



Hawaii Real Estate Commission

CONDORAMA XI

PRESENTED BY CAI HAWAII

A **Free** Education Program for Condominium Owners

Topics Include: Impact of Lahaina Fires on Insurance Premiums
Statewide, Disinformation Affecting Community Associations –
What to Know and What to Do, Effectively Dealing with Rogue
Boards, and Labor Law - Fundamentals of Hiring & Firing



Saturday November 18, 2023
Program: 9:00 a.m. to 11:00 a.m.
Via Webinar

Condorama XI will be conducted via Webinar, with the link to the
webinar sent after online registration at www.caihawaii.org.
Registration available prior to start of event.

Visit www.cca.hawaii.gov/reb/condorama for more information

This webinar or educational presentation is entirely 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. Real Estate Commission may be reached at (808) 586-2644, 7:45 AM to 4:30 PM. If you need an auxiliary aid/service or other accommodation due to a disability, contact Benedyne Stone at (808) 586-2644 or hirc@dcca.hawaii.gov as soon as possible, preferably within two (2) business days of the seminar. If a response is received after that date, we will try to obtain the auxiliary aid/services or accommodation, but we cannot guarantee that the request will be fulfilled. Upon request this notice is available in alternative formats such as large print, Braille, or electronic copy.



Hawaii Real Estate Commission

CONDORAMA XI

November 18, 2023

AGENDA

09:00 – 09:05 a.m.

09:05 – 09:30 a.m.

09:30 – 10:00 a.m.

10:00 – 10:30 a.m.

10:30 – 11:00 a.m.

11:00 – 11:05 a.m.

Melanie Oyama - Welcome & Introductions

Sue Savio – Impact of Lahaina Fires on Insurance Premiums Statewide

Ian Lind – Disinformation Affecting Community Associations – What to know and What to Do

Paul Ireland Koftinow, Esq. – Effectively Dealing with Rogue Boards

John Knorek, Esq. – Labor Law – The Fundamentals of Hiring & Firing

Closing

Melanie Oyama
Programs Co-Chair



Mahalo

Krystyn Weeks

Insurance Associates



Milton Motooka

Motooka Rosenberg Lau & Oyama



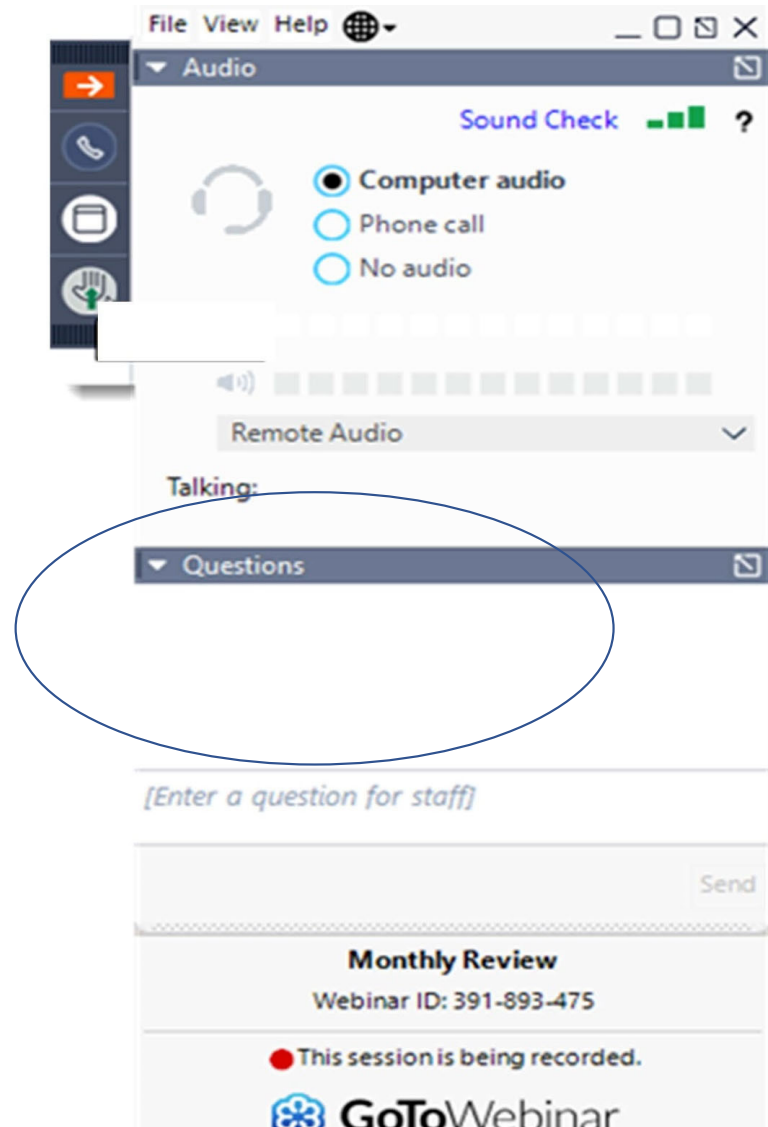
Richard Ma

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 2 credit hours to fulfill continuing education requirements for CMCA® certification.

