


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## Is your Condo Building Structurally Sound?

August 26, 2021 via GoTo Webinar

- **Everyone will be muted**
- **Ask your questions via the Question Feature.** We will make every effort to answer the questions during the webinar
- **Handouts are available for download in the handout section**
- At the conclusion is a very brief survey (anonymous). We ask all to complete the survey. Mahalo for the honor of your time.

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.



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## Welcome!

- 🔧 What is spalling?
- 🔧 How can water create so much damage to concrete?
- 🔧 Is your building ignoring the warning signs of poor or deferred maintenance?
- 🔧 Will the master policy cover a building collapse? If not, what can your association do?

And  
Emergency Services in a disaster

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## Our Panel Speakers

**Dana Bergeman**, founder & CEO of Bergeman Group. Dana brings nearly 25 years of experience in the construction management industry (AEC) and LSE. His specialty is older buildings, especially AOA's and high rises and utilizes his structural engineer on staff in his projects.  
<https://www.bergemangroup.com/team>

**Chris Porter**, partner with Porter McGuire Kikona LLP. Chris brings over 30 years of knowledge and experience to the firm. Working with community association boards and other related entities, he specializes in the areas of condominium and [community association law](https://www.hawaii.legal.com/our-lawyers/), and [commercial litigation](https://www.hawaii.legal.com/our-lawyers/). <https://www.hawaii.legal.com/our-lawyers/>

**Sue Savio**, President and Owner of Insurance Associates Inc. since 1975. She is past President of the Hawaii Independent Insurance Agents Association and the Community Association Institute (CAI) and has served on their board in different capacities since 2000.  
<https://insuringhawaii.com/>

**John Cummings**, Department of Emergency Management, City and County of Honolulu Public Information Officer. John assists in the City's mission to develop, prepare for and assist in the implementation of emergency management plans and programs to protect and promote the public health, safety and welfare of the City during times of disaster or emergency.  
<http://www.honolulu.gov/dem/about-us/whoweare.html>

**Douglas Carroll & Hollie Stark**, Hawaii Emergency Management Agency, State of Hawaii. Douglas and Hollie implement the mission of the Agency to help the Hawai'i Ohana prepare for, respond to, and recover from disasters and emergencies. <http://dod.hawaii.gov/hema/>

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Moderated by Jane Sugimura

President – Hawaii Council of Community Associations



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What would we want to know if it happens here?



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Chris Porter  
Attorney  
Porter McGuire Kiakona LLP

Chris brings over 30 years of knowledge and experience to the firm. Working with community association boards and other related entities, he specializes in the areas of condominium and community association law, and commercial litigation.  
<https://www.hawaiiilegal.com/our-lawyers/>



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# Revisiting Fiduciary Duty in Light of the Florida Condo Collapse

BY CHRISTIAN P. PORTER, ESQ., PMK, LLP  
SPONSORED BY: HCCA  
AUGUST 26, 2021

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**General Information on Champlain Tower South, a 12-story Beachfront Condo in Miami suburb of Surfside, Florida**

1. Building Construction Started: 1980
2. Completed Construction: 1981
3. Partial Collapse: June 24, 2021
4. Demolished: July 4, 2021 (un-collapsed portion)
5. 98 Deaths Confirmed:
6. July 22, 2021
7. 40-Year-Old Building



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## Board Members in Hawaii in Condominium Projects have the Duty to Maintain, Repair and Replace the Common Elements

Most documents provide something similar to the following requirements of the Board of Directors:

**Operation and Maintenance; Duties of Association.** Operation of the Project and maintenance, repair, replacement and restoration of the common elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Act, this Declaration and the Bylaws. Specifically, but without limitation the Association shall:

- Make, build, maintain and repair all fences, sewers, drains, roads, driveways, driveway ramps, curbs, sidewalks, parking areas and other improvements which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the common elements or any part thereof, exclusive of the limited common elements.
- Keep the common elements (exclusive of the limited common elements) in a reasonably clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Project or the use thereof.
- Well and substantially repair, maintain, preserve, amend and keep all common elements (exclusive of limited common elements), with all necessary repairs and amendments whatsoever in reasonably good order and condition except as otherwise provided herein.

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## The Financial Planning Tools for the Board in Maintaining the Common Elements are: Budget and Reserves

**§514B-144 Association fiscal matters; assessments for common expenses.** (a) Assessments shall be made based on a budget adopted and distributed or made available to unit owners at least annually by the board.

