

Welcome to the



**Navigating the Pandemic in your  
Communities**  
December 5, 2020

## The Pandemic and Board Responsibility

H. Maxwell Kopper, Esq.



### Common Problems

- Enforcing Changing Restrictions
- Amenities/Common Area Restrictions
- Resident or Employee Tests Positive
- Annual Meetings

### Goals for to Surviving 2020

- Keep Owners, Residents, and Employees Safe During the Pandemic
- Follow State and Local Laws
- Limit Liability

Does the Board of Directors have  
the responsibility to implement the  
governmental orders?

How?

### Enforcing Changing Restrictions

- House Rule Amendment- Keep it Broad
- Check Your Current Documents- May allow for enforcement of State Law

<https://www.oneoahu.org/>

Mayor's Emergency Order 2020-29 Amending and Repealing Order Implementing Tier 2 November 21, 2020	Mayor's Ninth Proclamation COVID-19 - House Conversation November 21, 2020	Mayor's Emergency Order 2020-28 Order implementing Tier 2 of COVID-19 recovery framework October 21, 2020
Designated Businesses and Operations - Tier 2 Required Conditions Honolulu's COVID-19 Recovery Framework October 21, 2020	Mayor's Eighth Proclamation COVID-19 - House Conversation October 21, 2020	Mayor's Emergency Order 2020-28 Amendment to Order implementing Tier 1 of COVID-19 recovery framework October 19, 2020
Update to Honolulu's COVID-19 Recovery Framework Honolulu's COVID-19 Recovery Framework October 15, 2020	Mayor's Emergency Order 2020-27 Order implementing Tier 1 of COVID-19 recovery framework September 23, 2020	Guidance Memorandum Honolulu's COVID-19 Recovery Framework September 23, 2020
Mayor's Sixth Supplemental Proclamation COVID-19 - House Conversation September 23, 2020	Honolulu's COVID-19 Recovery Framework Plan to reduce the impact of COVID-19 in Honolulu September 23, 2020	Mayor's Emergency Order 2020-26 Amendment to Order implementing Tier 1 of COVID-19 recovery framework September 9, 2020

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8. **Are face coverings required at my condo building?** Yes, face coverings must be worn in all common areas of condo buildings including, but not limited to, elevators, parking structures, mail rooms, and reception areas.
9. **What is a "face covering"?** A face covering, for the purposes of the Mayor's Emergency Order, is a tightly woven fabric without holes, valves, or vents that covers the wearer's nose and mouth. It can be made of fabrics such as cotton, silk, linen. You can use a homemade, factory-made, or DIY face covering such as a scarf or handkerchief. To learn more about mask wearing and cloth face coverings, visit the CDC website at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>. A face shield is not an acceptable face covering unless the wearer meets the qualifications for being exempt from wearing a cloth face covering.

**NOTICE**  
FOR THE HEALTH  
AND SAFETY OF  
ONE ANOTHER



**PLEASE WEAR  
A FACE COVERING**



ComplianceSigns.com

<https://www.oneoahu.org/faqs/#condo>

**Do amenity restrictions within [Emergency Order 2020-29](#) relate to Community Associations (AOAO/HOA/PCA)?**

Mayor Caldwell's [Emergency Order 2020-29](#) **does not require** condo/residential to close their building's amenities.

However, the gatherings restrictions, mask mandate, and Social Distancing Requirements *do* apply to all in condo/residential facilities.

**Do social gathering restrictions apply to gatherings within the condo/residential ?**

Yes, social gathering restrictions apply with Community Associations.

**Are guests allowed?**

Yes, guests are allowed at this time. Gatherings and groups cannot consist of more than five individuals.

**Is mask wearing mandated in the common of condo/residential buildings?**

Yes, mask wearing is mandated within all common areas of residential communities and in outdoor common areas where proper physical distancing is not reasonably possible.

**Amenities/Common Area Restrictions**

- Pool
- Fitness Areas
- Hallways and lobbies
- ☛ Use of Amenities can be allowed with reasonable precautions

**Can condo/residential pools or spas be open?**

Mayor Caldwell's [Emergency Order 2020-29](#) allows condos/private residential communities to keep their pools open. All Social Distancing Requirements must be followed, and masks should be worn at all times when individuals are not in the water. It is recommended that facilities keep a sign in sheet so all affected individuals can be easily contacted in the event of a positive test result.

**Can condo/residential kiddie playparks be open?**

Children's amenities like playparks are allowed to remain open. However, these must be limited to groups of no more than five people. Please frequently and thoroughly sanitize the high touch areas between family groups and enforce mask wearing if the facility is indoors.