CAIHAWAII@HAWAIIANTEL.NET

Our Speakers



SUE SAVIO – Sue has been President and Owner of Insurance Associates, a kama’aina insurance agency, since 1975. Insurance Associates specializes in providing insurance services for Condominiums, Cooperatives, Homeowners Associations and similar developments. Insurance Associates today represents over 1000 community associations throughout Hawaii. Ms. Savio has served as President of the Hawaii Independent Insurance Agents Association (HIIA), has served as the President of Community Associations Institute (CAI) Hawaii, and has served on their board in different capacities for several terms since 2000 to 2022.

Sue was awarded the Richard M. Gourley Distinguished Service Award for her contribution to the community association industry in insurance. She currently serves on the boards of two condominium associations.

You may reach her at (808) 526-9271; e-mail: sue@insuringhawaii.com.

Our Speakers



IAN Lind - Ian is an award-winning investigative reporter, columnist, and blogger who has been writing about Hawaii politics, government, and media for over 30 years. He has previously served on two condominium boards, and has reported on a number of condo-related issues and problems. He has been writing for the online news organization, Civil Beat, for over a decade, and he also continues to blog at www.iLind.net.

Lind was recently awarded the 2023 Gavel Award by the American Judges Association for distinguished reporting about the Judiciary, “educating the public about the legal system and the fundamental principles and values upon which that system is based.” AJA is the largest independent, judge only, member organization in North America.

Our Speakers



PAUL IRELAND KOFTINOW., ESQ. 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.

Paul has been a regular speaker on topics relating to community association law. He is a recipient of the Hoku Award (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.

He can be reached at 808.697.6017; email pirelandkoftinow@alf-hawaii.com.

Our Speakers



JOHN KNOREK, ESQ. is a Director of the Torkildson Katz firm and has represented businesses and management executives in all aspects of employment and wrongful discharge law since 1981. He received his BA and MA degree in Public Administration from the University of Cincinnati, and his JD degree from Georgetown University Law Center.

He has the highest "A.V." rating in Martindale-Hubbell, and ranked in "Best Lawyers in America " and "Chambers USA Client's Guide" for employment law. John serves on the boards and chairs committees of the Society of Human Resource Management - Hawai'i Chapter, the Industrial Relations Research Association, Mid-Pacific Country Club, the Pacific Club, and the Hawai'i Opera Theatre. He guest lectures at the University of Hawai'i William S. Richardson School of Law and Shidler College of Business.

John can be reached at 808.523.5384; email john.knorek@torkildson.com.

Catastrophes & Reinsurance

Presented by:

Surita Savio

Insurance Associates, Inc.

sue@insurnghawaii.com

What is a Catastrophe?

- The term “catastrophe” in the property insurance industry denotes a natural or man-made disaster that is unusually severe.
- Causes any of the following: \$25 million or more in insured property losses, ten deaths, 50 people injured, 2,000 filed claims or homes and structures damaged.

2020 Catastrophes

- **1 wildfire event** (Western wildfires focused across California, Colorado, Oregon and Washington);
 - **1 drought and heatwave event** (summer/fall across Western and Central U.S.);
 - **3 tornado outbreaks** (including the Nashville tornado and Easter outbreak);
 - **7 tropical cyclones** (Hanna, Isaias, Laura, Sally, Delta, Zeta and Eta); and
 - **10 severe weather events** (including the Midwest derecho and Texas hail storms)
-
- Damages from these disasters exceeded \$1 billion each and totaled approximately **\$95 billion** for all 22 events.

2021 Catastrophes

- Damages from the 2021 disasters totaled approximately \$145 billion.
- The costliest 2021 events were Hurricane Ida (\$75 billion), the mid-February Winter Storm / Cold Wave (\$24.0 billion), and the Western wildfires (\$10.9 billion).

