



Hawaii Real Estate Commission

CONDORAMA VIII

PRESENTED BY CAI HAWAII



Saturday April 23, 2022
Program: 9:00 a.m. to 10:30 a.m.
Via Webinar



COMMUNITY
ASSOCIATIONS INSTITUTE





Hawaii Real Estate Commission

CONDORAMA VIII

PRESENTED BY CAI HAWAII

April 23, 2022

AGENDA

09:00 – 09:05 a.m.

Melanie Oyama - Welcome & Introductions

09:05 – 09:25 a.m.

Kevin Davis – The Rise in Hawaii D&O Liability Claims!

09:25 – 09:45 a.m.

Marcus Kawatachi – Hawaii Civil Rights Commission Complaints: The Most Common Complaints and What AOA Boards Can Do to Prevent Them

09:45 – 10:05 a.m.

Wes Brum – Murky Waters – Flood Insurance and You

10:05 – 10:25 a.m.

Paul A. Ireland Koffinow – Dealing with Difficult Owners During the Pandemic

10:25 – 10:30 a.m.

Adjournment and Q&A (if time permits)

Melanie Oyama
CAI Hawaii Programs Co-Chair



Mahalo

Krystyn Weeks

• Insurance Associates



Joshua German

Insurance Associates



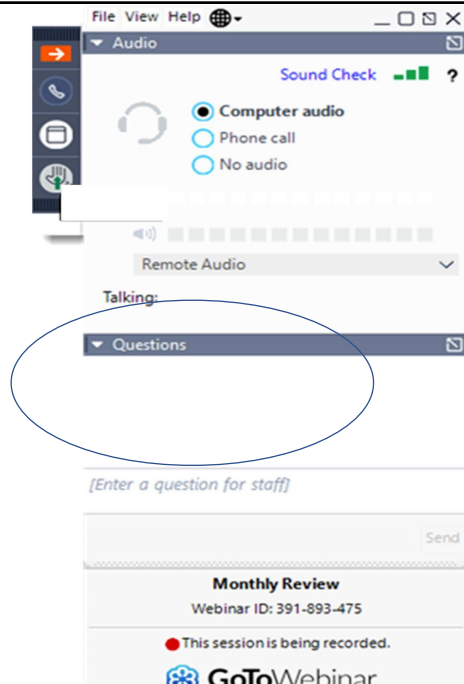
Richard Ma

Presentation Resources



QUESTIONS

Submit them 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

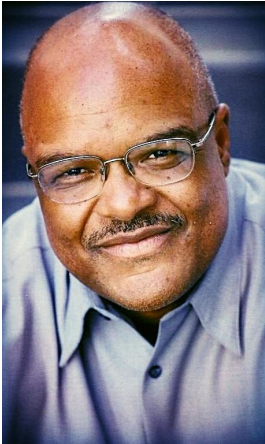
Additionally, the Commission's CETF funding of this educational effort shall not be construed to constitute the Commission's approval or disapproval of the information and materials discussed in this educational effort; the Commission's warrant or representation of the accuracy, adequacy, completeness, and appropriateness for any particular purpose of the information and or of any forms included in this educational effort; or the Commission's judgment of the value or merits of this educational effort.



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

Our Speakers



Kevin Davis is the President of Kevin Davis Insurance Services ,Inc., currently the Managing General Agent for Travelers Insurance and is one of the largest writers of specialty insurance coverage for community associations in the country, insuring more than 40,000 community associations.

A few highlights include: Mr. Davis served as president of the Greater Los Angeles Chapter of the Community Association Institute (CAI) and served on the board of the Orange County Chapter of CAI. Mr. Davis is one of a small group of individuals nationally to hold a Community Insurance and Risk Management Specialist (CIRMS) designation since April of 2003. Since 1985 Mr. Davis has been involved in developing several national insurance products specific to the community association industry, including, Directors and Officers Liability coverage, Crime, Umbrella, Liability Coverage and Errors and Omissions coverage. Mr. Davis graduated in 1978 from Temple University in Philadelphia. He graduated with a BA in Communications.

Our Speakers



Marcus Kawatachi is the Deputy Executive Director of the Hawai'i Civil Rights Commission, the state agency tasked with enforcing anti-discrimination laws in the areas of employment, housing, public accommodations, and access to state and state-funded services.

Mr. Kawatachi began his employment at the HCRC in 1996 and has held the positions of Law Clerk, Investigator, and Investigator Supervisor. In 2011 he was appointed Deputy Executive Director, a position in which he provides direct supervision to all HCRC investigators and attorneys. Born and raised in Hawai'i, Mr. Kawatachi received his B.A. from Princeton University and his law degree from the William S. Richardson School of Law.

