

CONDORAMA XV

PRESENTED BY CAI HAWAII



November 15, 2025

Condorama XV

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AGENDA



- 09:00 – 09:05 a.m. **Melanie Oyama** Welcome & Introductions
- 09:05 – 09:35 a.m. **Lance S. Fujisaki** Do's & Don'ts of Construction Contracts
- 09:35 – 10:05 a.m. **Rudy Savio** Key Points On How Property, Directors & Officers Claims Are Processed
- 10:05 – 10:25 a.m. **Andrew D. Chianese** Why Boards Get Sued & Steps To Avoid Lawsuits
- 10:25 – 10:30 a.m. **Melanie Oyama** Closing



Mahalo

Milton Motooka

Motooka Oyama & Lau



Richard Ma

Presentation Resources



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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.

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Our Speakers



Lance S. Fujisaki, born and raised in Honolulu, earned his Bachelor of Arts from the University of California, Berkeley, and his Juris Doctor from Hastings College of the Law, where he served as a Technical Editor on the Hastings Law Journal. As a partner at Anderson & Fujisaki LLP, he has been a member of the Hawai'i State Bar Association and the American Bar Association since 1986. Specializing in community association representation, he provides counseling, contract negotiations, and documentation for renovation projects, and has taught and written extensively on legal matters.

Our Speakers



Rudy Savio is the General Manager of Insurance Associates. He was born and raised on Oahu and attended Star of the Sea, Punahou and Santa Clara University, graduating with a Bachelor's Degree in Finance in 2006. Since then, he has been working in the insurance industry with a focus on coverage for associations' master policies as well unit owners' personal HO6 policies. Rudy sits on two condo boards, serving as the President of one board since 2020.

Our Speakers



Andrew D. Chianese is a Director at Torkildson Katz, A Law Corporation, where he is a member of the litigation department. His practice encompasses business litigation, construction litigation, and real property and commercial litigation. Throughout his career, Mr. Chianese has worked at firms specializing in these areas, successfully counseling individual clients and multinational corporations to achieve favorable decisions and settlements in state and federal court, as well as in mediation and arbitration proceedings.



Do's and Don'ts of Construction Contracts

Lance S. Fujisaki

November 15, 2025

Anderson & Fujisaki LLP A Limited Liability Law Partnership

11/07/25

PART 1: PRELIMINARY ISSUES

11/07/25

The following discussion is general in nature and offered for informational purposes only. Nothing in these materials is intended to, nor shall these materials constitute, legal advice. Please consult with your association attorney for legal advice. Depending upon the facts, circumstances and situation, provisions or exceptions found in the law and the governing instruments, different from those discussed in this presentation, may apply.

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This presentation is geared for board members and owners of units in condominium and planned community associations. The purpose of this presentation is to provide you with suggestions on things you may want to do, and things you may want to avoid, when entering into a construction contract.

Please keep in mind the following things:

1. Construction contracts are just one piece of a much larger construction project puzzle. I will talk about some of the other pieces of the puzzle. However, the focus will also be on construction contracts.
2. Construction contracts are an important piece of a construction project puzzle, but not necessarily the most important piece. A significant amount of work needs to be done before you begin work on the construction contract.

In my presentation, I will refer to the association as the Owner because standard contract forms refer to two parties: Owner and Contractor. Technically condominium associations are not the owners of the condo project. By comparison, planned community associations usually own the common area.

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Do: Discharge your fiduciary duty.

FIDUCIARY DUTY

The fiduciary duty is a bundling of a number of obligations, including the duty of:

- obedience
- diligence (due care)
- loyalty
- good faith

Directors have duties similar to the duties of a trustee to the beneficiaries of a trust. This means that a director must not act with self-interest, must act with such care as an ordinary reasonable and prudent person in a like position would under similar circumstances, and act in a manner believed to be in the best interest of the association.

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Examples of the duty of diligence:

- Gathering (researching, investigating) all necessary information for decision making;
- Consulting the opinions of appropriate professionals where necessary (i.e. legal counsel, engineers, architects, managing agents, parliamentarians, certified public accountants, etc.);
- Checking the license status of a contractor or consultant the board intends to hire;
- Complying with the requirements of the governing documents; and
- Complying with the requirements of the Condominium Property Act, Chapter 514B, Hawai'i Revised Statutes

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For more information, see the resources on the Department of Commerce and Consumer Affairs' website on fiduciary duty:

<https://cca.hawaii.gov/reb/files/2016/05/Board-of-Directors-Fiduciary-Duty.JC-yellow.pdf>
<http://cca.hawaii.gov/reb/resources-for-condominium-owners/>

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Don't: Procrastinate. Plan ahead and do your homework by reviewing the governing documents and HRS Chapter 514B.

Ask: What will be repaired or altered?