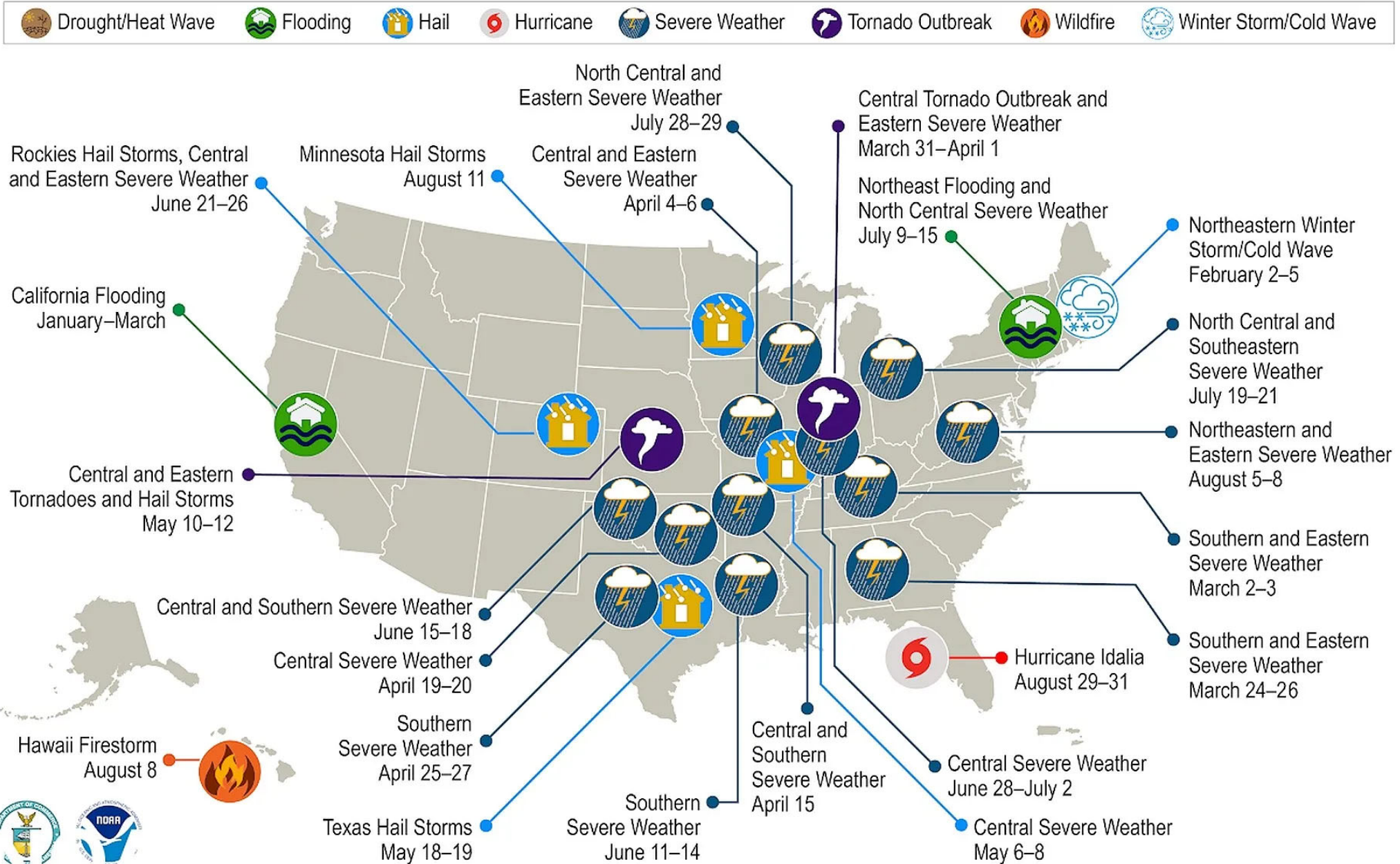
2022 Catastrophes

- The costliest 2022 events were Hurricane Ian (\$112.9 billion) and the Western and Central Drought / Heat Wave (\$22.1 billion).
- 2022 marks the eighth consecutive year (2015-2022) in which 10 or more separate billion-dollar disaster events have impacted the U.S.

2023 Catastrophes

- As of October 10, 2023, there have been 24 confirmed weather/climate disaster events with losses exceeding \$1 billion each to affect United States. These events included 1 drought event, 2 flooding events, 18 severe storm events, 1 tropical cyclone event, **1 wildfire event**, and 1 winter storm event.

U.S. 2023 Billion-Dollar Weather and Climate Disasters



This map shows the approximate location for each of the 23 separate billion-dollar weather and climate disasters that impacted the United States through August 2023.

2023 claims all-time highest

- With a little more than three months to go, 2023 has already hit the record books as having the greatest number of natural and climate disasters in a year.
- The number is almost three times higher than the yearly average. NOAA calculated that the U.S. suffers an average of 8.5 billion dollar disasters annually going back to 1980. On average, weather and climate losses total \$59.9 billion and cost 369 people their lives each year.
- Numbers have been steadily increasing, though. In the past five years, there have been an average of 18.0 disasters per year. The cost totaled an average of \$124.6 billion and 350 lives each year. The past three years saw an average of 20 disasters a year.
- Since 1980, the U.S. suffered 372 billion dollar events costing \$2.630 trillion and taking a total of 16,231 lives.

Catastrophes and Rates

- Property Rates started to climb in 2019 due to prior years.
- Hawaii rates remained relatively low until 2021.
- Catastrophes in 2021 and 2022 caused increases of 20-50% on the average
- In the US, property catastrophe reinsurance risk-adjusted rate increases were on average the highest in 17 years, with **loss-free accounts generally up +20% to +50%**

Re-insurance-what is it?

- An arrangement whereby an insurer transfers all or part of a risk to another insurer to provide protection against the risk of the first insurance.
- In simple terms, reinsurance could be defined as insurance for insurance companies.

What is Reinsurance?

- Reinsurance, often referred to as “insurance for insurance companies,” is a contract between a reinsurer and an insurer. In this contract, the insurance company—the cedent—transfers risk to the reinsurance company, and the latter assumes all or part of one or more insurance policies issued by the cedent.