**§514B-148 Association fiscal matters; budgets and reserves.** (a) The budget required under section 514B-144(a) shall include at least the following:

- (1) The estimated revenues and operating expenses of the association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the association as of the date of the budget;
- (4) The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association;
- (5) A general explanation of how the estimated replacement reserves are computed;
- (6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves; and
- (7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).

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### \*\*MANDATORY RESERVE REQUIREMENTS.....FOR CONDOMINIUM ASSOCIATIONS \*\*

**§16-107-61 Objective.** This subchapter implements the requirements of section 514A-83.6, HRS, that all condominium associations must follow budgets and establish statutory replacement reserves. *These rules try to ensure that each owner in a condominium project pays a fair share of the short-term and long-term costs of operating the project, based on the owner's period of ownership.* (ER 1/2/95) (Auth: HRS §§514A-83.6, 514A-99) (Imp: HRS §514A-83.6)

**§16-107-65 Calculation of estimated replacement reserves; reserve study; good faith.** (a) A board of directors of an association shall calculate the association's estimated replacement reserves based on a reserve study developed in compliance with this section.

(b) The board shall compile a list of the association's assets.

(c) The board shall determine the estimated useful life of each asset.

(d) The board shall calculate the estimated capital expenditure or major maintenance required for each asset.

(e) Each year, the board shall adjust the amount of the estimated replacement reserves for an asset based on reasonable projections for inflation and for interest which will be earned during the estimated useful life of the asset.

"Estimated replacement reserves" means funds which an association's reserve study indicates must be assessed and collected during a budget year to establish a full replacement reserve for the association by the end of that budget year.

"Exempt Association property" means any asset which:

- (1) At the end of its estimated useful life will require capital expenditures or major maintenance of less than \$1,000 or less than 0.1 per cent of the association's annual operating budget, whichever is greater; or
- (2) Has an estimated remaining life of more than twenty years.

**§16-107-71 Exempt association property; disclosure; transition to association property.** (a) The association's reserve study shall clearly disclose all assets for which funds are not included in the replacement reserve study because they are exempt association property. The reserve study shall also contain a brief explanation of why those assets are determined to be exempt association property.

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## What are the Standards that the Board of Directors will be Judged in Maintaining the Common Elements, Or Allegedly Failing to Do So?

**§514B-106 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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**§414D-149 General standards for directors.** (a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee:

- (1) *In good faith;*
- (2) *In a manner that is consistent with the director's duty of loyalty to the corporation;*
- (3) *With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and*
- (4) *In a manner the director reasonably believes to be in the best interests of the corporation.*

(b) ***In discharging the director's duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:***

- (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
- (3) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

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(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) ***A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.***

(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

(f) ***Any person who serves as a director to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss caused by or resulting from the person's performance of, or failure to perform duties of, the position to which the person was elected or appointed, unless the person was grossly negligent in the performance of, or failure to perform, such duties.*** For purposes of this section, remuneration does not include payment of reasonable expenses and indemnification or insurance for actions as a director as allowed by sections 414D-159 to 414D-167.

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## What is 'Gross Negligence', Meaning you are Liable as a Director?

**[Gross negligence includes ]indifference to [a] present legal duty and ... utter forgetfulness of legal obligations so far as other persons may be affected.** It is a heedless and palpable violation of [a] legal duty respecting the rights of others. The element of culpability [that] characterizes all negligence is in gross negligence magnified to a high degree as compared with that present in ordinary negligence. [Gross negligence is a manifestly smaller amount] of watchfulness and circumspection than the circumstances require of a person of ordinary prudence. But it is something less than willful, wanton and reckless conduct.

*Pancakes of Hawaii, Inc. v. Pomare Properties Corp.*, 85 Haw. 286, 293, 944 P.2d 83, 90 (Ct. App. 1997)

**QUESTION:** Is the failure to follow the Reserve Requirements and not Fund as recommended by the Property Manager and/or Reserve Specialist = Gross Negligence?

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## Will the "Business Judgment Rule" Protect me as a Director?