Our Speakers



Wes Brum is an Account Executive at Insurance Associates, Inc. and is the only Account Executive in the State who holds the Associates in National Flood Insurance (ANFI) designation. Wes has over 10 years of flood insurance experience, he attends the National Flood Insurance Conference annually and was previously the Flood Department Manager at Hawaii's largest Wright Your Own (WYO) company, First Insurance Company of Hawaii.

Wes has also previously served as the Vice President of the Underwriters Association of Hawaii from 2016-2017 and the President of the Underwriters Association of Hawaii from 2017-2018. Over the years, Wes has hosted multiple flood insurance continuing education courses across the State, is a member of the Community Association Institutes (CAI) and has participated as a member of the National Flood Association (NFA), Wholesale & Specialty Insurance Association (WSIA), and the Honolulu Association of Insurance Professionals (HAIP).

Our Speakers




PAUL A. IRELAND KOFTINOW is an associate attorney with Anderson & Fujisaki LLP A Limited Liability Law Partnership. He received his J.D. degree from William S. Richardson School of Law in 2013. He is licensed to practice law in the State of Hawaii and the U.S. District Court, District of Hawaii. His practice is focused on representing community associations in covenant enforcement litigation, collections work, general management issues, and developing association regulations and policies.

He has been a regular speaker on topics relating to community association law. He recently co-authored an article on recent developments in condominium nonjudicial foreclosures for the March 2021 edition of the Hawaii Bar Journal. He was also recently presented the Hoku Award (in 2021) by the Hawaii Chapter of Community Associations Institute ("CAI") in recognition of his participation in support of CAI Hawaii's education programs, chair of the HQ webinar programs, and interest in being a future leader with CAI Hawaii.

The Rise in Hawaii D & O Liability Claims! The What and the Why!



The views expressed in these materials are those of the author and do not necessarily reflect the views of Kevin Davis Insurance Services or The Travelers Companies, Inc. or any of its subsidiary insurance companies ("Travelers"). This material is for general informational purposes only and is not legal advice. It is not designed to be comprehensive and it may not apply to your particular facts and circumstances. Consult as needed with your own attorney or other professional adviser. This material does not amend, or otherwise affect, the provisions or coverages of any insurance policy or bond issued by Travelers. It is not a representation that coverage does or does not exist for any particular claim or loss under any such policy or bond. Coverage depends on the facts and circumstances involved in the claim or loss, all applicable policy or bond provisions, and any applicable law. Availability of coverage referenced in this document can depend on underwriting qualifications and state regulations."



Our goal in the webinar is to discuss why we are seeing the rise in D&O losses in Hawaii, what do they look like and what can be done to limit the losses.

What is Causing Hawaii To Be A Problem

- Broad Comprehensive D&O Contract
- Unskilled Volunteer Board Members
- Social inflation

Item #1

Broad Comprehensive D&O Contract!

D&O Liability protects ***Insured*** against a ***claim*** for a ***wrongful act*** made against them during the policy period.

D&O Coverages Concerns

- Broad Definition of Insured, Claim and Wrongful Act
- Non-Money Damage Exclusion
- No Noise Exclusion
- No Discrimination Exclusion
- No Employment Practices Exclusion
- No Insured vs. Insured Exclusion
- No Breach of Contract Exclusion

Item #2

Unskilled Volunteer Board Members

- The Board's responsibility has changed to not only manage the common areas and finances of the association but also to care for the health, safety and welfare of the association in ways that were never part of the governing documents.
 - Climate Change
 - Deferred Maintenance Concerns
 - Increase in discrimination, bullying and harassment claims
 - Rules Enforcement Challenges
 - Signs

Item #3

What is Social Inflation

- Social inflation refers to the rising costs of insurance claims caused by legislative, judicial, social and economic developments and resulting in more litigation, broader definitions of liability, and larger jury awards.

How Community Associations Avoid D & O Liability Claims

Treat it as a business.

Request a Reserve Study, Reserve and Use it.

Have an emergency plan.

Use Community Association Professionals

Risk Management Hotline?

3

Helpful Instructions

The helpline can be accessed by any current Travelers insured with Community Association Management Liability coverage.



- **Call:** 1.855.548.8656
- **Hours of operation:** Monday – Friday,
8:00 a.m. – 5:00 p.m. EST (excluding holidays)

After taking relevant details and analyzing the problem, a legal professional from Cole, Scott & Kissane, P.A. will return your call and discuss the matter for up to one hour, at no cost to you or your firm.