Who are re-insurers?

- Germany-based Munich Re nabbed the top spot, with a rating of AA- and the only positive outlook across all the 40 ranked.
- Coming in second is **Swiss Re**, which followed closely at \$43.917 billion in net reinsurance premiums written and a pretax operating income of \$654 billion.
- **Hannover** Rueck SE, another German firm, took third place with \$31.969 billion in net reinsurance premiums written and \$2.027 billion in pretax operating income.
- Rounding out the top five are **Berkshire Hathaway** Insurance Group and **SCOR**, recording \$22.147 billion and \$17.046 billion in net reinsurance premiums written

Key Issues about Reinsurance

- Reinsurance occurs when multiple insurance companies share risk by purchasing insurance policies from other insurers to limit their own total loss in case of disaster.
- By spreading risk, an insurance company takes on clients whose coverage would be too great of a burden for the single insurance company to handle alone.
- Premiums paid by the insured are typically shared by all of the insurance companies involved.
- U.S. regulations require reinsurers to be financially solvent so they can meet their obligations to ceding insurers.



Reinsurance is Regulated

- U.S. reinsurers are regulated on a state-by-state basis.
- Regulations are designed to ensure solvency, proper market conduct, fair contract terms, rates, and to provide consumer protection.
- Specifically, regulations require the reinsurer to be financially solvent so that it can meet its obligations to ceding insurers.

Reinsurance rates Hawaii

- A report from **First Street Foundation** released October 18, 2023 says states such as California, Florida and Louisiana, which are prone to wildfires and damaging storms and flooding, are likely to see the most dramatic increases in premiums. But the fire that destroyed the Hawaiian community of **Lahaina** on Aug. 8, as well as the **historic flooding** that happened in Vermont and Maine in July, are examples of events that could drive up insurance costs for homeowners in other states.

Condos in Hawaii

- Always had rate increases when other states suffered hurricanes. (reinsurance)
- Iniki caused HUGE increases for 3 years
- We are a hurricane state.
- Lahaina has shown many areas of Hawaii are prone to wildfire risk.
- Lahaina will cause HUGE increases for....?
- Certain areas on all islands will be rated for wildfires

Effects of Lahaina

- Cost currently at \$3.2B
- Thousands of homes were destroyed and at least 7 condos.
- Prior to the fire, Hawaii benefited from the cheapest home insurance rates compared to most states in the US
- Condo rates (Ho6) were also lower but now rising

Main Insurers in Hawaii

- First Ins Co of Hawaii – FICOH
- Fireman's Fund - Allianz
- DB –Dongbu
- State Farm
- ---
- Lexington –AIG
- Lloyds of London

Main Insurers Since Lahaina

- First Insurance Co of Hawaii – FICOH
- Fireman's Fund – Allianz
- DB- Dongbu
- State Farm
- ---
- Lexington Ins Co – AIG
- Lloyds of London

Inflation Effect 2023

- Construction cost on the rise
- Concrete up 30%
- Cost per square foot to rebuild increasing

Inflation/Reinsurance Increases

- Jan thru October 2023
- Cost to rebuild –\$300 per square foot
- October 2023
- Current cost to rebuild - \$400 on up
- Reinsurance costs on the rise and climbing

What to Expect

- Tighter underwriting
 - -master policy
 - -ho6
-
- More loss control services
 - -property
 - -liability

What to Expect

- Increase in replacement cost – most will see a 30% increase in valuation - others higher
- Increase in rates charged for property insurance
- Increase in premium due to increase in replacement costs and increase in rates due to reinsurance costs.
- **Double digit increase in maintenance fees**

What can you do about increase?

- **514B.138- Upkeep of condominium; high-risk components .**
- (a) The board, after notice to all unit owners and an opportunity for owner comment, may determine that certain portions of the units, or certain objects or appliances within the units such as washing machine hoses and water heaters, pose a particular risk of damage to other units or the common elements if they are not properly inspected, maintained, repaired, or replaced by owners. Those items determined by the board to pose a particular risk are "high-risk components" for the purposes of this section.

What can you do about increase?

- Follow your reserve study
- If non-sprinklered building; add cost of installing fire sprinklers to your reserve study
- Replace your pipes if over 30 years of age.
- Do pipes and sprinklers at the same time

Conclusion

- Catastrophes affect us all – no matter where they occur
 - Insurance is spreading the risk.
 - It behooves us all to maintain our buildings.
 - What happens to one condo affects us all
 - Maintenance is a must.
-
- **Preserve Protect Maintain**

Effectively Dealing With Rogue Board Members

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



Participation and Communication

- **Be familiar with your association's governing documents** (i.e., declaration, by-laws, house rules, design guidelines, review house rules, be familiar with forms, and association policies & procedures, etc..).
- **Review Newsletters & Notices** (be aware of upcoming meetings, projects, and rule changes).
- **Participate in meetings** (annual meeting, special meetings, & regular board meetings)
- **Volunteer to Serve** (become elected / appointed (to fill a vacancy) as a board member, or serve on committees if not prohibited by governing documents or the law)

*Be Active
& Informed*



ACCESS TO RECORDS

The DCCA's website has information & forms :

<https://cca.hawaii.gov/rico/materials/goto-records/>

For more information on records and access to records see:

HRS § 514B-152,

HRS § 514B-153,

HRS § 514B-154, &

HRS § 514B-154.5.

