

## PRESIDENT'S MESSAGE



**Sue Savio**

As we near the conclusion of my term as President of CAI Hawaii, I am happy to turn over the position to Kapono Kiakona, who will take office at our annual membership meeting on November 1st. We will be saying aloha to two term board member, Dave Talbert and welcoming Terry Schulze in the Community Association Volunteer category on our Board. The board is looking forward to another successful year as the Hawaii Chapter celebrates our 35th anniversary.

This is my last issue of the newsletter and I'm sure you'll notice that it's full of educational articles for all our different readers. Elaine Panlilio answers the common questions about whether it's the Association or the unit owner that's responsible for various damages. Alan Takumi answers the question about why fees increase and also gives some tips for saving water (this article was inadvertently left out of an earlier issue). Ken Kasdan's article discusses manufacture warranties in buildings that are older than 10 years.

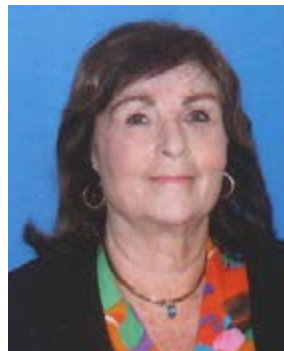
Our last seminar of the year is on October 10th – Almost Free Legal Advice. Come have lunch and for a fee of \$65 receive seminar materials and take advantage of our expert panel of attorneys led by Richard Ekimoto. CAI is also continuing our annual pass program for 2020 – take advantage of the discounted fees for our seminars and remember that the pass is transferable. We had 185 members signed up for this program. More information on the pass is included in this issue.

I learned a long time ago that no one runs an organization without the help of many. From small kid time I remember my Grandfather saying, "Many hands make light work". I would like to thank the many hands of Jonathan Billings, Kanani Kapopua, and Carol Rosenberg for their contributions each month in reporting financials, preparing meeting agenda and minutes, keeping the board informed about upcoming seminars and feedback on completed seminars. And the glue that holds us together our Chapter Director Lindsay Green. Every organization needs members and to all of you, I say thank you for participating in CAI Hawaii.

## CONGRATULATIONS TO 2019 ELECTED DIRECTORS

CAI concluded its annual Board Member election for the 2020-2022 term in September. Sue Savio (Business Partner) and Jonathan Billings (Community Association Manager) were re-elected and new Board Member, Terry Schulze was elected (Community Association Volunteer category).

Terry Schulze has served for more than ten years on the Board of Directors of the 428-unit Mott-Smith Laniloa, most of this time as an officer. She is currently Treasurer and chairs the Budget and Finance, Green, and Communications committees. Terry regularly attends CAI Hawaii Chapter seminars and Hawaii Council of Community As-



**Terry Schulze**

sociations (HCCA) meetings to network with other condominium owners and directors and to keep apprised of available resources, condo law changes, and issues pertinent to condominium management. She has also contributed to the CAI Hawaii Chapter newsletter. Terry is a small business owner for more than thirty years and holds degrees in biology and journalism from the University of Hawaii.



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**Lillian McCarthy**  
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The Hawaii Community Associations newsletter is published for association leaders and other related professionals of CAI. Authors are encouraged to submit articles for publishing consideration.

This publication is designed to provide accurate and authoritative information regarding the subject matter covered. It is issued with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services.

CAI Hawaii Community Associations newsletter provides an opportunity for information and/or comment.

Articles do not necessarily reflect the viewpoint of the Chapter. The reader should not act on information contained herein without seeking more specific professional advice.



# Official Notice 2019 Annual Meeting

## Awards & Prizes



**Friday, November 1, 2019**  
Registration: 5:30 - 6:00 p.m.  
No Host Bar opens at 5:30 p.m.  
Meeting and Awards presented promptly at 6:00 p.m.  
Japanese Cultural Center  
2454 South Beretania  
Validated Parking - \$8.00 (credit cards only)



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## HAWAIIAN PROPERTIES ANNOUNCES THE PROMOTION OF CHRISTY HINDS TO ASSISTANT VICE PRESIDENT, KONA BRANCH

Christy has 12 years in the association management industry. She has earned her PCAM® (Professional Community Association Manager) designation and is also a licensed Realtor. Christy has managed a varied portfolio of properties including developer accounts, townhome, community associations, traditional condominium associations and commercial complexes. She is highly organized, results oriented, and a problem solver. Prior to entering the association management industry, Christy owned two small businesses that provided her with an extensive background in business management, accounting and human resources.