The three Categories of Components of Condominium Projects

Components	Ownership
Common Elements	Owners jointly
Limited Common Elements	Owners jointly, subject to easement rights for individual owners
Apartments	Individual apartment owners

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Significance of Categories of Project Components

- Determines whether maintenance, repair and replacement can be performed at common expense or expense of apartment owners
 - Determines who must maintain, replace and repair
 - Determines whether Board can borrow funds for maintenance, replacement and repair
 - Affects approval requirements for alterations and additions
 - Determines who must insure the component

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Relevant sections of HRS Chapter 514B

HRS Section 514B-35 Unit Boundaries:

[§514B-35] Unit boundaries. Except as provided by the declaration:

- (1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings, are a part of the common elements;
- (2) If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element appurtenant solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements;
- (3) Subject to paragraph (2), all spaces, interior non-loadbearing partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; and
- (4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but are located outside the unit's boundaries, are limited common elements appurtenant exclusively to that unit. [L 2005, c 93, pt of §2]

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Relevant sections of HRS Chapter 514B

HRS Section 514B-41 Common Expenses:

[§514B-41] Common profits and expenses. (a) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners, including the developer, in proportion to the common interest appurtenant to their respective units, except as otherwise provided in the declaration or bylaws. In a mixed-use project containing units for both residential and nonresidential use, the charges and distributions may be apportioned in a fair and equitable manner as set forth in the declaration. **Except as otherwise provided in subsection (c) or the declaration or bylaws, all limited common element costs and expenses, including but not limited to maintenance, repair, replacement, additions, and improvements, shall be charged to the owner or owners of the unit or units to which the limited common element is appurtenant in an equitable manner as set forth in the declaration.**

(continued)

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Relevant sections of HRS Chapter 514B

HRS Section 514B-41:

(c) Unless otherwise provided in the declaration or bylaws, if the board reasonably determines that the extra cost incurred to separately account for and charge for the costs of maintenance, repair, or replacement of limited common elements is not justified, the board may adopt a resolution determining that certain limited common element expenses will be assessed in accordance with the undivided common interest appurtenant to each unit. In reaching its determination, the board shall consider:

- (1) The amount at issue;
- (2) The difficulty of segregating the costs;
- (3) The number of units to which similar limited common elements are appurtenant;
- (4) The apparent difference between separate assessment and assessment based on the undivided common interest; and
- (5) Any other relevant factors, as determined by the board.

The resolution shall be final and binding in the absence of a determination that the board abused its discretion.

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Do: Consult with the Association's legal counsel on whether the work will involve common elements, limited common elements or apartments.

Ask your lawyer whether, and if applicable how, the following cases affect (1) who is responsible for repairing, replacing or maintaining the subject components, (2) who is responsible for the cost of repairing, replacing or maintaining the subject components:

Brown v. Brent, 138 Hawai'i 140, 377 P.3d 1058 (App. June 17, 2016) (SDO).
<https://www.courts.state.hi.us/wp-content/uploads/2016/06/CAAP-14-0001379sdo.pdf>

Harrison v. Casa De Emdeko, Inc., 418 P.3d 559 (2018)
<https://www.courts.state.hi.us/wp-content/uploads/2018/04/SCWC-15-0000744.pdf>

Cook v. The Association of Apartment Owners of Mt. Terrace, 155 Hawai'i 94 (App. Sept. 30, 2024) (SDO).
<https://www.courts.state.hi.us/wp-content/uploads/2024/09/CAAP-20-0000536sdo.pdf>

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Do: Consider whether amendments to the governing documents are necessary to facilitate the project, including financing.

If the governing documents are unclear on whether the components of the construction project are common elements, limited common elements or part of the apartments, consider seeking owner approval to amend the governing documents to clarify the documents.

A well drafted amendment may avoid years of costly litigation over the meaning of the governing documents.

This means that the board must consult with legal counsel very early in the process given the length of time it will take to obtain the approval or written consent of owners representing 67% or more of the common interest.

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Don't: Proceed with a project without owner approval (if it is required).

- Does the work require owner approval?
- Are there spending limits in the governing documents that apply to the project?
- Are owner approval requirements in the governing documents triggered by alterations or additions?
- Will some owners be directly affected by the work?

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Do: Confirm that the cost of the work will be assessed to owners properly.

COMMON ELEMENT
AOAO

LIMITED
COMMON ELEMENT
VARIES

APARTMENT
INDIVIDUAL
OWNERS

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Do: Develop a plan to finance the work ahead of time.

ASSESS BORROW RESERVES

SPENDING LIMITS

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PART 2: OVERVIEW OF A CONSTRUCTION PROJECT

In a traditional project, the owner hires an architect or engineer to develop the general concept of the project and prepare plans and specifications. The plans and specifications are then put out for bid to various contractors who price the project and bid, usually on a firm price. (Bids can be on a cost-plus basis with a guaranteed maximum price. This is extremely rare.)

After the owner selects the contractor and the contract is signed, the architect, engineer or Construction Manager (collectively "Design Professional") often has responsibility to review samples and shop drawings and for supervisory functions to assure that the project is actually built in accordance with the final plans and specifications (or with change orders drafted, or at least approved, by the Design Professional) and provide contract administration. Of course there are variations. For example, if the owner knows which general contractor it wishes to use, the owner can negotiate with that contractor to get involved early in the process and consult with the Design Professional during the design phase.

