Hawaii Real Estate Commission

CONDORAMA IV

PRESENTED BY CAI HAWAII

A **Free** Education Program for Condominium Owners

Topics Include:

City and County of Honolulu Sprinkler Ordinance

Condominium Mandatory Mediation and Voluntary Binding Arbitration, Act 196

Service and Assistance Animals, Act 217

Saturday, November 17, 2018
Program: 9:00 a.m. to 11:00 a.m.
State Capitol Auditorium

AGENDA
CONDORAMA IV
November 17, 2018

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.	**City and County of Honolulu Sprinkler Ordinance – Fire Captain Kevin Mokulehua and Battalion Chief Wayne Masuda, Honolulu Fire Department**
9:40 a.m. – 10:10 a.m.	**Condominium Mandatory Mediation and Voluntary Binding Arbitration, Act 196 – Lance S. Fujisaki, Esq.**
10:10 a.m. – 10:40 a.m.	**Service and Assistance Animals, Act 217 – John A. Morris, Esq.**
10:40 a.m. – 10:55 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

FIRE CAPTAIN KEVIN MOKULEHUA, 20 years of HFD experience, 1 year: 4th Battalion (Ewa Beach and Waikele Fire Stations), 9 years: 1st Battalion (Kuakini, Kalihi Kai, and Kakaako Fire Stations); 10 years: Fire Prevention Bureau (Administration, Plans Review, Code Enforcement, Community Relations/Education and Relief Public Information Officer).

BATTALION CHIEF WAYNE MASUDA, 28 years of HFD experience, 20 years: 2nd Battalion (McCully, Palolo, Kaimuki, Hawaii Kai, Pawaa, and Wailupe Fire Stations); Fire Dispatch, Training and Research Bureau, Planning and Development, Fire Prevention.

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. His exclusive field of practice is in the representation of community associations, including counseling, contract negotiations and documentation for renovation projects.

JOHN A. MORRIS first became involved with condominiums and homeowner associations when he served for three years (1988-1991) as the first condominium specialist for the Hawaii Real Estate Commission. As condominium specialist, he gave advice on questions about the condominium law and helped review developers' filings for new projects. He also helped establish the Commission's condominium education and mediation programs and proposed and drafted new legislation and rules for the Commission, including the legislation and rules relating to reserves. On behalf of the Commission, he prepared a detailed report for the 1991 legislative session analyzing the issues he encountered as condominium specialist and the problem areas of the law.

Mr. Morris has spoken and written articles about homeowner associations and legislation affecting them. Each year, he helps the firm of Ekimoto & Morris, LLLC publish a 400-page "Director's Guide to Hawaii Community Association Law", a handbook for directors which includes the condominium law and other relevant statutes, as well as 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 of Hawaii.

Mr. Morris is a past president of the Hawaii Chapter of CAI and a former member and co-chair of its Legislative Action Committee. Every year, he participates in legislative hearings on changes to the condominium law and provides testimony on proposed bills. In 2011, he served as a member of the Mortgage Foreclosure Task Force Advisory Committee. The committee was created by the Legislature to provide advice and assistance in developing a fair and effective foreclosure law.

HONOLULU FIRE DEPARTMENT
FIRE CAPTAIN KEVIN MOKULEHUA
BATTALION CHIEF WAYNE MASUDA

✓ *MGM GRAND HOTEL FIRE, November 21, 1980*

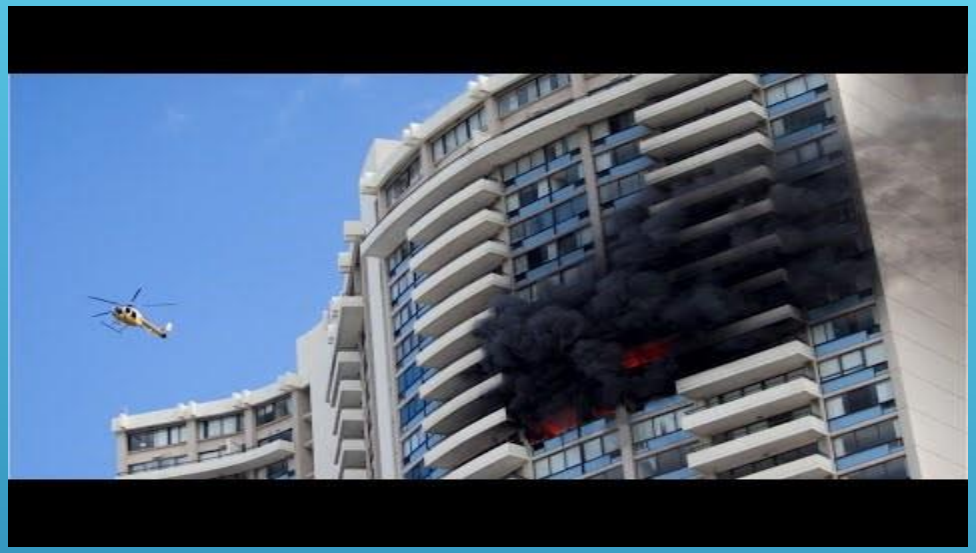
87 DEATHS, $105 MILLION SETTLEMENT, $300 RECONSTRUCTION COSTS

✓ *FIRST INTERSTATE BUILDING FIRE*

April 1, 2000

No deaths, 11 firefighters hospitalized, $10 million in damages to structure, $2 million to contents

✓ *MARCO POLO CONDOMINIUM FIRE July 14, 2017*



4 deaths, 1 firefighter treated, $107 million damages

- ✓ ***City Council reconvenes Residential Fire Safety Advisory Committee***
  - ✓ ***1st meeting September 8, 2017, Final Report November 8, 2017***
- ✓ ***April 25, 2018 City Council adopts Bill 69 by a vote of 8 to 1***
- ✓ ***May 3, 2018 Mayor Caldwell signs, and it becomes Ordinance 18-14***
- ✓ ***Life Safety Evaluation***
- ✓ ***HFD Website http://www.honolulu.gov/hfd/default.html***

Ordinance 18-14

Ordinance 18-14: Relating to Fire Safety became effective on May 3, 2018. This Ordinance addresses fire safety in existing high-rise residential buildings and requires these buildings be retrofitted as necessary to comply with specified fire safety standards.

This Ordinance also promotes fire safety improvements in existing high-rise residential buildings through the amendment of the Fire Code of the City and County of Honolulu. It establishes a fire and Life Safety evaluation process to assist building and unit owners in addressing the costs associated with implementing fire safety improvements.

This document will provide guideline information of the Ordinance and a basic understanding of the process for the Life Safety evaluation which is a major component of the Ordinance. For detailed information, refer to the Ordinance (which can be found on the HFD's Website) at https://www.honolulu.gov/hfd.html. This Ordinance is required for existing high-rise residential buildings which do not have an automatic fire sprinkler system throughout.