**HAWAI'I CIVIL RIGHTS COMMISSION COMPLAINTS:
THE MOST COMMON COMPLAINTS AND WHAT AOA BOARDS CAN
DO TO PREVENT THEM**

By Marcus Kawatachi

Deputy Executive Director, Hawai'i Civil Rights Commission

April 23, 2022

Hawai'i Civil Rights Commission

Enforces State Laws Prohibiting Discrimination in:

- Employment (Hawai'i Revised Statutes, Chapter 378)
- Public Accommodations (Hawai'i Revised Statutes, Chapter 489)
- State & State Funded Services (Hawai'i Revised Statutes, Chapter 368)
- Housing (Hawai'i Revised Statutes, Chapter 515; Hawai'i Administrative Rules §§ 12-46-301 to 318)

State Protected Classes EMPLOYMENT



Sex (including Gender Identity and Expression)

Disability

Age

Race

Ancestry/National Origin

Religion

Color

Marital Status

Sexual Orientation

Assignment of Income for Child Support Obligations

Arrest & Court Record

National Guard Participation

Breastfeeding

Credit History or Credit Report

Victim of Domestic Violence or Sexual Violence

Reproductive Health Decisions

Other State Protected Classes

REAL ESTATE TRANSACTIONS:

Race

Sex (including Gender Identity and Expression)

Ancestry/National Origin

Color

Religion

Familial Status

Disability

Marital Status

Age

HIV Infection

Sexual Orientation



PUBLIC ACCOMMODATIONS:

Race

Sex (including Gender Identity and Expression)

Color

Religion

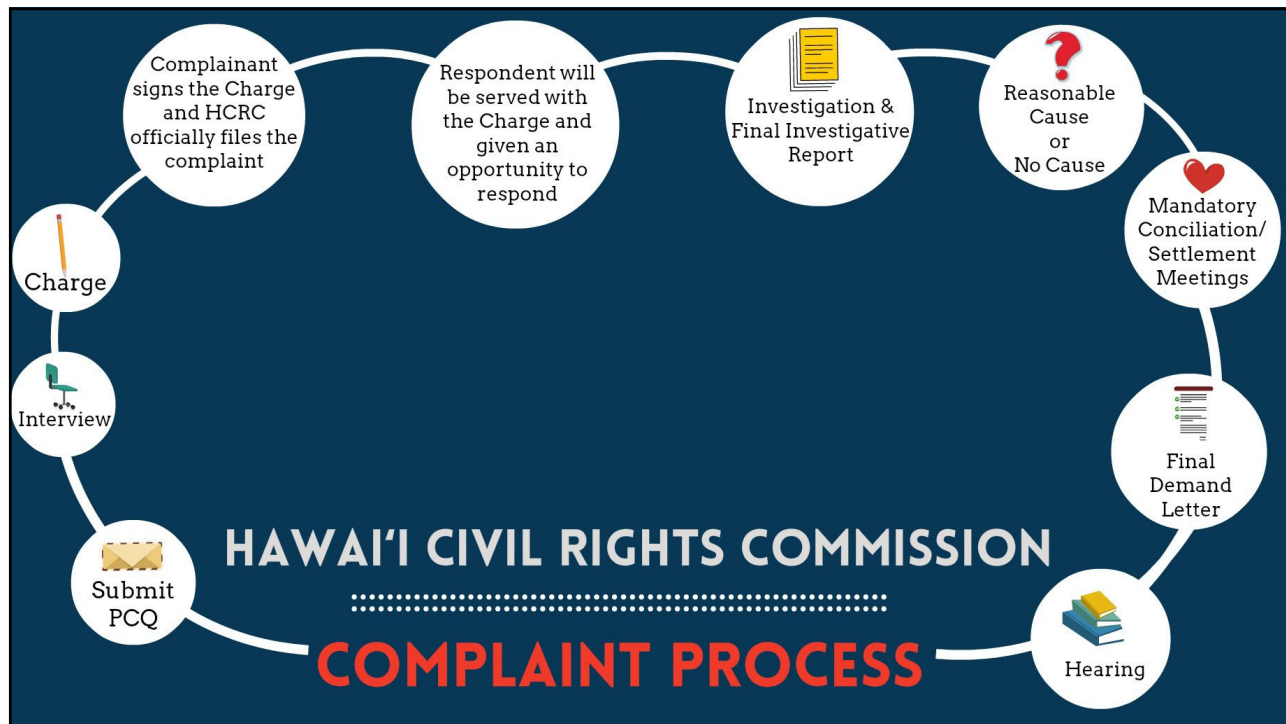
Ancestry

Disability

Sexual Orientation

STATE & STATE-FUNDED SERVICES:

Disability



Who Can Be Sued? Who Can Be Named in a Complaint?

Anyone involved who is alleged to have been involved in a discriminatory housing act:

- Some examples - clerical staff, maintenance staff, landscapers, vendors, neighbors, tenants, landlords, owners, managers, real estate agents, brokers, newspapers, insurance companies, mortgage companies, banks, lenders, architects, developers, homeowners associations, government agencies, police departments, etc.



Housing Discrimination Can Take Many Forms Some Examples ...