The business judgment rule was developed "as a device for insulating corporate decision makers, both officers and directors, from personal liability for mistakes of business judgment arrived at in good faith." E. Johnson & R. Osborne, *The Role of the Business Judgment Rule in a Litigious Society*, 15 Val.U.L.Rev. 49, 52-53 (1980) (footnotes omitted). A traditional definition of the rule is:

[O]rdinarily neither the directors nor the other officers of a corporation are liable for mere mistake or errors of judgment, either of law or fact. In other words, directors of a commercial corporation may take chances, the same kind of chances that a man would take in his own business. Because they are given this wide latitude, the law will not hold directors liable for honest errors, for mistakes of judgment, when they act without corrupt motive and in good faith, that is, for mistakes which may properly be classified under the head of honest mistakes.

3A Fletcher, *supra*, § 1039, at 37-38 (rev. perm. ed. 1975) (footnotes omitted). See also C. Lewis, *The Business Judgment Rule and Corporate Directors' Liability for Mismanagement*, 22 Baylor L.Rev. 157 (1970); 19 Am.Jur.2d *Corporations* § 1279 (1965).

*Lussier v. Mau-Van Dev., Inc.*, 4 Haw. App. 359, 375-76, 667 P.2d 804, 816-17 (1983)

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## The Business Judgment Rule will Not Protect a Board that Fails to Develop a Plan and Fails to Repair the Common Elements

At least one Court has held the following:

*Under the business-judgment rule, "where a challenge is made by an individual owner to an action of a condominium board ..., absent claims of fraud, self-dealing, unconscionability or other misconduct, the court should apply the business-judgment rule and should limit its inquiry to whether the [board's] action was authorized and whether it was taken in good faith and in furtherance of the legitimate interests of the condominium."* *Schonerger*, 523 N.Y.S.2d at 529. See Note, *Judicial Review of Condominium Rulemaking*, 94 Harv.L.Rev. at 663. See also *Levandusky v. One Fifth Avenue Apartment Corp.*, 75 N.Y.2d 530, 554 N.Y.S.2d 807, 811, 553 N.E.2d 1317, 1321 (N.Y.1990) (applying business-judgment rule to actions by board of directors of residential cooperative apartment). We have applied the business-judgment rule to decisions by the board of directors of a Rural Electric Cooperative. *Lill v. Cavalier Rural Electric Co-op.*, 456 N.W.2d 527, 530 (N.D.1990) citing *Levandusky*. **We hold the business-judgment rule applies to a board's actions regarding repairs to the common areas of a condominium.**

*Agassiz W. Condo. Ass'n v. Solum*, 527 N.W.2d 244, 248 (N.D. 1995)

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### In this Case, the Board Failed to Make Definite Plans for Necessary Repairs to the Common Elements, Business Judgment Rule did NOT Protect the Directors – Sounds like the Florida case

*This record and the trial court's findings show the board has failed to make definite plans for necessary repairs to the common areas in Solum's building, and its failure posed serious, potential dangers for the condominium residents. Agassiz's bylaws affirmatively require the board to make repairs to common areas, and under the business-judgment rule and the trial court's findings, the board's inaction was not authorized and was a breach of its duty. Compare Schoninger, 523 N.Y.S.2d at 529 (board's choice between two plans for repair of common area and implementation of one plan governed by business-judgment rule).*

*Agassiz W. Condo. Ass'n v. Solum*, 527 N.W.2d 244, 248–49 (N.D. 1995)

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### Don't be the Board that "kicks the can down the road"..... such inaction could result in a Lawsuit and Personal Exposure

Do not ignore your Property Manager's Recommendations on Maintenance Fee Increases to Fund the Association's Reserves.

Do not ignore the Reserve Specialist's Reserve Study.

Do not delete relevant capital items from the Reserve Study.

Do not Promise to "Never Raise Maintenance fees."

If your building is 40 plus years old, Do Not ignore the fact that a structural analysis may be prudent.

Do not Avoid Making a Decision ....better to Adopt a Plan of Action for Repair and Replacement of Common Elements.



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### Reservation of Rights Letters from Insurance Companies.

Claim is made against the Board of Directors for failing to maintain the common elements, and the claim is tendered – or given to – the Association's insurance agent to be sent to all potentially applicable insurance carriers that cover the Association.

Assuming no personal injury or property damage, and the claims are for, among other things, breach of fiduciary duty and gross negligence, the Directors & Officers' (or D&O) insurance carrier will normally accept the defense of the action, and typically they will issue a "Reservation of Rights" letter.

A Reservation of Rights letter is issued to indicate that the claim may not be covered under the applicable D&O insurance policy. Reservation of rights letters do not deny a claim. However, the letter indicates that the insurance carrier is investigating the claim and reserves the right to deny the claim after it completes its investigation.