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PART 2: OVERVIEW OF A CONSTRUCTION PROJECT

In Phase 1, the Owner chooses a Design Professional to create a conceptual study. During the Phase 1 planning stage the Design Professional assists the Owner in determining the feasibility of the project and the basic performance parameters. The deliverables typically include the project description, preliminary drawings, and performance requirements.

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PART 2: OVERVIEW OF A CONSTRUCTION PROJECT

During Phase 2, the Design Professional generally prepares the construction bid documents, which includes the Owner-General Contractor agreement, general conditions, general requirements and other documents. It is important that the Owner's legal counsel be part of the contract drafting team, and to assist with the decision-making process leading up to Phase 3. During Phase 2, the Owner has the opportunity to select the details of the design features.

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PART 2: OVERVIEW OF A CONSTRUCTION PROJECT

In Phase 3, after the plans and specifications and contract forms are completed and accepted by the Owner, the Design Professional assists the Owner in advertising and obtaining bids for the work. The Owner issues the bid documents. Various methods of bidding approaches are available, but usually the lowest responsive and responsible bid is selected. Various pricing approaches are also available, including fixed price, guaranteed maximum price, cost-reimbursable, unit price, and others, or combinations of these approaches. The Design Professional must advise the Owner on the appropriate approach, based on the Owner's needs and tolerance for risk.

The Board should consult with the Design Professional on the appropriate number of bidders who are invited to bid.

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PART 3: STANDARD FORM CONTRACTS

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Overview of an AIA Contract

In Hawaii, most construction contracts are written on standard form American Institute of Architects (AIA) forms. I favor AIA forms because they have been around for over 100 years, they are updated every 10 years, there is case law interpreting the provisions and since standard forms are so common, most contractors and construction lawyers are familiar with their basic structure. There are several different AIA contract forms. There are different forms for small projects, medium projects and more complex projects. There are forms for contracts administered by architects or engineers, and different forms for projects that are administered by construction managers. There are forms for design-build projects. There are forms for contracts between owners and architects or engineers, and contracts between owners and construction managers. Although the forms differ, there is a general consistency in the terms which makes it relatively easy to use the different forms. If you master one form, you will not be reinventing the wheel if you use a different form. There are licensing fees that must be paid before the forms can be used.

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Do: Use AIA standard forms of contracts.

Because AIA contracts are the most common form of agreement, my comments will refer to the AIA standard forms.

The title of this presentation is “Do’s and Don’ts of Construction Contracts.” When I refer to Construction Contracts, I am actually referring to “Contract Documents.”

You might think of a construction contract as a single document signed and dated by the parties on the last page. Actually, the standard form construction contract isn't just a single document. It's comprised of many different documents and parts which, when read together, constitute the entire set of obligations undertaken by the parties. In the AIA forms, these documents are collectively called the "Contract Documents."

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AIA Standard Forms

Contract Documents includes not just the basic agreement between the parties but also the general terms and conditions, drawings, specifications, amendments, and addenda--each of which is its own separate document. Once you include all of the Contract Documents, a standard form construction contract can easily span hundreds or even thousands of pages.

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The Agreement

The first of the Contract Documents is the "Agreement." The "Agreement" is the short document signed by both parties that sets out the most essential terms of the deal between the owner and contractor, like the price of the work and payment terms. Depending on the form used, this may be called the A101, or A131 form. Keep in mind, this is not necessarily a "short" document; it spans about 6,300 words. It is short only in comparison to the General Conditions.

The Agreement doesn't give a detailed description of the work the contractor has agreed to perform. You should find that in the "Drawings" and "Specifications." Important Point: the Agreement is not the entire contract. It's just one of the many Contract Documents. If you only reviewed the Agreement, you'd be missing the vast majority of what constitutes the contract.

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The General Conditions

If the Agreement contains the most essential, business terms of the deal between the owner and the contractor. The "General Conditions of the Contract for Construction" spell out in detail the administrative procedures and how the parties, design professionals and construction manager will interact with each other throughout the course of the project. This document spans about 24,000 words.

The General Conditions are a separate document and must be read in concert with the Agreement. Many of the most important contract terms are found not in the Agreement but in the General Conditions, including changes in the work, the contractor's indemnification provision, the one-year corrective period (a.k.a. the "contractor's call back"), the warranty provision, and the procedures for progress payments.

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The General Conditions

The General Conditions also explain how the contractor and the Design Professional will interact with each other on important matters like the review and certification of the contractor's pay applications and rejection of work. Since the contractor and Design Professional generally don't have a direct contract with each other, the General Conditions are the primary law setting out how they should work together.

Most of the provisions in the AIA documents are very well drafted. I particularly like the warranty provision which is broad in scope. However, boards should consider whether this should be supplemented with more detailed warranties.

The AIA documents are intended to be modified, tweaked and shortened. Some provisions are included in order that the parties consider the appropriateness of the provisions and do not gloss over issues. The documents are not intended to be a one-size-fits-all agreement. The AIA documents are typically modified extensively by the parties.

