



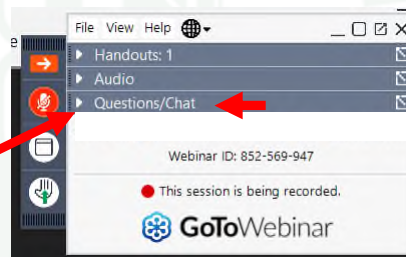
# Welcome to the Board of Director Training

Find us at [HawaiiCouncil.org](http://HawaiiCouncil.org) (under redesign).

You will be MUTED in the Webinar

If you have a question, please use the **question/chat** feature and every effort will be made to have the question answered.

Click on the small ► to open the box.



**Bite Squad calls or texts are from 612 area code**

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We encourage you to follow along with the workbook.

The workbooks has blank pages for note taking

The power point follows the workbook and we have included the workbook page numbers into the power point slides.

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**DISCLAIMER:**

*Nothing herein is intended to, nor shall it constitute, legal, engineering or other professional advice.*

*Readers should consult with their own attorney, engineer or other professional if they are seeking or are in need of professional advice.*

*Professional advice may depend upon the actual facts, circumstances, and situations, as well as the requirements of applicable laws, statutes, ordinances, rules and codes and the governing documents of the specific project.*

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## Your Industry Speakers

**Jane Sugimura** – President - Hawaii Council of  
Community Associations

**R.Laree McGuire** – Attorney & Partner, Porter McGuire  
Kiakona LLP

**Christopher Shea Goodwin** – Attorney, Christopher  
Shea Goodwin, AAL, LLC

**Sue Savio** – President, Insurance Associates

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## HRS 421J is for Planned Unit Developments aka Homeowners Associations

Samples:

Ewa By Gentry  
Mililani Town Association  
Ocean Point

The HRS 421J statutes are  
included in your  
workbooks



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## BEING A BOARD OF DIRECTOR



Jane Sugimura, Attorney  
Clay Chapman Iwamura  
Pulice & Nervell

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# Being a Board of Director

Thank you for volunteering on your Board

*Being on the board of your Condo, does not mean you can do what you or the majority of the Board do want you want.*

- Condominiums are created by State statute HRS Chapter 514B
- Declarations HRS §514B - 32, By Laws HRS 108, and House Rules
- Fiduciary Duty
- Conflicts of Interest
- Business Judgement Rule

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Governing Documents page 9-12  
Jane Sugimura



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## Condominium Governing Documents

page 9-12

Declarations – describes the Condominium Property

HRS §514B - 32

By Laws – describes the Operations and Management of the Condominium

HRS §514B - 108

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## §514B – 32 Declarations

page 9

Declarations will describe the Condominium Property to include:

- Number of buildings, floors and units in each building
- Unit numbers & boundaries
- % common interest to each unit
- % of approval of the owners 67% for all amendments to the declarations
- Permitted and prohibited uses of each unit
- Common elements

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## §514B – 108 By Laws

page 11

Describes the Operations and Management of the Condominium to include:

- # of members of the Board, titles of the officers of the association
- Election by the board (positions)
- qualifications, powers & duties, terms of office & manner of electing and removing directors and officers and the filling of vacancies
- Powers of the board or officers may delegate to other persons or to a managing agent

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## §514B – 108 By Laws (cont.)

page 11

- Designation of the officers who may prepare, execute, certify and
- record amendments to the declaration
- Staggering terms of directors
- By Law amendments 67% owners consent & time limit

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## Knowledge Tip

### Read and know your By Laws and Declaration:

- This is provided to you at the time you entered into contract to purchase the unit
- If you don't have it...ask for a copy from your Managing Agent
- Have a copy present at each board meeting

Often times you may have to read them again to refresh the memory.

- ✓ **HRS §514B – 107(e)** Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments.

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### HRS §514B – 102 Powers, Duties and General Provisions Management of your Condominium Association Page 13

(b) The membership of the association shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all former unit owners entitled to distributions of proceeds under section §514B-47, or their heirs, successors, or assigns.

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## HRS §514B – 103 Association Registration

Page 14

### Biennial registration requirement Condo Education Fund

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## HRS §514B – 104 Association Powers & Limitation on Powers

Page 16



- (1) Adopt and amend the declaration, bylaws, and rules and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section §514B 148;
- (3) Hire and discharge managing agents and other independent contractors, agents, and employees;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. For the purposes of actions under chapter 480, associations shall be deemed to be "consumers";
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;

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## HRS §514B – 104 Association Powers & Limitation on Powers (cont.)

Page 16 & 17

- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
  
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section §514B 35(2) and (4), and for services provided to unit owners;

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## HRS §514B – 104 Association Powers & Limitation on Powers (cont.)

Page 17

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

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## §514B – 104 (19) Association Powers and Limitations

Page 17

(19) By regulation, subject to sections §514B 146, §514B 161, and §514B 162, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding.

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### §514B – 104 (19 b)

If a tenant of a unit owner violates the declaration, bylaws, or rules and regulations of the association, in addition to exercising any of its powers against the unit owner, the association may:

- (1) Exercise directly against the tenant the powers described in subsection (a)(11);
- (2) After giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation, provided that a unit owner shall be responsible for the conduct of the owner's tenant and for any fines levied against the tenant or any legal fees incurred in enforcing the declaration, bylaws, or rules and regulations of the association against the tenant; and
- (3) Enforce any other rights against the tenant for the violation which the unit owner as landlord could lawfully have exercised under the lease, including eviction, or which the association could lawfully have exercised directly against the unit owner, or both.

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### §514B-104 (19b) 3(c)

The rights granted under subsection (b)(3) may only be exercised if the tenant or unit owner fails to cure the violation within ten days after the association notifies the tenant and unit owner of that violation; provided that no notice shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of section 521-51(1) or 521-51(6).

(d) Unless a lease otherwise provides, this section does not:

(1) Affect rights that the unit owner has to enforce the lease or that the association has under other law; or

(2) Permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws, or rules and regulations.

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## HRS 514B – 105 Association; Limits on Powers

Page 19

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

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

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

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## HRS §514B – 105 Association; Limits on Powers (Cont.)

Page 19

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

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

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## Association; Limits on Powers (Cont.)

Page 19

(e) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to the borrowing.

In connection with the borrowing, the board may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings.

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## HRS 514B – 106 Board Powers, Duties and Limitations

Page 21

Board; powers and duties. (a) Except as provided in the declaration, the bylaws, subsection (b), or other provisions of this chapter, the board may act in all instances on behalf of the association.

**In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.**

Any violation by a board or its officers or members of the mandatory provisions of section 514B-161 or 514B-162 may constitute a violation of the fiduciary duty owed pursuant to this subsection; provided that a board member may avoid liability under this subsection by indicating in writing the board member's disagreement with such board action or rescinding or withdrawing the violating conduct within forty-five days of the occurrence of the initial violation.

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## HRS §514B – 106(f)

Page 22

(f) At any regular or special meeting of the association, any member of the board may be removed and successors shall be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be by a vote of a majority of the unit owners and, otherwise, in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors and, if removal and replacement is to occur at a special meeting, section §514B-121 (c)

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## Knowledge Tip

As a Board Member and you disagree:

Meeting minutes **should** reflect your “NO”  
This includes executive session minutes

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## HRS §514B 106.5 Service of Process page 24



Service of process. The board shall establish a policy to provide reasonable access to persons authorized to serve civil process in compliance with section 634-21.5  
(Process Servers)

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## HRS §514B – 107 Board; Limitations

page 23



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## HRS §514B – 107 Board Limitations

Page 23

- No tenant, Resident Manager or employee of a Condominium shall serve on its board
- An Owner shall not act as an officer of an association and an employee of the managing agent retained by the association. Any owner who is a board member of an association and an employee of the managing agent retained by the association shall not participate in any discussion regarding the management contract at a board meeting and shall be excluded from any executive session of the board where the management contract or the property manager will be discussed

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## HRS §514B – 107(e) Board Limitations

Page 23

(e) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments.

NOTE: Any new laws will be updated by March of the following year.

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## Board Limitations HRS §514B – 107 (f) EDUCATE

Page 23

(f) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of subsection (d).

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## Education Resources in Hawaii

Hawaii Council of Community Associations (HCCA)

[HawaiiCouncil.org](http://HawaiiCouncil.org)

Website is being redesigned

**Have a question to ask?**

Email us at [HCCA.HCAAO@gmail.com](mailto:HCCA.HCAAO@gmail.com)

Condo Insider - YouTube

Community Associations Institute (CAI)

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

Both hold educational seminars several times a year and are posted on the websites above.

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## HRS §514B – 108

### BY LAWS, RESTATEMENT OF DECLARATIONS & BY LAWS & BY LAW AMENDMENTS

PAGE 25

(e) The bylaws may be amended at any time by the vote or written consent of at least sixty-seven per cent **(67%)** of all unit owners.

Any proposed bylaws together with the detailed rationale for the proposal may be submitted by the board or by a volunteer unit owners group.

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Does an Association ever  
update the By Laws?

Yes, it can be done.

1<sup>st</sup> check your own By Laws for provisions to restate  
or “update” your By Laws.

2<sup>nd</sup> follow the rules of HRS §514B -108 and 109

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## HRS §514B – 109

### Not in the workbook

(a) Notwithstanding any other provision of this chapter or of any other statute or instrument, an association at any time may restate the declaration or bylaws of the association to set forth all amendments thereto by a resolution adopted by the board.

