



Hawaii Real Estate Commission

Fundamentals of Successfully Operating an Association



**Saturday, October 23, 2021
Program: 9:00 a.m. to 12:00 p.m.**



The Fundamentals of Successfully Operating an Association

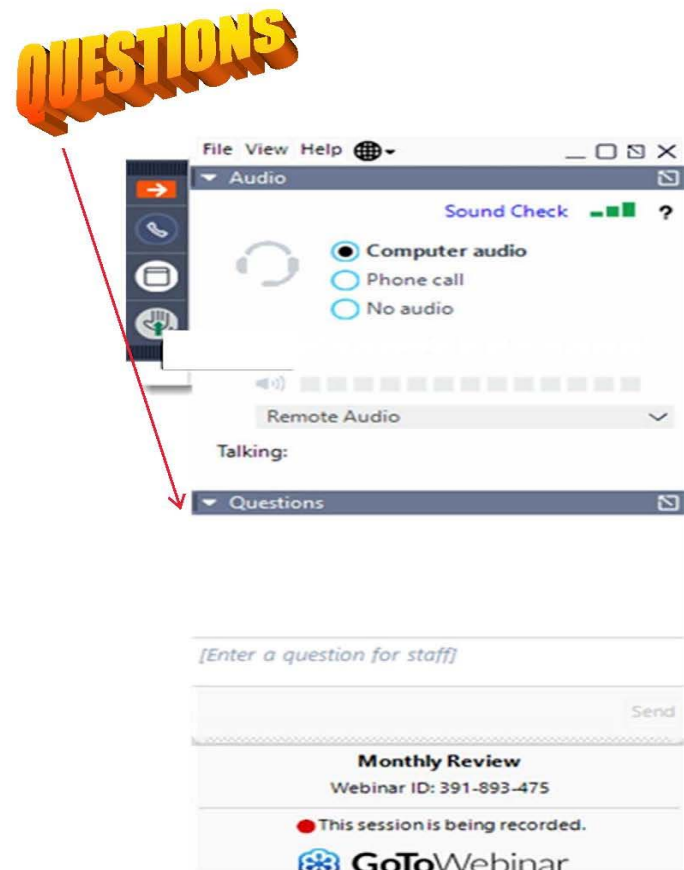
The Fundamentals of Successfully Operating an Association

October 23, 2021

AGENDA

9:00 a.m. - 9:05 a.m.	Welcome and Introductions – Milton Motooka
9:05 a.m. - 9:30 a.m.	Association Finances – Budgets, Collections & Reserves Jonathan Billings, PCAM, RS
9:30 a.m. - 9:55 a.m.	Contracting Wisely Neil Ross, PCAM
9:55 a.m. - 10:20 a.m.	Reducing Board Liability to Suits Melanie Oyama, Esq.
10:20 a.m. - 10:30 a.m.	BREAK
10:30 a.m. - 10:35 a.m.	Introduction of Speakers for second half
10:35 a.m. - 11:00 a.m.	Do's & Don'ts of Effective Rule Making John Morris, Esq.
11:00 a.m. - 11:25 a.m.	Keys to Processing Applications for Unit Modifications Lance Fujisaki, Esq.
11:25 a.m. to 11:50 a.m.	Everything You Need to Know About Association Insurance Sue Savio
11:50 a.m. – Noon	Evaluation and Adjournment

Submit questions using the
GoToWebinar Tool “Questions”





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

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This webinar is pending approval by the Community Association Managers International Certification Board (CAMICB) for 1.5 credit hours to fulfill continuing education requirements for CMCA[®] certification.

CAIHAWAII@HAWAIIANTEL.NET

MAHALO

Ron Lewis and Robert Hitchcock – technical and
registration logistics

Our Speakers



Jonathan Billings, PCAM[®], RS[®]: Jonathan is Vice President of Operations of Touchstone Properties, and has been involved with association management in Hawaii since 2010. Jonathan manages several associations that vary in size and difficulty and has been successful in developing strong relationships with all of his Boards and On-Site Management. He was awarded “Property Manager of the Year” in 2011 by the Resident Manager Association and received the prestigious Hoku award in 2014 from the CAI Chapter of Hawaii, which is given in recognition of participating in support of CAI education programs, and demonstrated leadership skills, and an interest in being a future leader with CAI Hawaii. Jonathan is currently serving as the President of the Hawaii Chapter of CAI. He has received his Professional Community Association Manager (PCAM) and Reserve Specialist (RS) designations from CAI.

Our Speakers



Neil Ross, PCAM®, has been working in the Property Management Industry since 2007 in London – England, New Jersey and Hawaii. In 2017 he joined Associa Hawaii as Senior Vice President of Operations. In this role, he is responsible for oversight of Management Services throughout the State. He is also directly involved in the day-to-day management of several Associations. Neil has spoken on several Community Association related issues including technology, future trends, and Association finances. Prior to joining the property industry, Neil lived in the Bay Islands of Honduras, working as a PADI (Professional Association of Diving Instructors) Course Director and Dive Operation General Manager.

Our Speakers



Melanie Oyama is a Partner with Motooka Rosenberg Lau & Oyama; her primary practice areas are delinquency collections and general counsel for Condo and Community Associations. She earned her Juris Doctor at Arizona Summit School of Law in 2015. She completed a three-year juris doctor program in just over two years, including courses in Ireland. Prior to attending law school, Melanie received her Bachelors in Justice Administration from Hawaii Pacific University in 2013. Prior to and while earning her B.A. degree, Melanie worked for Motooka & Rosenberg for thirteen and a half years as a paralegal. She has been the Co-Chair for CAI Hawaii's Programs Committee since 2018 and this is her fifth year as Co-Chair of CAI's Board Leadership Development Workshop. She also currently serves as Co-Chair for our Neighbor Island Committee.

BREAK

PROGRAM WILL START AGAIN AT 10:30 A.M.