WRITTEN REQUEST FOR CONDOMINIUM ASSOCIATION RECORDS	
Date of Request: _____	
To: _____ <small>(Condominium Managing Agent or Board of Directors if self-managed)</small>	
Name of Condominium Project: _____	
Contact Information:	
Name of Person Requesting Documents: _____	
Requestor's Address: _____	
Residence No.: _____	Business No.: _____
Email Address: _____	Fax No.: _____
<ul style="list-style-type: none">I hereby confirm that I am: <input type="checkbox"/> an owner in this condominium project or <input type="checkbox"/> an agent authorized by the owner(s) and entitled to request receive and/or view the documents identified below.I hereby request (please check only one): <input type="checkbox"/> to examine or <input type="checkbox"/> receive copies of the association records identified below.	
Documents Relating to Condominium Operations:	Please indicate the specific month(s) and year(s) for each category:
<input type="checkbox"/> Board of Directors Meeting Minutes:	_____
<input type="checkbox"/> Financial Statements:	_____
<input type="checkbox"/> General Ledgers:	_____
<input type="checkbox"/> Accounts Receivable Ledgers:	_____
<input type="checkbox"/> Accounts Payable Ledgers:	_____
<input type="checkbox"/> Check Ledgers:	_____
<input type="checkbox"/> Common Elements Receipts:	_____
<input type="checkbox"/> Common Elements Expenditures:	_____
<input type="checkbox"/> Monthly Statement of Current Delinquency or Unpaid Common Element Assessments:	_____
<input type="checkbox"/> Condominium Management Agreement:	_____
<input type="checkbox"/> Insurance Policies: (i.e. Name of insurance company, type of policy, date/year of policy, etc.)	_____
<input type="checkbox"/> Contracts: (i.e. Name of business, type of contract, date of transaction, etc.)	_____
<input type="checkbox"/> Invoices: (i.e. Name of business, type of goods or services, date of transaction, etc.)	_____
Documents Relating to General Condominium Provisions:	
<input type="checkbox"/> Declaration:	_____
<input type="checkbox"/> Bylaws:	_____
<input type="checkbox"/> House Rules:	_____
<input type="checkbox"/> Master Lease:	_____
<input type="checkbox"/> Sample Original Conveyance Document:	_____
<input type="checkbox"/> Public Report:	_____
<input type="checkbox"/> Amended Public Report:	_____

ACCESS TO RECORDS

The DCCA's website has information & forms :
<https://cca.hawaii.gov/rico/materials/got-records/>

Documents Relating to Condominium Governance:

- ☐ Association Meeting Minutes:
- ☐ Current Member or Owner List:
- ☐ Names and Addresses of Vendees Under an Agreement of Sale:
- ☐ Name and Address of Time Share Association Representative/Agent for the Individual Time Share Owners:
- ☐ Proxies:
- ☐ Tally Sheets:
- ☐ Ballots:
- ☐ Owners' Check-In Lists:
- ☐ Certificate of Election:

Documents Relating to Condominium Operations:

- ☐ Board of Directors Meeting Minutes:
- ☐ Financial Statements:
- ☐ General Ledgers:
- ☐ Accounts Receivable Ledgers:
- ☐ Accounts Payable Ledgers:
- ☐ Check Ledgers:
- ☐ Common Elements Receipts:
- ☐ Common Elements Expenditures:
- ☐ Monthly Statement of Current Delinquency or Unpaid Common Element Assessments:
- ☐ Condominium Management Agreement:
- ☐ Insurance Policies: (i.e. Name of insurance company, type of policy, date/year of policy, etc.)
- ☐ Contracts: (i.e. Name of business, type of contract, date of transaction, etc.)
- ☐ Invoices: (i.e. Name of business, type of goods or services, date of transaction, etc.)

OPEN BOARD MEETINGS

- HRS §§ 421J-5 and 514B, and your Bylaws.

§514B-125 Board meetings.

(a) All meetings of the board, other than executive sessions, **shall be open to all members of the association,** and association members who are not on the board shall be permitted to participate in any deliberation or discussion, other than executive sessions, **pursuant to owner participation rules adopted by the board.**



OWNER PARTICIPATION AT BOARD MEETINGS

- Condominium association boards may adopt rules for owner participation.
- Notice to all owners at any regular or duly noticed special meeting is required.

HRS § 514B-125(b)



OWNER PARTICIPATION AT BOARD MEETINGS

Potential Rules for Owner Participation:

- Rule Objectives: Maintain board control over the meeting and avoid heated interactions.
- Board member discussion first.
- Limit time for each owner.
- Chair may have discretion to allocate time for participation at the end of the meeting.
- Exclusive of executive session.
- Board may amend the rules upon due notice.