**Can condo/residential dog parks and green spaces be open?**

Mayor Caldwell's [Emergency Order 2020-29](#) allows condos/private residential communities to keep their dog parks and green areas open. Groups of no more than five people are allowed. All Social Distancing Requirements must be followed, and masks should be worn at all times. It is recommended that facilities keep a sign in sheet so all affected individuals can be easily contacted in the event of a positive test result.

**Can condo/residential gyms or fitness centers be open?**

Mayor Caldwell's [Emergency Order 2020-29](#) allows condos/private residential communities to keep their gym/fitness centers open. All Social Distancing

Requirements must be followed, and masks should be worn at all times. It is recommended that facilities keep a sign in sheet so all affected individuals can be easily contacted in the event of a positive test result.

**Can condo/residential tennis courts and other courts be open?**

Mayor Caldwell's [Emergency Order 2020-29](#) allows condos/private residential communities to keep their tennis and volleyball courts open. Groups of no more than five people are allowed, all Social Distancing Requirements must be followed, and masks should be worn at all times. It is recommended that facilities keep a sign in sheet so all effected individuals can be easily contacted in the event of a positive test result.

**Do condo/residential facilities need to keep a record of who uses their pool/gym/fitness center/etc.?**

No, this is not required but is strongly recommended for the safety of all residents and staff that you do so.

This kind of records will assist public health officials to promptly contact trace impacted individuals in the event of a positive test result from one of your residents.

**Resident or Employee Tests Positive**

- Employee – Take immediate action, minimize spread
- Resident – Inform others (without disclosing specifics), aid in quarantine.

**What should we do if one of our residents or staff is tested positive for COVID-19?**

Residents and associations/boards should work closely with public health officials and their private health care provider for advice and guidance. Individuals who were in close contact with the positive individual should be tested as recommended by their health care provider. Individuals who were in close contact with the positive individual should self-isolate until they receive a negative test result. We encourage associations and residents to consult with the respective health care providers for recommendations and guidance in the event a resident or staff member tests positive.

**In the event that a resident or staff member tests positive for COVID-19 what cleaning protocols do you recommend?**

Please follow CDC guidelines for cleaning facilities:  
<https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>



## FAQ

A Board has started to implement plans to create a Play ground within the common elements.

Should this be cancelled until there is a better control of the Pandemic and a vaccine is available?

If we don't, what are the liabilities to the Association?

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## Cleaning and Disinfecting Your Facility

Everyday Steps, Steps When Someone is Sick, and Considerations for Employers

Updated July 28, 2020

### How to clean

- **Wear disposable gloves** to clean and disinfect.
- **Clean surfaces using soap and water, then use disinfectant.**
- Cleaning with soap and water **reduces number of germs, dirt and impurities** on the surface. **Disinfecting kills germs** on surfaces.
- **Practice routine cleaning** of frequently touched surfaces.
  - More frequent cleaning and disinfection may be required based on level of use.
  - Surfaces and objects in public places, such as shopping carts and point of sale keypads should be cleaned and disinfected before each use.
- **High touch surfaces include:**
  - Tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, sinks, etc.

### *How to Disinfect*

- **Disinfect with a household disinfectant on [List N: Disinfectants for use against SARs-CoV-2external icon](#)**, the virus that causes COVID 19.

**Follow the instructions on the label** to ensure safe and effective use of the product.

Many products recommend:

- Keeping surface wet for a period of time (see product label).
- Precautions such as wearing gloves and making sure you have good ventilation during use of the product.

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Keeping surface wet for a period of time (see product label).  
Precautions such as wearing gloves and making sure you have good ventilation during use of the product.

### Additional considerations for employers

**Educate workers** performing cleaning, laundry, and trash pick-up to recognize the symptoms of COVID-19. Provide instructions on what to do if they develop [symptoms](#) within 14 days after their last possible exposure to the virus.

**Develop policies for worker protection and provide training** to all cleaning staff on site prior to providing cleaning tasks.

- Training should include when to use PPE, what PPE is necessary, how to properly don (put on), use, and doff (take off) PPE, and how to properly dispose of PPE.

Ensure workers are trained on the hazards of the cleaning chemicals used in the workplace in accordance with OSHA's Hazard Communication standard ([29 CFR 1910.1200external icon](#)).

**Comply with OSHA's standards** on Bloodborne Pathogens ([29 CFR 1910.1030external icon](#)), including proper disposal of regulated waste, and PPE ([29 CFR 1910.132external icon](#)).