Please address and send all intent to comply letters to:

Fire Chief Manuel P. Neves
Honolulu Fire Department
636 South Street
Honolulu, Hawaii 96813-5007

Questions/Inquiries regarding Ordinance 18-14:

Battalion Chief Wayne Masuda
Fire Prevention Bureau
Email: wmasuda@honolulu.gov
Phone: (808) 723-7151

Fire Captain Kevin Mokulehua
Fire Prevention Bureau
Email: kmokulehua@honolulu.gov
Phone: (808) 723-7152

Ordinance 18-14 Guidelines:

- Each building owner or representative is required to submit a written statement/letter to the Honolulu Fire Department (HFD) stating their intent to comply with the Ordinance
    - Building owners, property managers, board presidents and/or any managing representative of the building may submit the letter to HFD
- HFD will provide a written response to the intent to comply letter
- The Life Safety evaluation must be completed by a licensed design professional or an assessor under the supervision of a licensed design professional and submitted to HFD
    - Licensed design professionals include engineers and architects who are knowledgeable in fire and building codes
- An appeal may be submitted to HFD if the Association of Apartment Owners disagree with the final Life Safety evaluation
    - A decision will be rendered
- There are exceptions within the Ordinance that allows a building to opt out of installing an automatic fire sprinkler system
    - There are no exceptions within the Ordinance to opt out of the Life Safety evaluation
- The Ordinance allows sufficient time to complete the Life Safety evaluation and make any necessary retrofits to attain a passing score
- The Ordinance also allows sufficient time for the installation of an automatic fire sprinkler system
- Bill 72 was introduced by Councilmember Carol Fukunaga on September 12, 2018
    - If this bill passes, it will provide extensions to all deadlines within Ordinance 18-14

Life Safety Evaluation:

- The Life Safety evaluation was developed by the Residential Fire Safety Advisory Committee and is a tool used to compare the relative level of life safety from fire to a level that is considered acceptable

- There are eight tables to complete

    - Each table contains risk parameters and a corresponding fixed value

    - The evaluator must determine the value based upon his/her inspection of the building and enter those values

- After all values have been entered, Table 8 will determine whether or not the building passed the evaluation

- The evaluation can be completed with the option of having an automatic fire sprinkler system or opting out of the sprinkler system to see whether or not a passing score would be attained with the sprinkler system

- To complete the evaluation, the licensed design professional or the assessor under the supervision of a licensed professional must have an understanding of fire and building codes

- The building owner/property manager should work with the licensed design professional or the assessor under the supervision of a licensed professional to complete the evaluation inspection of a dwelling unit to determine

    - For example: automatic door closures, smoke alarms, and vertical openings

    - Possibly upgrading fire exit door hardware, fire alarm systems, or other fire protection systems in order to attain a passing score

- The building must maintain a passing score of the Life Safety evaluation for the life of the building

HONOLULU FIRE DEPARTMENT

CITY AND COUNTY OF HONOLULU

636 South Street
Honolulu, Hawaii 96813-5007
Phone: 808-723-7139 Fax: 808-723-7111 Internet: www.honolulu.gov/hfd

KIRK CALDWELL
MAYOR

MANUEL P. NEVES
FIRE CHIEF

LIONEL CAMARA JR.
DEPUTY FIRE CHIEF

EXISTING HIGH-RISE RESIDENTIAL BUILDINGS GUIDELINES

Listed below are the Honolulu Fire Department (HFD) guidelines for Ordinance 18-14, which became effective on May 3, 2018. This ordinance addresses fire safety in existing high-rise residential buildings not protected throughout by an automatic fire sprinkler system and requires that these buildings be retrofitted as necessary to comply with specified fire safety standards. This ordinance also promotes fire safety improvements in existing high-rise residential buildings through the amendment of the Fire Code of the City and County of Honolulu, and establishes a fire and life safety evaluation process to assist building and unit owners address the costs associated with implementing fire safety improvements.

An existing high-rise residential building is defined as a building that has floors used for human occupancy located more than 75 feet above the highest grade, contains dwelling units, and was erected before 1993.

The Authority Having Jurisdiction for Ordinance 18-14 is the HFD.

The following guidelines will assist building owners to meet the requirements of Ordinance 18-14:

1. Each building owner shall submit a letter stating their intent to comply with the ordinance. The letter is due to the HFD by November 2, 2018, and shall be addressed to:

   Fire Chief Manuel P. Neves
   Honolulu Fire Department
   636 South Street
   Honolulu, Hawaii 96813-5007

   (Reference: Fire Code of the City and County of Honolulu, Section 13.3.2.26.2.4.)

2. The HFD shall review and respond to the letter within 60 calendar days of receipt of the letter. (Reference: Fire Code of the City and County of Honolulu, Section 13.3.2.26.2.5.)

3. A building fire and life safety evaluation shall be conducted by a licensed design professional by May 2, 2021. A licensed design professional is an architect or engineer who is knowledgeable with the requirements of the evaluation. The evaluation shall be submitted to the HFD via an e-mail to hfdsystems@honolulu.gov. (Reference: Fire Code of the City and County of Honolulu, Section 13.3.2.26.2.)

4. The Association of Apartment Owners (AOAO) or the Cooperative Housing Corporation (CHC) may request an appeal of the final score of the building fire and life safety evaluation by submitting a letter to the HFD (see item 1) within 45 calendar days of the date of the completed evaluation. The request shall include a statement describing the basis for the appeal, supporting documentation, if any, and the relief requested.

   The HFD shall render a decision on the appeal no later than 30 calendar days from the receipt of the appeal. (Reference: Fire Code of the City and County of Honolulu, Section 13.3.2.26.1.)

5. Buildings shall comply by passing the building fire and life safety evaluation by May 2, 2024. The HFD may grant an extension to this date if automatic fire sprinkler systems are used to achieve compliance. All buildings must continue to maintain a passing status of their evaluation code assessments. (Reference: Fire Code of the City and County of Honolulu, Section 13.3.2.26.2.)

6. The AOAO or the CHC of buildings ten floors and over may opt-out of the automatic fire sprinkler requirement within three years of the completion of the building fire and life safety evaluation, provided:

   - The majority of unit owners or shareholders vote to opt-out of the requirement at a regularly scheduled or special meeting of the owners or shareholders.

   - The regularly scheduled or special meeting is convened and noticed in accordance with the AOAO or CHC by-laws.

   - The building must receive a passing score on the building fire and life safety evaluation through the implementation of alternative prevention and fire safety systems.

   - The AOAO or CHC shall provide verifiable public disclosure of its action to opt-out to all current and future

owners, shareholders, and residents. Verifiable public disclosure shall include a sign posted in the building's public notification area and real estate sales disclosures as may be required by Hawaii real estate industry practices.

Note: The sign shall be made visible from the building's main entrance and read:

> This building is not protected throughout by an approved automatic fire sprinkler system as required by Ordinance 18-14: Relating to Public Fire Safety.

Signage shall be durable and at least 24 inches wide by 24 inches long with a minimum 2-inch lettering on a contrasting background.

(Reference: Fire Code of the City and County of Honolulu, Section 13.3.2.26.2.3.)

7. The entire building, including all common areas and units, shall be required to be protected by an approved automatic fire sprinkler system or an alternative fire prevention and life safety system as approved by the HFD by May 3, 2030. Compliance shall be achieved as follows:

    - Common areas for buildings 20 floors and over shall be completed by May 2, 2026.

    - Common areas for buildings 10 to 19 floors shall be completed by May 2, 2028.

    Note: An extension to May 2, 2033, may be approved by the HFD, provided that compliance using an automatic fire sprinkler system in the common areas related to building egress path has been achieved

    Exceptions:

    - Buildings are exempt from the automatic fire sprinkler system requirements if all dwelling units have exterior access and a continuous egress path to exit the building and no full-length interior corridors.

- Buildings less than ten floors in height may receive a building fire and life safety evaluation passing status in lieu of the approved automatic sprinkler system requirements.

- Buildings may be protected throughout by an approved automatic fire sprinkler system per National Fire Protection Association 13R when approved by the HFD.

- Private balconies that have at least one long side that is 50 percent open are not required to have automatic fire sprinkler protection.