(b) Subject to section §514B-23, an association at any time may restate the declaration or bylaws of the association to amend the declaration or bylaws as may be required in order to conform with the provisions of this chapter or of any other statute, ordinance, or rule enacted by any governmental authority, or to correct the percentage of common interest for the project so it totals one hundred per cent, by a resolution adopted by the board.

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## HRS §514B – 111 Judicial Powers & Compliance with Declarations & ByLaws

Page 26

Judicial power to excuse compliance with requirements of declaration or bylaws.

- (a) The circuit court of the judicial circuit in which a condominium is located may excuse compliance with any of the following provisions in a declaration or bylaws if it finds that the provision unreasonably interferes with the association's ability to manage the common property, administer the condominium property regime, or carry out any other function set forth in the declaration or bylaws, and that compliance is not necessary to protect the legitimate interests of the members or lenders holding security interests:



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## HRS §514B – 112 Condominium Community

Mutual Obligations

page 28

Means we all have to comply with the provisions of the By Laws, Declarations & House Rules.

Applies to:

Owners  
Tenants  
Guests  
Pets  
Vendors

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## HRS §514B – 113 Medical Cannabis; discrimination

page 29

Medicinal use must have a legal card and can be kept on file with GM/RM

A provision in any articles of incorporation, declaration, bylaws, administrative rules, house rules, or association documents of a condominium allowing for any of the discriminatory practices listed in paragraphs (1) to (7) of section HRS 515-3 against a person residing in a unit who has a valid certificate for the medical use of cannabis as provided in section HRS 329-123 **in any form is void, unless the documents prohibit the smoking of tobacco** and the medical cannabis is used by means of smoking.

Nothing herein shall be construed to diminish the obligation of a condominium association to provide reasonable accommodations for persons with disabilities pursuant to section 515-3(9).

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## What can a Condo Association do about the complaints of Marijuana Smoking

- The smell from a lanai
- The smell that passes thru air vents from one unit to the next



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## Governance – Elections & Meetings

pages 30 - 41

**R. Laree McGuire, Attorney & Partner**  
Porter McGuire Kiakona, LLP



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## Governance – Elections & Meetings

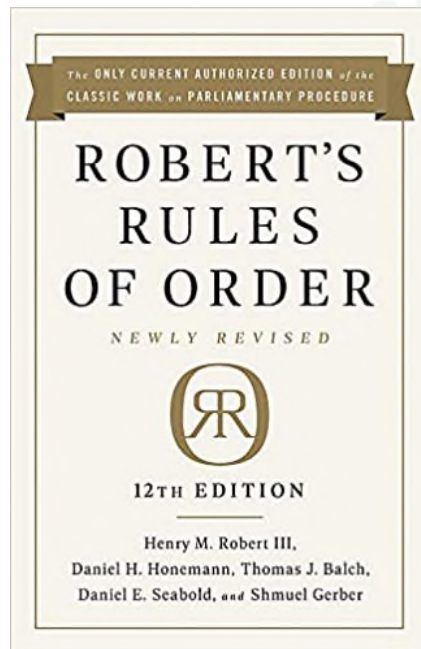
pages 30 - 41



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Applies to all meetings

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## What is an Association Meeting vs a Board Meeting?

HRS 514B – 121

HRS 514B - 125

# ANNUAL MEETING



aka "ANNUAL MEETING"



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## HRS 514B – 121 Association Meetings

aka "ANNUAL MEETING"

Page 30



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## HRS 514B – 121 (b) Association Meetings

page 30

- Electronic Voting device Isolated from any connection to an external network including internet
- Provide secrecy and integrity of unit owners' votes and audit trail
- Reference number of the electronic voting device  
Each common interest voted; and  
The Vote that was tabulated
- Copy of printed audit trail available to owners after the meeting same as HRS 514B – 154 & 154.5
- Copy of procedures "shall be" available at "no charge" to any owner and at any meeting that uses electronic voting
- Held at least once each year
- Check your By Laws for timing & location requirements

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## HRS 514B – 121 (c) Association Meetings (cont.)

Special meetings of the association may be called by the president, a majority of the board, or by a petition to the secretary or managing agent signed by not less than 25% of the unit owners as shown in the association's record of ownership.

- Secretary or managing agent has 14 days (of receipt) to send out the notice to all unit owners of record
  - Hand delivered or
  - mailed (prepaid) to the mailing address of each unit or other mailing address designated in writing by the unit owner
  - via electronic mail at with written consent in writing by the unit owner
- Meeting date shall be set no later than sixty (60) days from receipt of petition
- Petitioners shall have the authority to set the time, date and place for the special meeting
  - send out the notice and proxies
  - at association expense in accordance with the condominium bylaws
- Notice must state the date, time and place of the meeting, items on the agenda, including the general nature and any proposal to remove a member of the board.

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## HRS 514B – 122 Association Meeting; Minutes

Page 34

(a) Minutes of meetings of the association shall be approved at the next succeeding regular meeting or by the board, within sixty days after the meeting, if authorized by the owners at an annual meeting.  
If approved by the board, owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty days after approval.

(b) Minutes of all meetings of the association shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting.

(c) An owner shall be allowed to offer corrections to the minutes at an association meeting.



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## Association Meetings; Voting and Proxies

### HRS 514B – 123

page 35



MOUNTAIN SIDE 8/20/14  
BOARD MEMBER PROXY BALLOT  
PLEASE FILL OUT SEPARATE BALLOT FOR YOUR OWN VOTE

CONDO OWNERS VOTE ONLY FOR CONDO BOARD  
HOA OWNERS VOTE ONLY FOR HOA BOARD

1 PROXIES: CONDO: 1 @ 1.5 VOTES  
VOTE FOR CONDO ONLY  
HOA: 1 @ 1.5  
VOTE FOR HOA ONLY

CONDO (VOTE FOR 2):  
1. *Patricia H. Fyfe*  
2. *Siobhán B. McCarthy*

HOA (VOTE FOR 2):

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## HRS 514B – 123 Association Meetings; Voting & Proxies

Page 35 - 37

- One (1) vote per unit
- Proxy delivery deadline – no later than 4:30pm HST on the 2<sup>nd</sup> business day prior to the date of the meeting to which it pertains
- Proxy must contain:
  - Name of the Association
  - Date of the meeting
  - Printed name/s of the person giving the proxy
  - Unit number for which the proxy is given
  - Date that the proxy is given
  - Signature of the proxy holder

The proxy is only valid for the meeting which the proxy pertains

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(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 21 days before its distribution of proxies.

If the board receives within seven (7) 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 proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or
- 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

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(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).

(k) No board shall adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to association matters on the common elements by unit owners; provided that a board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both.

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No solicitation of proxies from any unit owner are allowed by:

- Managing Agent
- Resident Manager/General Manager
- Association Employees

No casting of any proxy vote at any association meeting by

- Managing Agent
- Resident Manager

Exception: Only for purpose of establishing a quorum

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## HRS 514B – 124 Association Meetings; Purchaser's Right to Vote

Page 38

The **purchaser** of a unit pursuant to a recorded agreement of sale shall have all the rights of a unit owner, including the right to vote.

The seller may retain the right to vote on matters substantially affecting the seller's security interest in the unit, including the right to vote on, the following, among others:

- (5) The construction of any additions or improvements, and any substantial repair or rebuilding of any portion of the project;
- (6) The special assessment of any expenses;
- (7) The acquisition of any unit in the project;
- (8) Any amendment to the declaration or bylaws;
- (9) Any removal of the project from the provisions of this chapter; and
- (10) Any other matter that would substantially affect the security interest of the seller.

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Is the right to vote as of the date of recording of the sale?

Or

The date recognized by the managing agent which could be the date they received the condo transfer notice from escrow.

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## HRS 514B – 124.5

### Voting for Elections; Cumulative Voting

page 40

(a) If the bylaws provide for cumulative voting for an election at a meeting, each unit owner present in person or represented by proxy shall have a number of votes equal to the unit owner's voting percentage multiplied by the number of positions to be filled at the election.

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## HRS 514B – 125

### Board Meetings & Minutes

page 41

- Open to all members (owners) of the Association
- Closed to non Board Members while in Executive Session
  - Executive session is closed to all owners who are not members of the Board.
  - Executive session is used to address confidential matters such as employment issues, litigation matters and delinquencies
- Robert's Rules of Order
- Meet at least once per year
- Notice must be posted 72 hours prior to the meeting or simultaneous with notice to the board

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## Board Meetings: HRS 514B – 125

### page 41

- Open to all members of the association
- All members may participate in any deliberation or discussion (except executive session)
- Robert's Rules of Order
- Meet at least once per year
- Meeting notice posted 72 hours prior to the meeting. Includes items on the Agenda.
- Electronic links for ZOOM/Webinar – send electronically
- Director Conflicts of Interest need to be disclosed and not vote on that issue

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## HRS 514B – 125 (g)

### Director Conflict of Interest

#### page 42

(g) A director shall not vote at any board meeting on any issue in which the director has a conflict of interest.

A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

**"Conflict of interest", as used in this subsection, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the association.**

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**Board member discussions, decisions or correspondence via email or in person between board meetings**



**HRS 514B – 125 (a)**

Page 41



- **Not allowed** as it does not allow for owner participation in any deliberation or discussion
- Cannot make a board decision between board meetings and ratify that decision at the next board meeting

See handout mailed with training workbook

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## How do we handle meetings via Webinar or Zoom and allow homeowner participation ?