“Christy’s promotion to Assistant Vice President is well-deserved as Christy plays an integral role in our Kona operations and sets the bar for exemplary customer service standards,” said Kathy Cooley, Vice President of Hawaiian Properties' Kona office. “Christy is well-respected within the industry and a highly valued member of our Hawaiian Properties team. She will continue to help us expand our portfolio and deliver excellent service to our clients.”

## 2019 FREE ANNUAL SEMINAR FOR BOARD OF DIRECTORS

Hawaiian Properties held its annual seminar for Board of Directors on August 9 at the Ala Moana Hotel. The seminar included a Legislative Update Forum with John Morris, Ekimoto & Morris, Christian Porter, Porter McGuire Kiakona & Chow, LLP, and Carole Richelieu, Senior Condominium Specialist, Real Estate Branch, Department of Commerce and Consumer Affairs.

Julie Adamen, Adamen, Inc, was the featured guest speaker who provided a dynamic presentation on “The Essential Skills of an Effective Board of Directors.” The event had 22 vendor sponsors situated throughout the room who gave away generous prizes, such as an iPad, Hawaiian Airlines gift certificate, Bluetooth speaker, gift cards and cash, and helped to educate the board members.

The attendees were treated to a delicious buffet lunch and were given a special gift.



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## SOLVING THE "P" PROBLEM – PETS, PROSTITUTES, PROBLEM BOARDS AND OWNERS

CAI Hawaii held a seminar at the Japanese Cultural Center on September 12 with a popular topic with over 341 registrations consisting of board members, community association managers, attorneys and vendors.

Melanie Oyama represented CAI Hawaii and welcomed all participants.

Moderator Milton Motooka introduced the speakers:

Albert "Spike" Denis, CPP, President of the Pacific Security Group covered dealing with criminal elements and the homeless. He spoke on ways to keep homeless from trespassing, how to approach, physical security measures, use of crime prevention through environmental design, and provided contact information on many agencies who may help. Also covered issues related to prostitution and meth labs in associations.

Marcus Kawatachi, Deputy Executive Director, Hawaii Civil Rights Commission explained the mission of the Hawaii Civil Rights Commission,



complaint process, defined disability under Hawaii state law, and reasonable accommodation. He also covered what are assistant animals.

Paul A. Ireland Koftinow, Esq., associate with Anderson, Lahne & Fujisaki LLP spoke on how to deal with rogue board members and problems in the community. Explained what board members can/should do to educate all

members. He also covered civil lawsuits and the process of Temporary Restraining Order (TRO).

Panel members answered audience questions at the end of the presentation and volunteered to remain behind to answer any additional questions after the seminar concluded.

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# Hawaiiana Finishes Strong in the Third Quarter of 2019

Hawaiiana concluded the third quarter of 2019 with a strong finish, showing continued growth and strong client retention.

At Hawaiiana Management Company, we are grateful to have one of the best jobs in the world – serving our association management clients! 2019 continues to be a year of growth – not just in “numbers,” but in value added for our clients. Hawaiiana reached some important milestones in 2019 that we would like to share:

- Since the first of the year, Hawaiiana has added 46 new clients on four islands, translating to over 6,100 homes. Included are 17 new developments, and five associations returning to Hawaiiana from other management companies.
- We have welcomed ten new management executives with especially impressive resumes and prior experience.
- On August 1, we opened our second Maui office in Ka-

hana to serve our West Maui clients! This is especially significant, considering over 30 of our “Valley Isle” clients are on the west side.

- Educational seminars for both board members and residential managers were presented on four islands, including three board seminars on three islands! Pertinent topics presented by top industry experts included insurance, legal matters, communication skills and more.
- We have added six knowledgeable Accounting Specialists to personally assist clients who have questions about their account. Our Accounting Specialists field approximately 360 calls per week!
- A new Hawaiiana website and app are coming during the fourth quarter.