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Other Forms of Agreement

Some contractors or construction managers have their own proprietary or “manuscript” forms of agreement. I generally discourage use of these forms and recommend using an AIA contract because of the standard terms that are familiar in the industry. It can be very time consuming to compare a manuscript form of agreement to the roughly 6,400 word AIA A131 and 24,000 word AIA A132 standard forms and confirm that the form contains similar provisions. This is not to say that other forms of agreement are not adequate. For example, elevator consultants often recommend using their form of elevator modernization contracts which may be better suited to those unique types of projects. In those situations, it may be best to use forms that the elevator consultants are familiar with and can easily enforce. However, for the typical construction project, AIA forms are probably the best option.

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Benefits of AIA standard forms

In my opinion, associations that use AIA contracts will be substantially protected from most problems that arise on construction projects. In addition, use of AIA standard forms is a sign that the board has discharged its duties to the association. However, it must be emphasized that the Contract Documents are composed of many documents, all of which are necessary to achieve a successful outcome. Simply using AIA standard form does not guarantee a good result. AIA standard forms include critically important provisions, including provisions on:

Payment and billing procedures
the work

Certifications, guarantees and warranties
Dispute resolution procedures
Insurance
orders

Substantial and final completion of

Job safety

Termination

Change
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The Drawings & Specifications

While the Agreement, General Conditions, and Supplementary Conditions, if any, establish the business relationship between the owner and the contractor, the "Drawings" and "Specifications" describe exactly what the contractor is supposed to build, that is, the contractor's scope of work. The specifications are commonly referred to as the Project Manual. In many ways, the other Contract Documents merely set the stage for the successful completion of the scope of work established by the Drawings and Specifications. The Drawings--also informally called the "plans"--are the "graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions" of the work.

The Specifications are written requirements for materials, equipment, systems, standards and workmanship. Each component of the work--earthwork, concrete, electrical, plumbing, etc.--has its own section in the Specifications. The Drawings show you the work while the Specifications tell you how it should be done.

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The Drawings & Specifications

Because a judge, jury or arbitrator will be the ultimate arbiter of contract disputes, I like to see a narrative description of the project in the Specifications that summarizes the information in the Drawings. This should help all of the parties to understand the scope of work. However, some design professionals insist that the description of the work should only be contained in the drawings and not described in words.

Although it is the job of the Design Professional to review the Drawings and Specifications, board members should review these documents as they contain binding contract provisions. Sometimes, the drawings contain extensive notes that are also incorporated by reference in the contract.

As the Drawings and Specifications may conflict with each other, the contract should include an "order of precedence" clause stating, for example, that the Specifications will control over the Drawings, or vice versa.

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Do: Have your Association attorney review all construction contracts.

Generally, all contracts should be reviewed by legal counsel. Even small contracts can significantly affect the Association adversely.

Your association may have contracts that (1) will not expose the Association to risk of bodily injury, property damage or financial risk, (2) are short in duration, (3) are limited in scope, and (4) that involve amounts that are insignificant relative to the Association's budget. Probably very few contracts meet these criteria. These contracts may not need legal review.

Although all contracts should be reviewed by your attorney, on small contracts, it is perfectly fine for the Board to ask the attorney to spend not more than a specified amount of time to review and report in writing or orally on obvious or major problems. The attorney should be able to spot major issues without investing a lot of time. In this way, the Board can economically protect the Association from major issues.

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Do: Consult with the Association's insurance agent.

Be sure to consult with your association insurance agent on the recommended levels and types of coverage that the contractor should maintain. The insurance requirements are usually set forth in a separate exhibit.

Inform the insurance agent of the details of the project. If the project entails shipping millions of dollars of equipment from the mainland or overseas, disclose that to the insurance agent. The association may be deemed to own the equipment upon payment, even while in transit. If the equipment is lost before it arrives at the project or is installed, it may not be insured under the association's property insurance program.

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Do: Inquire about special insurance coverages.

Builder's Risk Insurance

Ask your insurance agent about builder's risk insurance. Builder's risk insurance provides coverage for goods lost or damaged while in transit across inland waterways, or overland by train, truck, or plane. Builder's risk insurance follows the goods as they move rather than insuring property in a fixed location on a particular parcel of real estate. It can provide broader coverage for losses occurring during construction than most permanent property policies. Builder's risk insurance typically provides coverage on property that is destined to be included in the project, while in storage at the construction site, while in offsite storage, and while in transit.

Pollution Liability Insurance

Most contractors do not carry this insurance. However, it may be necessary if the work involves removal or handling of hazardous materials, or if the work involves risks to the environment.

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Do: Inquire about special insurance coverages.

Professional Liability Insurance

Most contractors do not carry professional liability insurance. However, if the work requires the contractor to provide design professional services, the contractor should provide professional liability coverage.

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Do: Require performance and payment bonds

Performance bonds are issued by sureties. A surety is like a guarantor and is typically an insurance company. The surety agrees to pay for the performance of a contract if the Contractor defaults in the performance of the contract. A payment bond is an agreement in which the surety assures the obligee (the association) that the persons providing labor, materials and equipment to the project will be paid by the principal/Contractor. In many cases, Association governing documents require Boards to procure bonds for improvements to the project.