Meeting notice is required to be posted 72 hours prior with the meeting agenda or simultaneous with notice to the board. The notice can include the meeting link, however, the links don't work unless created electronically.

The link needs to be sent electronically.

The notice should include the method to obtain the link via electronically.

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## Frequently asked Question

- 1) Email/Phone Number Contact for Board of Directors: Upon request, should the owners be provided with the Names of Board of Directors, phone and email?
- 2) What if I have a concern regarding the RM or an employee? Who do I direct it to?  
 A board member? Will my name be disclosed to the employee?  
 Any assurances that any employee complaint will be conducted with confidentiality?
- 3) Committees – who is allowed to create this, who gets to choose who becomes a member?
- 4) If the Board appoints a committee, are owners who do not serve on the committee allowed to also attend committee meetings and give input or suggestions?

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## HRS 514B – 126 Board Meeting MINUTES

page 42

### INCLUDES:

- Recorded vote of each board member on all motions except executive session
- Approved no later than the second (2<sup>nd</sup>) succeeding regular meeting
- Available within seven(7) calendar days after approval
- Unapproved final drafts available within 30 days after the meeting. Except executive session.



<b>CONDO BOARD MEETING</b>	
February 21, 2011	
Association Clubhouse	
7:00 P.M.	
<b>AGENDA</b>	
1) CALLING OF ROLL	
2) PROOF OF DUE NOTICE OF MEETING	
3) APPROVAL OF REGULAR MEETING MINUTES FROM February 7	
4) 2011 & ORGANIZATIONAL MEETING February 3, 2011	
5) CORRESPONDENCE	
6) OFFICERS REPORTS	
7) OLD BUSINESS	
- Rules and Regulations	
- Committee Chairs	
8) NEW BUSINESS	
- Finance/Insurance Actions	
- Maintenance Committee	
- Next set for roofing bids	
- Allow Treasurer to speak with attorney on collections	
- Entry into vacant unit	
- Refund insurance deductible	

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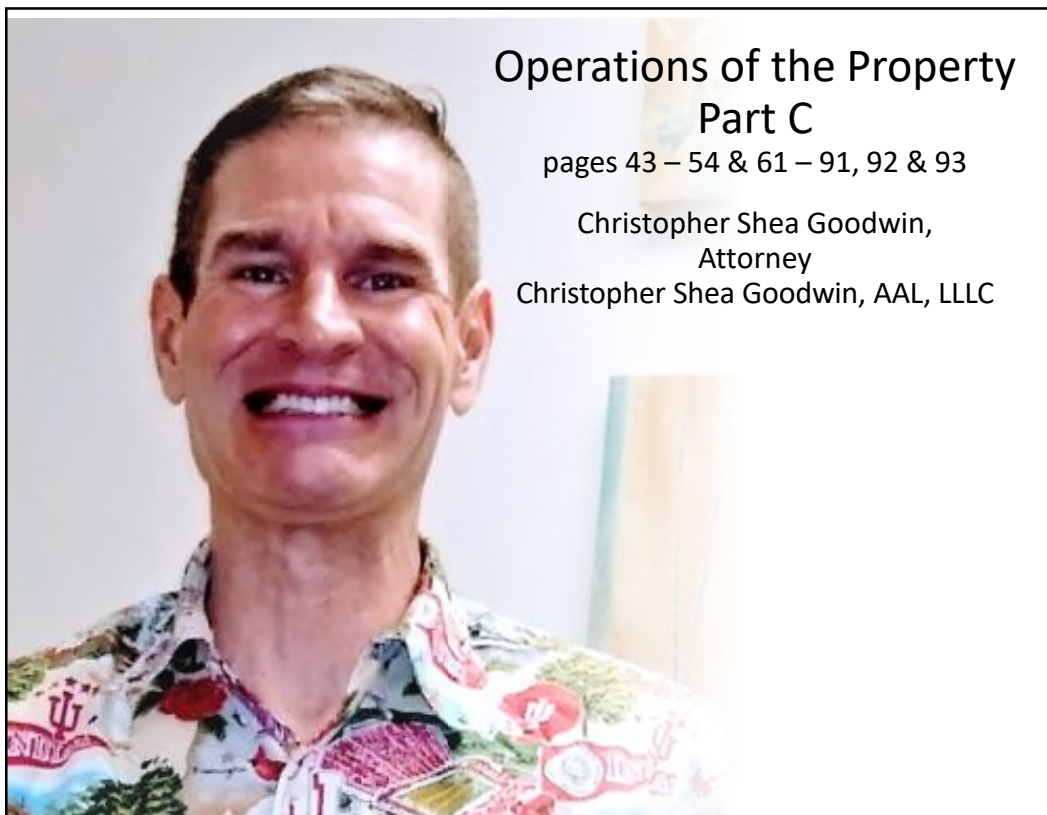
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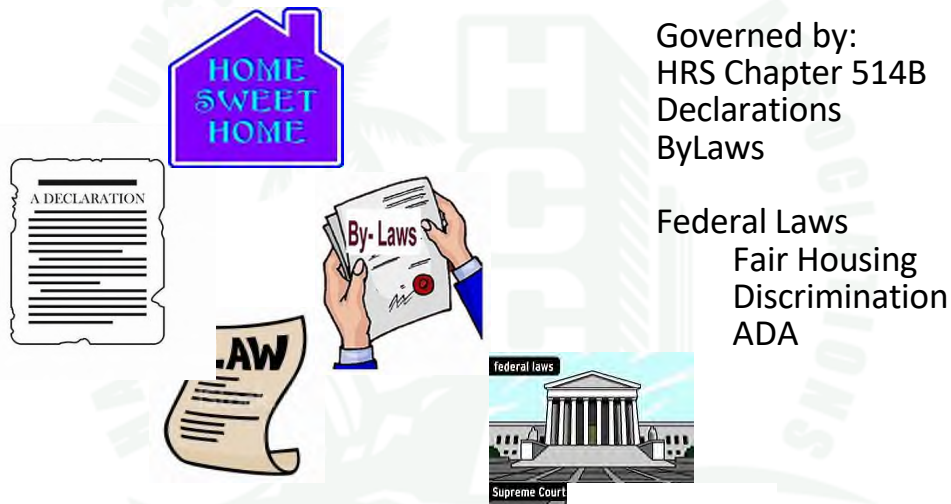
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## HRS §514B – 131 Operation of the Property

page 43



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## HRS §514B – 132 Operation of the Property

Page 43-45

- Managing Agents
  - Licensed Real Estate Broker under HRS Chapter 467
  - Corporation under HRS Chapter 412 Article 8
- Register with the Real Estate Commission and applicable fees
- Fidelity Bond \$500 x # of units of the Condo Association or <\$20,000 or >\$500,000. Insured with an insurance company authorized to do business in Hawaii
- Only employees covered under the bond to handle or have custody or control of association funds.
- Fidelity Bond protects the managing agent against loss of any association moneys, securities or other properties caused by the fraudulent acts or dishonest acts of employees of the managing agent.
- Act to recover from the fidelity bond

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## Knowledge Tip

### Managing Agents

Do they have a fiduciary duty to the Association  
or the Board?

HRS §514B–132(a)(6)(c)  
Page 45

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## HRS §514B – 133 Association Employees; Background Check & Prohibition

page 46

- Applies to any employee that would have access to keys or association funds
- Must have verified written consent from the prospective employee
- Hawaii Criminal Justice Data Center
- Association Employees shall not engage in renting or selling units within the project/Association

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**HRS §514B – 134**  
**Management & Contracts, Managing Agent**  
**and**  
**Association**  
 page 47

- Written Contract
- Financial & Accounting Obligations
- Services Provided
- Compensation

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**Upkeep of Condominium**  
**HRS §514B – 137**  
 page 48

- Association is responsible for the operation of the property
- Each unit owner is responsible for Maintenance, Repair, and replacement of the Owner's unit.
- Unit owners must allow the Association access into their unit to repair damage that is in the "common elements".
- Unit owner must allow other unit owners access into their unit to access & repair damage that is related to another unit owner's or neighboring unit

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## HRS §514B – 138 Upkeep of Condominium; **High Risk Component**

page 49

### What are High Risk Components?

- Washer hoses
- Water service and drain lines attached to appliances
- Dryer Lint Ducts
- Plumbing – angle valves, P trap, hot water heater etc.

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## High Risk Component & RFSAC

Installation of Battery-operated smoke detector  
Each year include this in the inspection and change the  
battery

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What if a unit owner refuses access into a unit to perform high risk component inspections?

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HRS §514B – 139  
Upkeep of Condominium;  
Disposition of Unclaimed Possessions  
page 50

Property that has been abandoned by a unit owner in or on the common elements

- Notifications to the unit owner requirements, storage

New Law Section – Update  
Stay tuned!

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## Additions to and Alterations of Condominium

HRS §514B – 140

page 51

- Requires written consent of the Board
- Applies to Solar Energy Devices for Townhouses & Single Family Units

**Does this apply to Satellite Dish Antennas?**

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## Aging in Place or Disabled; Limitation of Liability

HRS §514B – 142

page 55

Acting through the board, shall not have any legal responsibility or liability to actions and recommendation the board takes on any report, observation or complaint made or referral which relates to an elderly or disabled unit owner who may require services and assistance to maintain independent living in their unit/home.

Use the resources available to the public to assist your residents or guide your resident's family members.

Share the information



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City & County of Honolulu  
Elderly Affairs Division  
AGING AND DISABILITY RESOURCE CENTER



[ElderlyAffairs.com](http://ElderlyAffairs.com)

Social Workers employed by the Elderly Affairs Division will access the person and recommend services.