- Denial of housing because of a potential resident's religion, sexual orientation, marital status, etc.
- Unequal treatment in a potential resident's application process (e.g., criminal background check) because of his or her race, sex, age, etc.
- Resident manager enforces house rules unequally because a household has minor children or a person with a disability
- Imposing additional program requirements on participants based upon their protected class such as "parenting classes" or "support groups."

More Housing Discrimination Examples

- Office staff hangs up on a resident or refuses to return a phone call because of the person's limited English proficiency
- Board of directors of a homeowners' association unequally subjects an owner to fines or fees because he or she has complained about alleged housing discrimination
- Security staff subjects a resident to sexual advances, racial slurs, or other harassing conduct, and corrective action not taken



		
<p>DISABILITY</p> <p>Physical or Mental Impairment that substantially limits one or more major life activities</p>	<p>REGARDED</p> <p>Regarded as having such an impairment.</p>	<p>RECORDED</p> <p>Record of such an impairment.</p>

Reasonable Accommodation

Change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a disabled person to have an equal opportunity to use and enjoy a housing accommodation/dwelling, including public and common areas.



Reasonable Accommodation Examples



- Reserving a parking place for a mobility-impaired tenant closer to his unit than other tenants are entitled to have
- Allowing a resident to participate in meetings via telephone conference when unable to appear in person due to a disability
- Waiving a rule against non-residents using the laundry room to allow the friend of a disabled resident to do that resident's laundry

What Should the Housing Provider Do After Receiving the Request?

- Engage in an informal *interactive* process
- Clarify what the requester's needs are
- Act in a timely manner
 - An unreasonable delay in the interactive process can be considered a denial of a reasonable accommodation!

What Should the Housing Provider Do After Receiving the Request? - Verification

The housing provider may (but is not required to) request that the person with a disability provide:

- Verification of the disability
 - Unless the disability is apparent or known
- Verification of the disability-related need for the requested accommodation
 - Unless the disability-related need is apparent or known

Assessing the Request for Reasonable Accommodation

- Whether a requested accommodation is reasonable is a question of fact, determined by close examination of the particular circumstances.
- A request for a reasonable accommodation may be denied only if there is no disability, no disability-related need for the accommodation, or if the request is unreasonable.

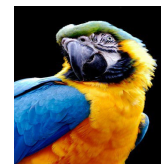
What is “Unreasonable”?

A request would be unreasonable if:

- it would impose an undue financial and administrative burden on the housing provider; or
- it would fundamentally alter the nature of the housing provider’s operations

Service Animals and Assistance Animals

- Under federal and state fair housing law, a request for use of a service animal or assistance animal is considered a request for a reasonable accommodation.
- Such an accommodation may involve making an exception to a “no pets” or “no animals” rule.
- A service or assistance animal is NOT a pet!



Retaliation



- It is illegal to subject a person to adverse treatment because the person:
 - Exercised any rights granted by fair housing laws,
 - Opposed a discriminatory practice, or
 - Filed a fair housing complaint or assisted in filing a complaint.

* This is a stand-alone legal claim and one of the most common bases for filing housing discrimination claims.

Retaliation Examples

- Evicting a tenant for reporting discrimination to the landlord or filing a discrimination complaint with HUD or HCRC
- Retaliatory conduct against a real estate agent who refuses an owner's decision to discriminate
- Vandalism or violence directed against an individual for participating in a HUD or HCRC investigation
- Raising a tenant's rent or program fee for refusing an owner's sexual advances



Tips to Help Prevent Civil Rights Complaints

- Educate yourself on any changes in the law; e.g., HUD's January 2020 Notice FHEO-2020-1 ("Assistance Animals Notice")
- Create a culture of non-discrimination on property, with policies, procedures, and regular periodic training of staff. Set clear limits.
- Be consistent in applying rules, policies, and procedures, especially when taking any adverse action against residents.
- Investigate internal complaints promptly and take appropriate corrective action. Follow up with the complaining party.
- Engage in an interactive process when a person requests reasonable accommodation.

19

Tips to Help Prevent Civil Rights Complaints

- Do not retaliate against a resident who opposes discrimination or participates or cooperates in a HCRC investigation; e.g., charging a resident for the cost of responding to a complaint of discrimination.
- Do not stop fulfilling your legal obligations (e.g., responding to reasonable accommodation requests) once a complaint is filed.
- Consider mediation as an option to resolve disputes.
- Document everything!