- Elevator hoistways and machine rooms are not required to have automatic fire sprinkler protection.

- Class II wet standpipe systems may be removed when buildings are protected throughout by automatic fire sprinkler systems.

- Combined standpipe and automatic fire sprinkler systems using existing standpipes shall be permitted to utilize pump sizing for the fire sprinkler demand.

(Reference: Fire Code of the City and County of Honolulu, Sections 13.3.2.26.2.6 and 13.3.2.26.2.7.)

DRAFT 11/06/2017
FIRE SAFETY EVALUATION WORKSHEET

Worksheet Cover Sheet			
EVALUATION WORK SHEETS FOR			
THE FIRE AND LIFE SAFETY INDEX FOR			
EXISTING RESIDENTIAL HIGH-RISE BUILDINGS			
FACILITY:		BUILDING:	
FIRE COMPARTMENTS(S) EVALUATED			
EVALUATOR:		DATE:	6/1/2018
PURPOSE:			
Complete this work sheet for each fire compartment (floor) Where conditions are the same in several fire compartments, one work sheet sheet can be used for those fire compartments.			

HAVE A MAJORITY OF THE UNIT OWNERS VOTED TO OPT OUT OF REQUIRED SPRINKLER PROTECTION? **No** << Answer by placing a "Yes" or "No" in the box on the left.

PLEASE NOTE THAT A PASSING SCORE USING THE OPT-OUT SCORING CAN RESULT IN A PASSING SCORE BUT THAT SCORE DOES NOT PROVIDE AN EQUIVALENT LEVEL OF LIFE SAFETY TO BUILDING OCCUPANTS AND FIRE FIGHTERS AS THE NON-OPT OUT VERSION.

Table 1. Occupant and Firefighter Risk Parameters

Risk Parameters

RISK PARAMETER VALUES

1.RESIDENT EVACUATION CAPABILITY

MOBILITY STATUS		NORMAL OR LIMITED MOBILITY	REQUIRE ASSISTANCE	NOT MOVABLE
OCCUPANT RISK FACTOR (O1)		1.50	2.50	4.00
FIREFIGHTER RISK FACTOR (FF1)		1.60	3.00	5.00

ENTER (O1) **1.50**
ENTER (FF1) **1.60**

2. OCCUPANT LOAD

RESIDENTS	1 TO 25	26 TO 50	51 TO 100	> 100
OCCUPANT RISK FACTOR (O2)	1.00	1.10	1.20	1.30
FIREFIGHTER RISK FACTOR (FF2)	1.00	1.10	1.20	1.30

ENTER (O2) **1.30** **The occpuant load is** **persons**
ENTER (FF2) **1.30**

3. FIRE COMPARTMENT LOCATION (L)

FLOOR	9TH FLOOR OR LOWER	10TH TO 19TH	20TH TO 29TH	> 30TH
OCCUPANT RISK FACTOR (O3)	1.10	1.20	1.30	1.40
FIREFIGHTER RISK FACTOR (FF3)	1.10	1.50	1.80	2.00

ENTER (O3) **1.10** **Highest floor with residential dwellings is** **floor.**
ENTER (FF3) **1.10**

Table 2. Risk Factor Calculations

	O1		O2		O3		ORF
OCCUPANT RISK FACTOR (ORF)	1.50	X	1.30	X	1.10	=	**2.15**
	FF1		**FF2**		**FF3**		**FFRF**
FIREFIGHTER RISK FACTOR (FFRF)	1.60	X	1.30	X	1.10	=	**2.29**

Table 3A and 3B Building Status

Table 3A. New Buildings

		ORF		ORF
1.00	x	2.15	=	**2.15**

		FFRF		ORF
1.00	x	2.29	=	**2.29**

Table 3B. (Existing Buildings)

		ORF		ORF
0.60	x	2.15	=	**1.29**

		FFRF		FFRF
0.60	x	2.29	=	**1.37**

This facility is an existing building.
OCCUPANT RISK FACTOR (ORF) **1.29**

FIREFIGHTER RISK FACTOR (FFRF) **1.37**

Table 4 Fire Safety Parameter Values

Parameters	Parameter Values					
1. CONSTRUCTION TYPE		NONCOMBUSTIBLE TYPES I AND II				
LOCATION OF FIRE COMPARTMENT (Floor above level of exit discharge)	TYPE IIB, TYPE III, V	TYPE IIA (ONE HOUR)	TYPE IA or IB (FIRE RESISTIVE)			
9TH OR LESS	NP	NP	2			
10TH TO 15TH	NP	NP	1			
16TH TO 29TH	NP	NP	0			
21ST TO 30TH	NP	NP	-1			
30TH AND ABOVE	NP	NP	-2			
ENTER 1.	2					
2. INTERIOR FINISH (Corridors and Exits)	UNDETERMINED OR LESS THAN CLASS C	CLASS C	CLASS B	CLASS A*		
	-10	-5	-2	3		
ENTER 2.	3					
3. CORRIDOR & DWELLING UNIT SEPARATION WALLS	NONE OR INCOMPLETE	≤ 1/2 HR.	>1/2≤ 1 HR NON-MASONRY (e.g. gypsum wall board stud partition)	≥ 1 HR MASONRY OR CONCRETE *		
	-10	-5	0	4		
ENTER 3.	0					
4. DOORS TO CORRIDOR *	NO DOOR OR DOOR CONTAINS UNPROTECTED OPENINGS	<20 MIN. FPR NO CLOSER	<MIN 1 3/4 INCH SOLID WOOD CORE WITH CLOSER	MINIMUM 20 MIN. FPR WITH CLOSER		
	-10	-5	2	5		
ENTER 4.	5					
5 EXIT ACCESS*						
5A. INTERIOR CORRIDOR	MAXIMUM CORRIDOR DEAD END			NO DEAD END > 20		
	>100 FEET	51 - 100'	21' - 50'	TRAVEL DISTANCE >150 FEET	100' - 150'	<100 FEET
	-8	-6	-4	0	1	2
5B. EXTERIOR EGRESS BALCONIES (EXTERIOR EXIT ACCESS)	MAXIMUM CORRIDOR DEAD END			NO DEAD END > 30		
	>100'	50' - 100'	30' - 50'	TRAVEL DISTANCE >150'	100' - 150'	<100 FEET
	-4	-2	-1	1	4	8
ENTER 5.	0					
6. VERTICAL OPENINGS	OPEN 4 OR MORE FLOORS		OPEN 2 OR 3 FLOORS	ENCLOSED WITH INDICATED FIRE RESISTANCE		
	-14		-10	0	2	
ENTER 6.	2					
7. HAZARDOUS AREAS	DOUBLE DEFICIENCY		SINGLE DEFICIENCY		NO DEFICIENCIES	
	IN FIRE COMPARTMENT	OUTSIDE FIRE COMPARTMENT	IN FIRE COMPARTMENT	OUTSIDE FIRE COMPARTMENT		
	-11	-5	-8	-2	0	
ENTER 7.	0					
8. SMOKE MANAGEMENT	NONE	SMOKEPROOF ENCLOSURE IN ONLY ONE EXIT STAIR	EXTERIOR STAIRS OR STAIR SHAFT WITH EXTERIOR EXIT ACCESS FOR ALL EXIT STAIRS	SMOKEPROOF ENCLOSURE (VIA NATURAL VENTILATION OR MECHANICAL PRESSURIZATION) ALL EXIT STAIRS	MECHANICAL SMOKE CONTROL WITHIN FIRE COMPARTMENT OR FLOOR IS SUBDIVIDED INTO ONE OR MORE SMOKE COMPARTMENTS	
	-5	-2	3	4	4	
ENTER 8.	-2					
9. EGRESS ROUTES	< 2 ROUTES	MULTIPLE ROUTES				
		DEFICIENT	NOT DEFICIENT	NOT DEFICIENT W/ COMPLIANT STAIRWELL REENTRY		
	-8	-2	0	1		
ENTER 9.	1					
10. FIRE ALARM SYSTEM	NONE, NONOPERATIONAL, OR NONCOMPLIANT	MANUAL INITIATION WITHOUT FIRE DEPARTMENT NOTIFICATION				
		OCCUPANT NOTIFICATION WITHOUT VOICE COMMUNICATION	OCCUPANT NOTIFICATION WITH VOICE COMMUNICATION			
	-10	1	4			
ENTER 10.	4					
11. SMOKE DETECTION	NONE	CORRIDORS *			TOTAL SMOKE DETECTION THROUGHOUT FIRE COMPARTMENT	
	0 (3) **	3			5	
ENTER 11.	3					
12. AUTOMATIC SPRINKLERS	NONE	CORRIDOR & COMMON AREAS	ENTIRE BUILDING WITH NFPA 13R ON RESIDENTIAL FLOORS	ENTIRE BUILDING *		
	-6 (0)** (-6)***	0	8	10 (5)*		
ENTER 23.	-6					
13. SMOKE ALARMS	NONE	ONE IN HALL NEAR BEDROOM	ONLY IN BEDROOM(S)	IN ALL BEDROOMS AND HALLWAYS NEAR BEDROOMS NO TANDEM OPERATION	IN ALL BEDROOMS AND HALLWAYS NEAR BEDROOMS WITH TANDEM OPERATION	
	-10	-2	-1	2	4	
ENTER 13.	4					
14. STANDPIPE SYSTEM	NONE	CLASS I STANDPIPE PRESENT BUT NOT IN ALL REQUIRED EXITS	CLASS 1 MANUAL STANDPIPE IN ALL EXIT ENCLOSURES	AUTOMATIC WET STANDPIPE SYSTEM WITH HOSE VALVES IN ALL EXIT ENCOSURES	* COMBINED SYSTEM WITH HOSE VALVES IN ALL EXIT ENCOSURES	
	-10	-5	5	7	10	
ENTER 14.	5					
15 ELEVATORS	NO RECALL OR NO FIREFIGHTER SERVICE	WITH RECALL AND FIREFIGHER SERVICE				
		NO EMERGENCY POWER	EMERGENCY POWER			
	-5	0	3			
ENTER 15.	0					
16 EMERGENCY LIGHTING AND EXIT SIGNS	NO EMERGENCY LIGHTING	EXITS ONLY	EXIT ACCESS AND EXITS			
	-2	0	2			
ENTER 16.	2					