EXECUTIVE SESSION

§514B-125 Board meetings. (c) The board, by majority vote, may adjourn a meeting and reconvene in **executive session** to discuss and vote upon matters:

- (1) Concerning personnel;
 - (2) Concerning litigation in which the association is or may become involved;
 - (3) Necessary to protect the attorney-client privilege of the association; or
 - (4) Necessary to protect the interests of the association while negotiating contracts, leases, and other commercial transactions.
- The general nature of any business to be considered in executive session shall first be announced in open session.



Association Meetings

TIP: Try to work with your current board members before trying to proceed with a special meeting.

TIP: You should also always work with experts when proceeding with a special meeting (i.e., parliamentarians & attorneys).

- Association meetings shall be at least once each year. See HRS § 514B-121(a)
- A **special meeting** may be called "by a petition to the secretary or managing agent signed and dated by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership." See HRS § 514B-121(c)

- Agenda Items Might Include:

Board Member Removal & Re-election

Amendments to the Declaration / By-Laws

Approval to spend beyond spending limits

Soliciting Proxies & Written Statements

TIP: Solicit proxies to engage with other owners.

§514B-123 Association meetings; voting; proxies.

(1) Any board that intends to use association funds to distribute proxies, including the standard proxy form referred to in subsection (e), shall first post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days before its distribution of proxies. **If the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement,** the board shall mail to all owners either:

(A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies **accompanied by their statements;** or

(B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies **and their statements.**

The statement, which shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page, indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies; and

(2) A board or member of the board may use association funds to solicit proxies as part of the distribution of proxies. If a member of the board, as an individual, seeks to solicit proxies using association funds, the board member shall proceed as a unit owner under paragraph (1).

Board Members Owe a Fiduciary Duty to the Association

The Fiduciary Duty

Duty of Loyalty: Board members are in a position of trust.

Duty of Diligence & Due Care: Act as a reasonably prudent person would act in similar circumstances.

Duty of Good Faith: Act in the Association's best interest.

Duty of Obedience: Comply with the law, the governing documents, policies and procedures.



Be Positive

A background image showing two people in business attire shaking hands. The image is partially obscured by a large, light-yellow circular shape on the left side, which contains the title. A semi-transparent blue box on the right side contains a list of five bullet points. The overall tone is professional and positive.

- Encourage open communication
- Engage in an appeal and hearing process when available (sometimes required by the by-laws)
- Avoid escalation
- Be courteous and professional
- Work to avoid future disputes

Mandatory Mediation



HRS § 514B-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 § 514B-162 (b)



Mandatory Nonbinding Arbitration

HRS § 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.

Community Guidelines

"Unit Owners Have A Right To:"

- "A competent and responsive association with prudent expenditure of fees, proper budgeting, and reserve funding."
- "A board that meets its fiduciary duty towards the association."
- "Fair and consistent application of the bylaws and rules."
- "Honest and respectful treatment by their association and managing agent."
- "Participate and have their voices heard in governance decisions."
- "Access to documents and records pursuant to §§514B-152, 153, 154, and 154.5, HRS."
- "Access to a fair and open appeals process, mediation, and arbitration."
- "A well-maintained community."
- "Up to date information regarding their association."
- "Proper notice regarding elections, fines, maintenance fee increases, borrowing, bylaw changes, special meetings and other decisions."

Source: Condominium Owners Rights and Responsibilities for Better Associations (DCCA)

<https://cca.hawaii.gov/reb/files/2016/05/Owners-Rights-and-Responsibilities-May-2016.pdf>

Disinformation Condo-Style

The uses and pitfalls of social media

Ian Lind • November 18, 2023

Overview

- Introduction
- The social media revolution
- Definitions
- Condo boards: Part of the conspiracy?
- Consensus: Build a positive social media presence
- Boards need to adopt a social media policy, defining goals, roles
- The best defense is transparency

Introducing...

Ian Lind

- Former state director of Common Cause, the nonpartisan citizen's watchdog organization.
- Former legislative and city council staff member
- Investigative reporter for three decades, most recently for Civil Beat
- Longtime condo board member in two projects, former president of one
- Blogging for more than 20 years at www.iLind.net
- Email: ian@iLind.net

The social media revolution

- It's now a digital world.
- We are all part of the social media revolution
- It all started less than 20 years ago
- Governments, and private organizations, have not yet caught up

Definitions

- Social Media
- Misinformation
- Disinformation
- Conspiracy theories

Condo boards: Part of the conspiracy?