20



Murky Waters – Flood Insurance & You

CONDORAMA VIII
CAI - HAWAII CHAPTER
PRESENTED BY WESLEY BRUM

INSURANCE ASSOCIATES



Section 1 – Introduction & Evolving Flood Risks

Section 2 – The National Flood Insurance Program: Coverage, limitations, and exclusions

Section 3 – Flood Zones & Flood Insurance Coverage

Section 4 – NFIP: Risk Rating 2.0

Section 5 – Flood Insurance Resources

Here's our Agenda



Evolving Flood Risk

- ▶ Global Warming
 - ▶ Glaciers and ice sheets worldwide are melting, adding water to the ocean.
 - ▶ Volume of ocean expands as water warms.
 - ▶ Greenhouse gas emissions.
 - ▶ Severe weather
 - ▶ Coastal erosion



Evolving Flood Risk – Sea Level Rise

- ▶ King Tides or "Sunny-Day Flood" – when ocean level rises higher than coastal infrastructure was designed to accommodate.
 - ▶ May of 2017, water levels rose 2.5 feet above average in Waikiki. Roads and sidewalks were underwater.
- ▶ Extremely High-Surf/Severe Rain Events
- ▶ According to The Hawaii Climate Change Mitigation and Adaptation Commission, Waikiki Beach, along with other coastal strips on neighboring Hawaii islands are expected to experience frequent flooding within 15 to 20 years.
- ▶ NOAA predicts that Hawaii will see between six (6) and eight (8) inches of sea level rise in the next three decades.
 - ▶ <https://coast.noaa.gov/hi/>





The
National
Flood
Insurance
Program

A Stroll Down Memory Lane to 1968

- ▶ The Good Ol' Days
 - ▶ 33 Cents/Gallon Gasoline
 - ▶ 15 Cent Hamburgers



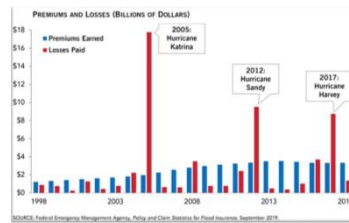
The National Flood Insurance Program (NFIP)



- ▶ The National Flood Insurance Act of 1968, congress approved and created the National Flood Insurance Program (NFIP).
- ▶ Primarily due to the lack of availability of private flood insurance.
- ▶ Increased request for federal disaster assistance due to flooding.
- ▶ NFIP Primary Goal – Preservation of lives and property.
- ▶ The NFIP was originally created as a self-supporting entity, where administrative operating expenses, flood claims, etc. were to be paid through premiums collected.

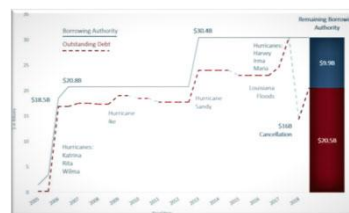
NFIP – Premiums vs. Claims

- ▶ **Hurricane Katrina**
 - ▶ 1.2 Million Claims
 - ▶ Estimated \$18 Billion
- ▶ **Hurricane Sandy**
 - ▶ 144,000 Claims
 - ▶ Estimated \$8.1 Billion
- ▶ **Hurricane Harvey**
 - ▶ 92,000 Claims
 - ▶ Estimated \$8.92 Billion



NFIP – Current Debt

- ▶ Currently, the program is structured to borrow from the U.S. treasury when premium are insufficient to cover claims.
- ▶ Current Debt is **\$20.525 billion**
- ▶ Leaving \$9.9 billion in borrowing authority from a \$30.425 billion limit



Do You Live In A Flood Zone?



- ▶ The answer is YES!
- ▶ Every property in Hawaii has a flood zone designation.
- ▶ While your property may not be in a high-risk flood zone (A or V) which would require mandatory flood insurance purchase as a condition of a federally regulated loan, that does not mean that flooding is not possible.
- ▶ According to FEMA, almost 30% of all flood claims comes from structures located within a low-risk flood zone area, flood zone X.

What Flood Zone Are You Located In?

Flood Hazard Assessment Tool

<http://gis.hawaiiinfip.org/FHAT/>



FEMA Flood Map Service Center

<https://msc.fema.gov/portal/home>

Enter an address, place, or coordinates: @



What is a Flood?

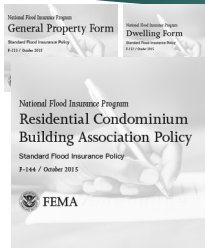
- ▶ NFIP Definition of "Flood"
 - ▶ A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:
 - ▶ Overflow of inland or tidal waters.
 - ▶ Unusual and rapid accumulation or runoff of surface waters from any source.
 - ▶ Mudflow; A river of liquid and flowing mud on the surface of normally dry land areas as when earth is carried by a current of water.
 - ▶ Not Mudflows:
 - ▶ Landslide
 - ▶ Slope failure
 - ▶ Saturated soil mass



Who Needs Flood Insurance?