* Interior finish of Class B or less that is provided with a listed, approved fire retardant coating, providing a Class A rating, is acceptable.

* For locations where there are no interior corridors, only exterior egress balconies, use 4 points, regardless of wall type.

* For buildings with exterior egress balconies enter 5 regardless of door type

* Use (0) where Parameter 9 is = 8.

* For locations where there are no interior corridors, only exterior egress balconies, use 3 points, even if there is no smoke detection.

** Use this value if the entire zone is protected with quick-response automatic sprinklers.

* For locations where there are no interior corridors, only exterior egress balconies, use 5 points, even if there is no sprinkler protection

** For locations which have opted out of sprinkler protection, use 0 points.

*** Item 1 is 2 points use -6 points here

* Credit for a combined system is only permitted if the Parameter 13 Automatic Sprinklers value is 8 or 10

NP Not permitted, this evaluation method cannot be used.

Table 5 Individual Safety Evaluations

FIRE SAFETY PARAMETER	COMPARTMENTATION FIRE SAFETY (S1)	EXTINGUISHMENT FIRE SAFETY (S2)	EGRESS FIRE SAFETY (S3)	GENERAL OCCUPANT SAFETY (S4)	GENERAL FIRE FIGHTER SAFETY (S5)
1. CONSTRUCTION	2	2		2	2
2. INTERIOR FINISH (Corridors and Exits)	3		3	3	3
3. CORRIDOR & DWELLING UNIT SEPARATION WALLS	0			0	0
4. DOORS TO CORRIDOR *	5		5	5	5
5. EXIT ACCESS*			0	0	0
6. VERTICAL OPENINGS	2		2	2	2
7. HAZARDOUS AREAS	0	0		0	0
8. SMOKE MANAGEMENT			-2	-2	-2
9. EGRESS ROUTES			1	1	1
10. FIRE ALARM SYSTEM		4		4	use 1/2 of item 10 2
11. SMOKE DETECTION		3	3	3	3
12. AUTOMATIC SPRINKLERS		-6	-6	-6	-6
13. SMOKE ALARMS			4	4	
14. STANDPIPE SYSTEM		5			5
15. ELEVATORS					0
16. EMERGENCY LIGHTING AND EXIT SIGNS			2	2	2
SUBTOTALS	12.0	8.0	12.0	18.0	17.0
ADDITIONAL FACTORS			OCCUPANT RISK FACTOR 1.29	OCCUPANT RISK FACTOR 1.29	FIREFIGHTER RISK FACTOR 1.37
TOTAL VALUE	**S1 = 12.0**	**S2 = 8.0**	**S3 = 9.3**	**S4 = 14.0**	**S5 = 12.4**

Table 6 Minimum Required Fire Safety Indices

	COMPARTMENT FIRE SAFETY Sa Sa		EXTINGUISHMENT FIRE SAFETY Sb Sb		EGRESS FIRE SAFETY Sc Sc		GENERAL OCCUPANT FIRE Sc		FIRE FIGHTER SAFETY Se	
		EXIST.		EXIST.		EXIST.		EXIST.		EXIST.
STANDARD INDICES		8		8		8		8		8
OPT-OUT INDICES		6		6		8		6		6

HAVE A MAJORITY OF THE UNIT OWNERS VOTED TO OPT OUT OF REQUIRED SPRINKLER PROTECTION [No] This answer is from cell G17 ir

IF THE ANSWER IS YES,THEN PROCEED WITH THE OPT OUT VERSION
THIS VERSION IS INTENDED FOR THOSE BUILDINGS THAT WISH TO OPT OUT OF SPRINKLER PROTECTION FOR THE BUILDING. THIS CHECKLIST DOES NOT PROVIDE AN EQUIVALENT LEVEL OF LIFE SAFETY TO BUILDING OCCUPANTS AND FIRE FIGHTERS AS THE NON-OPT OUT VERSION.

Sa = [8] Sb = [8] Sc = [8] Sc = [8] Se = [8]

Table 7. Fire Compartment Safety Equivalency Evaluation

CALCULATED FIRE SAFETY INDEX		MINIMUM REQUIRED FIRE SAFETY INDEX							YES	NO
			S1		Sa		C	Is C >=0?		
COMPARTMENTATION FIRE SAFETY (S1)	less	COMPARTMENT FIRE SAFETY (Sa)	12.0	-	8.0	=	4.0		X	
			S2		Sb		E	Is E >=0?		
EXTINGUISHMENT FIRE SAFETY (S2)	less	EXTINGUISHMENT FIRE SAFETY (Sb)	8.0	-	8.0	=	0.0		X	
			S3		Sc		P	Is P >=0?		
EGRESS FIRE SAFETY (S3)	less	EGRESS FIRE SAFETY (Sc)	9.30	-	8.00	=	1.30		X	
			S4		Sd		G	Is G >=0?		
GENERAL OCCUPANT SAFETY (S4)	less	GENERAL OCCUPANT SAFETY (Sd)	14.0	-	6.0	=	8.0		X	
			S5		Se		F	Is F >=0?		
FIRE FIGHTER SAFETY (S5)	less	FIRE FIGHTER SAFETY (SE)	12.4	-	8.0	=	4.4		X	

TABLE 8 CONCLUSIONS

☐ All of the checks in Table 7 are in the "Yes" column. The level of fire safety is acceptable.