They will help in engaging the person into the recommended services

Elderly Affairs works closely with Catholic Charities Hawaii



SENIOR  
INFORMATION & ASSISTANCE  
HANDBOOK

The Area Agency on Aging of the City and County of Honolulu Since 1975  
[www.ElderlyAffairs.com](http://www.ElderlyAffairs.com)

If you would like a copy – email a request to  
[HCCA.HCAAO@gmail.com](mailto:HCCA.HCAAO@gmail.com)  
With your mailing address

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Vencer Health Technologies  
[VencerHealth.com](http://VencerHealth.com)



**Vencer Health App**


Certified Respite Care Right to your Home  
Quick and Easy Right from your Phone

u53

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## Our Why

Too often family members are left to be the primary caregivers of their loved ones. Leaning on other family members or being a caregiver for someone can be intense, stressful, and physically demanding. It puts an emotional and mental strain on relationships. Watching their friends and family struggling with these challenges of being both a family member and a caregiver, Mark Salazar, Marvin Galicha, and Jeff Guira founded Vencer Health Technologies.



[https://vimeo.com/464066792?utm\\_source=email&utm\\_medium=vimeo-cliptranscode-201504&utm\\_campaign=28749](https://vimeo.com/464066792?utm_source=email&utm_medium=vimeo-cliptranscode-201504&utm_campaign=28749)

Link will be sent out on a email blast in the next few days after I recover!

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**COMING SOON**



Mark Salazar, Vencer Health

**Will be featured on the December 5<sup>th</sup>,  
HCCA ZOOM seminar.**

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CATHOLIC CHARITIES  
HAWAII

# Phone-A-Friend Project

Lyn Moku  
Program Volunteer Coordinator  
May 20, 2021

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## HRS §514B – 144

### Association Fiscal Matters; Assessments for Common Expense

page 61

- Budget
- Assessed to each unit based upon % of ownership
- Assessed to unit caused by misconduct
- Increases to maintenance fees require 30 days notice prior to effective date of the increase

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## Frequently asked questions?

### What is in a Budget?

Any expenses related to the operation of the property

- Payroll
  - Utilities: electric, water/sewer, internet/cable etc
  - Property Management
  - Insurance Premiums
  - Maintenance
    - Painting
    - Parking lot
    - Landscaping
    - Roof
    - Plumbing
  - Education
  - Savings or Reserves
  - Legal and Collection
1. Conduct a property inspection or maintenance review
  2. Review all contracts
  3. Review Insurance policies – Coverage & deductibles

**Now hire an independent, third party, professional to complete a Reserve Study on your property**

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## Frequently Asked Question

### Why a Reserve Study specialist?

One of the most important responsibilities that Board members and professional Managers face each year is the preparation of their Reserve Study. This document will not only reveal the current Reserve strength of the Association, but also the Funding Plan moving forward.

- They are trained in adhering to strict National Reserve Study Standards
- The Component List serves as the foundation of every Reserve Study, detailing the scope and schedule of all repair & replacement projects.
- They represent in independent standard of your property financial wellness

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## Frequently asked Question

I am new to the Board at my Condo.

Our Board has been utilizing the managing agent to complete the Reserve Study for years.

From what I have been reading on reserve study, it is usually done by an independent third party and that person has the educational qualifications related to the reserve study professional industry. It makes them a “qualified expert”

In reading our Managing agent contract, they are held harmless for practically everything. They also have the fidelity bond that protects them against the loss of association caused by fraudulent or dishonest acts of the managing agent employees.

Then in reviewing HRS §514B-148(d): “anyone and that includes a board member and or the managing agent – will not be held liable if the estimate proves to be incorrect”

This makes no sense to me.

Can you clarify why a condo would allow a property manager with an interest to serve the board that prefers no maintenance increase, want to use the property manager to complete a reserve study?

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## HRS §514B – 145 Association Fiscal Matters; **Collection of Unpaid Assessments**

Page 62

Debt Collection has specific federal and state law  
requirements

Initial delinquency notices sent by Managing Agents

Pre-lien and/or litigation demands are sent by  
Association attorney.

- From Tenants or Rental Agents

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## Frequently Asked Question

In June 2019, a statement was sent to a homeowner indicating a late fee assessment for May 2018 of \$25.00. The total statement balance = \$25.00

The homeowner states that they never got a statement of any sort indicating any late fee assessment in 2018 or up to June 2019.

1. If the late fee was assessed in 2018, wouldn't there have been late fees assessed each month from May 2018 up to and or including June 2019?
2. What is the proper/legal debt collection practice relative to late payment statements?
3. What responsibility does the board have in ensuring that the collection and late fee assessments are being done within the debt collection practices and laws?
4. If the board states that the issue is between the homeowner and the managing agent, what recourse does this homeowner have?

NOTE: The homeowner claims that they have called the managing agent accounting department several times. They claim, they print out the statement and it is given to the property manager for mailing. The property manager does not return calls or respond to emails regarding this matter.

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## HRS §514B – 146 Association Fiscal Matters; **Lien for Assessments** Page 63

NEW in 2019

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure, regardless of the presence or absence of power of sale language in an association's governing documents

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**HRS §514B – 146.5 & HRS Chapter 667  
Association Fiscal Matters;  
Supplemental Non-Judicial Foreclosure Notices;  
Restrictions on Power of Sale**

PAGE 68 & 107

Act 282/SB 551 became law without Gov. Ige's signature (now HRS  
§514B – 146.5)

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SB551/Act 282 (2019) is now HRS §514B – 146.5 includes valuable  
consumer protections by:

- May not be exercised against:
  - Fines, penalties, legal fees or late fees
  - Active Duty Military (less than 1 year in arrears)
- Requiring the foreclosing Association to offer mediation with any notice of default and intent to foreclose
- Provide procedures for a Request for Mediation by the Homeowner
  - 30 days to make a request for Mediation by the Homeowner
- Mediation is Mandatory to the Association to participate if requested by the Homeowner
- Non Judicial Foreclosure is on hold while Mediation is in place
- 60 day time period to complete Mediation from the date of Mediation request
- Additional specific "Notice of Default" wording is required on the notice in capital letters and 14pt font size...

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## Non Judicial and Judicial Foreclosure

page 106 & 107



### Judicial Foreclosure

- Court
- File Complaint in Court
- Commissioner
- Auction

### Non Judicial Foreclosure

- No court
- Faster and Cheaper
- Auction

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## HRS §514B – 148 Association Fiscal Matters; Budgets and Reserves

page 74



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## HRS §514B – 148 Association Fiscal Matters; Budgets and Reserves

page 74

The reserves are the estimated revenues and operating expenses of the association

- Estimated revenues and operating expenses
- Is the budget prepared on a Cash or accrual basis
- Total replacement reserves as of the date of the budget
- Estimated replacement reserves required to maintain the property based upon the reserve study
- How the estimated replacement reserves are computed
- Amount that must be collected for the year to fund the estimated replacement reserves

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- Calculation method – 100% funded or cash flow plan
  - Yearly assess owners based upon funding method
  - Estimated replacement based upon estimated life and capital expenditure
- A board may not exceed its total adopted annual operating budget by more than 20% during the fiscal year of the budget year.
- Special assessment – board shall adopt a resolution containing the written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. This shall be sent to all unit owners.
- Exceptions
- Statute overrides any association governing documents

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"Capital expenditure" means an expense that results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset that extends the life of an existing asset for a period greater than one year.

"Cash flow plan" means a minimum twenty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.

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## HRS §514B – 149 Association Fiscal Matters; **Handling and Disbursement of Funds**

page 77



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*Do you remember?*

## HRS §514B – 149(c)(2)(C)

New in 2019

(C) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; government money market funds; or shares or units of another mutual fund satisfying the requirements of this subparagraph; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners;

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## HRS §514B – 150 Association Fiscal Matters; Audits & Audited Financial Statements

page 78

- Annual Audit
- One Annual unannounced verification of the Association cash balance by a CPA
- Copy to each unit owner 30 days prior to Annual meeting

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Association Matters;  
Lease Rent Negotiation  
HRS §514B – 151  
page 79

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## HRS §514B – 152 Association Records

page 79

The association shall keep financial and other records sufficiently detailed to enable the association to comply with requests for information and disclosures related to resale of units. Except as otherwise provided by law, all financial and other records shall be made available pursuant to section 514B-154.5 for examination by any unit owner and the owner's authorized agents.

Association records shall be stored on the island on which the association's project is located; provided that if original records, including but not limited to invoices, are required to be sent off-island, copies of the records shall be maintained on the island on which the association's project is located.

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<http://cca.hawaii.gov/reb/resources-for-condominium-owners/>

The screenshot shows the homepage of the Department of Commerce and Consumer Affairs (DCCA) Real Estate Branch. The header includes the DCCA logo, the text "Department of Commerce and Consumer Affairs Real Estate Branch", and a search bar. A navigation menu contains links: Home, About, Forms, Calendar, Publications, HRS/HAR, FAQs, Quick Links, Contact, and DCCA Home. Below the menu, a breadcrumb trail reads "Home » Resources for Condominium Owners, Boards of Directors & Associations". The main heading is "RESOURCES FOR CONDOMINIUM OWNERS, BOARDS OF DIRECTORS & ASSOCIATIONS". Underneath, a sub-heading reads "Resources for Condominium Owners & Boards of Directors". The text explains that condominium ownership is shared and provides information on brochures, guides, and a public searchable database of Developer's Public Reports and an association contact list. A page number "72" is visible in the bottom right corner.