The Reservation of Rights letter will typically contain information about the claim, including the policy in question, the claim made against the policy, and the part of the claim that may not be covered. We recommend that an Association contact their attorney if it seems like the insurer intends on denying the claim, or does deny the claim.

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MAHALO!



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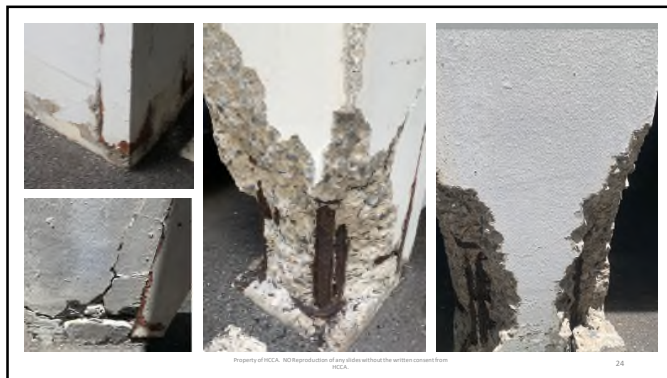
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**Dana Bergeman**  
CEO & founder –  
Bergeman Group

Founder & CEO of Bergeman Group. Dana brings nearly 25 years of experience in the construction management industry (AEC) and LSE.

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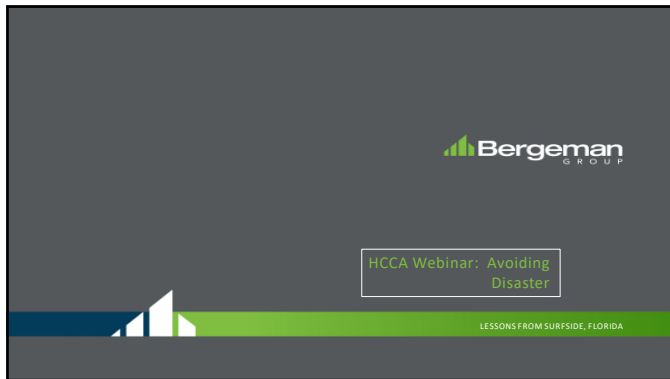
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HCCA Webinar: Avoiding Disaster

- Based on your experience, can you tell us what happened in Florida to make that building collapse?
- We don't yet know exactly what caused the tragedy in Florida.
- Structural engineers are focusing on the lowest part of the building in trying to determine Champlain Towers South collapsed.
- Most theories appear to be centered around structural failure of the pool/recreation deck and lowers parking levels as the catalyst for collapse.

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HCCA Webinar: Avoiding Disaster

- Based on your experience, can you tell us what happened in Florida to make that building collapse?
- A 2018 report found "major structural damage" in the building's pool deck and recreation deck areas.
- There are reports of severe concrete spalling and related damage, concrete slabs not sloped to drain properly and failed pool deck/recreation deck waterproofing.
- Most experts have said that the collapse appeared to involve a failure at the lowest levels of the building or in the building's parking garage.

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## HCCA Webinar: Avoiding Disaster

### Theories cited by Engineers:

- "[T]hat part of the pool [area] came down first and then dragged the middle of the building with it, and that made that collapse," Allyn Kilsheimer told The Washington Post.
- "You can see the failure came from the bottom," said veteran structural engineer and the chairman of the California seismic safety commission Kit Miyamoto.
- "Vertically imploding," suggesting that columns at the bottom were "compromised," per The Washington Post.

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June 30, 2021



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## HCCA Webinar: Avoiding Disaster

### Theories cited by Engineers:

- "A foundation-related matter — potentially corrosion or other damage at a lower level," is suggested by video footage, Donald Dusenberry told The New York Times. "You certainly can't rule out a design or construction error that has survived for 40 years," Dusenberry added.
- "Punching shear failure," when slabs of concrete that make up a building's floors detach from the structure's vertical support columns, per The Post.
- "Axial failure," which would mean columns suffered excessive stress from compression.

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## HCCA Webinar: Avoiding Disaster

### The Bottom Line

- There does not yet appear to be a singular smoking gun.
- A collection of various factors likely.
  - Heavy focus on Deferred Maintenance
  - Severe Concrete Spalling and Related Corrosion Damage
    - Failed Waterproofing



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### HCCA Webinar: Avoiding Disaster

- What is the likelihood that we could have a collapse here in Hawaii like the building collapse in Surfside, Florida?
- Thankfully, the engineering community advises us that a major event like the tragedy in Florida is quite rare and highly unlikely.
- However, repairs continually deferred into the future do increase risks – both economic and life safety.
- The regular and timely maintenance of condominium and other buildings is essential to maintaining a safe environment.