- Many individual owners see condo governance as a vast conspiracy
- Vocal critics who share a conspiratorial view pose a substantial problem
- But we're stuck with them!
- And sometimes even conspiracy theories are at least partially right

The best defense against conspiracy mindset

- No easy answers
- Research shows arguing “facts” doesn’t work
- Best practice: Proactive strategy of “innoculation,” transparency, trust-building

CONDORAMA XI

LABOR LAW

Hiring and Firing Basics



JOHN L. KNOREK

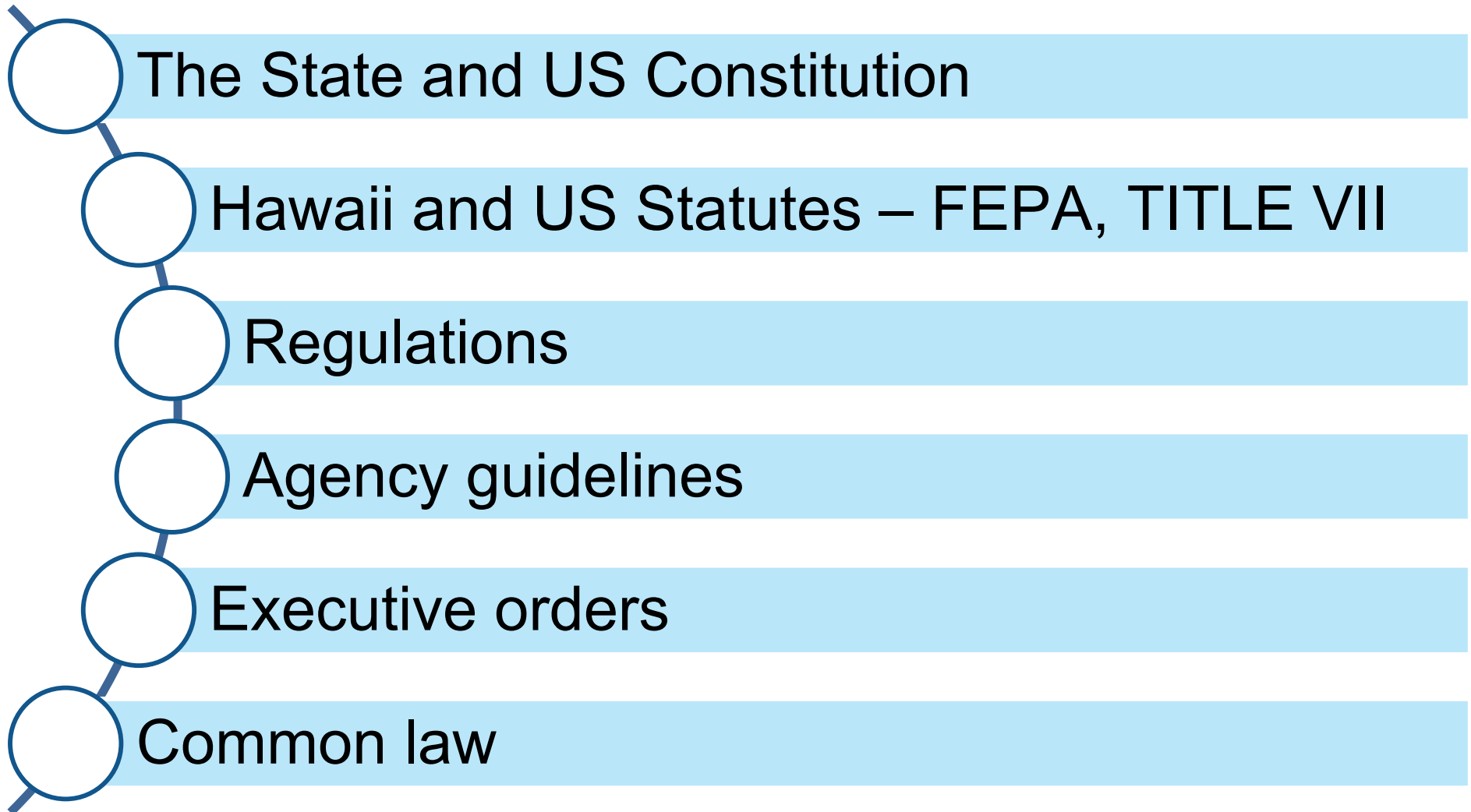
Director

700 Bishop Street, 15th Floor, Honolulu, HI 96813

Dir: 808.523.5384 Main: 808.523.6000

www.torkildson.com | Email: jlk@torkildson.com

Sources of Law



- KNOW WHAT YOU WANT
 - Good Job Description
 - Good Application Form
 - Essential Job Functions
 - Thorough Background Check
 - Credit and criminal history
 - Every prior employer

KNOW WHAT TO ASK

- Only Job-related Interview Questions
- Avoid mention of any protected class
 - Age, religion, race, national origin, ancestry, ethnicity, color, citizenship, sex including gender identity and expression, sexual orientation, disability, marital status, credit history, arrest and court record, victim of domestic or sexual violence status, reproductive health decision, genetic information....prior workers comp claims

Double Whammy 2015

- Adams v. CDM Media USA, Inc (2015)
 - To avoid trial employer must show that employee was aware of job requirements and unqualified or unable to perform core functions of job
- Shimose v. Haw. Health Sys. Corp. (2015)
 - Conviction must be rationally related to core job duties to disqualify employee/applicant