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The screenshot shows a list of resources for condominium owners. The list is organized into three sections: "BOARD OF DIRECTORS, FIDUCIARY DUTY & BUSINESS JUDGMENT RULE", "BUDGETING, FINANCES & RESERVES", and "CONDOMINIUM GOVERNANCE & INFORMATION". The "CONDOMINIUM GOVERNANCE & INFORMATION" section is expanded, showing a list of links. A red arrow points to the link "Access to Condominium Documents (PDF) (NEW)". The list includes links to various documents, including "Aging in Place: How to Cope (PDF) Conference Report", "Aging in Place and The Disabled (May 2017) (PDF)", "Condominium Governance in Brief (September 2015) (PDF)", "Condominium Governance - Common Issues - Part 1 (August 2016) (PDF)", "Condominium Governance - Common Issues - Part 2 (August 2016) (PDF)", "Condominium Repairs & Renovations (RICO) (PDF)", "Got Records? Information For Condo Owners About Access To Information (RICO Document Request Form)", "Hawaii Condominium Bulletins" (with sub-links for "2014-Current Bulletin Index" and "1991-2001 Bulletin Index"), "Memorandums & Informal Non-Binding Interpretations", "Information for Condominium Owners (RICO)", "Information About Paying Association Fees (RICO)", "Information for Owners of Rental Properties (RICO)", "Introduction to Condominium Living (July 2018) (PDF)", and "Insurance Basics (May 2020) (PDF) (NEW)". A page number "73" is visible in the top right corner.

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**Watch your cell phones for  
Bite Squad  
LUNCH  
delivery alerts  
Area code 612 calls or text msg**

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Does your AOAO have a website?

Post the following documents on your website:

- House Rules
- Declarations
- By Laws
- CC & R
- Architectural or Design guidelines & application process

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## HRS §514B – 152 Association Records; Records to be Maintained

page 80

- Financial records – detailed to enable to comply with requests for information and disclosures related to resale of units.
- Available to a unit owner and the owner's authorized agents (see also HRS §514B – 154 and §514B – 154.5 ).
- Stored on the island of the property.
- Originals can be sent off island BUT copies of the records shall be maintained on the island of the property.
- All governing documents old and restated

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## HRS §514B – 153 Association Records; Records to be Maintained

Page 83

- Governing Documents and amendments
- Original documents, public reports, master lease, if any
- Detailed accurate records in chronological order.
  - receipts and expenditures, itemizing maintenance and repair expenses for common elements and other expenses
- Monthly statements of total delinquent dollar amounts of unpaid assessments
- Homeowner membership list – Affidavit requirement

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## HRS §514B – 154 Association Financial Records

page 85

- Financial Statement available on 24 hour loan or at no cost to a unit owner
- Financial Statements, General Ledgers, Accounts Receivable Ledgers, Accounts Payable and Check Ledgers, Insurance Policies, Contracts and Invoices of the Association shall be available for examination by a unit owner

Affidavit Requirement  
8 hours+ will bear a cost

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## HRS §514B – 154 Association Meeting Records

page 85

(c) After any association meeting, and not earlier, unit owners shall be permitted to examine proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election; provided that:

(1) Owners shall make a request to examine the documents within thirty days after the association meeting;

(2) The board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the association or its members or both; and

(3) Owners shall pay for administrative costs in excess of eight hours per year.

The documents may be destroyed **Ninety (90) days after the association meeting;** provided that in the event of contested election the documents shall be retained until the contested election is resolved after which they may be destroyed. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any owner upon the owner's request; provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

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## HRS §514B – 154 (f) Owner Written Request to Examine Documents

page 86

- (f) Owners may file a written request with the board to examine other documents. The board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request.
- (g) An association may comply with this part by making information available to unit owners, at the option of each unit owner and at no cost to the unit owner for downloading the information, through an internet site.

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### CONDOMINIUM: ACCESS TO CONDOMINIUM DOCUMENTS

*Real Estate Branch  
Department of Commerce and  
Consumer Affairs*

*September 2020*

<http://cca.hawaii.gov/rco/got-records/>

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RICO offers the following form as a helpful tool for **condominium owners** to use when requesting documents:

[\(PDF\) WRITTEN REQUEST FOR CONDOMINIUM ASSOCIATION RECORDS](#)

For some records, an affidavit from the condominium owner may be required. RICO offers the following sample affidavits that may be used when requesting certain documents:

[\(PDF\) SAMPLE GOOD FAITH AFFIDAVIT FOR LISTS](#)

[\(PDF\) SAMPLE GOOD FAITH AFFIDAVIT FOR FINANCIAL INFORMATION](#)

RICO offers the following form as a helpful tool for **condominium associations** to use when responding to a request for documents:

[\(PDF\) WRITTEN RESPONSE TO REQUEST FOR CONDOMINIUM RECORDS](#)

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## HRS §514B – 154.5

### Association Documents to be Provided

Page 87 - 89

- All financials detailed in order to comply with requests for information and disclosures related to resales
- Financial statements, GL, AR, AP, check ledgers, insurance policies, more
- Governing documents to include House Rules, Master lease (if applicable) & other
- Detailed, itemized and chronological order of receipts and expenditures, payment vouchers and monthly statements
- Documents to be kept on the same island as the property
- Signed executed agreements for managing the operation of the property
- Accurate list of all members (owners)
- Current financial statement, at no cost or on 24 hour loan to review
- Meeting minutes of the Association HRS §514B – 122 and Board Minutes HRS §514B – 126
- Minutes at no cost or on 24 hour loan to review
- Proxy Tally sheets
- Employment contracts
- More

Some are subject to copying fees

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5

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HRS §514B – 156 Pets  
page 91

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## Reminders!

- A service animal is individually trained to do work or perform tasks for the benefit of an individual with a disability, including physical, sensory, psychiatric, intellectual or other mental disability.
- Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of the definition.
- You may not ask a person the nature of their disability or require a Dr. to describe or disclose the patient's disability.

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## Service Animals – Civil Penalty

Effective 2019

HRS 347-206

page 92

Establishes a CIVIL PENALTY for knowingly misrepresenting an animal as a service animal. Hawaii Law is updated to conform to the definition of a “service animal” under the Americans with Disability Act of 1990.

\$100 and not more than \$250 for 1<sup>st</sup> violation

\$500 for the 2<sup>nd</sup> and each violation after

A service animal is individually trained to do work or perform tasks for the benefit of an individual with a disability, including physical, sensory, psychiatric, intellectual or other mental disability.

**Only dogs qualify as “service Animals.”**

Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of the definition <sup>84</sup>

118



## Attorney's Fees, Delinquent Assessments, and Expenses of Enforcement

HRS §514B – 157

page 93

86

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## HRS §514B – 157 Attorney's Fees, Delinquent Assessments & Expense Enforcement

Page 93

Can be paid to an attorney working on behalf of an association for:

- Debt collection on delinquent assessments against any owner's unit
  - Foreclosure
  - Enforcing the provisions of governing documents and House Rules. Includes HRS §514B or REC
    - Against any owner, occupant, tenant, employee of an owner or any other person in any manner use the property.
- Payment is due on demand

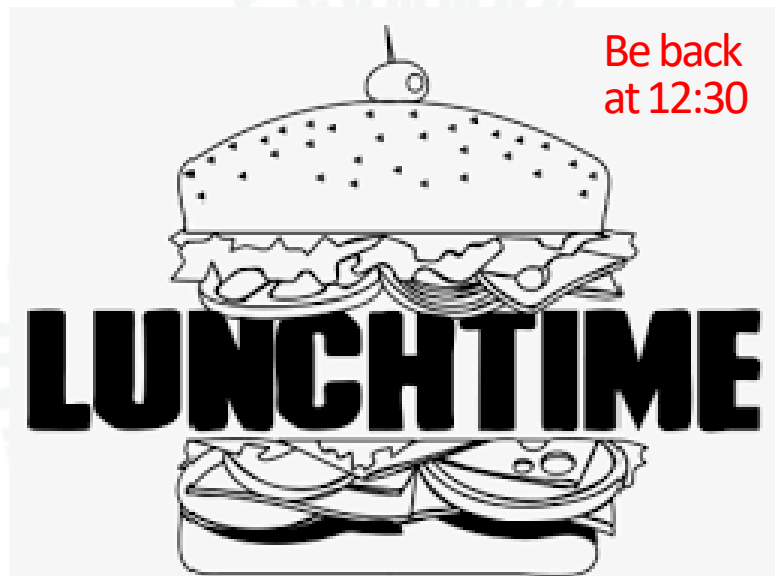
A unit owner is charged for the legal costs of enforcement

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12  
0

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**Enjoy your lunch!**

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# Insurance Requirements

Sue Savio – Insurance Associates  
Pages 58-60



FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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## Basics of Condo Insurance

Master Policy and HO6 Policy

Presented by:  
Sue Savio, President  
Insurance Associates, Inc.  
September 2019

Workbook pages 63 - 65

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

123



## Master Policy

- Mandatory per the bylaws of §514B
- Covers the building **as originally built** at today's replacement value.
- Is paid for in your maintenance fees
- Has a deductible ***per claim—not per unit.***

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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## Claims Under the Master Policy

- Standard perils are:
  - Fire
  - Lightning
  - Smoke damage
  - Vehicle damage
  - Hail
  - Wind
  - Hurricane
  - Explosion
  - Riot or civil commotion
  - Aircraft damage
  - Theft
  - Falling objects
  - **Water overflow from a domestic plumbing system.**

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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## Some Basic Exclusions

- Rust
- Wear and Tear
- Mold
- Asbestos removal (limited with water claim)
- Termite damage
- **Sewer Backup –may have limited coverage \$25,000-50,000**

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

126

## HO6-Homeowners Form 6

- Designed for the condo unit owner, HO6 covers:
  - **Above the “*as originally built*”**
    - upgrades and improvements by current or previous owner
  - Contents
  - Loss of Use
    - Rental Income or Additional Living Expense
  - Personal Liability
  - The ***Master Policy Deductible*** may be charged back to the unit owner if the claim came from your unit even if the pipe is behind the wall.