If the Contractor fails to provide bonds and fails to perform the work or pay subcontractors or suppliers, the association may have very little recourse against the Contractor if it is judgment proof. While a bond will not provide the association a complete guarantee of performance, it will provide the association with substantial protection in the event of a problem. If the Contractor fails to perform, the association may have no effective recourse. It is a business decision for the Board whether to require bonds.

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Final Tips

The Association should have its Design Professional vet the contractor. Selecting the right contractor is probably more important than the contract terms.

However, as past performance is never a guarantee of future performance, even with the best contractor, associations need adequate terms in their contracts.

Be sure to use a licensed contractor. It's important to hire the right kind of contractor for your particular job. If the project involves a new roof, a specialty roofing contractor may be sufficient. But if your job includes more than two specialties (for example, an extension requiring framing, flooring, drywall, and roofing), you should consider hiring a general contractor. A general contractor will be licensed to do most of the work and will hire licensed subcontractors to take care of any specialty work for which he/she isn't licensed to do. For more information, see: <https://cca.hawaii.gov/rico/materials/licensedcontractor/>

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Final Tips

Try conducting a stress test: Think about all of the things that can go wrong on the project.

Will the provisions in the Contract Documents, including the Drawings and Specifications, adequately protect your association and allow you to enforce the Contract Documents to obtain the outcome that you intended?

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CONCLUSION

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Property and D&O Claims

How are They Processed?

Presented by:

Rudy Savio, General Manager of Insurance Associates

November 2025

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Agenda

- ▶ Claim Terminology
- ▶ Property Claims
- ▶ Master Policy & HO6
- ▶ Property Claim Process
- ▶ Liability Claims
- ▶ D&O Claims

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Claims Terminology

- ▶ **Insured**
 - ▶ Who or what are we covering?
- ▶ **Date of Loss**
 - ▶ When did the loss occur?
- ▶ **Coverage**
 - ▶ Is the loss covered or excluded?

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Property Claims

Policy asks three questions:

- ▶ **Insured:**
 - ▶ Is the Damaged Property Covered by the Policy?
- ▶ **Date of Loss:**
 - ▶ Did the loss occur during the policy Term?
- ▶ **Coverage:**
 - ▶ Was the damage caused by a covered peril?

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Property Claims: Covered Perils

- ▶ 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*



Property Claims: *Exclusions*

- ▶ Hurricane/Named Storm
- ▶ Earth Movement
- ▶ Flooding
 - ▶ Tsunami
 - ▶ Storm Surge
 - ▶ Mother Nature



Types of Property Policies in Condos

- ▶ **H06** - Coverage for condo unit owners whether you live in it or rent it out
- ▶ **Master Condo Policy**

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H06- Condo Unit Owners Policy

- ▶ **Dwelling or Building (Coverage A)**
 - ▶ Covers the AOA0 Deductible
 - ▶ Covers the upgrades and improvements made by the current or previous owner(s)
- ▶ **Contents or Personal Property (Coverage C)**
 - ▶ Covers the contents in the unit (furniture, TV, etc)
- ▶ **Loss of Use (Coverage D)**
 - ▶ Covers costs to stay elsewhere *or* Rental Income
- ▶ **Personal Liability (Coverage E)**

Does not cover "as built"

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Master Condo Property Policy

- ▶ Covers the building as built
 - ▶ per your Governing Documents
- ▶ Covers the AOA Business Personal Property
- ▶ Covers the RM's unit, including upgrades
 - ▶ If owned by Association

Does not cover upgrades in units.

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Now You Have a Claim...

Kitchen Fire? Water Damage?

Your Personal HO6:

- ▶ **Does not pay** for extraction, drying or repairing the damage to the "as built" of the condo
- ▶ **Does pay** for damage to upgrades made by current or previous owner(s)
- ▶ **Does pay** for damage to contents and the cost to live elsewhere
- ▶ **Does pay** for the AOA deductible

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Now You Have a Claim...

Kitchen Fire? Water Damage?
Master Policy:

- ▶ Does cover extraction and drying of unit
- ▶ Does pay for repairs to the *as built*
- ▶ Does cover the smoke damage to the building, units and hallways

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Now You Have a Claim...Step 1

Stop the cause of the damage

- ▶ Shut the water off
 - ▶ Ice maker, Toilet Valve, Building Main Line
- ▶ Fire or Smoke
 - ▶ Call the fire department
- ▶ Slip & Fall
 - ▶ Take a picture of the area and then fix the cause:
 - ▶ Raised walkway
 - ▶ Hole in ground
 - ▶ Moss on walkway, etc.

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INSURANCE CLAIMS POLICY

Purpose:
This policy clarifies operational policies, establishes action to be taken in the event of property damage in The Parkview building and describes insurance considerations by apartment (unit) owners for claim(s).

Background:
The Association contracts for several types of insurance coverage. Of particular importance is the policy used most of the time for claim(s) arising from damage to property. The deductible for this policy is **\$10,000 per occurrence**.

Your Board is concerned over the increased frequency of **water claim(s)**. The Board has adopted a water damage policy mandating action after water damage and specifying conditions for possible insurance claim payments.