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### HCCA Webinar: Avoiding Disaster

- What is the likelihood that we could have a collapse here in Hawaii like the building collapse in Surfside, Florida?
- While a catastrophic disaster like the Champlain Towers tragedy is unlikely, smaller accidents like a railing coming loose or concrete spalling falling from a lanai, become increasingly likely and exponentially more expensive to fix the longer repairs are deferred into the future.

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### HCCA Webinar: Avoiding Disaster

- How does our environment effect the structural stability of concrete buildings?
- Hawaii's buildings and environment are similar to South Florida.
- Like Florida, our hot, humid and salty environment due to our proximity to the Pacific Ocean relentlessly attack our buildings.
- Also, like Florida, most of our buildings are aging.
- Aging buildings in a coastal environment often need repairs sooner and on a larger scale than most condominium owners generally expect.

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### HCCA Webinar: Avoiding Disaster

- What kinds of maintenance issues do concrete high-rise buildings in Hawaii face?
  - Waterproofing failures at lanais, parking structures and pool/rec decks.
  - Concrete spalling and similar damage at pool decks and recreation decks
  - Leaking swimming pools in need of repair
  - Dangerous concrete spalling on high rises; including structural damage to supporting columns and shear walls
  - Dangerously loose (or even missing) railings
  - Window sealant failures; Glass falling from antiquated windows
  - Waste and Water Piping Failures
  - Fire Safety Issues

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### HCCA Webinar: Avoiding Disaster

- Are there State or local laws that require structural inspection of high-rise buildings?
- NO. We do not have regular inspection or building maintenance requirements in Hawaii.
- In many other parts of the country - especially large cities with many high-rise buildings like Honolulu - building owners and condominium associations are required by law to inspect their buildings and other exterior surfaces every five to ten years to identify required repairs before they result in an accident.

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### HCCA Webinar: Avoiding Disaster

- Are there State or local laws that require structural inspection of high-rise buildings?
- Perhaps the best example of what is needed in Honolulu is what is done in New York City, another municipality with lots of residential high-rise communities. New York Local Law 11 requires buildings six stories or taller to have their facades inspected every five years by a construction professional, who then submits an inspection report to the local building department. Any hazards found are required to be repaired on a timely basis.
- NY Local law 11 emerged after a 1979 tragedy where a college student was killed when concrete masonry fell from a building.

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### HCCA Webinar: Avoiding Disaster

- Are there State or local laws that require structural inspection of high-rise buildings?
- A similar and more recent example is California Senate Bill 326. In August 2019, the California Governor signed SB326, a new statewide mandate adding a requirement for condominium associations and other multi-family properties to conduct regular inspection of balconies and other exterior structural elements. That law went into effect on January 1, 2020.
- Once again, SB 326 was driven by a tragic accident that claimed six lives and injured several others due to the failure of building components like lanais, balconies, and railings due to deterioration and corrosion.

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### HCCA Webinar: Avoiding Disaster

- Are there State or local laws that require structural inspection of high-rise buildings?
- As reported in the Honolulu Star Advertiser, after the deadly 2016 Ala Moana railing collapse, the Honolulu City Council considered two bills that would have required safety inspections every five years for thousands of residential and commercial buildings on Oahu. The measures stalled after receiving push-back from some city agencies and various organizations representing homeowners' associations.

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### HCCA Webinar: Avoiding Disaster

- You served as a board member, what types of issues did you have to deal with in serving as a board member dealing with repair and maintenance of these buildings?
- Just like in Florida, association boards here in Hawaii often know they need to make repairs, but because making repairs is so costly it is politically toxic, and thus, repairs are routinely deferred.
- Both as a board member and as a construction consultant, over the years I have had a front row seat witnessing association board after association board search for a mystical solution that won't cost much. When they don't find it, boards either quit, fire their engineers, construction consultants and other professionals as scapegoats, face a recall or kick the can down the road.