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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## HO6 Continued

- Not all are created equally...
  - Limited coverage for sewer backup
  - Limited coverage for your upgrades for a water back up claim.
    - Other than water claim full coverage for upgrades and contents.
  - Need to buy a broad policy that **covers sewer back up**

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

128

## So You Have a Claim

- Each owner needs to file an HO6 claim
- If over the deductible then AOA will file a claim
- Adjusters will work together
- **Under §514B deductible of AOA can be assessed to:**
  - All units (common expense)
  - Unit(s) that caused claim
  - Unit(s) damaged in claim

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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## §514B-143 – Insurance Section

- (d) The board, in the case of a claim for damage to a unit or the common elements, may:
  - (1) Pay the deductible amount as a common expense;
  - (2) After notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated; or
  - (3) Require the unit owners of the units affected to pay the deductible amount.

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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## Force Placed Insurance

- (g) The board, with the vote or written consent of a majority of the owners, may require unit owners to obtain reasonable types and levels of insurance.
- The liability of a unit owner shall include but not be limited to the deductible of the owner whose unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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## Force Placed Insurance

- If the unit owner does not purchase or produce evidence of insurance requested by the board, the directors may, in good faith, purchase the insurance coverage and charge the reasonable premium cost back to the unit owner.
- In no event is the association or board liable to any person either with regard to the failure of a unit owner to purchase insurance or a decision by the board not to purchase the Insurance for the owner, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained.

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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## Force Placed—How it Works

- Owners sent letters to show proof and warned:
  - If no proof is submitted, Board may buy it.
- Board buys a **Master HO6 Policy**.
- Policy and charge sent to management firm who adds the charge to the maintenance fees of the unit owners who are listed on the policy.

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

133

## H06

- Premium is relatively minor
- Do not buy the cheapest – buy the broadest.
  - “Premium is what you *pay*, not what you *buy*”
- You will have a claim – *Its just a matter of time.*

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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## Homeowners H06 Policy (sample)



**FIRST INSURANCE  
COMPANY OF HAWAII LTD.**  
P.O. BOX 2888 • HONOLULU, HAWAII 96808

HPX 2903390 00

### HOMEOWNERS POLICY

NEW DECLARATIONS ***** EFFECTIVE 10/03/13				
			HPX 290 33 90 (00) CUST # 0000000000 ORIG. INCEP 10/13	
POLICY NUMBER	POLICY PERIOD FROM TO		COVERAGE IS PROVIDED IN THE	AGENCY P
HPX 290 33 90	10/03/13	10/03/14	FIRST FIRE & CASUALTY INS	0024300 CC
		12:01 AM STANDARD TIME		
NAMED INSURED AND ADDRESS			AGENT	
3			INSURANCE ASSOCIATES INC CEDRIC CHANG 800 BETHEL ST STE 200 HONOLULU HI 96813 TELEPHONE - 538-6938	

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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COVERAGE AT THE ABOVE DESCRIBED LOCATION IS PROVIDED ONLY WHERE A LIMIT OF LIABILITY IS SHOWN OR A PREMIUM IS STATED

SECTION I COVERAGE	LIMIT OF LIABILITY	PREMIUMS	TOTAL PREMIUMS
A. DWELLING	\$10,000		
B. OTHER STRUCTURES	NO COVERAGE		
C. PERSONAL PROPERTY	\$20,000	\$71.00	
D. LOSS OF USE	\$12,000	\$9.00	
DEDUCTIBLE OTHER THAN HURRICANE	\$250		
<b>SECTION II COVERAGE</b>			
E. PERSONAL LIABILITY	\$300,000 EACH OCCURRENCE		
F. MEDICAL PAY. TO OTHERS	\$1,000 EACH PERSON	\$12.00	
<b>TOTAL BASIC PREMIUM</b>			\$92.00
<b>ADDITIONAL COVERAGE</b>			
EQUIPMENT BREAKDOWN COVERAGE	LIMIT OF LIABILITY \$50,000	\$0.00	
COVERAGE A - INCREASED LIMITS		\$11.00	
HURRICANE EXCLUSION CREDIT		\$25.00CR	
UNIT OWNERS - RENTAL TO OTHERS		\$24.00	
PREMISES ALARM OR FIRE PROTECTION		\$1.00CR	
UNIT OWNERS COVG A - SPECIAL COVERAGE		\$13.00	
LOSS ASSESSMENT		\$6.00	
PERSONAL INJURY		\$26.00	
MINIMUM PREMIUM APPLIES		\$4.00	
<b>TOTAL ADDITIONAL PREMIUMS</b>			\$58.00
<b>TOTAL PREMIUM</b>			\$150.00

THIS POLICY EXCLUDES FLOOD AND HURRICANE LOSSES

**Homeowners H06 Policy (sample)**

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

136

## Master Policy

- Premium is relatively minor
- Do not buy the cheapest – buy the broadest.
  - “Premium is what you *pay*, not what you *buy*”
- You will have a claim – *Its just a matter of time.*

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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**FIRST INSURANCE**  
**COMPANY OF HAWAII, LTD.**  
P.O. BOX 2888 • HONOLULU, HAWAII 96822

CPP 7026156 16

## Sample AOA Policy

POLICY ISSUED BY FIRST INSURANCE COMPANY OF HAWAII, LTD.

### COMMERCIAL LINES POLICY COMMON POLICY DECLARATIONS

POLICY NUMBER CPP 7026156 16

RENEWAL OF CPP 7026156 15

#### NAMED INSURED AND ADDRESS

WAIKIKI TOWNHOUSE (AOAO)  
% HAWAIIANA MANAGEMENT CO LTD  
PO BOX 4009  
HONOLULU HI  
96812

#### AGENCY NAME AND ADDRESS

INSURANCE ASSOCIATES INC  
800 BETHEL ST STE 200  
HONOLULU HI  
96813

CUSTOMER NUMBER: 0000000000

AGENCY NUMBER: 0024300-00

POLICY PERIOD: FROM: SEPT 01, 2012 TO: SEPT 01, 2013 AT  
12:01 A.M STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.

BUSINESS DESCRIPTION: CONDOMINIUM ASSOCIATION

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS  
OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED  
IN THIS POLICY.

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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## Sample AOA Policy

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS  
FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY  
BE SUBJECT TO ADJUSTMENT.

COMMERCIAL PROPERTY COVERAGE  
COMMERCIAL GENERAL LIABILITY COVERAGE  
COMMERCIAL AUTOMOBILE COVERAGE  
COMMERCIAL CRIME COVERAGE

#### PREMIUM

\$32,957.00  
\$5,519.00  
\$83.00  
\$249.00

TOTAL PREMIUM: \$38,808.00  
PAYABLE AT INCEPTION: \$38,808.00

FORMS APPLICABLE TO ALL COVERAGE PARTS:  
FCL 501 11/87 TIL 0017 11/98  
FCL 301A 7/89

HIL0001 2/03  
FGF 800 9/89

COUNTERSIGNED 09/17/2012

FORM NO. FCL 500 07/98

VICE PRESIDENT  
(AUTHORIZED REPRESENTATIVE)

FINAL 9.14 BOD TRAINING [9.11.2019 754PM]

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# Commercial General Liability



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## General Liability Policy

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- ▶ Covers
  - Bodily Injury
  - Property Damage
  - Damage from work product of the contractor
  
- ▶ But....every policy has exclusions
 

Some require special policies to overcome the deficiencies of the CGL. Others require tweaking the CGL coverage.



141

## Exclusions - Pollution

**Pollution**  
 (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".  
 (a) As to from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:  
 (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building.  
 (ii) "Bodily injury" or "property damage" for which you may be held liable if you are a contractor and the owner or lessee of such premises, site or location has been added to



### LESSON:

The standard General Liability policy form offers very little pollution coverage. A separate Pollution policy may be necessary. A construction consultant can help you identify exposures.

lubricants or other operating fluids escape from a vehicle plant designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fluids, lubricants or other operating fluids, or if such fluids, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.  
 (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or  
 (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "boiler fire".

(a) Request, demand, order or statutory or regulatory requirement that any insured or others be held for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or  
 (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".  
 However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.



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## Exclusions - Lead

### EXCLUSION - LEAD

This endorsement modifies insurance provided under the following:  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of, or caused by, lead.



### LESSON:

A separate Pollution policy may be necessary. A construction consultant can help you identify exposures.



143

## Exclusions - Asbestos

### EXCLUSION - ASBESTOS

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. This insurance does not apply to:



#### LESSON:

A separate Pollution policy may be necessary. A construction consultant can help you identify exposures.

e. transmitted by any other means.