☐ One or more of the checks in Table 7 are in the "No" column. The level of fire safety is not acceptable.

Condominium Mandatory Mediation and Voluntary Binding Arbitration

November 17, 2018

Resources:

Hawai`i Revised Statutes, Sections 514B-161 and 162 and new section effective January 2, 2019

Hawai`i Revised Statutes:

https://www.capitol.hawaii.gov/hrscurrent/

Additional Reading:

Beyond Reason: Using Emotions as You Negotiate, Fisher and Shapiro (2005)

Getting to YES: Negotiating Agreement Without Giving In, Fisher and Ury (2011)

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A LIMITED LIABILITY LAW PARTNERSHIP

Subsidized Mandatory Mediation

Mediation by professional mediators is available across the state to owners and boards of directors within condominium associations registered with the Hawaii Real Estate Commission. There is a nominal cost, but the majority is subsidized through the Condominium Education Trust Fund.

Act 196, SLH 2018 expands both the scope of who can participate in mandatory mediation and what may be mediated. Act 196 additionally allows parties to apply to the circuit court to compel mediation in certain circumstances and sets time deadlines. This law is effective January 2, 2019, but sunsets on June 30, 2023.

Subsidized Voluntary Arbitration

Act 196 created additional dispute resolution tools to support non-binding mediation by subsidizing voluntary binding arbitration. Parties are required to participate in evaluative mediation prior to arbitration.

Avoiding Disputes Before You Need to Mediate

Learn about strategies to identify the purposes of expressions of strong negative emotions and how to evaluate the core concerns that need to be addressed to improve relationships. These strategies have the potential to transform negotiations from an uncomfortable, unproductive process, into effective problem solving.

The theory and practice of cooperative negotiation arose out of the Harvard Negotiation Project in 1979. This was featured in Getting to YES. See sidebar. Cooperative negotiation is when the parties consider the interests of the other side in addition to their own.

MANDATORY MEDIATION

1. WHAT KINDS OF DISPUTES ARE SUBJECT TO MANDATORY MEDIATION?

The mediation must meet the following requirements:

- The dispute must involve the following parties:
  - ☐ unit owner and the board,
  - ☐ unit owner and the managing agent,
  - ☐ board members and the board, or
  - ☐ directors and managing agents and the board

When does a dispute qualify for mandatory mediation?

- The dispute must involve interpretation or enforcement of the association's declaration, bylaws, or house rules;
- The parties have not already mediated the same or a substantially similar dispute; and
- An action or an arbitration concerning the dispute has not been commenced.

2. WHAT KINDS OF DISPUTES ARE EXCLUDED?

- Disputes involving threatened property damage or the health or safety of unit owners or any other person;
- Disputes involving assessments;
- Disputes involving personal injury claims; or
- Disputes involving matters that would affect the availability of any coverage pursuant to an insurance policy obtained by or on behalf of an association..

However, the above disputes may be submitted to voluntary mediation.

3. MAY OTHER ISSUES BE INCLUDED IN THE MEDIATION?

Yes, mandatory mediation may include issues and parties in addition to those identified above, provided that a unit owner or a developer and board are parties to the mediation at all times and the unit owner or developer and the board mutually consent in writing to the addition of the issues and parties.

4. CAN THE BOARD (OR OTHER RESPONDING PARTY) DENY A REQUEST FOR MEDIATION?

No, upon written request, if the mediation meets the above requirements.

5. WHAT IS EVALUATIVE MEDIATION AS OPPOSED TO FACILITATIVE MEDIATION?

These terms are not defined in the statute. However, evaluative and facilitative are the most common styles of mediation:

- Facilitative Mediation.

  The goal of facilitative mediation is to facilitate negotiations and communications between parties and to guide the parties so that they may reach amicable and mutual solutions to their disputes.

- Evaluative Mediation.

  In evaluative mediation, the mediator uses his/her experience, education, training and knowledge and provides the parties with an assessment and oftentimes a recommendation as to an appropriate resolution.

6. MAY WE CHOOSE FACILITATIVE MEDIATION IF THE OTHER SIDE REQUESTS EVALUATIVE MEDIATION?

No, if evaluative mediation is requested in writing by one of the parties, the other party cannot choose to do facilitative mediation instead, and any attempt to do so shall be treated as a rejection to mediate.

7. WHAT ARE MY REMEDIES IF THE OTHER PARTY REFUSES TO MEDIATE?

- A unit owner or an association may apply to the circuit court in the judicial circuit where the condominium is located for an order compelling mediation only when:

  (1) Mediation of the dispute is mandatory pursuant to subsection (a);
  (2) A written request for mediation has been delivered to and received by the other party; and
  (3) The parties have not agreed to a mediator and a mediation date within forty-five days after a party receives a written request for mediation.

8. HOW WILL THE COURT DECIDE THE MOTION TO COMPEL MEDIATION?

The application made to the circuit court shall be made and heard in a summary manner (presumably without an evidentiary hearing) 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 $1,500.

9. MAY WE RECOVER OUR LEGAL FEES AND COSTS FOR THE MEDIATION?

Generally, each party to a mediation must bear the attorneys' fees, costs, and other expenses of preparing for and participating in mediation incurred by the party, unless there is a written agreement providing otherwise that is signed by the parties.

If the mediated claim is later litigated or arbitrated, legal fees and costs may be awarded by the court, or by an award of an arbitrator.

10. ARE MEDIATIONS SUBSIDIZED BY THE CONDOMINIUM EDUCATION TRUST FUND?

Your mediation may be subsidized by the Condominium Education Trust Fund if it meets the requirements for mandatory mediation. If so, the following conditions apply:

- Shall include a fee of $375 to be paid by each party to the mediator;

- The mediator shall receive no more from the fund than is appropriate under the circumstances, and in no event more than $3,000 total;

- May include issues and parties in addition to those identified above (see question 1 and 2), provided that a unit owner or a developer and board are parties to the mediation at all times and the unit owner or developer and the board mutually consent in writing to the addition of the issues and parties; and

- May include an evaluation by the mediator of any claims presented during the mediation.

11. WHAT IF THERE IS ONGOING LITIGATION OR ARBITRATION; CAN I STILL DEMAND MEDIATION?

A court or an arbitrator with jurisdiction may consider a timely request to stay any action or proceeding concerning a dispute that would be subject to mandatory mediation in the absence of the action or proceeding, and refer the matter to mediation, provided that:

- The court or arbitrator determines that the request is made in good faith and a stay would not be prejudicial to any party; and

- No stay shall exceed a period of ninety days.

VOLUNTARY BINDING ARBITRATION

1. ARE ARBITRATIONS SUBSIDIZED BY THE CONDOMINIUM EDUCATION TRUST FUND?

Yes, effective January 2, 2019, any parties permitted to mediate condominium related disputes pursuant to section 514B-161 may agree to enter into **voluntary binding arbitration**, which may be supported with funds from the Condominium Education Trust Fund pursuant to section 514B-71.