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## HCCA Webinar: Avoiding Disaster

- What is the one piece of advice you would give to ADAO's and their unit owners to prevent or minimize their exposure to a building collapse.
- Perhaps the greatest lesson to be learned from the Surfside, Florida tragedy is that if you think you can keep putting it off you shouldn't, and potentially, you can't.
- As Jane and I offered in our recent co-written article, our advice to condominium owners is stop recalling your association board for embarking upon unpopular repairs.
- Start listening to what the experts like construction consultants, engineers, attorneys, and your insurance agent are telling you.
- Fix it before it gets worse and costs you even more, or worse, someone gets hurt or killed.



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## Sue Savio President, Insurance Associates

- President and Owner of Insurance Associates Inc. since 1975.
- She is past President of the Hawaii Independent Insurance Agents Association and the Community Association Institute (CAI) and has served on their board in different capacities since 2000. <https://insuringhawaii.com/>



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**Collapse**  
Got Coverage?

Presented by:  
Surita Savio  
Insurance Associates Inc.

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**Master Policy – Insured Perils**

- Fire and lightning
- Smoke damage
- Vandalism
- Wind & Hurricane
- Hail
- Aircraft Damage
- Vehicle Damage
- Riot & Civil Commotion
- Theft
- Falling Objects
- **Building Collapse**

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**Peril of Collapse**

- **Causes of Loss – Special Form**
  - Unlike other “causes of loss” forms that list the covered perils, under the “Special” form, all losses are covered unless they are listed as an exclusion.
- Collapse is **not** excluded under the Special Form.

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## But...

### D. ADDITIONAL COVERAGE – COLLAPSE

We will pay for loss or damage caused by or resulting from risks of direct physical loss involving collapse of a building or any part of a building caused only by one or more of the following:

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## Collapse Covered If:

1. The "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Part;
2. Hidden decay;
3. Hidden insect or vermin damage;
4. Weight of people or personal property;
5. Weight of rain that collects on a roof;
6. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

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## Collapse Goes On To Say...

- Collapse does **not** include settling, cracking, shrinkage, bulging or expansion.

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## HO6 Policy – Collapse Covered?

- Varies by company
- On several HO6 policies collapse is **not** a covered peril under Section 1 (A&C) but is an *Additional Coverage*.

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## HO6 Policy - Collapse

### 8. Collapse

- The coverage provided under this Additional Coverage – Collapse applies only to an abrupt collapse.
- For the purpose of this Additional Coverage – Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.
- This Additional Coverage – Collapse does not apply to:
  - A building or any part of a building that is in danger of falling down or caving in;
  - A part of a building that is standing, even if it has separated from another part of the building; or
  - A building or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending or warping, or any other structural damage or expansion.

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## HO6 Policy... Continued

- We insure for direct physical loss to covered property involving abrupt collapse of a building or any part of a building if such collapse was caused by one or more of the following:
  - The Perils Insured Against named under Coverage C;
  - Decay, of a building or any part of a building, that is hidden from view, unless the presence of such decay is known to an "insured" prior to collapse;
  - Insect or vermin damage, to a building or any part of a building, that is hidden from view, unless the presence of such damage is known to an "insured" prior to collapse;
  - Weight of contents, equipment, animals or people;
  - Weight of rain which collects on a roof; or
  - Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.
- Loss to an awning, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under d.(2) through (6) above, unless the loss is a direct result of the collapse of a building or any part of a building.
- This coverage does not increase the limit of liability that applies to the damaged covered property.

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## Conclusion

- Maintain your building regardless of cost.
- Don't get on the Board if you can't make hard a decision for the good of all owners.
- Do **not** rely on insurance to bail you out.

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## John M. Cummings III

City and County of Honolulu

Department of Emergency  
Management (DEM)

Public Information and  
Education Officer

(808) 723-8960

[jcummings@honolulu.gov](mailto:jcumings@honolulu.gov)



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**DEM - Our Daily Mission**  **CITY AND COUNTY OF HONOLULU**

Our mission is to develop, prepare for and assist in the implementation of emergency management plans and programs to protect and promote the public health, safety and welfare of the City during times of disaster or emergency.