2021 CONDORAMA

Fundamentals of Successfully Operating an
Association

ASSOCIATION FINANCES

Jonathan Billings
RS, PCAM



ASSOCIATION FINANCES: A TO Z

Handling Association finances is one of the most important aspects of running a successful Association.

Association finances include:

- **Annual Operational Budgets**
- **Annual Reserve Studies**
- **Investment Policy**
- **Monthly Financial Preparation/Review**
- **Collection Procedures**

ANNUAL OPERATING BUDGETS

Assessments shall be made based on a budget adopted and distributed or made available to unit owners at least annually by the board.

A budget is ESTIMATES OF REVENUE & EXPENDITURES during a period of time.

Historical Trend

Historical trend budgeting means looking at a particular line item over a period of time to identify either an increasing or decreasing trend.

Zero Based Budgeting

Zero-based budgeting means setting every line item to zero and justifying each dollar budgeted.



ANNUAL RESERVE STUDY

A Reserve Study Addresses Three Questions:

- 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?

A Reserve Study is Not:

- A crystal ball
- Forensic/Destructive Inspection
- Code Compliance Inspection
- Hard Cost Proposals
- Engineering Analysis



Budget to engage professionals to further investigate critical components, inaccessible components, components that show signs of deterioration, etc.

RESERVE STUDY: ESTIMATED USEFUL LIFE & REPLACEMENT COSTS

When will the components need replacement?

- Past Experience
- Publications
- Hawaii Licensed Contractors
- Warranty Information
- Comparisons

Useful life will vary depending on circumstances

Take a close look at the next 3-5 years

Estimated costs fluctuate: Supply Chain Disruption, Petroleum, Labor, Tariffs, Etc.



INVESTMENT POLICY

Stipulates:

Investment
Policy

- What investments are acceptable
- Who has authority to make decisions
- What terms must be met



MONTHLY FINANCIAL PREPARATION/REVIEW

Financial statements:

- Prepared Monthly
- Provide economic information needed to make decisions
- Enable the Board to monitor financial activity

Common Financial Reports Includes:

Balance Sheet

Income Statement

General Ledgers

Bank Statements

Bank Reconciliation Report

Delinquency Report



COLLECTING ASSESSMENTS: Create and Publish a Clear Collection Policy.

A written collection policy:

- Is not intended to punish owners, but to *protect* them against those who don't pay on time
- Serves to educate owners about legal obligations and consequences
- Serves as a roadmap to guide the board in handling collections predictably and enforcing the policy consistently

Common Collection Cycle

L1: Friendly Reminder, with Late Fee Charge

L2: A Reminder with Late Fee Charge

L3: A Certified Demand Letter with Late Fee Charge & deadline.

Attorney Letter: Letter address to Attorney to take new action or follow up old account status



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Contracting Wisely

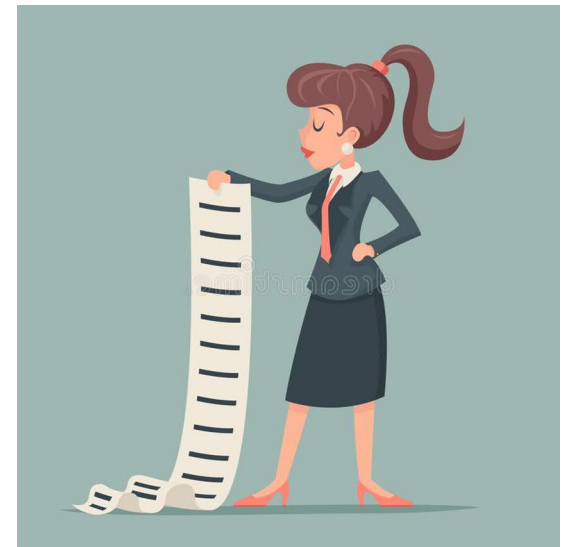
Preparing specifications for contracts, selecting a reputable contractor, and monitoring contracts

Agenda

- **Contracts: types, preparation and specifications:**
 - When do we need a contract in the first place?
 - What kind of contracts are available, and which one should we select?
 - How do we prepare specifications, and what should be included?
 - Are there specifications we should always include? Doesn't it depend on the scope of work? Who should write the specifications?
- **Bidding and Contractor Selection:**
 - What is involved in the bidding process? How many bids should we get?
 - Are we qualified to review the bids?
 - How can we verify that a contractor is qualified and reputable?
 - Now we have selected our contractor, what do we do to finalize terms?
- **Monitoring contracts and work product:**
 - How do we monitor the work to ensure the contract is being adhered to?
 - What can we expect throughout the duration of the contract?
 - Now the project has been completed, what's next? How long should we keep the contract on file?



Do we really need a contract for this? **YES**



\$\$\$

When do we need a contract and what kind of contract should we use?

- Who will you be working with? Handyman, Landscaper, Engineering firm?
- What is the scale and scope of the project or service?
- When DON'T we need a contract?

CONTRACT TYPES:

- Service Contract or Agreement
- Specific Repair Contract
- Preventative Maintenance Contract
- Large-scale construction or renovation Contract



SERVICE SOLUTION

SUMMARY OF SERVICES

FIRE ALARM ESSENTIAL SERVICE OFFER - SIMPLEX 4100ES FIRE ALARM PANEL

TEST AND INSPECTION:

Inspections and diagnostic tests for the accessible peripheral devices listed and currently connected to the facility fire alarm system. Tests will be scheduled in advance. System labor discount on parts and peripherals of 10%. Unless otherwise specified herein, batteries installed within wireless initiating and notification peripheral devices are not covered under this agreement. Replacement of such batteries will be at an additional cost.



4. **Code Compliance.** Company does not undertake an obligation to inspect for compliance with laws or regulations unless specifically stated in this Agreement. Customer acknowledges that the Authority Having Jurisdiction (e.g. Fire Marshal) may establish additional requirements for compliance with local codes. Any additional services or equipment required will be provided at an additional cost to Customer.