- Whether you live inside or outside of the "high-risk" flood zone area, consider purchasing flood insurance.
- Homes and business in "high-risk" flood zone areas with government backed mortgages are required to have flood insurance
- **HRS514B-143, Section E**
 - The declaration, bylaws, or the board may require the association to carry any other insurance, including workers' compensation, employment practices, environmental hazards, and equipment breakdown, that the board considers appropriate to protect the association, the unit owners, or officers, directors, or agents of the association. *Flood insurance shall also be maintained if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance policy shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration.*

NFIP – Policy Types



Dwelling Form

- Residential Structures: 1 – 4 Family Dwelling

General Property Form

- Commercial/Non-Residential

Residential Condominium Building Association Policy (RCBAP)

- Must have bylaws
- More than 75% of the total square footage must be residential

NFIP – Maximum Coverage Limits

- ▶ **Dwelling Form – 1-4 Family Dwelling**
 - ▶ \$250,000 Building Coverage / \$100,000 Contents Coverage
- ▶ **General Property Form – Non-Residential**
 - ▶ \$500,000 Building Coverage / \$500,000 Contents Coverage
- ▶ **Residential Condominium Building Association Policy (RCBAP)**
 - ▶ \$250,000 x Total number of units within the structure / \$100,000 Contents Coverage
 - ▶ Example: Structure has 100 Units, total Building Coverage limit is \$25,000,000 (\$250,000 x 100 Units = \$25,000,000)
 - ▶ 80% Co-Insurance Requirement



NFIP - RCBAP – What IS Covered?

► What IS Covered under Building Property coverage:

- The insured building and its foundation
- The electrical systems
- Central air-conditioning equipment, furnaces, and water heaters
- Permanently installed carpeting over an unfinished floor
- Permanently installed paneling, wallboard, bookcases, and cabinets
- Foundation walls, anchorage systems, and staircases attached to the building
- Fuel tanks and the fuel in them, solar energy equipment, and well water tanks and pumps
- Furnaces, water heaters, heat pumps, and sump pumps



NFIP - RCBAP – What's NOT Covered?

► Excluded losses, or what IS NOT covered:

- Damage caused by moisture, mildew, or mold that could have been avoided by the property owner (the Association)
- Additional living expenses such as temporary housing
- Most self-propelled vehicles such as cars, including their parts
- Property and belongings outside of a building such as trees, plants, shrubs, wells, septic systems, walks, decks, patios, fences, seawalls, hot tubs, and swimming pools
- Financial losses caused by business interruption or loss of use of insured property
- Any damage caused by water flow beneath the earth's surface (review the exclusions section in your flood insurance policy for specific information on damage caused by seepage or drain or sewer backup)



NFIP - Basements

► Basement is defined as:

- Any area of the building, including any sunken room or sunken portion of a room having its floor below ground level on all sides.



NFIP – Coverage A - Basements

- ▶ Central air conditioners
- ▶ Cisterns & the water in them
- ▶ Unfinished drywall (walls, ceilings in a basement)
- ▶ Electrical junction and circuit breaker boxes
- ▶ Electrical outlets on switches
- ▶ Elevators and related equipment
- ▶ Fuel tanks and fuel in them
- ▶ Furnaces and hot water heaters
- ▶ Heat pumps
- ▶ Non-flammable insulation
- ▶ Pumps and tanks used in solar energy systems
- ▶ Stairways and staircases attached to the building
- ▶ Sump pumps
- ▶ Water softeners and chemicals in them, water filters and faucets installed as an integral part of the plumbing system
- ▶ Well water tanks and pumps
- ▶ Required utility connections for items on this list
- ▶ Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support the building

Property Not Insured

- ▶ Personal property not inside a building
- ▶ Building, and contents in it, located entirely in, on, or over water
- ▶ Open structures, including a boathouse in, on, or over water
- ▶ Recreation vehicles
- ▶ Self-propelled vehicles or machines licensed for public road use
- ▶ Land, land values, lawns, trees, shrubs, plants, growing crops or animals
- ▶ Accounts, bills, coins, currency, other valuable papers
- ▶ Underground structures and equipment, including wells, septic tanks, septic systems
- ▶ Walks, decks, driveways, etc.
- ▶ Containers & related equipment, such as tanks containing gases and liquid
- ▶ Fences, retaining walls, seawalls, piers, docks, etc.
- ▶ Aircraft, watercraft or their furnishings and equipment
- ▶ Hot tubs and spas that are not bathroom fixtures
- ▶ Swimming pools and their equipment

NFIP – Policy Exclusions

- ▶ Partial List of Exclusions under the NFIP
 - ▶ Loss of revenue or profits
 - ▶ Loss of access
 - ▶ Loss of use
 - ▶ Loss from interruption of business or production
 - ▶ Additional living expenses
- ▶ Water or water borne material that:
 - ▶ Backs up thru sewers or drains
 - ▶ Discharges or overflows from a sump pump
 - ▶ Seeps or leaks on or thru insured property
 - ▶ Damage from the pressure or weight of water




NFIP – Program Changes – Risk Rating 2.0

- ▶ Effective October 1, 2022
 - ▶ All New Business Policies
- ▶ Effective April 1, 2022
 - ▶ All New & Renewal Policies



NFIP – What is Risk Rating 2.0?