## Annual Meetings

- Postpone Where Possible
- Vote By Ballot When Needed
- Creative Options



**Are Board meetings permitted under this order?**

Yes, Board meetings are not considered “social gatherings” for the purpose of the Emergency Order and are allowed at this time.

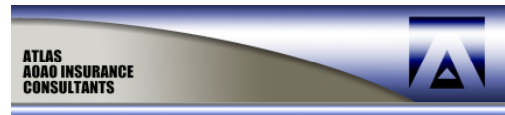
Please make every effort to provide virtual/remote attendance options and limit the number of people physically present to only those who cannot attend virtually/remotely.

# Good Luck and Stay Safe

Maxwell Kopper  
mkopper@Hawaiiilegal.com

December 5, 2020

## AVOIDING AOA LIABILITY IN A PANDEMIC



### Who we are

- We are a division of the largest locally-owned insurance agency (by premium volume) in Hawaii
- We specialize in insurance solutions for the Association of Apartment Owners/Condominiums (AOAO) and Homeowner Associations
- We have offices in Honolulu, Wailuku, Kona, Hilo and Kauai.
- We have a dedicated team of individuals who work *exclusively* in the AOA/HOA marketplace and Loss Control & Claims in-house resources.



## Overview

- Liability
- Insurance Liabilities
- Follow directives
- Communicate
- Safe Work Practice for Employees
- Common Areas/ Amenities
- Professional Advice



## Liability

Legal responsibility for your actions. If a person or entity fails to fulfill that responsibility, they have left themselves vulnerable to a lawsuit for the resulting damages.



## Do you have Coverage???

- ❑ Under the General Liability Policy for Injuries to third parties
- ❑ Under the Worker's Compensation Policy for Employees
- ❑ Under the D&O policies



## General Liability

COMMERCIAL GENERAL LIABILITY  
CG 21 67 12 04

COMMERCIAL GENERAL LIABILITY  
CG 21 32 05 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
**FUNGUS/BACTERIA EXCLUSION**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### FUNGI OR BACTERIA EXCLUSION

### COMMUNICABLE DISEASE EXCLUSION

This endorsement modifies insurance provided under the following

This endorsement modifies insurance provided under the following

## COMMERCIAL GENERAL LIABILITY COVERAGE PART

## COMMERCIAL GENERAL LIABILITY COVERAGE PAI

- [illegible]



## Worker's Compensation

## Is COVID-19 considered a Work-related Injury?

Was the employee exposed to or directly contracted COVID-19 in the course of his or her work duties?

**PART ONE**  
**WORKERS COMPENSATION INSURANCE**

#### A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.



## Directors' and Officers' Liability

### III. EXCLUSIONS

A. EXCLUSIONS APPLICABLE TO ALL LOSS

- [illegible]



## Follow Directives

## CDC & Government guidelines

These guidelines are the best practice for protecting against the spread of the virus.

Guidelines should be basis of reopening and continuing operation.



## Communication

- Importance of communication

- Reminders

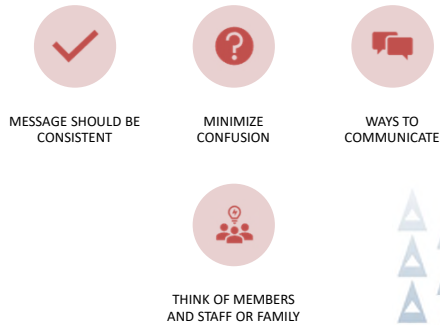
- Establish trust

- Taking the overall safety seriously

- Emphasis on the seriousness



## Communication



## Have a plan

Returning to work plan

Symptoms

What to do

What are the rules

Social distance

Etiquette

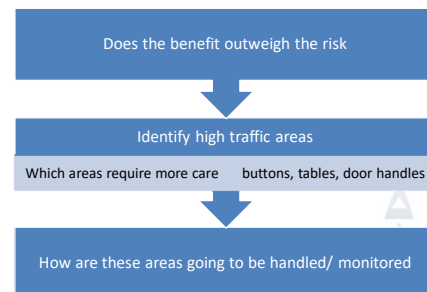


## Safe Practice For Staff

- Daily health checks
  - Temperature screening
  - Questionnaire-encourage open communication
- COVID training: documented
  - Facts on the virus
  - Steps if they are in contact with COVID
  - Social distance
  - Etiquette



## Common Areas/ Amenities



## Common Area/ Amenities

- Promote social distancing
  - Move or remove equipment to allow for social distance
  - Reservations or scheduling for amenities
  - Amenity access for resident members only



## Common Area/ Amenities





## FAQ

If our Board continued with the Play ground installation for this year

According to the slides, will the Association be required to clean the playground equipment after each use?