5. **Limitation of Liability; Limitations of Remedy.** Customer understands that Company offers several levels of protection services and that the level described has been chosen by Customer after considering and balancing various levels of protection afforded and their related costs. It is understood and agreed by Customer that Company is not an insurer and that insurance coverage shall be obtained by Customer and that amounts payable to Company hereunder are based upon the value of the services and the scope of liability set forth in this Agreement and are unrelated to the value of Customer's property and the property of others located on the premises. Company makes no guaranty or warranty, including any implied warranty of merchantability or fitness for a particular purpose that equipment or services supplied by Company will detect or avert occurrences or the consequences therefrom that the equipment or service was designed to detect or avert. It is impractical and extremely difficult to fix the actual damage, if any, which may result from failure on the part of

6. **Service Level of the Emergency or On-call Services.**

8. **General Provisions.** Customer has selected the service level desired after considering and balancing various levels of protection afforded and their related costs. All work to be performed by Company will be performed during normal working hours of normal working days (8:00 a.m. - 5:00 p.m., Monday through Friday, excluding Company holidays), as defined by Company, unless additional times are specifically described in this Agreement. Inspections shall be pre-scheduled with a mutually agreeable date and time. Emergency service work shall be scheduled with an ETA which can be a four-hour window due to the dynamic nature of emergency service calls. Additional charges may apply for special scheduling requests (e.g. working around equipment shutdowns, after hours work). Company will perform the services described in the Service Solution ("Services") for one or more system(s) or equipment as described in the Service Solution or the listed attachments ("Covered System(s)"). UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT, ANY INSPECTION (AND, IF SPECIFIED, TESTING) PROVIDED UNDER THIS AGREEMENT DOES NOT INCLUDE ANY MAINTENANCE, REPAIRS, ALTERATIONS, REPLACEMENT OF PARTS, OR ANY FIELD ADJUSTMENTS WHATSOEVER. NOR DOES IT INCLUDE THE CORRECTION OF ANY DEFICIENCIES IDENTIFIED BY COMPANY TO CUSTOMER. COMPANY SHALL NOT BE RESPONSIBLE FOR EQUIPMENT FAILURE OCCURRING WHILE COMPANY IS IN THE

How do we prepare bid specifications and what should be included? What is essential to include?

- Avoid the fruit basket!
- Be specific, be clear
- More is better.



- | | |
|---|------------------------------------|
| • Name of all Parties subject to contract | • Liability and Indemnification |
| • Timeline and key dates | • Permits and licensing |
| • Payment terms and total contract value | • Inspections |
| • Material specifications | • Additional costs per unit/hour |
| • Storage provisions | • Penalties for failure to perform |
| • Responsibility for damage | • Maps and location of work |
| • Insurance requirements | • Work hours and restrictions |
| • Performance expectations | • Work inspections and oversight |
| • Guarantees/warranties/references | • Subcontracting |

Sample Simple Request for Proposal (RFP):

Request for Proposal: Landscaping Services

Overview

Community Name: Mauna Olu Estates Owners Association ("Association")

Location: Maunaolu Street, Makaha, HI 96792. (See Exhibit A).

Description: Mauna Olu Estates is a large Community Association with common roadways and drainage channels. The Association is requesting proposals for general landscaping services.

Contact: Any questions should be directed to the Association Management Team, Neil Ross (neilr@associahawaii.com) and Dianne Gatmen (dianneg@associahawaii.com)

Key Dates: All proposals, including Exhibit B, enclosed, must be submitted by email no later than close of business on October 31st, 2021.

Site Inspection: All bidders are welcome to inspect the site. Please contact Neil or Dianne to coordinate access.

Insurance/license: Contractor will be required to submit proof of current insurance in the form of a Certificate of Liability Insurance (CGL) and proof of current contractor license.

Warranty: Contractor will be required to provide materials, and workmanship.

References: Contractor will be required to provide the last twelve months, for similar for confirmation of work performance.

Inspection: The Association reserves the right to inspect workmanship of the contractor at any time.

Exhibit A: Map

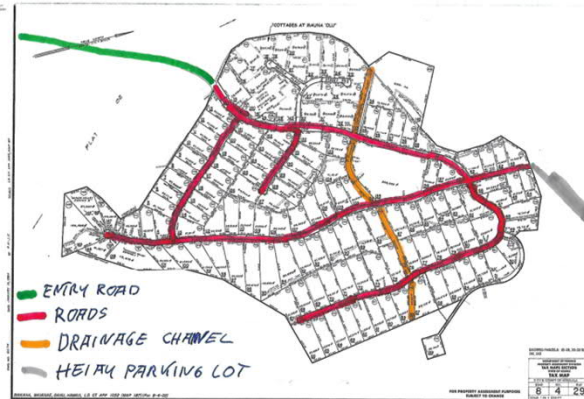


Exhibit B: Submittal Form

Legal Company name: _____

Address: _____

Contact name: _____

Contact phone/email: _____

License No.: _____ Tax ID: _____

Date Submitted: _____

Specifications:

- ENTRY ROAD (Green in Exhibit A):**
 - Mow and trim every two weeks.
 - Spray for weeds semiannually.
 - Water manually as needed.
- ROADWAYS (Red in Exhibit A):**
 - Mow and trim every two weeks.
 - Spray for weeds semiannually.
 - Edge along roadways quarterly.
- Heavy Parking Lot (Grey in Exhibit A):**
 - Mow and trim every two weeks.
 - Spray for weeds semiannually.
 - Water manually as needed.
 - Trim trees and shrubs up to 10' quarterly.
- Channel (Orange in Exhibit A):**
 - Clear channel of debris monthly.
 - Clear two feet on either side of channel monthly.
 - Spray weeds inside channel semiannually.

Notes:

- or will be responsible for the supply of all materials required to fulfill contract, including labor.
- or will be responsible for removal of all green waste from site.