144

## Exclusions - Professional Liability

### EXCLUSION - CONTRACTORS - PROFESSIONAL LIABILITY

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2, Exclusions of Section 1 - Coverage A - Bodily Injury And Property Damage Liability and

2. Subject to Paragraph 3. below, professional services include:



#### LESSON:

When you engage with a contractor to do structural or design work a separate Professional Liability policy is needed. Consultants and architects are examples of professions that need Professional Liability Insurance.

architectural or surveying services in connection with construction work you perform.

sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.



145

## Exclusions - Residential

### MULTI-FAMILY RESIDENTIAL CONSTRUCTION EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to 2. Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I):

This insurance does not apply to:

"Property damage" arising out of any construction operations, whether ongoing operations or the "products/completed operations hazard", which involve "multi-family owned developments", "tract housing" developments or "condominiums projects".

This exclusion applies to construction operations including "pre-construction", "construction", "post-construction", or "reconstruction" of such buildings or structures, whether performed by the insured or on the insured's behalf.



146

## Additional Insured

► CG 2010- for ongoing operations

► CG 2037- for completed work

► New version is (Ed. 04-13) difference is

*"If coverage to the additional insured is required by a contract or agreement, **the most [the insurer] will pay on behalf of the additional insured is the amount of insurance required by the contract.**"*



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## Additional Insured

- ▶ Sample Additional Insured Contract Requirement that we have seen used.

*The Contractor, and its subcontractors of any tier, shall obtain and maintain in full force and affect the following insurances with limits which will be the greater of:*

- (a) those specified in this Agreement;*
- (b) Contractor's actual insurance policy limits; or*
- (c) those limits required by law.*

- ▶ Primary and Non-contributory status and Waiver of Subrogation is recommended.



148

## Occurrence Endorsement

### **CHANGE IN OCCURRENCE DEFINITION**

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** The definition of "occurrence" in **SECTION V - DEFINITIONS** is replaced by the following:

"Occurrence" means:

- a.** An accident, including continuous or repeated exposure to substantially the same general harmful conditions; or
- b.** A negligent act or omission in the performance of a "construction contract", but only with respect to "property damage".

- B.** The following definition is added to **SECTION V - DEFINITIONS**:

"Construction Contract" means a written contract or written agreement to build, demolish, repair, remodel, or alter tangible real property, including land and the improvements thereon, or a written contract or written agreement to supply material, parts, equipment, goods or products for such work on tangible real property.

- C.** All other terms, conditions, provisions and exclusions of the policy shall apply.



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## General Liability

- **\$2,000,000** General Aggregate\*
- **\$2,000,000** Products and Completed Operations Aggregate
- **\$1,000,000** Personal and Advertising Injury
- **\$1,000,000** Each Occurrence
- **\$100,000** Damage to Premises rented to insured
- **\$5,000** Medical Expense Limit

**\*Per project aggregate is recommended.**



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## Key Commercial General Liability Considerations

- ▶ No exclusion for multi-family, townhouse or condominium projects.
- ▶ Additional insured endorsements shall be on form CG 2010 07 04 (ongoing operations) and CG 2037 10 04 (completed work) or their equivalent if possible
- ▶ Primary and non-contributory coverage in favor of the additional insured
- ▶ Waiver of subrogation in favor of the additional insureds
- ▶ Coverage for completed operations with a revised definition of Occurrence
- ▶ Coverage on a per project general aggregate basis



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## General Liability



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## Other Insurance Considerations



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## Business Automobile Liability

The business auto policy shall include coverage for all owned, leased, hired and non-owned automobiles.

- ▶ **\$1,000,000** Bodily Injury Each Person
- ▶ **\$1,000,000** Bodily Injury Each Accident
- ▶ **\$1,000,000** Property Damage Each Accident
- or--
- ▶ **\$1,000,000** Combined Single Limit of Liability



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## Workers' Compensation

The workers' compensation shall be endorsed to provide a waiver of subrogation in favor additional insureds.

- ▶ **Employer's Liability**
  - \$500,000 Bodily Injury by Accident (each accident)
  - \$500,000 Bodily Injury by Disease Limit (policy limit)
  - \$500,000 Bodily Injury by Disease Employee (each employee)



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## Workers' Compensation



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## Umbrella Liability

- ▶ The umbrella liability shall be at least following form excess over the commercial general liability, business auto liability and employer's liability.
- ▶ The policy shall provide defense in addition to the limits of liability.



158

## Common BOD Mistakes

- ▶ Not verifying who's insuring the materials in transit, off the jobsite, and while on the job site.
- ▶ Not verifying the contractor's Coverage—Example: Does the contractor have coverage for multi-family residential work?
- ▶ Not requiring the right level of coverage—Not just limits and lines of coverage, but proper Additional Insured status (Primary wording and Waiver of Subrogation)



159



# Licensing and Bonding

(To Bond or Not to Bond?)



160

## Licensing

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- ▶ A Licensed contractor has training, Insurance (Commercial General Liability and Workers' Compensation), and can obtain building permits.
- ▶ The DCCA requires projects over \$1,500 to be done by licensed contractors (Plumbing and electrical work always require licensed contractors).



161

## Bonding

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A bond is a guarantee by a 3<sup>rd</sup> party that ensures the contractor's obligation will be fulfilled.

3 Parties to a bond:

- ▶ Obligee (association)
- ▶ Principal (contractor)
- ▶ Surety (the company that assures the contractor's performance)



162

## Types of Bonds

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- ▶ **Performance Bond**  
If the contractor does not complete the job the surety will pay to get it done.
- ▶ **Payment Bond**  
If the contractors does not pay the subcontractors or material suppliers the surety will pay.



163

## When is Bonding Needed?

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- ▶ If it is a governing document requirement.
- ▶ If it is a lender requirement.
- ▶ When the size of the project is large.
- ▶ When there is difficulty finding a qualified alternative contractor.



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## Takeaways

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- ▶ Consult with Professionals when Engaging with a Contractor
  - Construction Consultant
  - Attorney
  - Insurance Agent
- ▶ A well written contract protects the Association and the contractor.



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**SAMPLE**

Sample Condominium, AOA  
Insurance Summary  
Date Prepared: September 26, 2009

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

Agent: Sue Savio  
Direct Line: 808-526-9271  
Direct Fax: 808-792-5371  
E-mail: sue@ia-hawaii.com

Coverage	Limits	Term	Policy Period	Premium	Insurance Company	Comments
<b>Property</b>		Annual	01/01/09 – 01/01/10			This coverage pays to rebuild the condominium at today's replacement cost in case it is damaged by a covered peril. Covered perils include Fire, lightning, wind, hurricane, vehicle damage, sudden and accidental water overflow, smoke damage, falling objects, etc. Property coverage is required in the by-laws and is required by HRS 514-B. There are usually exclusions for earthquake and flood as these coverages are written separately.
Building Replacement Cost	\$ 100,000,000					
Business Personal Property	\$ 100,000					
Building Ordinance/Increased Cost of Construction	\$ 5,000,000					
Deductible (all other perils excluding hurricane)	\$ 5,000					
Hurricane Deductible (1% of the building value)	\$ 1,000,000					
<b>Commercial General Liability</b>		Annual	01/01/09 – 01/01/10			This coverage pays for bodily injury or property damage to third parties. Examples of liability losses would be a slip and fall in the common areas, a drowning in the association's swimming pool, or a garage door gate that closed on the hood of a visitor's new Cadillac. This coverage protects the assets of the association in case they get sued in any of the above scenarios. It is almost always required by the by-laws.
General Aggregate	\$ 2,000,000					
Personal & Advertising Injury	\$ 1,000,000					
Each Occurrence	\$ 1,000,000					
Fire Damage (any one fire)	\$ 50,000					
Medical Expense (any one person)	\$ 5,000					
Hired/Non-Owned Automobile (occurrence)	\$ 1,000,000					
<b>Environmental Impairment Liability</b>		Annual	01/01/09 – 01/01/10			This is also known as pollution liability coverage. An association might have diesel storage tanks to power an emergency generator and would want to have protection in case there were a pollution loss. Pollution losses are usually excluded under most property and liability policies so a separate policy is necessary for this coverage.
Each Accident	\$ 1,000,000					
Aggregate	\$ 1,000,000					
Defense Costs	\$ 500,000					
Deductible	\$ 10,000					
<b>Commercial Umbrella</b>		Annual	01/01/09 – 01/01/10			This coverage provides additional liability protection in case the loss exceeds the limits available on the underlying General Liability, Environmental Liability, D&O Liability and Employers Liability policies. This coverage kicks in when the primary policy limits are exhausted.
Each Occurrence	\$ 25,000,000					
Liability Aggregate Limit	\$ 25,000,000					
Retained Limit	\$ 0					
<b>Boiler and Machinery (Equipment Breakdown)</b>		Annual	01/01/09 – 01/01/10			This coverage pays for accidental breakdown to electrical equipment that is part of the building. This could be for air conditioning, chillers, boilers, air handlers, elevators, security systems, etc.
Covered Amount	\$ 100,000,000					
Deductible	\$ 5,000					
<b>Directors' and Officers' Liability</b>		Annual	01/01/09 – 01/01/10			This coverage defends the directors and officers against charges of actual or alleged wrongful acts. Typical claims arise out of discrimination, wrongful termination, breach of contract, conflict of interest, breach of loyalty, etc.
Each Occurrence	\$ 2,000,000					
General Aggregate	\$ 2,000,000					
Deductible	\$ 1,000					
<b>Fidelity Bond</b>		Annual	01/01/09 – 01/01/10			This coverage pays for theft of association funds. It is required by HRS 514A and HRS 514B.
Deductible	\$ 200,000					
<b>Flood Insurance</b>		Annual	01/01/09 – 01/01/10			This coverage pays to rebuild or repair the property in case it is damaged by the peril of flood. Flooding can be caused by rising surface water from any source including storm surge during a hurricane or tsunami.
Covered Amount	\$ 100,000,000					
Deductible	\$ 5,000					
<b>Workers' Compensation and Employers Liability</b>		Annual	01/01/09 – 01/01/10			This coverage is required by statute. It pays the cost of medical care and loss of income in case an employee is injured on the job.
Bodily Injury (each accident)	\$ 500,000					
Bodily Injury (policy limit)	\$ 500,000					
Bodily Injury (each employee)	\$ 500,000					
<b>Temporary Disability Insurance</b>		Statutory	Continuous until cancelled			This coverage is required under Hawaii State Law. It pays for loss of income for up to 6 months in case an employee is injured off the job.