A child, then their household members contract Covid19, now there are more residents testing positive.

Is the Board liable?

What would you advise this Condo Board?

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## Professional Advice



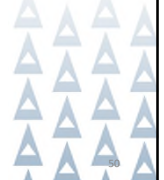
**Legal counsel:**  
uncertainty about opening  
liability concerns



**Janitorial Services:**  
training for staff  
cleaning/ disinfecting



**Risk Consulting**  
Identify risk or exposures



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## Take Away

### Follow directives

- decision making and preventative practices

### Communicate

### rules & current facts

### Safe Work Practice for Employees

- Employee wellbeing

### Common Areas/ Amenities

- Maintain guidelines and rules

### Professional Advice for uncertainty



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**VENCER HEALTH TECHNOLOGIES**

Caregiving is hard work and our belief that professional care providers can help your family be a family again.

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[hawaiiCouncil.org](http://hawaiiCouncil.org)  
New Solutions & Navigating the  
Pandemic for your Communities  
HRS 514B – 142

in-home care  
solution:

vencer health  
mobile app



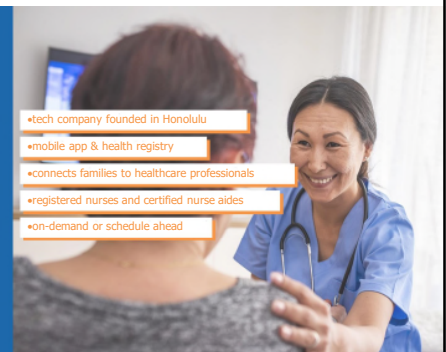
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CEO & Founder  
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vencer health  
overview

- tech company founded in Honolulu
- mobile app & health registry
- connects families to healthcare professionals
- registered nurses and certified nurse aides
- on-demand or schedule ahead

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**VENCER HEALTH**  
TECHNOLOGIES

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**•services: ADL**

•companion care  
•personal hygiene  
•bath and shower

•Companion care includes non-medical services such as emotional support and socialization (i.e., having a conversation with active listening, playing cards, reading).

•Assist with personal hygiene which include oral hygiene, nail care (except for diabetics), grooming and dressing, and keeping clothing clean and dry.

•Provider may assist with bathing with the use of shower chair or bathing bed. Minimum recommended booking time is 2 hours.

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TECHNOLOGIES

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**•services: ADL**

•in-home mobility  
•bathroom use  
•light housekeeping

•Assist with transferring (i.e., bed to wheelchair, wheelchair to toilet), repositioning, walking, and using assistive equipment, like wheelchairs and walkers.

•Perineal care after toileting, including cleaning after episodes of incontinence, using a bedpan, and with indwelling urinary catheters.

•Light housekeeping includes keeping the living area clean, safe, and well-organized including changing the bed linens, dusting and wiping surfaces and vacuuming.

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**•how it works**

•Choose Service  
•Choose Provider  
•Get Care

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CEO & Founder  
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HRS 514B – 142

**•Clients: Caregivers:**

•benefits

•Hire **certified and trusted professionals** to provide in-home health services when you have no family or friends are not available **AND** when the level of care **requires highly trained individual.**

•Caring for mom and dad can be intense, stressful, and physically demanding. Order services for **respite** so you can continue to provide the best care for your loved one. Services can be ordered remotely **on-demand or advanced scheduling via the app.**

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CEO & Founder  
December 05, 2020

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TECHNOLOGIES

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Pandemic for your Communities  
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**•sign today:**  
[vencerhealth.com](https://www.vencerhealth.com)

•Vencer Health was founded on the fact that caregiving is hard work  
•and our belief that professional care providers can help.

•So, your family can be a family again.

•Mark Salazar, MHA  
CEO & Founder  
December 05, 2020

**FAQ**

If our Condo Association uses your services and under HRS 514B – 142 Aging in Place, we hire a service from Vencer Health for a homeowner.

Is the service charged to our Condo Association or to the homeowner?

Do we need to obtain consent from the Homeowner family member prior to ordering the service?

Are there are HIPA violations with ordering services for a homeowner?

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## Vencer Health Technologies

Uber of home Healthcare

<https://www.youtube.com/watch?v=9XSS5InR2ak>

<https://www.facebook.com/Vencer-Health-Technologies-110645547173571>

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## REMINDER: Duty of Care

514B – 137 – Upkeep includes the operation of the property

- Fiduciary Duty

*This is your community  
Your home  
Protect it like Ohana!*

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