Water Claims

1. If at all possible, stop the cause of the claim. Shut off the water.
2. Call the Resident Manager immediately and advise of the situation. He/She will check for damage to units below and on the side of your unit.
3. Call in the plumber to repair the pipe or appliance that leaked. To assist resident(s)/owner(s), the Resident Manager has a list of licensed plumber(s)/contractor(s), many of whom have previously worked in Windward Passage building. These vendors have agreed to provide a report of their action(s) taken and necessary details to determine the cause(s) of the problem.
4. Call in the appropriate people to clean up i.e. extractors to dry out carpet, etc.
5. Call your homeowners carrier and report the claim.
6. Resident Manager will send an incident report to the Account Executive.

Insurance Considerations:
Because the damage to personal property is **not** covered under the Association insurance, owners should include all personal items under their own personal property insurance policies with appropriate and affordable deductibles.

1. **Water damage claims** – The Parkview’s insurance policy will usually cover damage to apartment wall(s) and floor(s) (except for special replacements more costly than the original coverage i.e. “upside”) **but not furniture or other personal property.**
If a water damage claim(s) is “not covered” by The Parkview’s insurance policy, the Association has no responsibility for paying the claim.

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2. Common Elements – All areas and structures of the building which are not part of a unit are considered “common” and are covered by the Association insurance policies. “Vertical” damages are common elements, which the Association is responsible to repair and maintain. “Floods” (leakage, water closets, showers/tubs, kitchen sinks, water supply pipes, hoses and connectors within apartment) are not common elements. **Maintenance of these items and contents are the responsibility of the unit owner(s).**

3. Where a damage claim is attributable to the malfunction of personally owned fixtures of appliances, or from abuse or negligence by the resident, the Apartment owner will be responsible for payment of the insurance deductible or actual costs of loss.

Fire Claim

1. Call 911. Give them specific details especially you unit number.
2. Sound the fire alarm.
3. Close your door and leave the unit – do not lock your door.
4. Instantly report to the Resident Manager.

Liability Claim

1. If necessary call 911 to provide medical attention.
2. Report the incident to the Resident Manager.
3. Get the names and phone numbers of the injured person(s).
4. Get the names and phone numbers of any witnesses.
5. Call your homeowners carrier and report the claim.
6. Resident Manager will send an incident report to the Account Executive.

Now You Have a Claim...Step 2

Write up an Incident Report (IR)

- ▶ Date and Time of Loss
- ▶ State cause and what unit it came from
- ▶ Names, unit numbers and contact info for all affected.
- ▶ More details better than less

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Incident Report

Report Date: _____ Report Completed By: _____

Date of Occurrence: _____ Time: _____ AM / PM

Incident Type: Fire Theft Water Leak Vandalism Utilities Other: _____

Units Involved (if applicable):

Unit #	Owner Name	Owner Phone #	Insurance Info (if available)

Attach additional page if more units are involved

Describe the incident in detail:

Reported To: _____ Date: _____ Time: _____

Were personal injuries involved? Yes No If yes, describe:

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Now You Have a Claim...Step 3

Remind Owners to file an HO6 Claim

- ▶ HO6 Adjuster needs to get involved sooner than later
- ▶ Covers upgrades, contents, loss of use and Master Policy deductible

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Now You Have a Claim...Step 4

Send IR to Master Policy Agent

- ▶ Even if below the deductible
- ▶ May need to report after the fact

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Now You Have a Claim...Step 5

Cooperate

- ▶ Adjusters may need help
- ▶ Access to Units
- ▶ Governing docs required
- ▶ Typical Timeline: 4-6 weeks to claim closure & payment

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Now You Have a Claim...Step 6 Payment & Assessment Letter

- ▶ Master Policy Claim Payment sent to Property Manager
- ▶ Email the agent for help dividing funds between affected unit owners
- ▶ Deductible paid one of three ways under HRS 514B
 - ▶ By Association (common expense)
 - ▶ Causative owner
 - ▶ Split amongst owners receiving proceeds from the claim
- ▶ Some HO6 Carriers Require Assessment Letter to pay the Master Policy Deductible

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Statement of Loss

<u>Coverage & Detail</u>	<u>RCV</u>	<u>Depreciation</u>	<u>ACV</u>
<u>Building</u>			
Unit 234			
Mitigation (Rainbow International)	\$ 561.06	\$ -	\$ 561.06
As Built Repairs (Engle Martin)	\$ 2,851.66	\$ 974.51	\$ 1,877.15
Subtotal	\$ 3,412.72	\$ 974.51	\$ 2,438.21
Unit 236			
Mitigation (MD Restoration)	\$ 7,686.03	\$ -	\$ 7,686.03
As Built Repairs (Engle Martin)	\$ 18,272.18	\$ 2,754.41	\$ 15,517.77
Subtotal	\$ 25,958.21	\$ 2,754.41	\$ 23,203.80
Unit 238			
Mitigation (Serv Pro)	\$ 1,840.29	\$ -	\$ 1,840.29
As Built Repairs (Engle Martin)	\$ 3,254.71	\$ 372.79	\$ 2,881.92
Subtotal	\$ 5,095.00	\$ 372.79	\$ 4,722.21
Claim Subtotal	\$ 34,465.93	\$ 4,101.71	\$ 30,364.22
Less Deductible	\$ 15,000.00		\$ 15,000.00
Total	\$ 19,465.93		\$ 15,364.22