2. WHAT KINDS OF ARBITRATIONS WILL BE SUBSIDIZED BY THE FUND?

- The arbitration must be voluntary. If governing documents include mandatory binding arbitration, this will presumably preclude subsidies;

- The arbitration must be binding; and

- The parties must have first attempted evaluative mediation.

3. WHAT ARE THE REQUIREMENTS FOR SUBSIDIZED ARBITRATIONS?

Your binding voluntary arbitration may be subsidized by the Condominium Education Trust Fund. If so, the following conditions apply:

- Each party must pay a fee of $175 to the arbitrator.
- The arbitrator shall receive no more from the fund than is appropriate under the circumstances, and in no event more than $6,000 total.
- The arbitration may include issues and parties in addition to those identified in question 1, provided that a unit owner or a developer and board are parties to the arbitration at all times and the unit owner or developer and the board mutually consent in writing to the addition of the issues and parties.

NOTE: Please also see the provisions below on mandatory nonbinding arbitration.

HOW DO WE LIVE TOGETHER WITH OUR DIFFERENCES

Excerpt from Beyond Reason: Using Emotions as You Negotiate, Roger Fisher and Daniel Shapiro (2005).

We all have emotions all the time. Yet during a negotiation we have so many things to think about that we give little or no thought to emotions. We become so busy thinking that we let our emotions take care of themselves. Most negotiators treat emotions as an obstacle to clear, rational thought. As a result, we do not realize the opportunity afforded by positive emotions. Although the Declaration of Independence emphasizes the "pursuit of happiness," there seems to be remarkably little organized common sense about that pursuit.

If we disagree with someone, how can we interact in ways that stimulate positive emotions in both of us? It is against this background that our book advances two big propositions: First, take the initiative. If you are dealing with someone with whom you disagree, don't wait for emotions to happen and then react.

Second, address the concern, not the emotion. Rather than try to understand every current emotion and its possible causes, focus on five widely shared concerns that can be used to stimulate helpful emotions in others and in you. These core concerns are:

■ Appreciation. Feeling unappreciated puts people down. We can appreciate others by understanding their point of view; finding merit in what they think, feel, or do; and communicating our understanding through words or action. We can appreciate ourselves, too.

■ Affiliation. Rather than having each negotiator feel alone and disconnected, we can try to build structural connections as colleagues and personal connections as confidantes.

■ Autonomy. Recognize that everyone wants freedom to affect or make a great many decisions. We can expand our autonomy and avoid impinging upon theirs.

■ Status. No one likes to feel demeaned. Rather than compete with others over who has the higher social status, we can acknowledge everyone's areas of particular status, including our own.

■ Role. An unfulfilling role leaves us feeling trivialized and unengaged. Yet we are free to choose roles that help us and others work together. And we can expand the activities within any role to make them fulfilling.

Concepts from Getting to YES: Negotiating Agreement Without Giving In, Roger Fisher and William Ury:

■ Think about interests not positions

■ Separate the people from the problem

■ Invent options for mutual gain

■ Use objective criteria to resolve disputes productively - Best Alternative to a Negotiated Agreement (“BATNA”)

Appendix: Excerpt of Statutes

Current Version of HRS § 514B-161	Version Effective January 2, 2019
§514B-161 Mediation. (a) [Section effective until January 1, 2019. For section effective January 2, 2019, see below] 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 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.	§514B-161 Mediation. (a) [Section effective January 2, 2019, until June 29, 2023. For section effective until January 1, 2019, see above. Reenacted on June 30, 2023, as January 1, 2019 version.] The mediation of a dispute between a unit owner and the board, unit owner and the managing agent, board members and the board, or directors and managing agents and the board shall be mandatory upon written request to the other party when: (1) The dispute involves the interpretation or enforcement of the association's declaration, bylaws, or house rules; (2) The dispute falls outside the scope of subsection (b); (3) The parties have not already mediated the same or a substantially similar dispute; and (4) An action or an arbitration concerning the dispute has not been commenced.
(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.	(b) The mediation of a dispute between a unit owner and the board, unit owner and the managing agent, board members and the board, or directors and managing agents and the board shall not be mandatory when the dispute involves: (1) Threatened property damage or the health or safety of unit owners or any other person; (2) Assessments; (3) Personal injury claims; or (4) Matters that would affect the availability of any coverage pursuant to an insurance policy obtained by or on behalf of an association.
(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.	(c) If evaluative mediation is requested in writing by one of the parties pursuant to subsection (a), the other party cannot choose to do facilitative mediation instead, and any attempt to do so shall be treated as a rejection to mediate.
	(d) A unit owner or an association may apply to the circuit court in the judicial circuit where the condominium is located for an order compelling mediation only when: (1) Mediation of the dispute is mandatory pursuant to subsection (a); (2) A written request for mediation has been delivered to and received by the other party; and

Current Version	Effective January 2, 2019
	(3) The parties have not agreed to a mediator and a mediation date within forty-five days after a party receives a written request for mediation.
	(e) Any application made to the circuit court pursuant to subsection (d) 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 $1,500.
	(f) Each party to a mediation shall bear the attorneys' fees, costs, and other expenses of preparing for and participating in mediation incurred by the party, unless otherwise specified in: (1) A written agreement providing otherwise that is signed by the parties; (2) An order of a court in connection with the final disposition of a claim that was submitted to mediation; (3) An award of an arbitrator in connection with the final disposition of a claim that was submitted to mediation; or (4) An order of the circuit court in connection with compelled mediation in accordance with subsection (e).
	(g) Any individual mediation supported with funds from the condominium education trust fund pursuant to section 514B-71: (1) Shall include a fee of $375 to be paid by each party to the mediator; (2) Shall receive no more from the fund than is appropriate under the circumstances, and in no event more than $3,000 total; (3) May include issues and parties in addition to those identified in subsection (a); provided that a unit owner or a developer and board are parties to the mediation at all times and the unit owner or developer and the board mutually consent in writing to the addition of the issues and parties; and (4) May include an evaluation by the mediator of any claims presented during the mediation.
	(h) A court or an arbitrator with jurisdiction may consider a timely request to stay any action or proceeding concerning a dispute that would be subject to mediation pursuant to subsection (a) in the absence of the action or proceeding, and refer the matter to mediation; provided that: (1) The court or arbitrator determines that the request is made in good faith and a stay would not be prejudicial to any party; and (2) No stay shall exceed a period of ninety days.

Voluntary Binding Arbitration

§514B- Voluntary binding arbitration. [Section effective January 2, 2019. Repealed on June 30, 2023.] (a) Any parties permitted to mediate condominium related disputes pursuant to section 514B-161 may agree to enter into voluntary binding arbitration, which may be supported with funds from the condominium education trust fund pursuant to section 514B-71; provided that voluntary binding arbitration under this section may be supported with funds from the condominium trust fund only after the parties have first attempted evaluative mediation.

(b) Any voluntary binding arbitration entered into pursuant to this section and supported with funds from the condominium education trust fund:

(1) Shall include a fee of $175 to be paid by each party to the arbitrator;

(2) Shall receive no more from the fund than is appropriate under the circumstances, and in no event more than $6,000 total; and

(3) May include issues and parties in addition to those identified in subsection (a);

provided that a unit owner or a developer and board are parties to the arbitration at all times and the unit owner or developer and the board mutually consent in writhing to the addition of the issues and parties.

Mandatory Nonbinding Arbitration

[§ 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 Hawai`i 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 Hawai`i 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 attorney& 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.