KNOW WHAT TO SAY

- Condition job offer on:
 - Medical Exam
 - Drug Screen
 - Background check
 - At-will status
 - Arbitration Agreement
 - Non-solicitation Agreement
 - Non-Competition Agreement (?)
- Be careful to determine if exempt from overtime
- Be careful not to make any promises

AT-WILL EXCEPTIONS

- Kinoshita v. Canadian Pacific Air – implied in fact contracts
- Ravelo v. County of Maui – detrimental reliance
- Parnar v. American Hotels – public policy wrongful discharge

Only Job-related Interview Questions

KNOW WHAT TO EXPECT

- Job Duties Clear?
- Pay Clear?
- Vacation, Sick and PTO Leave Clear?
- Work Rules Clear?
- Mandated Benefit Compliance:
 - TDI
 - WC
 - PPHC

KNOW WHEN TO END IT

- Document performance issues
- Good faith discipline not “counseling”
- Tie discipline to job duties
- Consider severance and release agreement

Five questions to consider BEFORE terminating:

- (1) Did the employee have any contractual limitations on at-will status through a verbal or written agreement, or any handbook without a disclaimer?
- (2) Did the employee complain about discrimination, harassment or retaliation? Review all protected categories.
- (3) Is the employee a whistleblower?
 - Did they complain about anything illegal, unethical or unsafe?

Five questions (continued)

- (4) Did the employee recently (last 6 months) take any protected leave?
 - FMLA, HFL, workers' compensation, disability/temporary disability insurance, pregnancy, military, etc.
- (5) Can you explain a job related reason for terminating the employee that was communicated to the employee at some time? Is there any documentation of warning the employee he could be fired for this?

The 7 Factor Test of Good Cause: Be Fair, Honest & Consistent

- Is employee on Notice of what is expected?
- Do you have objective proof of that violation?
- What is the employee's explanation or excuse?
- How does the violation or poor performance affect the business and its customers?
- How has the Company treated other employees that are similarly situated?
- Is there a legitimate reason to treat this employee differently?
- Does the discipline fit the offense, given the employee's tenure and past performance?

WHEN IN DOUBT....

CALL YOUR EMPLOYMENT COUNSEL

Mahalo



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Mahalo and Aloha

- Thank you to our speakers and to everyone who joined us today.
- Email us if you would like to review the recording of this webinar: caihawaii@hawaiiantel.net. This is a free program so you can share the recording with anyone who might be interested.
- 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.
- The recordings of all 2022 programs are still available, including the free Condorama VIII and Condorama IX. Email us if you would like to register for any of these.
- The 2022 and 2023 Calendars of Events are also included in this handout.



2023 Programs

- January 26*** – **What's New in the World of Condominiums and Planned Community Associations**—Anne Anderson, Bernie Briones, Co-Chairs
- February 15*** – **Owners' and Board Members' Rights and Wrongs—Bringing Peace to the Promised Land**—Kanani Kaopua, Carol Rosenberg, Co-Chairs
- March 9*** – **Fortifying the Fortress—including security, preparing for the elderly, privacy**—Jennifer Landon, Milton Motooka, Co-Chairs
- April 13** – **Managers' Forum**
- May 18*** – **Finances—including budgets and reserves, inflation, insurance**— Josh German, Chair
- June 17, 24*** – **Board Leadership Development Course**—Melanie Oyama, Keven Whalen, Co-Chairs
- July 27** – **Legislative Update 2023**—presented by the Legislative Action Committee
- September 20*** – **Short Term Rentals**—Mike Ayson, John Morris, Co-Chairs
- October 25*** – **Association Fundamentals**—Lance Fujisaki, Melanie Oyama, Co-Chairs
- December 14*** - **Cyber Threats**—Richard Ekimoto, Steve Glanstein, Co-Chairs (Rescheduled from August 10th)

**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 attached to the Department of Commerce and Consumer Affairs, State of Hawaii, through the Professional and Vocational Licensing Division.*



2024 Calendar of Events



January 24* – **Get your Act Together—Tips for a successful Annual and Board Meeting Season** – Kanani Kaopua, Rachel Glanstein, Co-Chairs

March 7* – **Ask the Consultants and Contractors**—Milton Motooka, Bernie Briones, Co-Chairs

May 16* – **Association and Homeowner Insurance Policies Explained** — Josh German, Mike Ayson, Co-Chairs

June 22, 29* – **Board Leadership Development Workshop** (two half day webinars covering the basics of board leadership responsibilities) – Melanie Oyama, Keven Whalen, Co-Chairs

July 18 – **Legislative Update** – presented by the Legislative Action Committee

August 22 – **Reserves and Budgets**—Jonathan Billings, Carol Rosenberg, Co-Chairs

September 26 – **Employment/Labor Law—Hiring, Firing, and Supervising** —Paul Ireland Koftinow, Melanie Oyama, Co-Chairs

October 24 – **Covenant Enforcement: Case Law Update** – Anne Anderson, Chair

November 1 – **Annual CAI Membership Meeting**

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