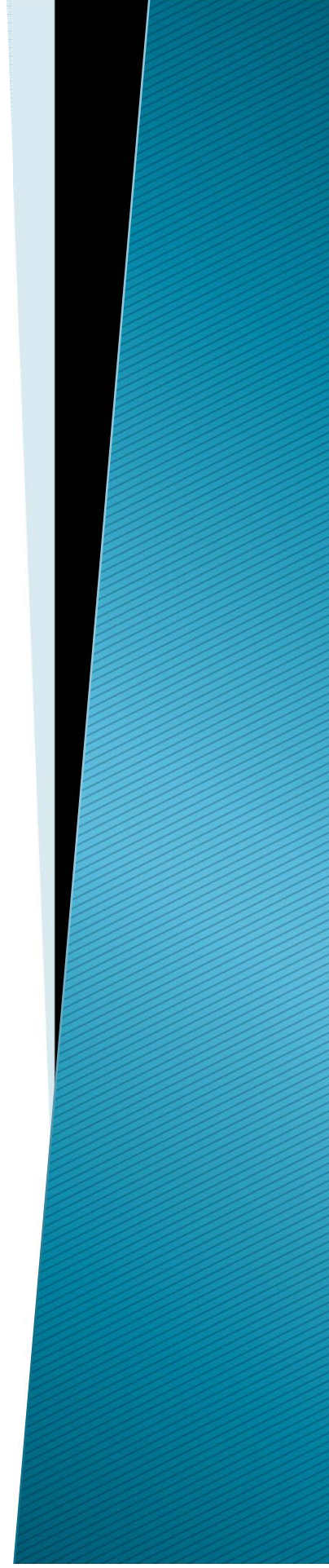
A Reserve Study –

- ✗ Needed to complete the operating budget.
- ✗ Will affect the ability to obtain new or refinance mortgages.
- ✗ Will affect HUD/FHA Financing.
- ✗ Impact maintenance fees and potential special assessments.
- ✗ Minimize chance of Litigation.

# OTHER HAWAII LEGAL NOTABLES

- ✗ The Reserve Funding method shall not be used to circumvent the contributions required in the reserve study.
- ✗ You must define and disclose budgeted contributions. You cannot simply use left over cash flow. Is there a line item on the financial statement?
- ✗ If the BOD collects LESS than 100% of the contributions, it must be PROMINENTLY disclosed.
- ✗ The Reserve Funding Plan cannot reflect FUTURE loans or assessments. Look at the Projection!

# Risk Control & Insurance



# Four Major Areas of Losses

- ▶ Loss resulting from damage to AOA property
- ▶ Loss resulting from injury for which AOA is liable
- ▶ Loss of AOA 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 built is responsibility of the AOA



# Insurance

- ▶ The policy is a contract between the insurance carrier and the association. It is 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
<b>Property including Equipment Breakdown</b>						
Building Replacement Cost	\$ 149,273,275	Annual	12/10/08 – 12/10/09	\$ 129,674	First Insurance Company of Hawaii, Ltd. and Lloyd's of London	
Business Personal Property	\$ 100,000					
Building Ordinance/Increased Cost of Construction	\$ 5,000,000					
Deductible (all other perils excluding hurricane)	\$ 5,000					
Hurricane Deductible (2% of the building value)	\$ 2,987,465					
<b>Comprehensive General Liability</b>						
General Aggregate	\$ 2,000,000	Annual	12/10/08 – 12/10/09	\$ 13,315	First Insurance Company of Hawaii, Ltd.	
Products and Completed Operations Aggregate	Included					
Personal & Advertising Injury	\$ 1,000,000					
Each Occurrence	\$ 1,000,000					
Fire Damage (any one fire)	\$ 100,000					
Medical Expense (any one person)	\$ 5,000					
Hired/Non-Owned Automobile (occurrence)	\$ 1,000,000					
<b>Commercial Umbrella</b>						
Each Occurrence	\$ 25,000,000	Annual	12/10/08 – 12/10/09	\$ 6,724	Great American Insurance Company	Provides coverage above the Directors' & Officers' Policy
Liability Aggregate Limit	\$ 25,000,000					
Retained Limit	\$ 10,000					
<b>Directors' and Officers' Liability</b>						
Each Occurrence	\$ 2,000,000	Annual	12/10/08 – 12/10/09	\$ 2,041	Travelers Casualty and Surety Company of America	
General Aggregate	\$ 2,000,000					
Deductible	\$ 2,500					
<b>Flood – Tower Building</b>						
Building Coverage	\$ 52,000,000	Annual	01/16/09 – 01/16/10	\$ 22,828	First Insurance Company of Hawaii, Ltd.	
Contents Coverage	\$ 100,000					
Deductible	\$ 5,000	Annual	01/24/09 – 01/24/10			
<b>Flood Insurance – Parking Building</b>						
Building Coverage	\$ 500,000					
Contents Coverage	\$ 100,000					
Deductible	\$ 5,000					
<b>Fidelity Bond</b>						
Deductible	\$ 110,000	Annual	12/10/08 – 12/10/09	\$ 268	First Insurance Company of Hawaii, Ltd.	
<b>Workers' Compensation</b>						
Bodily Injury (each accident)	\$ 500,000	Annual	12/10/08 – 12/10/09	\$ 18,141	First Insurance Company of Hawaii, Ltd.	
Bodily Injury (each employee)	\$ 500,000					
Bodily Injury (policy limit)	\$ 500,000					
<b>Temporary Disability Insurance (TDI)</b>						
	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.
- ▶ Owners should purchase an HO6 to protect their exposure to risk of loss.









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.