- "Water manually" as described above relates to the operation of the pre-installed irrigation lines.
- Workmanship: the contractor must perform all functions and activities to established industry standards and practices, in a manner that will produce a finished work of first-class appearance.
- Contractor will be responsible for all logistics, setup, deliveries, clean up, health and safety and other environmental code considerations.

Bid Submittals:

Total Cost: \$ _____ (please provide rate exclusive of GET).

Additional/alternate costs:

- Hourly rate for mowing/trimming _____
- Hourly rate for irrigation repairs _____
- Hourly rate for incidental work _____

Printed Name: _____

Signature: _____ Date: _____

Who should write the specifications?

- What is the project and Who is most qualified?
 - Board Member?
 - Professional Manager?
 - Engineer or Architect?



INVESTMENT



Now that we have the Specifications, what is involved in the bidding process?

- Number of bids
- Where to find bidders
- Bid comparison information
- Who should conduct the review?
- Governing Documents

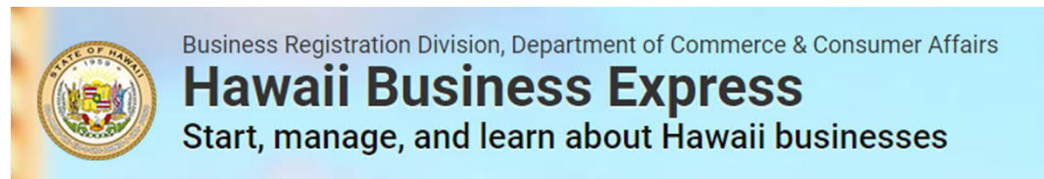


BID SUMMARY PAINTING

	ABC LLC	CDE LLC	EDF LLC	FGH LLC	HII LLC
1 BASE BID - EXTERIOR	\$ 528,800.00	\$ 1,082,194.00	\$ 466,850.00	\$ 1,151,358.00	\$ 335,368.00
DURATION OF PROJECT: WORKING DAYS	240	240-280	100-120	300	360
peeling paint / sq foot beyond 500 sf	\$ 10.00	\$ 4.70	\$ 2.00	\$ 8.50	\$ 5.00

We have found a contractor or service provider we are ready to select, how can we verify that they are reputable?

- Confirmation of qualifications
- References
- Site visits



Selection made, what now? Back to the contract!

CONTRACT TYPES:

- Service Contract or Agreement
- Specific Repair Contract
- Preventative Maintenance Contract
- Large-scale construction or renovation Contract
- Engage your Attorney! What type of contract do you need?
- What should be included?
- It's not a competition!
- Who signs the contract?



- | | | |
|--|-------------------------|------------------|
| • Complete Specifications | • Costs | • Termination |
| • Drawings, plans, etc | • Timeline | • Change Orders |
| • Legal Description | • Warranties | • Subcontracting |
| • Location | • Performance Standards | |
| • Insurance and Indemnification provisions | • Restoration | |

How do we monitor the work to ensure the contract is being adhered to?

- Professional vs repair contracts.
- Engaging a Project Manager or Consultant.
- Utilizing your Management Team.
- Frequency of Inspections.
- Change orders.
- Stage Payments.



Warning signs to look out for through the duration of the contact

- Time delays, days off, late starts.
- Concerns with workmanship.
- Safety concerns.
- Material changes.
- Carelessness.
- Change in service provider.
- Subcontractors.



The contract term is over, and/or the project is complete, what now?

- Ensure all specifications have been fulfilled.
- Arrange for final inspections and walk-throughs.
- Prepare punch list.
- Acceptance of work - who approves?
- Is there a retention?
- Warranties.
- Record retention.



CONSTRUCTION PUNCH LIST
CHECK LIST

CATEGORY	ITEM	REPORTED	COMPLETED
CEILINGS			
	Are there any visible drywall tape joints? Check in natural light and with lights on		
	Are the holes for light fixtures and vents undercut so there are gaps at the coverplate		
	Do you notice any cracks in the ceiling		
	Do you notice any cracks at the corners of skylights		
	Do you have adequate access to your attic and is it insulated properly		
	Are skylights sealed		
	Are smoke detectors installed and operational		
WALLS			
	Are there any visible tape joints not properly sanded or missing paint		
	Are there any cracks at the corners of door and windows		
	Do you see any screw heads popped through the drywall		
	Do you see any nail heads popped in wood framing		
	Is there adequate paint coverage or do you see thin spots		
	If your walls are textured, is it uniform		
	Do you notice any gouges, dings or crushed corners		
	Are there any cracked or chipped wall tiles		
	Are there any broken grout pieces on tile walls		
	Is wall covering secure at wall ends and corners		
	Are any trim pieces tight to the wall with no gaps		
DOORS AND WINDOWS			
	Check frames for damage - dents, scratches, buckling		
	Doors should open and close smoothly without catching		
	Self-closing doors should latch on closing		

Contracting Wisely Key Takeaways:

- Seriously consider a contract or service agreement for all scheduled and ongoing projects or services.
- Ensure the RFP and or Bid Specification Pack is clear and consistent.
- Read the contract (or have a professional do it for you).
- Task someone with the responsibility of making sure the contract is adhered to.
- Address contract concerns immediately.
- This is a TEAM EFFORT. A close working relationship with your professional support network and contractor will lead to happy owners and Directors.