SERVICE AND ASSISTANCE ANIMALS

John A. Morris, Ekimoto & Morris, LLLC

For 2018, Act 217 (SLH 2018), which takes effect on January 1, 2019, states its purpose as follows:

> *The legislature finds that there is a growing problem with people fraudulently representing untrained animals as service dogs. This has resulted in legitimate service dogs being needlessly distracted or even attacked by untrained dogs or other animals, as well as in violations of the food and sanitation code. Currently, there is no legal consequence for misrepresenting a pet dog or other animal as a service animal.*

What Are The Issues?

1) DOES YOUR DECLARATION OR BYLAWS PROHIBIT ANIMALS?

2) IS YOUR PROJECT COVERED BY THE AMERICANS WITH DISABILITIES ACT ("ADA") OR BY THE FEDERAL AND STATE FAIR HOUSING LAWS?

1) DOES YOUR DECLARATION OR BYLAWS PROHIBIT ANIMALS?

Most people agree that section 514B-156 of the condominium law requires that any prohibitions on pets be stated in the bylaws, not the house rules. Therefore, if you are a condominium and your bylaws do not prohibit pets, there is a good argument that your house rules, alone, cannot legally prohibit pets.

If you are a non-condominium, you have to look carefully at your governing documents. In general, courts seem to prefer that prohibitions on the use of units - such as keeping a pet in a property - be stated in a document that must be amended with the participation of the owners, not just the board.

2) IS YOUR PROJECT COVERED BY THE AMERICANS WITH DISABILITIES ACT ("ADA") OR BY THE FEDERAL AND STATE FAIR HOUSING LAWS?

Condominiums are potentially subject to the Americans with Disabilities Act ("ADA") or the federal and Hawai'i "fair housing laws", or both. The federal fair housing law is called the "Fair Housing Amendments Act of 1988" ("FHAA"); the State law is found in Hawaii Revised Statutes ("HRS") Chapter 515. The fair housing laws, which use the term "assistance animal," apply to residential condominium projects (i.e., projects with long-

term owners or renters); the ADA, which uses the terms "service animal," applies to condominium projects which are open to the public, with commercial operations, including convenience stores and certain short-term renters (such as condominium hotels and time-share projects).

If you are a purely residential condominium project, the ADA should not apply to your project. Instead, the fair housing laws should apply. In a fairly recent (2007) Hawai`i case, Mabson v. Association of Apartment Owners of Maui Kamaole, the court indicated that a residential condominium is not subject to the ADA.

In fact, whether the property is open to the public (as opposed to just its residents) is a significant issue. The Office of the U.S. Attorney General's "Technical Assistance Manual" provides some guidance:

> *Although title III does not apply to strictly residential facilities, it covers places of public accommodation within residential facilities. Thus,* ***areas within multifamily residential facilities that qualify as places of public accommodation are covered by the ADA if use of the areas is not limited exclusively to owners, residents, and their guests****.*
>
> *ILLUSTRATION 1: A private residential apartment complex includes a swimming pool for use by apartment tenants and their guests.* ***The complex also sells pool "memberships" generally to the public. The pool qualifies as a place of public accommodation****.*
>
> *ILLUSTRATION 2: A residential condominium association maintains a longstanding policy of* ***restricting use of its party room to owners, residents, and their guests****. Consistent with that policy, it refuses to rent the room to local businesses and community organizations as a meeting place for educational seminars. The party room is* ***not a place of public accommodation****.*
>
> *ILLUSTRATION 3: A private residential apartment complex contains a rental office.* ***The rental office is a place of public accommodation****.*

U.S. Department of Justice, *ADA Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities, available at* http://www.ada.gov/taman3.html. (Emphasis added.)

In addition, a condominium may be subject to the ADA if it is a "place of lodging" under the ADA if: (1) the apartments are used for rentals that are short-term in nature (generally 30 days or less), (2) the occupants do not have the right to return to a specific apartment, and (3) the project offers amenities similar to a hotel, motel, or inn.

What Is A "Service Animal"?

The ADA applies to service animals. The U.S. Department of Justice's revised ADA regulations define "service animal" narrowly as any dog (or, in some circumstances, a miniature horse!) that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The revised regulations specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition." Thus, trained dogs are the only species of animal that may qualify as service animals under the ADA (there is a separate provision regarding trained miniature horses!), and emotional support animals are expressly precluded from qualifying as service animals under the ADA.

At ADA-covered facilities, an animal need only meet the definition of "service animal" to be allowed into the facility.

What Is An "Assistance Animal"?

The reasonable accommodation provisions of both State and federal laws apply where persons with disabilities use (or seek to use) assistance animals in residential housing where the provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals.

Assistance animals are sometimes referred to as "service animals," "comfort animals," "support" or "emotional support animals," or "therapy animals." To avoid confusion with the ADA "service animal" definition discussed above, you should use the term "assistance animal" to ensure that you keep a clear understanding of your obligations under both the State and federal fair housing laws.

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests in residential projects, the law does not require an assistance animal to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals.

What Questions Can You Ask About A Service Dog?

To determine if an animal is a service animal, you cannot ask about the nature or extent of a person's disability, but may only make two inquiries to determine whether an animal qualifies as a service animal. An ADA-covered entity may ask: **(1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform?**

Those are the only two inquiries that an ADA-covered facility may make even when an individual's disability and the work or tasks performed by the service animal are not readily apparent. You are not allowed to: (i) request any documentation for the dog, such as proof that the animal has been certified, trained, or licensed as a service animal; (ii) require that the dog demonstrate its task; or (iii) inquire about the nature of the person's disability.

You cannot even make the two permissible inquiries set out above when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

The service animal may not be denied access to the ADA-covered facility unless: (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures. A determination that a service animal poses a direct threat must be based on an individualized assessment of the specific service animal's actual conduct - not on fears, stereotypes, or generalizations about the animal's breed (e.g., pitbulls) or how the animal might behave. If, however, a particular service animal behaves in a way that poses a direct threat to the health or safety of others, has a history of such behavior, or is not under the control of the handler, that animal may be excluded. Otherwise, the service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.

Are gyms, fitness centers, hotels, or municipalities that have swimming pools required to allow a service animal in the pool with its handler? No. The ADA does not override public health rules that prohibit dogs in swimming pools. Nevertheless, service animals must be allowed on the pool deck and in other areas where the public is allowed to go. If a service animal is out of control and the handler does not take effective action to control it, staff may request that the animal be removed from the premises.

What Questions Can You Ask About An Assistance Animal?

Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. Generally, documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

If a disability-related need **is readily apparent** or **already known to the provider**, you may **not** ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal. For example, persons who are obviously blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog.

If the disability is readily apparent or known but the disability-related need for the assistance animal is **not**, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, you may ask a person in a wheelchair who is seeking a reasonable accommodation for an assistance animal that provides emotional support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability.

If a disability is **not obvious,** in general, you may request reliable, disability-related information that (1) is necessary to verify that the person meets the law's definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation (a dog or other animal), and (3) shows the relationship between the person's disability and the need for the requested accommodation (but without revealing too many details about the nature of the disability).

A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Where the answers to questions (1) **and** (2), above, are "yes," the law requires the housing provider to modify or provide an exception to a "no pets" rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an

undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services.

As outlined in more detail below, the request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal.

Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal. Liability insurance for assistance animals is another issue and probably depends on whether the owners have voted to require ALL owners in the project to have insurance.