Fire Claims

- ▶ Marco Polo is Largest at \$73,000,000+ paid by Property Policy alone
- ▶ Four fatalities
- ▶ Liability, D&O and Umbrella all paid out Policy Limits
- ▶ Sprinklered Building Fire Claim the same week as Marco Polo paid \$175,000

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Liability Claims

- ▶ Master liability policy covers the common and limited common areas
- ▶ Covers *bodily injury* or *property damage* to third parties
 - ▶ Slip and fall in the common area
 - ▶ Drowning in the Association pool
 - ▶ Gate or falling tree limb damages a car

Basic D&O Terminology

Insured

- ▶ Employees
- ▶ Board Members
- ▶ Volunteers
- ▶ Property Manager while acting on the association's behalf

*Disclaimer: Policy language differs. Refer to your policy's definitions.

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Basic D&O Terminology

Wrongful Acts

- ▶ Any actual or alleged act, error, omission, misstatement, misleading statement, breach of duty or neglect.

*Disclaimer: Policy language differs. Refer to your policy's definitions.

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Basic D&O Terminology

Claim

- ▶ Written demand for monetary damages or non-monetary relief
- ▶ Civil proceeding commenced by service of complaint or similar proceeding
- ▶ Criminal proceeding commenced by filing of charges

*Disclaimer: Policy language differs. Refer to your policy's definitions. 11/07/25

Basic D&O Terminology

Claim (Continued)

- ▶ Formal proceeding, commenced by a filing of a notice of charges, service of summons or similar document
- ▶ Arbitration, mediation, or similar dispute

*Disclaimer: Policy language differs. Refer to your policy's definitions.

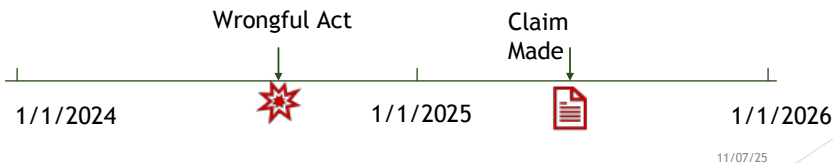
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Basic D&O Terminology

Claims Made Coverage

- ▶ Unlike *Occurrence* based Property and General Liability policies, D&O coverage is triggered when a ***Claim is Made*** against the insured regardless of when the *Wrongful Act* took place.

Example:



D&O Claims

Most Common D&O Claims in Hawai'i

- ▶ Wrongful Foreclosure
- ▶ Breach of Fiduciary Duty
- ▶ Improper Assessments
- ▶ Breach of Contract
- ▶ ADA/Discrimination



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D&O Claims Data

Claim Statistics

- ▶ Nationally: \$30,000-40,000
- ▶ Hawai'i: \$50,000 - \$75,000
- ▶ Hawai'i was one of Travelers' worst performing States with an estimated 275% Loss Ratio
- ▶ Hawai'i was CNA's worst performing State

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Summary

- ▶ **Property Policy** pays to rebuild the building at today's replacement cost in case it is damaged by a covered peril.
- ▶ **Liability Policy** pays for bodily injury or property damage to third parties.
- ▶ **D&O Policy** defends the directors and officers against charges of actual or alleged wrongful acts.
- ▶ **Umbrella Policy** provide additional liability protection in case the loss exceeds the limits available on the underlying policies.

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Best Way for Claim Happiness...

Do not have claims 😊

- ▶ Maintain Your Building & Mitigate Risks
- ▶ Follow Your Reserve Study
- ▶ Show up and listen with an open mind
- ▶ Make **Business Decisions** based on the best interests of the Association
- ▶ Leave your personal gripes at the door
- ▶ Avoid lawsuits against the association!!
 - ▶ *You are suing yourself and will pay higher insurance premiums for years to come!*

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All Pau 😊

Mahalo!

11/07/25

Why Boards Get Sued, and Steps To Avoid and Prepare for Such Lawsuits

Presented by Andrew D. Chianese, Esq.
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11/07/25

Agenda

- Initial notice: give the party a chance to be heard
- Formal notice: respond, agree to meet to discuss, give chance to be heard, be open to moderate changes, notify your insurance carrier(s), begin creating and protecting records
- Mediation: good-faith attempt to resolve, be willing to agree to more than you want to, balance the benefit of maintaining good feelings throughout the project
- Arbitration
- Lawsuit
- Settlement agreement

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Why do Boards get sued?

- At any given moment, any person can be unreasonable, including yourself.
- Many things can go wrong in a building or community:
 - a. maintenance, construction, repairs
 - b. selective rule enforcement
 - c. financial assessments
 - d. privacy and access issues
- It is understandable that the first response is to be defensive, but to the extent you are able, start with compassion.