Mahalo

Neil Ross, PCAM Senior Vice President, Assoc ia Hawai i neilr@associahawaii.com 808-792-3052



FUNDAMENTALS OF SUCCESSFULLY OPERATING AN ASSOCIATION

REDUCING BOARD LIABILITY



Presented by

**Melanie K. Oyama, Esq.
Motooka Rosenberg Lau & Oyama**

INTRODUCTION

- I. Legal Documents and Authority
- II. Powers and Duties of the Board
- III. Financial Management
- IV. Liability and Insurance
- V. Dealing with and Balancing Owners' Rights and Responsibilities



D&O CLAIMS

Possible claims under Directors' and Officers' Liability Insurance are as follows:

- Breach of Governing Documents

- Breach of Contract

- Failure to Properly Reserve Funds

- Breach of Fiduciary Duty - Conflict of Interest

- Failure to Collect Assessments

- Breach of Fiduciary Duty - Breach of Loyalty



I. LEGAL DOCUMENTS AND AUTHORITY

A. Governing Documents

1. Declaration
2. By-laws
3. House rules

B. Legal Authorities

1. Federal and State Laws
2. Caselaw
3. Local Statutes/Ordinances



I. LEGAL DOCUMENTS AND AUTHORITY

C. Governing documents are subject to the authority of the federal and state laws, caselaw, and local statutes and ordinances

D. Ignorance of the governing documents is no excuse for errors or negligence



II. POWERS AND DUTIES OF BOARD MEMBERS

Powers are defined as actions that the Board can do.

Duties are actions that the Board must do.

Function of the Board = Executive,
Legislative, & Judicial Branches



II.A POWERS

1. Familiarity with Governing Documents
2. Familiarity with Relevant Laws
 - i. HRS 514B
 - ii. HRS 421J
 - iii. HRS 414D



II.B FIDUCIARY DUTIES*

1. Duty of Obedience = Scope of Authority
2. Duty of Diligence/Care = Informed Decisions
3. Duty of Loyalty = Best Interest of the Association (conflicts of interest)
4. Duty of Good Faith = Honest and Fair Dealings

* HRS 514B-106, HRS 414D-149, HRS 414D-150, HRS 414D-155



II.C BUSINESS JUDGMENT RULE

What is the business judgment rule?

- a. Acting in good faith;
- b. Acting with the care of an ordinary reasonably prudent person in like position;
- c. Acting in a manner believed to be in the best interest of the Association



II.C BUSINESS JUDGMENT RULE

What is the effect of the business judgment rule?

- a. Courts will likely not second guess decisions of a Board if the Board acted reasonably and in good faith
- b. Boards will generally not be liable for making “ordinary” mistakes because Courts recognize that directors are volunteers



III. FINANCIAL MANAGEMENT

- A. Collection of Assessments
- B. Maintaining Financial Records
- C. Fidelity Bond Requirements
- D. Annual audits
- E. Reserves



IV. LIABILITY AND INSURANCE

A. Liability Protections

1. Indemnification*
2. Non-Profit Corporations Act**
3. Volunteer Protection Act***

B. Directors' and Officers' Liability Insurance

* Governing Documents (usually the Bylaws)

** HRS 414D-149(f)

** VPA was passed by Congress in 1997 and amended in 2017



V. DEALING WITH AND BALANCING OWNERS' RIGHTS AND RESPONSIBILITIES

A. Owners' Right

1. to be treated fairly and with respect
2. to attend and participate in Board meetings (but may be limited in some respects)*
3. to inspect/review Association records**

* HRS 514B (will vary for planned community associations - check Bylaws for any provisions that allow owner's to attend and participate in Board meetings)

** Applies to Condominium Associations (HRS 514B), Planned Community Associations (HRS 421J-7), and Non-Profit Corporations (HRS 414D-302, 303, and 306)



V. DEALING WITH AND BALANCING OWNERS' RIGHTS AND RESPONSIBILITIES

- B. Communicate with owner/tenant and determine the issues
- C. Mediate the dispute if necessary and/or required
- D. Arbitrate the dispute if mediation fails



Thank you!

Motooka Rosenberg Lau & Oyama, LLC

MYHawaiiLaw.com

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Help Line (Collections): 532-7246



Welcome Back!

Our Speakers



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 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.

Our Speakers



Lance S. Fujisaki, Esq. was 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. He served as a Technical Editor on the Hastings Law Journal. 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. He has taught numerous programs on legal matters for CAI and other local organizations, has written articles for the community association community, and has spoken at Condorama presentations in Honolulu. His exclusive field of practice is in the representation of community associations, including counseling, contract negotiations and documentation for renovation projects.

Our Speakers



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 of Community Associations Institute (CAI) Hawaii, and has served on their board in different capacities since 2000. She was awarded the Gourley Award for distinguished service to CAI Hawaii. She currently serves on the boards of three condominium associations.



Hawaii Real Estate Commission

Fundamentals of Successfully Operating an Association

October 23, 2021

DEVELOPING AND ENFORCING EFFECTIVE HOUSE RULES

John A. Morris, Esq

In adopting and amending effective house rules, the board should focus on three concepts: 1) process; 2) content; and 3) enforcement.

PROCESS

Most bylaws (and sometimes declarations) include a specific provision on the process that must be followed to adopt or amend house rules.

- The provision will sometimes state that the board alone, can adopt and amend house rules.
- Other provisions will require that, before adopting or amending house rules, the board must give owners notice and an opportunity to comment on the proposed house rules before the board adopts them.
- Some bylaws even require owners to vote to approve the board's proposed house rules.

- In all cases, as a matter of due process, the board should ensure that every owner and resident receives a copy of the revised house rules before the board begins enforcing the new rules.
- Following the required process is important. Otherwise, if the board fails to follow the required process, owners may be able to challenge the validity of the house rules and undermine their enforcement.
- In addition, boards should carefully document that they followed the required process to adopt the house rules. Otherwise, without proof that the board did follow the right process, an owner may also challenge the house rules simply because the board cannot provide that proof.

CONTENT

- The law, and sometimes the declaration and bylaws limit what can be included in the house rules.
- Chapter 514B, Hawaii Revised Statutes (“HRS”), includes provisions relating to house rules. HRS section 514B-104 (a) (1) together with section 514B-106 (a) give the board the authority to adopt house rules.
- HRS section 514B-105 (b) prevents the use of house rules to restrict matters that should be stated in the declaration or bylaws. (For example, restrictions on the use of units -- such as occupancy restrictions -- must be stated in the declaration or bylaws. *See* HRS section 514B-105 (b) (2).)