Controlling Service Animals

The ADA requires that **service animals** be under the control of the handler at all times. In most instances, the handler will be the individual with a disability or a third party who accompanies the individual with a disability. The service animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal's work or the person's disability prevents use of these devices. In that case, the person must use voice, signal, or other effective means to maintain control of the animal.

For example, a person who uses a wheelchair may use a long, retractable leash to allow her service animal to pick up or retrieve items. She may not allow the dog to wander away from her and must maintain control of the dog, even if it is retrieving an item at a distance from her. Or, a returning veteran who has PTSD and has great difficulty entering unfamiliar spaces may have a dog that is trained to enter a space, check to see that no threats are there, and come back and signal that it is safe to enter. The dog must be off leash to do its job, but may be leashed at other times. Under control also means that a service animal should not be allowed to bark repeatedly in a lecture hall, theater, library, or other quiet place. However, if a dog barks just once, or barks because someone has provoked it, this would not mean that the dog is out of control.

Common Questions About Restricting Service Animals

- The ADA does not require service animals to wear a vest, ID tag, or specific harness. The Department of Justice states: *There are individuals and organizations that sell service animal certification or registration documents online. These documents do not convey any rights under the ADA and the Department of Justice does not recognize them as proof that the dog is a service animal.*
- The handler is responsible for caring for and supervising the service animal, which includes toileting, feeding, grooming and veterinary care. ADA-covered entities are not obligated to supervise or otherwise care for a service animal.
- A guest with a disability who uses a service animal must be provided the same opportunity to reserve any available room at a hotel as other guests without disabilities. They may not be restricted to "pet-friendly" rooms.
- Hotels are not permitted to charge guests for cleaning the hair or dander shed by a service animal. However, if a guest's service animal causes damages to a guest room, a hotel is permitted to charge the same fee for damages as charged to other guests.
- Some people with disabilities may use more than one service animal to perform different tasks.
- Individuals who have service animals are not exempt from local animal control or public health requirements, such as vaccination.
- Service animals are subject to local dog licensing and registration requirements.
- The ADA does not restrict the type of dog breeds that can be service animals.

Controlling Assistance Animals

Hawaii Civil Rights Commission rules state:

§12-46-318 Defenses.

* * *

(c) Refusal to allow the use of a particular assistance animal. An owner or any other person engaging in a real estate transaction may refuse to allow a person with a disability the use of a particular assistance animal if:

(1) The animal poses a direct threat to the health or safety of others and the animal's owner or

handler takes no effective action to control the animal so that the threat is mitigated or eliminated;

(2) The animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated by a reasonable accommodation;

(3) The presence of the assistance animal would pose an undue financial and administrative burden to the owner or person engaging in a real estate transaction; or

(4) The presence of the assistance animal would fundamentally alter the nature of the operations of the owner or person engaging in a real estate transaction.

The determination of whether an assistance animal poses a direct threat and whether the animal's owner or handler has taken effective action to control the animal so that the threat is mitigated or eliminated, must be based on an individualized assessment about the specific animal in question, such as the animal's current conduct or recent history of overt acts. The determination may not be based on the animal's species or breed. Factors to be considered include: the nature, duration and severity of the risk of injury; the probability that the potential injury will actually occur; whether reasonable modifications of rules, policies, practices, procedures, or services will reduce the risk; and whether the animal's owner has taken any action that has reduced or eliminated the risk, such as obtaining specific training, medication, or equipment for the animal. Denial of the use of a particular animal does not preclude a request to use a different animal.

Example:

Michael, who lives in an apartment building that has a "no pets" policy, has a disability and requires the use of Spot, an emotional support dog. One day while Michael and Spot are riding in the elevator, Spot lunges and bites a guide dog owned by Cindy, who is blind and is in the elevator at the time. Spot therefore poses a direct threat to the health and safety of others. If the direct threat can be mitigated, for example by having Michael muzzle and hold Spot by a short leash when Spot is in common areas, and by having Michael and Spot refrain from riding in the same elevator and being in the same common areas as Cindy and her guide dog, Michael may continue to use Spot. However, if the direct threat from Spot cannot be mitigated, or if Spot's continued presence would cause an undue financial and administrative burden, the apartment manager may deny Michael's use of Spot, though Michael may then request the use of a different emotional support animal.

Common Questions About Restricting Assistance Animals

The Hawaii Civil Rights Commission says the following requirements are reasonable restrictions on **assistance animals**:

- Having the animal licensed with the county, if the county requires licensing.

- Having the animal vaccinated, with documentation of the vaccinations.
- Requiring that the animal be registered with the association.
- Having the animal meet minimum sanitary standards.
- Requiring the owner of the animal to pick up all solid waste.
- Having the animal under the control of its handler by the use of a harness, leash, tether, cage or other physical control. If the nature of the person's disability makes that impractical or if physical control would interfere with the assistance that the animal provides, the association may require that the animal be otherwise under the control of the handler, by voice, signals, or other effective means.
- Having the person assume responsibility for damages caused by the animal. Nevertheless, because assistance animals are not pets, they may not be subject to deposits, fees, surcharges or liability insurance imposed on pet owners. There may be limited exceptions with regards to insurance.
- Having the person clean the unit upon vacating, by fumigation, deodorizing, professional carpet cleaning, or other appropriate methods, at the person's expense.

ACT 217, SB 2461 CD 1 RELATING TO FALSE SERVICE ANIMALS (Became law without the governor's signature; stated effective date of January 1, 2019.)

The act notes that service animals are supposed to be individually trained to perform tasks for disabled persons. Therefore, the act continues:

> *The legislature affirms that a dog or other animal whose sole function is to provide companionship, comfort, or emotional support does not qualify as a service dog under chapter 347, Hawaii Revised Statues, or the Americans with Disabilities Act of 1990 (ADA).*

As a result, the legislature concludes with the following statement:

The purpose of this Act is to:

> *(1) Establish a civil penalty for fraudulently representing an animal as a service animal; and*
>
> *(2) Establish a definition of "service animal" that more closely conforms with the Americans with Disabilities Act of 1990, as amended.*

On that basis, the act adds a new section to chapter 347 to confirm that it is "*unlawful for a person to knowingly misrepresent as a service animal any animal that does not meet the requirements of a service animal as defined in section 347-2.5.*" A person who by "clear and convincing evidence" is shown to have violated that restriction can be fined not less than $100 and not more than $250 for a first violation and not more than $500 for a second or subsequent violation.

Part of the stated purpose of the act is to make Hawaii law consistent with federal law, which permits not only service dogs but also service miniature horses. (Fortunately, service miniature horses seem to be quite rare in Hawaii.) Therefore, the act amends numerous sections of the Hawaii Revised Statutes to confirm that service "animals", not "dogs", are covered by the law.

Then, however, the act goes on to define a service "animal" as "*any dog that is individually trained . . . .*" and further states:

> *Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must relate directly to the individual's disability. Neither the potential crime deterrent effects of an animal's presence nor the provision of emotional support, comfort, or companionship by an animal constitutes work or tasks for the purposes of this definition.*

While this language does not seem to permit service miniature horses, federal law still does so. Regardless, the end result is that a service "animal" under Hawaii law is a service dog.

In summary, it is important to note that this legislation applies only to the federal Americans with Disabilities Act and Hawaii's equivalent law – the laws that govern disabilities in commercial/business properties and areas open to the public at large. The legislation does not apply to residential properties – e.g., residential condominiums – which are, instead, subject to the federal and State "fair housing laws." SB 2461 does not make any changes to those fair housing laws, so it does not have a direct impact on purely residential condominiums.

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