- ▶ New rating methodology
- ▶ Delivers rates which reflects a property's unique flood risk
- ▶ Rates are developed on a structure-by-structure basis
- ▶ Removal of "Grandfathering"
- ▶ Maximum rate increases of 18%



NFIP – Risk Rating 2.0 – Rate Increase?

- ▶ "Grandfathered" policies will transition to their full risk rate
 - ▶ Example: Current flood zone VE with a Grandfathered Flood Zone of AE
- ▶ Risk Rating 2.0 "Glidepath" to current rates, meaning an 18% increase annually until the "Full Risk Rate" is achieved.
 - ▶ Example: current premium is \$10,000 w/grandfathering applied. Risk Rating 2.0 premium is \$35,000, you'll need to budget for an 18% increase annually until you reach the \$35,000 premium.
- ▶ Rate Decreases
 - ▶ Select few will see premium decreases
 - ▶ No rate tables



NFIP – Program Changes – Legacy Rating

- ▶ **Legacy Rating Methodology**
 - ▶ Since the late 1970's, rates have predominately been based on relatively static measurements:
 - ▶ Flood Zone
 - ▶ Base Flood Elevation
 - ▶ Foundation Type
 - ▶ Structural Elevation
- ▶ Standardized rating tables will no longer be used, rates will be calculated using an algorithm.




NFIP – Program Changes – New Rating Variables

- ▶ **Risk Rating 2.0 – New Rating Methodology**
 - ▶ Distance to Flooding Source & Flood Type
 - ▶ Includes storm surge, tsunami, coastal erosion
 - ▶ Building Occupancy
 - ▶ Construction Type
 - ▶ Frame, Masonry, Other
 - ▶ Foundation Type
 - ▶ Ground Elevation
 - ▶ First Floor Height
 - ▶ Number of Floors
 - ▶ Prior Claims



NFIP – Fees & Surcharges

- The following fees and surcharges will apply to all policies:
 - Reserve Fund Assessment**
 - Percentage of the total premium. Purpose is to set aside additional funds to pay for future catastrophic flood losses. 18% of the Discounted Premium
 - HFAA Surcharge**
 - Flat fee of either \$25.00 or \$250.00
 - Federal Policy Fee (RCBAP)**
 - Flat charge, to defray certain administrative expenses incurred by the NFIP.
 - Units 1-20 = \$47 per unit
 - Units 21-40 = \$20 per unit
 - Units 41-100 = \$10 per unit
 - Units 101+ = \$2 per unit




NFIP – What Is NOT Changing

- The Mandatory Purchase requirement
- Floodplain Management
- Statutory caps on annual individual rate increases
- Building/Contents maximum limits



NFIP - Flood Claim Process

- Step 1:** Contact your insurance agent to report your flood loss.
 - Generally, the adjuster will contact you within 24-48 hours after the claim is reported.
 - Take photos and/or video.
- Step 2:** Prepare for your inspection.
 - For building items, keep samples (twatches) and also photograph or list items make, model, and serial number.
 - Save all invoices and receipts.
- Step 3:** Work with your adjuster.
 - Will provide you with a detailed damage estimate and a Flood of Loss document.
 - Note: If your adjuster has questions about complicated damage, they may request assistance from an engineer or other experts. These experts can help determine the cause and extent of damage.
- Step 4:** Document your loss and receive payment



NFIP Flood Insurance Manual

- Access the NFIP Flood Insurance Manual Online at:
 - <https://www.fema.gov/flood-insurance/work-with-nfip-manual>
- Flood manual topics include:
 - Introduction
 - Before You Start
 - How to Write
 - How to Endorse
 - How to Renew
 - How to Cancel
 - Appendix section

Resource Links

National Flood Insurance Program: <https://www.fema.gov/flood-insurance>

Map Service Center: <https://msc.fema.gov/portal/home>

NFIP Flood Insurance Manual: <https://www.fema.gov/flood-insurance/work-with-nfip-manual#flood-insurance>

NFIP Bulletins: <https://infocservices.floodsmart.gov/xyabull2020.html>

NFIP Claims Handbook: https://www.fema.gov/sites/default/files/2020-05/HNA_ClaimsHandbook_10062017.pdf

Risk Rating 2.0 – Equity in Action: <https://www.fema.gov/flood-insurance/risk-rating>

FEMA Elevation Certificate: https://www.fema.gov/sites/default/files/2020-07/fema_nfp_elevation_certificate-form-instructions_feb-2020.pdf

NOAA Climate Change: <https://www.noaa.gov/climate>

Mudflow vs. Mudslide/Landslide

- According to FEMA, a mudflow occurs when liquid and flowing mud moves over the surface of normally dry land. In contrast, mudslides happen when a mass of earth or rock travels downhill.
- Flood claims become "sticky" when a structure is located at the base of a hillside
 - Is it Chocolate Cake or a Chocolate Shake?