- HRS section 514B-105 (b) (“Association; limitations on powers”) states the following limitations on an association’s power to adopt rules:

- (b) **Unless otherwise permitted by the declaration, bylaws, or this chapter, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:**

(1) *Prevent any use of a unit which violates the declaration or bylaws;*

- (2) *Regulate any behavior in or occupancy of a unit which violates the declaration or bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners; or*

- (3) *Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in condominiums or regularly purchase those mortgages.*

- **Otherwise, the association may not regulate any use of or behavior in units by means of the rules and regulations.**

- (Emphasis added.)

- Similarly, many bylaws will limit house rules to controlling the management and use of the common or limited common elements but will not clearly allow house rules to control the use of units.
- On the other hand, there are arguments that the board can adopt policies that implement the authority the board already has under the declaration and bylaws. In other words, the board can adopt policies that provide more detail on how the board will enforce and implement its existing authority under the declaration and bylaws.
- Nothing in the law prohibits the board from including those policies in or with the house rules. Nevertheless, to avoid challenges that the board has exceeded its authority under section 514B-105 (b), the board should probably make the basis for any such policies very clear in the policies, themselves.
- Even if the board has the authority to adopt house rules on specific issues, the board has to be aware of external limitations imposed by other laws on the board's freedom of action.

- Fair Housing. For condominiums, one of the areas of greatest potential liability arises under the Federal Fair Housing Amendments Act of 1988 ("FHAA") (and its State counterpart, Chapter 515, HRS. Under those laws, the four main problem areas are: (i) alterations to units and common elements (as they affect disabled occupants); (ii) restrictions on children; (iii) restrictions on animals (as they affect disabled occupants); and (iv) occupancy limits and standards (which often affect families with children).
- Compliance with the FHAA and state law is important because violations can result in significant penalties (and a lot of inconvenience) if the federal or state agencies begin an investigation.
- Note that the government will sometimes take the position that just printing or publishing discriminatory statements in the house rules – such as a prohibition on young children using the pool or other common areas, an occupancy restriction for units, or a prohibition on animals, etc. – can create liability under the FHAA, regardless of whether the provisions are actually enforced.
- One way to avoid that problem is to ensure that an association's house rules recognize fair housing requirements and include at least a general statement regarding compliance with the FHAA, e.g., a "Non-Discrimination Policy."
- **Boards should be very careful in adopting any house rules that may raise potential fair housing issues.**

- Pets. Leaving aside all issues relating to service, assistance, or emotional support animals, most people agree that section 514B-156 of the condominium law requires that prohibitions on pets must be stated in the bylaws, not just the house rules. Associations can include prohibitions controlling pets in the house rules but not an absolute prohibition on pets.
- In other words, if an association's house rules prohibit pets but its bylaws do not, anyone who understands this issue can argue that the prohibition in the association's house rules is not enforceable. Therefore, the association should be aware of this issue if it plans to prohibit pets in the house rules without supporting prohibitions in its bylaws.

- Smoking. Under the general law, the board can prohibit smoking anywhere in the common elements. Nevertheless, there is also an argument that the board cannot prohibit smoking in units unless the bylaws prohibit smoking in units.
- The board may be able to control smoking in units based on the provisions in the bylaws that prohibit owners from using their units in a way that create a nuisance for other residents. Nevertheless, under that theory, the board will have the burden of showing that a nuisance is being created by the smoke coming from an owner's unit. That is not as simple as a bylaws provision that simply prohibits smoking in units.

- Noise. As noted above, generally house rules cannot control conduct within a unit. Nevertheless, under the provisions in the bylaws prohibiting nuisances, most associations have house rules prohibiting excessive noise coming from a unit under the theory that excessive noise is a nuisance.
- Antennas. If an association's house rules deals with antennas, they should probably recognize that section 207 of the Federal Telecommunications Act of 1996, entitled "Restrictions on Over-the-Air Reception Devices" ("OTARD") probably makes it impossible for the association to prevent an owner from installing an antenna or small satellite dish (one meter in diameter or less) to receive video programming, as long as the installation is on property owned by or for the exclusive use of the owner.

ENFORCEMENT

Fines. One low-cost way of enforcement is to impose fines. While fines do not involve much financial outlay for an association, they can be a difficult issue. The basic principle with fines is that “the punishment must fit the crime.” In other words, the fines must be appropriate to the harm for which the fines are imposed.

Hawaii case law indicates that failing to give notice and an opportunity to be heard before imposing a large fine or simply imposing large fines may be questioned by a court.

Courts also seem to be of the belief that if the fines are not effective within a reasonable time, more formal enforcement practices – such as mediation, arbitration, or court – should be followed.

The condominium law, section 514B-104 (A) (11), allows fines, so there is no question that fining is permitted under Hawaii’s law. Moreover, many bylaws specifically permit the board to adopt fines for the association. Otherwise, the association must follow the requirements of section 514B-104 (A) (11), which states as follows:

- **§514B-104 Association; powers.** (a) Except as provided in section 514B-105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

• * * *

(11) Impose charges and penalties, including late fees and interest, for late payment of assessments and levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws **or, if the bylaws are silent,** pursuant to a resolution adopted by the board that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process as provided by sections 514B-161, 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the department of commerce and consumer affairs;

•

(Emphasis added.)

- Associations that are intending to impose fines under their house rules but do not have a specific provision on fines in their bylaws should adopt a resolution as required by this section. Otherwise, owners and residents may challenge the board's authority to impose fines without that resolution. Even for associations that have a fining provision in their bylaws, this section gives some idea as to appropriate procedures to follow.
- On a related issue, when enforcing house rules that may impact someone with a disability, associations should avoid "self-help" remedies, such as fines. Fining a disabled person can often increase potential liability because it can be deemed to be "retaliation". Therefore, it may be better to discuss the violation with the resident and move for mediation or some other formal dispute resolution process. The Hawaii Civil Rights Commission ("HCRC") interprets "retaliation" very broadly, so it is better to work with a disabled resident through some formal process because direct action (like fines) may be deemed retaliation by the HCRC.