For more information on disaster preparedness go to:

  **Department of Emergency Management**  
[www.honolulu.gov/dem](http://www.honolulu.gov/dem)

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**Emergency Management Coordination**

**Primary Mission Support - Structural Collapse**

- **Activate and staff the City Emergency Operations Center (EOC) – Frank F Fasi Municipal Building**
- **Provide**
  - Support to HFD Incident Command (IC) and other on scene responders
  - Issue Emergency Public Information (EPI) and Guidance in conjunction with HFD IC
  - Evacuation and Sheltering
- **Coordinate**
  - Information Gathering
  - Strategy Development
  - Operational Decisions
- **Process Requests for Assistance (RFAs)**
  - City owned resources
  - Local Non-Government partners
  - State-owned resources via HI-EMA
  - Federal-owned resources via HI-EMA

 **CITY AND COUNTY OF HONOLULU**



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## Honolulu Fire Department & Emergency Medical Services City and County of Honolulu

- Captain Blake Takahashi – Honolulu Fire Department
- Captain Richard Yost – Honolulu Fire Department
- Arnold Paragoso – Emergency Medical Services (EMS), Assistant Chief of Operations



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

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### Blake Takahashi

- Honolulu Fire Department
- Fire Captain
- Rescue 1, 1<sup>st</sup> Platoon

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### Hfd rescue's operational capabilities (Rescue 1 & Rescue 2)

- Helicopter Rescue Ops
- Public Safety Dive Ops
- Rescue Boat Ops
- Trench Rescue
- Confined Space Rescue
- High Angle Rope Rescue
- Structural Collapse Rescue

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## What is Structural collapse rescue?

- Lifting/Moving Heavy Objects
- Breaking & Breaching
- Emergency Shoring
- Emergency Ladder Systems
- Heavy Rigging
  - HFD's Program is inline with FEMA USAR Capabilities



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## Structural collapse initial HFD response package

- 1 ENGINE OR AERIAL APPARATUS (5 PERSONNEL)
- 2 RESCUE COMPANIES (10 PERSONNEL)
- 2 HAZMAT COMPANIES (10 PERSONNEL)
- 1 BATTALION CHIEF
- ANY ADDITIONAL RESOURCES REQUESTED

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## Incident command system at a structural collapse

- During the initial phase, HFD would be the Lead City Agency and take Command of the incident.
- A HFD Incident Management Team (IMT) would be established for a large-scale event (i.e. Surfside, FL) and be scaled up to a C&C of Honolulu IMT.
- Only if an event exceeds the county's ability to respond adequately (or is expected to, such as a large hurricane), then a request will be made to the Governor for the Hawai'i Emergency Management Agency to step in with coordination of needed resources and public messaging. (H.R. 127)

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## What would we want to know if it happens here?

- Preplans, Floor Layouts, & Inspections (Internal HFD documentation)
- Building Plans (Dept. of Planning and Permitting)
- Occupant List (Accountability, Disabled/Assistance)

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## Conclusion

- In the event of a large-scale structural collapse, the Honolulu Fire Department has Rescue personnel trained to the same standards as those deployed to the Surfside, Florida collapse.
- Due to our geographic location, we will need to request outside resources/support immediately.
- Vital information that can be passed on (i.e. past inspections, occupant lists, etc.) will help to focus our search and rescue efforts.

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## Honolulu Emergency Medical Services

Mass Casualty Response



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## Honolulu EMS

### Medical Command

- 911 call placed by residents/witnesses
- EMS deploys resources
- Incident command will be set-up
- Triage (treatment, rehab, transport)
- Deployment of ambulances and personnel based on the number of viable patients
- Do not transport the deceased
- Back-up services (AMR, Federal Fire are limited but can be called to assist)



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State of Hawaii – Hawaii  
Emergency Management Agency

<http://dod.hawaii.gov/hjema/>

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August 2019

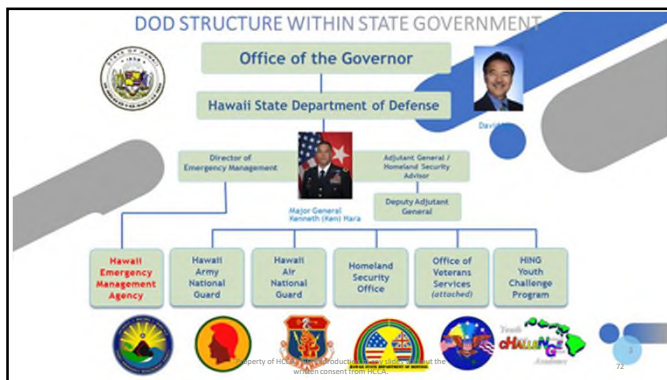
## OVERVIEW OF HAWAII REVISED STATUTES CHAPTER 127A

Hawaii Revised Statutes (HRS) Chapter 127A creates state and county emergency management agencies and defines the responsibilities and authorities of the Governor and Mayor related to emergency and disaster preparedness and response. Select duties and powers conferred by the statute are listed below. The full chapter is available here: [https://www.capitol.hawaii.gov/statutes/Vol03\\_Ch0127-0000/HRS0127A/](https://www.capitol.hawaii.gov/statutes/Vol03_Ch0127-0000/HRS0127A/).