Dealing with difficult owners during the pandemic (and beyond)

Paul A. Ireland Kofinow, attorney at law
Anderson & Fujisaki LLP
A Limited Liability Law Partnership



Education and Communication

- Be familiar with your association's governing documents (i.e., declaration, by-laws, house rules, design guidelines).
- Offer educational meetings (review house rules, provide forms, discuss procedures for submitting requests to the association, etc.).
- Newsletters (notify owners of upcoming projects, encourage feedback when revising house rules, remind residents of house rule provisions).
- Enforcement (notify owners and tenants of violations when they occur, and carefully log recurring violations).

Dispute Prevention



Common Issues

- Unpaid assessments
- Unauthorized alterations & maintenance issues
- Noise or odor complaints
- Harassment, threats, violence

"I won't let anyone in my unit during the pandemic!"

"I need a break with my assessments because I lost my job."

"My neighbor's music and TV noise is too loud!"

Negotiation Process

- Encourage open communication
- Consider an appeal and hearing process (if not already required by the by-laws)
- Develop a timeline for compliance
- Avoid escalation
- Work to avoid future disputes

Mandatory Mediation

HRS § 514 B-162 (a) requires mediation when:

- The dispute involves the interpretation or enforcement of the association's declaration, bylaws, or house rules;
- The dispute falls outside the scope of subsection (b) [see next slide];
- 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.

Voluntary Mediation

Mediation is not mandatory when the dispute involves:

- Threatened property damage or the health or safety of unit owners or any other person,
- Assessments,
- Personal injury claims, or
- Matters that would affect the availability of any coverage pursuant to an insurance policy obtained by or on behalf of an association.

See HRS § 514 B-162 (b)

Mandatory Nonbinding Arbitration

HRS § 514 B-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.

Litigation (judicial intervention)

- Unpaid assessments:
Foreclosure, money judgments, wage garnishment, etc.
- Covenant enforcement:
Injunctive relief (to compel compliance).
- Temporary restraining orders:
Court order to prevent further harassment or contact;
or, to stop or prevent further violation.

Settlement

Parties enter into a binding settlement agreement:

- Formal Settlement Agreement
- Stipulated Judgment, etc.

Voluntary dismissal:

The dispute is resolved voluntarily by the parties, and there are no remaining claims and issues.

Community Guidelines

- “Assessments. “Collect assessments and other fees from homeowners in a timely and equitable manner and in accordance with state statutes and board-approved procedures.”
- “Communication. Provide at least one form of regular communication with residents, and use it to report substantive actions taken by the board.”
- “Governance and the law. Govern and manage the community in accordance with all applicable laws and regulations. Conduct review of governing documents to ensure legal compliance and to determine whether amendments are necessary.”
- “Grievances and appeals. Allow residents to bring grievances before the board or a board-appointed committee and follow well-publicized procedures that give residents the opportunity to correct violations before imposing fines or other sanctions.”
- “Rules. Uniformly enforce all rules, including architectural guidelines, but only after seeking compliance on a voluntary basis.”

Source: The Board Member Tool Kit A Guide for Community Association Volunteer Leaders, 3rd Ed., Community Associations Institute

Closing

- Thank you to our speakers and to everyone who joined us today.
- Link to the recording of today's program. Email us if you would like to review the recording: caihawaii@hawaiiintel.net
- Evaluation and feedback – the form will pop up when you exit. It will also be emailed to you. Use whichever method is easier for you.
- Annual Pass members – you will be automatically registered for those upcoming programs that you selected for 2022.



CAI HAWAII 2022 Programs

April 23 – Condorama VIII – free program from the Hawaii Real Estate Commission

May 11* – R&R – Rules and Regulations: **How to Create and Enforce Them**; Melanie Oyama, Kanani Kaopua , Co-Chairs

June 11*, June 18* – Board Leadership Development Workshop; Keven Whalen, Melanie Oyama, Co-Chairs

July 14 – Legislative Update—presented by the Legislative Action Committee

August 10 – Show me the Money —Delinquency Collections ; Melanie Oyama/Paul Ireland Kotinow, Seminar Co-Chairs

September 17, 24 – Board Leadership Development Workshop; Keven Whalen, Melanie Oya-ma, Seminar Co-Chairs

October 13 – What Board Members Should Know About Condominium Unit Renovation Projects — How to Handle Unit Owner Renovations of Apartments – More Important Than You May Think! Lance Fujisaki, John Morris' Seminar Co-Chairs

**This seminar or educational presentation is entirely or partly funded by funds from the Condominium Education Trust Fund (CETF), for condominium unit owners whose associations are registered with the Real Estate Commission. The CETF is administered by the Real Estate Commission which is a ☐ ached to the Department of Commerce and Consumer Affairs, State of Hawaii, through the Professional and Vocational Licensing Division.*