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

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## Condominium Living in Hawaii: Renovations and Repairs

<https://cca.hawaii.gov/rco/files/2019/08/CONDO-190718-Condo-Living-Renovations-and-Repairs.pdf>

**Carefully research any restrictions and remember to get pre-approval if necessary.** In addition to reviewing the relevant information from your association, ask if you need approvals from the condominium association or building management before you start. Some associations require owners to submit building plans for approval before work can start. **All associations should require that you use a licensed contractor, electrician or plumber if one is required, and that necessary building permits are obtained.**

**If my project is only for minor repairs, can I hire a handyman or handyperson?** If the total cost of your project, including labor and materials is less than \$1,500, and doesn't require a building permit, you can hire a handyman. "Handymen" usually perform minor repairs and projects that are typically described as "odd jobs" or "fix-up tasks." Without a contractor's license, handymen who do projects that are (1) over \$1,500, or (2) require a building permit, are engaged in unlicensed contracting. The handyman exemption does not apply to electrical and plumbing work. Licensees (including real estate brokers and salespeople) and registrants (including condominium associations), may be prosecuted for aiding and abetting unlicensed contractors, electricians or plumbers.

**HANDYMAN REPAIRS \$1,500 LIMIT TOTAL**

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Regulated Industries Complaints Office  
225 S. Beretani Street, 9th Floor  
Honolulu, Hawaii 96813  
808.534.0000

CONDOMINIUM LIVING IN HAWAII: RENOVATIONS AND REPAIRS

**If my project is only for minor repairs, can I hire a handyman or handyperson?** If the total cost of your project, including labor and materials is less than \$1,500, and doesn't require a building permit, you can hire a handyman. "Handymen" usually perform minor repairs and projects that are typically described as "odd jobs" or "fix-up tasks." Without a contractor's license, handymen who do projects that are (1) over \$1,500, or (2) require a building permit, are engaged in unlicensed contracting. The handyman exemption does not apply to electrical and plumbing work. Licensees (including real estate brokers and salespeople) and registrants (including condominium associations), may be prosecuted for aiding and abetting unlicensed contractors, electricians or plumbers.

**How or when can work be performed?** Association rules or regulations may also specify things like what hours work can be performed, which elevators workers can use, and how construction debris is to be disposed of. Therefore, it's important to work closely with your association board and resident manager on these issues in advance. If your remodel requires accessing the building's main electrical or plumbing systems, you're going to need to make those arrangements in advance.

**Insurance.** Licensed contractors are required to carry liability insurance and are responsible if a worker is injured on a jobsite. Your association may ask for proof of insurance from your contractor before work starts. If you plan to do the work yourself under an owner-builder permit, you may need additional insurance or a special rider.

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Alternative Dispute Resolution Mediation  
HRS §514B - 161  
page 96



DISPUTE RESOLUTION

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# Mediation

HRS §514B – 161 d(1)  
page 96  
effective January 2, 2019

Mandatory requirement



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## Mediation



Mediation is about giving people the power to come to a solution that works for both of them with the assistance of a mediator. (courtesy of Mediation Center of the Pacific)

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## HRS §514B – 161 Mediation eff. 1/2/2019

Page 96

The mediation of a dispute between a unit owner and the board, unit owner and the managing agent, board members and the board, or directors and managing agents and the board **shall be mandatory upon written request to the other party when the dispute involves:**

- Governing document enforcement to include House Rules
- Parties have not mediated the same or similar dispute
- No actions or arbitration concerning the dispute has not been commenced

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**Not Mandatory requirement when the dispute involves:**

- Unit owner and the board
- Unit owner and the managing agent
- Board members and the board or director
- Managing agents and the board

**And the dispute involves:**

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

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## HRS §514B – 161 (4c) Evaluative Mediation

Page 96

If evaluative mediation is requested in writing by one of the parties pursuant to subsection (a), the other party cannot choose to do facilitative mediation instead, and any attempt to do so shall be treated as a rejection to mediate

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(d) A unit owner or an association may apply to the circuit court in the judicial circuit where the condominium is located for an order compelling mediation only when:

- (1) Mediation of the dispute is mandatory pursuant to subsection (a);
- (2) A written request for mediation has been delivered to and received by the other party; and
- (3) The parties have not agreed to a mediator and a mediation date within forty-five days after a party receives a written request for mediation.

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(g) Any individual mediation supported with funds from the condominium education trust fund pursuant to section §514B-71:

(1) Shall include a fee of \$375 to be paid by each party to the mediator;

(2) Shall receive no more from the fund than is appropriate under the circumstances, and in no event more than \$3,000 total;

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## Difference between Mediation & Arbitration

### Mediation

- **Objective: Reach a written settlement agreement.**
- Parties attend, and often meet face to face.
- A neutral mediator attempts to assist the parties in reaching a settlement.
- “Evaluative Mediation” is an option where the mediator provides a nonbinding analysis of the parties’ dispute.
- Usually lasts between 2 hours, to 8 hours.
- **Caveat:** The parties might not reach a settlement.

### Arbitration

- **Objective: A neutral Arbitrator decides the outcome.**
- “Binding Arbitration” has limited means to appeal.
- “Non-Binding Arbitration” can be appealed to the Circuit Court for a new trial.
- The process can take months and may include several hearings.
- Parties can require exchange of documents and other evidence.
- The “arbitration hearing” is held by the arbitrator and can take 1 day to 5 days.
- The Arbitrator reviews evidence and arguments from both sides.
- The Arbitrator prepares a written Arbitration Award and has broad discretion.
- The prevailing party must file a petition in Circuit Court to confirm the award.
- There are limited grounds to vacating an arbitration award.
- **Caveat:** It could cost as much as, if not more than, simply going to court.<sup>138</sup>

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## HRS §514B – 162 Arbitration

page 162



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. The arbitration shall be conducted, unless otherwise agreed by the parties.

The arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications.

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HRS §514B –  
162  
Arbitration  
page 99



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## HRS §514B – 192 Retaliation Prohibited

page 104

"Retaliate" means to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents

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Retaliation  
Prohibition  
HRS §514B –  
191  
page 104


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New Laws Enacted in  
2021  
And  
Important Federal Laws  
that we all must comply

R. Laree McGuire  
Attorney & Partner  
Porter McGuire Kiakona, LLP

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# New Laws 2021

2021 Legislative session started out with 18 new bills introduced; they ranged from allowing annual or special meetings to be held remotely via ZOOM or Webex or similar and to include Board elections to electronic voting, no smoking in units, proxy voting, member lists, time shares in condos and to the disposition of property left abandoned by an owner.

It is critical that homeowners monitor the bills introduced each year that have an impact on Condominiums (HRS 514B) and Planned Unit Developments (HRS 421J).

We have included in your training workbooks a detailed "HOW TO SUBMIT TESTIMONY" at both the state and Honolulu county level of government. It is in the back printed on easy to find colored paper.

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# New Laws 2021

Page 108

As of May 2021: with Gov. Ige for signature

**HB599:** Clarifies that planned community associations may conduct annual and special or regular meetings remotely consistent with the Hawaii Nonprofit Corporations Act. Authorizes condominium associations to conduct electronic meetings and electronic, machine, or mail voting during a state of emergency declared pursuant to Chapter 127A, HRS or whenever authorized in an association's declaration or bylaws. Effective 1/1/2022.

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# New Laws 2021

## Abandoned property

**SB329:** Shortens the notice period from sixty (60) days to thirty (30) days for a board to sell, store, donate, or dispose of personalty when the identity and address of the owner are known.

Removes the publication requirement and permits the board of directors of a condominium association to proceed directly to the sale, storage, donation, or disposal of personalty that has been abandoned in or on the common elements of a condominium when the identity or address of the owner is unknown.

Effective upon Gov. Ige's signature

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## 3 Categories of fees Priority of Payments

(1) Common Expenses  
assessed to all owners

Maintenance Fees

(2) Other fees:  
Submetering, Utility  
charges,  
Locker/Storage,  
Parking rental etc

(3) Late Fees, House Rule  
Violations, Interest and  
Attorney Fees under a  
priority of payment plan  
adopted by the Board

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## Discrimination page 105

The Fair Housing Act prohibits discrimination in housing because of:

- Race
- Color
- National Origin
- Religion
- Sex
- LGBTQ
- Familial Status\*
- Disability

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## Discrimination also applies to Residential Lending

**All Homeowner Associations are a part of this process.**

This means if the condominium and/or the Managing Agent get a request from a lender to complete forms from either VA or FHA, they need to comply and complete the government agency forms.

The cost incurred for the condominium to become either VA or FHA approved is at the expense of the lender and NOT the association.

VA and FHA are all about expanding homeownership opportunities.

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