HI-EMA Responsibilities	General Emergency Management Powers (Mayor and Governor)	Gubernatorial Powers with an Emergency Proclamation
<ul style="list-style-type: none"> <li>Perform emergency management functions within the state.</li> <li>Maintain a state comprehensive emergency management plan and standards for county and state agency plans.</li> <li>Assign responsibilities to state agencies for emergency support functions.</li> <li>Coordinate state response and recovery activities and all resource support to counties.</li> <li>Maintain a statewide system for detection, alert and warning of emergency conditions, including operation of a State Warning Point and maintenance of the Statewide Outdoor Siren Warning System.</li> <li>Institute public preparedness programs.</li> </ul>	<ul style="list-style-type: none"> <li>Declare an emergency via a mayoral or gubernatorial proclamation.</li> <li>Identify emergency workers required to report for duty.</li> <li>Develop mutual aid agreements.</li> <li>Lease or lend county/state property for emergency purposes.</li> <li>Re-allocate county/state public property to be utilized for emergency purposes.</li> <li>Direct non-compulsory evacuations.</li> <li>Establish special accounting forms and practices to expedite access to financial resources.</li> <li>Fix or revise hours of government business.</li> </ul>	<ul style="list-style-type: none"> <li>Apply for federal assistance by requesting a Presidential Disaster Declaration.</li> <li>Suspend any law that impedes or is detrimental to the expeditious and efficient execution of emergency functions.</li> <li>Assume direct operational control for events deemed beyond capabilities of local government.</li> <li>Suspend state holidays.</li> <li>Assure continuity of service by critical infrastructure facilities, publicly and privately owned, by regulating or taking over operations.</li> <li>Shut off or suspend utility services.</li> <li>Take action to prevent price gouging and hoarding of supplies, commodities and services.</li> </ul>

Hawaii Emergency Management Agency | Overview of Hawaii Revised Statutes Chapter 127A | [https://www.capitol.hawaii.gov/statutes/Vol03\\_Ch0127-0000/HRS0127A/](https://www.capitol.hawaii.gov/statutes/Vol03_Ch0127-0000/HRS0127A/)

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## What is HI-EMA and What Do We Do?

- Located in Diamond Head Crater, we serve as the coordinating agency between the four county emergency management agencies – Hawaii'i County Civil Defense, Maui Emergency Management Agency, City and County of Honolulu, and Kaua'i Emergency Management Agency – as well as State Warning Point, state and federal agencies.

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## State Warning Point

HI-EMA 24/7 State Warning Point function monitors incidents here in the State and across the Pacific for potential impacts. If a county needs help, they will be the first to be notified and start our process and plans to support the county.

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## The Four Mission Areas That Guide Emergency Management

- Preparedness
- Mitigation
- Response
- Recovery

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## What types of emergencies do we prepare for?

- All Hazards!
- Hurricanes
- Tsunamis
- Earthquakes
- Floods
- Volcanic Eruptions
- Wildfires
- Drought
- Human-caused

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## HR 127

All emergency response throughout the state starts at the county levels, as dictated by state law H.R. 127. *Only* if an event exceeds the county ability to respond adequately (or is expected to, such as a large hurricane), then a request will be made to the Governor for the Hawai'i Emergency Management Agency to step in with coordination of needed resources and public messaging

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## Emergency Response - RECAP

1. Emergency Incident
2. 911 call is made
3. 1<sup>st</sup> responders are HFD, EMS & HFD (County Agencies).
4. 2<sup>nd</sup> responders (State) are called in at the request of 1<sup>st</sup> responders (if beyond County capacity to handle)
5. Request for Assistance (RFA) is made to the state Hi-EMA via WebEOC.
6. Discussion on how best to satisfy the needs and other state departments, agencies or partners to fulfil the needs requested or required.

NOTE: Search and Rescue is HFD

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Mahalo for joining us in  
the webinar and to our  
valued Emergency  
Response Agencies!



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Educating Condo & Community Association Home owners since 1975

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