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Initial Preventative or Mitigation Measures

- Establish procedures for handling difficult owners before encountering such situations, such as a specific procedure for how the Board responds to the receipt of a written complaint.
- In the case of an actual conflict, it is important for Board members to remain calm. It is also important that once the conflict is resolved, make a written record of the conflict and provide that to the property manager to become part of the record.
- Come to each dispute objectively. Most Board members know the members making the complaint personally, and it is easy to judge the merits of the complaint in light of that member's perceived character. Resist this and treat every complaint as reasonable.
- Maintain transparency while still respecting privacy. Owners who claim lack of notice usually also claim that the Board has "something to hide" and escalate accordingly.
- Treat complaints against Board members in the same manner as complaints against other owners. The affected director should not participate in the discussion or decision-making aspects of the process, but should be afforded the same rights/responsibilities and opportunities to address the complaints as any other homeowner.

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Board Members Duties to AOA

- Each Board member owes the association at large a fiduciary duty.
- That fiduciary duty is broken into two separate duties: a duty of care and a duty of loyalty.
- The duty is largely financial, but it also relate to a member's focus, attention, and perceived favoritism.
- Disclose any conflict, potential or otherwise, and recuse yourself form any meeting when the conflicted issue is discussed.

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Initial Notice of the Complaint/Demand

- Respond and give an opportunity to be heard.
- Do not dismiss or disregard.
- Opportunity to be heard is not an admission of fault or wrongful conduct.
- Helps decrease claim of gross negligence, which may terminate insurance coverage.

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Formal Notice/Escalating Conflict

- If the complaining party escalates, agree to meet, give another chance to be heard.
- Be open to moderate changes, which is not an admission of fault or wrongful conduct.
- Provide notice to your insurance carrier(s).
- Begin creating and preserving records of the conflict.

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Mediation

- While not appropriate for every dispute, agreeing to mediation can be beneficial for multiple reasons.
- Gives the complaining party an opportunity to be fully heard by a neutral, knowledgeable party.
- Provides the AOA an opportunity to resolve an escalating dispute without litigation.
- The Board has control over the terms of the settlement.
- Helps prevent an award of legal fees should the complaining party prevail at trial.

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Arbitration

- Many of your governing documents provide for arbitration, but it is not always the best option for the parties.
- Benefits include that the ultimate decision is obtained faster and is usually confidential and final, though there are some avenues to appeal or overturn an award.
- Arbitration is not always beneficial because it is usually more expensive, discovery can be limited, which may be detrimental to the Board, and the results are less predictable.

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Litigation

- Gather all relevant or even potentially relevant documents
- Create terms of settlement to work towards
- Notify your insurance carrier(s)
- Maintain the attorney/client privilege by only sharing general information with the AOA
- Respond to your attorney's requests for information
- Prepare for depositions
- Be willing to go farther than you want to reach a settlement
- Fear trial

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Settlement Agreement

- Consider your worst-case scenario. Don't dismiss it. Really take it in and picture yourself there because it is a possibility.
- Consider the realistic expenses of continuing the dispute/lawsuit, both financial and emotional.
- Consider the realistic settlement offers the opposing party will make and consider what assets that party has that may limit your ability to collect a potential award.
- Recognize the benefits of settlement- you control your costs and the outcome. Remember that worst-case scenario? Avoided.
- Take your attorney's recommendations to heart. When explaining a settlement offer, your attorney may need to point out the difficulties in your case, and the benefits of settlement. This may be jarring, but it is nevertheless sound advice, and comes from a place of consistently conducting this analysis.
- Breathe. You are one step closer to resolving this dispute and moving on with your life.

11/07/25

In Closing

- **Document Everything** – Keep detailed records of decisions, contracts, meeting minutes, and maintenance schedules. Good records are the best defense.
- **Follow Governing Documents** – Consistently apply bylaws, rules, and covenants, avoid "unique circumstances".
- **Rely on Experts** – Engage property managers, legal counsel, and engineers when making complex or technical decisions.
- **Maintain Adequate Insurance** – Ensure both directors and officers (D&O) and general liability coverage are current and sufficient.
- **Prioritize Communication** – Transparent, timely communication with owners reduces distrust and potential legal escalation.
- **Use Mediation Proactively** – Resolve disputes early before they grow into costly litigation.
- **Train Board Members** – Regular legal and management training helps new directors understand fiduciary duties and avoid missteps.

11/07/25

Mahalo and Aloha

Thank you to our speakers and to everyone who joined us today.



2025 Calendar of Events

February*: "Meetings, Meetings, and More Meetings, Oh My" – Kanani Kaopua & Nikki Loh

March 6*: "Major Project Management" – Sue Savio & Bernie Briones

April 19*: "Condorama XIV" – Milton Motooka & Wes Brum

May 29*: "Where's the Money – Association Funding" – Anne Anderson & Melanie Oyama

June 14, 21*: "Board Leadership Development" – Keven Whalen & Melanie Oyama

July 17*: Legislative Action Committee – "2025 Legislative Update" – Phil Nerney

August 21*: "Mixed Plate" – Nikki Sen & Stephanie Poree

September 25*: "Owner Rights, Board Rights, and Association Rights" – Chris Goodwin & Sue Savio

October 23*: "EV, Fires, and Sprinklers" - Bernie Briones

November 15*: "Condorama XV – Milton Motooka & Wes Brum"

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