- Mediation. Each party pays only a filing fee to participate in mediation. Mediation is sponsored by the Hawaii Real Estate Commission and subsidized by money from its condominium education trust fund, which is funded by assessments on associations.

- Mediation helps provide a controlled setting for discussion and communication. Mediation also helps the parties focus on issues, not personalities, and on resolving the dispute, not blaming each other. Specially trained mediators assist the parties in communicating with each other, exploring possible solutions, and negotiating mutually acceptable settlements. Mediators do not impose solutions on parties to a dispute but try to help them reach their own solutions.

- For many years, the condominium mediation program that was supported by the condominium education trust fund followed the “facilitative” model of mediation. Under that model, volunteer mediators assist owners and associations in resolving their disputes, while still keeping the cost of mediation relatively low.
- A change made to the law in 2013 tries to promote greater use of mediation by utilizing “professionally trained mediators” funded by money from the condominium education trust fund, for “evaluative” mediation. The idea behind the change is that mediators with training in the condominium area and a legal background can be more effective in persuading parties to resolve their disputes, thereby making mediation a more effective dispute resolution procedure.

- Arbitration. Certain condominium disputes may be resolved by arbitration at the request of a party to the dispute. {Section 514B-162}. Arbitration is a method of resolving disputes by submitting them to an impartial person who has the power to make a binding determination concerning the dispute. Disputes about common expenses can only be resolved by arbitration if the owner first pays the full amount claimed by the association {Section 514B-162 (b) (5); Section 514B-146}.
- An arbitration hearing is similar to a court hearing but less formal. Sworn testimony and evidence may be presented, as in court, but the process is usually more flexible and informal, and pre-trial procedures are often reduced. Arbitration can be expensive and is certainly more expensive than mediation.

- Litigation. As with any disputes, condominium-related disputes can be decided in court. (Nevertheless, as noted above, parties can also demand arbitration of some disputes. {Section 514B-162.} Since litigation can be expensive and time-consuming, boards and owners should first explore mediation or even arbitration.
- Litigation can be expensive when facts are in dispute because of the procedures which may be used in some courts to obtain additional evidence and develop each party's case. For example, a party to litigation may make requests for documents, requests for written answers to questions, and may question other parties and their witnesses under oath (in depositions). All this takes additional time and money, which not only increases costs but also delays the case.



Hawaii Real Estate Commission

Fundamentals of Successfully Operating an Association

October 23, 2021



KEYS TO PROPERLY PROCESS APPLICATIONS FOR UNIT MODIFICATIONS

LANCE S. FUJISAKI

LEARNING OBJECTIVES



1. Fiduciary Duties



2. HRS 514B-140 and governing documents



3. Boundaries of apartments, common elements and limited common elements



4. Building permits and licensed contractors



5. Documents and tools

FIDUCIARY DUTIES



DUTY OF DUE CARE AND DILIGENCE

- Gather and request necessary information for decision making
- Review HRS § 514B-140 and governing documents
- Consult engineers or architects
- Respond promptly to applications
- Document, document, document

- Three categories of alterations:
- 1. Work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement
- 2. Material additions or alterations
- 3. Nonmaterial additions or alterations*
- * The proposed work will not jeopardize the soundness or safety of the property, reduce the value of the project, impair an easement, detract from the appearance of the project or interfere with or deprive a nonconsenting owner of the use or enjoyment of any part of the project, or directly affect a nonconsenting owner.

HRS SECTION 514B-140

- 1. Work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement



DISAPPROVAL

- 2. Material additions or alterations



- WRITTEN CONSENT OF 67% OF UNIT OWNERS
- CONSENT OF DIRECTLY AFFECTED OWNERS
- BOARD APPROVAL

HRS SECTION 514B-140

- Nonmaterial additions or alterations★
- ★ The proposed work will not jeopardize the soundness or safety of the property, reduce the value of the project, impair an easement, detract from the appearance of the project or interfere with or deprive a nonconsenting owner of the use or enjoyment of any part of the project, or directly affect a nonconsenting owner.



• BOARD APPROVAL

DECLARATION-BYLAWS-HOUSE RULES

- • BOARD MEMBERS MUST ALSO COMPLY WITH THE PROVISIONS OF THE GOVERNING DOCUMENTS
- • EACH SET OF GOVERNING DOCUMENTS IS DIFFERENT SO BE SURE TO READ THE DOCUMENTS

UNDERSTAND UNIT BOUNDARIES AND DEFINITIONS OF UNIT, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

- • REVIEW DECLARATION AND BYLAWS
- • REVIEW CONDOMINIUM MAP OR FILE PLAN, IF NECESSARY
- • REVIEW HRS SECTION 514B-35



BUILDING PERMITS, CONTRACTOR LICENSING, STAMPED PLANS

**1. Building
Permits –
plumbing and
electrical work**

**2. Licensed
Contractors**

3. Owner-Builder

**4. Stamped
Plans**

USE FORMS, CHECKLISTS AND STANDARD PROCEDURES

- Design Review Application
- Approval letter
- Contractor certificate
- Recorded modification or encumbrance agreement

BENEFITS OF STANDARD APPLICATION FORMS

- (1) provide documentation of the work performed inside units,
- (2) provide written representations that the owner will perform no other work in the unit other than that disclosed in the application,
- (3) identify the contractors who will perform the work,
- (4) educate owners of the approval process,
- (5) prevent owners and contractors from performing work without the approval of the Board, and
- (6) make it easier for the association to successfully enforce the governing documents against owners in the event that owners violate the governing documents or HRS Chapter 514B.

INFORMATION TO REQUIRE ON APPLICATION FORM

Identify the work to be performed

The contractor who will perform the work and license numbers (if applicable)

Estimated market value of the work

Confirmation that no other work will be performed

Include a checklist of all components of the unit and have owner check items that will be altered or replaced

Require before and after plans of the unit

Require elevation plans, if necessary

Owner's signature, acknowledging requirements and disclaimers

INFORMATION TO INCLUDE ON CONTRACTOR CERTIFICATE FORM

**Contractor's name,
license number and
type of license**

**Confirmation that
contractor reviewed
the design review
application**

**Certify whether
building permit is
required**

**Certify that
contractor will
comply with
approved
application**

**MAHALO,
GOOD LUCK
AND STAY
SAFE!**

For more information:

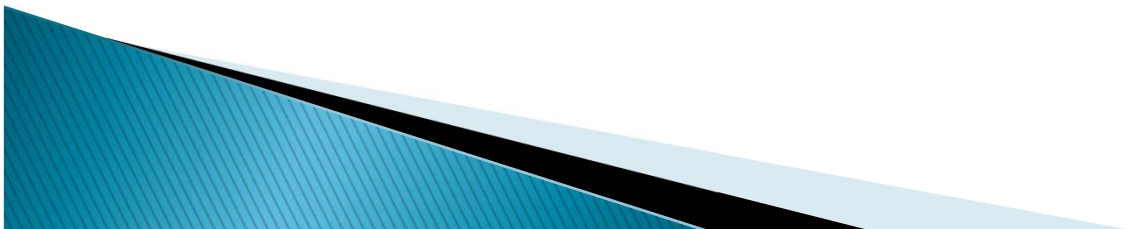
- **See June 2021 Hawaii Condominium Bulletin linked below for article by Lance Fujisaki on this topic:**
<https://cca.hawaii.gov/reb/files/2021/06/CB2106.pdf>



Hawaii Real Estate Commission

Fundamentals of Successfully Operating an Association

October 23, 2021



Risk Control & Insurance

Presented by:
Sue Savio, President
Insurance Associates, Inc.

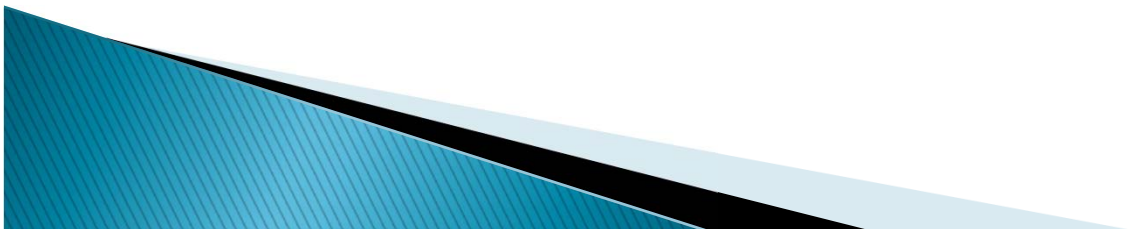
Four Major Areas of Losses

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



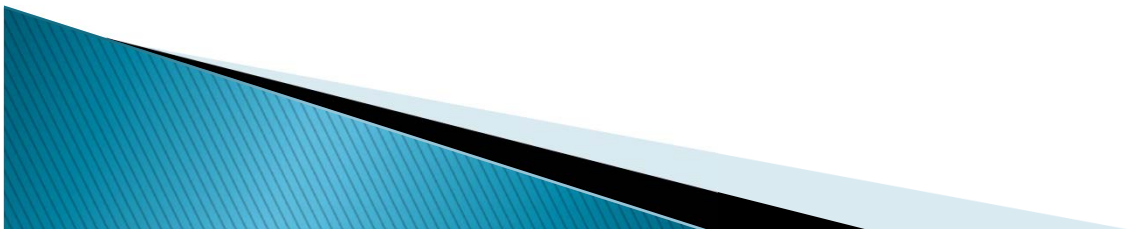
Risk Control Techniques

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



Who Insures What?

- ▶ Personal property and improvements are the responsibility of the owner
- ▶ Building as built is responsibility of the AOAO



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 AOAO and list coverages and exclusions



Summary of Insurance

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



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

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

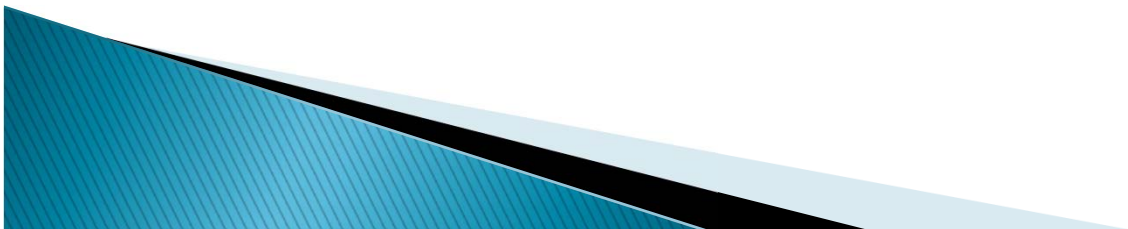
Agent: Sue Savio
Direct Line: 808-526-9267
Direct Fax: 808-792-5371
E-mail: sue@ia-hawaii.com

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

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

HO6– Covers

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



Conclusion

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





CAI HAWAII Calendar of Events 2022

Jan 20 – Out with the Old, In with the New - Changes in the Way Association and Board Meetings are held

Feb 17 – Meet the Experts

March 17 – Why Deferred Maintenance Can Lead to Catastrophe

May 12 – R&R – Rules and Regulations: how to create and enforce them (Covenant Enforcement)

July 14 - LAC Legislative Update

August 11 – Show me the Money (Delinquency Collections)

September 17 and 24 - Board Leadership Development Workshop (ABCs)

October 13 - What Board Members Should Know About Condominium Unit Renovation Projects

CAI Hawaii: www.caihawaii@hawaiiantel.net

For more education resources – newsletters and recorded programs:

DCCA Hawaii Real Estate Commission: www.hawaii.gov/hirec.