We know that success is not measured by mere statistics, but by the value we are able to provide to those we serve. Hawaiiana is grateful for the opportunity to serve



Hawaiiana welcomes new client West Loch Fairways Association, a community of 720 homes in Ewa Beach.



Royal Kahana, one of Hawaiiana’s most recent clients, is located on Maui’s west side. Hawaiiana recently opened a West Maui office to serve over 30 associations in the area.

## New Hawaiiana Clients Include:

Akamai Gardens  
Alii Cluster Park  
Candlewood  
Estate Villas at Hualalai, Ph. II  
Fairway Villas at Waikoloa  
Beach Resort  
Haiku Town Acres  
Hale Kai  
Hale Kamaole  
Hale Kona Kai  
Hale Makalei\*  
Hapuna Beach Residence  
Hapuna Estates at Mauna Lani  
Hauiki Ranch  
Ho’ole’a Terrace at Kehalani\*  
Ilima at Ho’opili  
Kaala Highlands  
Kaanapali Royal  
Kahuku Villas  
Kai Malu at Wailea  
Kainani Villas  
Kauai Beach Resort Master Assn.  
Kaulu Villas  
Kawainui Hale

Ke Kilohana  
Kihei Garden Estates  
Kihei Villages\*  
Kohina at Ho’opili  
Kona Reef  
Maalaea Kai  
Maalaea Mermaid  
Mauna Kea Fairways  
Oceanside Center  
Palehua Hale  
Royal Kahana  
SEABridge V  
The Ridge at Wailea HOA  
The Spinnaker  
The Town House  
Victoria Place  
Vintage at Kaanapali\*  
Waikoloa Beach Resort  
Waikoloa Colony Villas\*  
Waikoloa Hills Condominium  
West Kuiaha Meadows  
West Loch Fairways Assn.

\*Returning Hawaiiana Client

742 associations in Hawaii, translating to over 121,000 residences – all with a stellar client retention rate of 98.5%. As always, all of Hawaiiana’s employees are in Hawaii, all banking takes place in Hawaii, and association management is our only business. Our

continuing mission is to serve our clients!

For more information on Hawaiiana’s award-winning services, please contact: Mele Heresa, CCIM®, CPM® at meleh@hmcmtg.com or (808) 593-6827.



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## COMMUNITY ASSOCIATION MANAGER'S COUNCIL - PROMOTING RESOURCES & DESIGNATIONS

The Community Association Manager's Council has been discussing ways to improve the value propositions to management companies and managers and has recommended a number of changes for CAI's consideration. Those changes include easier access to educational material, local chapter linkage, reducing cost points for management companies, broadening opportunities for earning a PCAM designation, and a high-rise designation. CAI's Staff is working to implement those recommendations and the Board of Trustees must ultimately approve them, but many of these interact with several existing programs and take time to assess their impact across several operational policies.

Much of this will eventually appear in Common Ground, Community Manager, and your Chapter's newsletters. The Manager's Council heard your thoughts on including a PCAM designation for members performing management company functions in administration, covenant enforcement, financial reporting, and life-style services and recommended that PCAM designations be available to members performing these functions for communities and management companies. It recommended that these be subject to the following procedures:

Individuals seeking a PCAM designation must be members of CAI and eligible for the AMS designation. When completing the AMS application, members must be performing duties stated in at least two of the 6 categories required of managers. When applying for the PCAM

designation the member must be performing duties stated in at least 4 of the 6 categories and successfully passed the PMDP courses and case study. Management Company owners felt these would help attract and keep quality personnel and improve client retention.

Adjacent to this change is a recommendation for a High-Rise Community Manager designation and for Staff to create a curriculum to educate CAI members on all aspects relating to high rise management. The path to a designation will include experience serving in a management capacity for a high rise community, general parameters for minimum building height, budget, number of units, and amenities, expanded M-201 (Facilities Management) and M-205 (Risk Management) classes, and offer a variety of educational opportunities all while simultaneously working toward a PCAM and High-Rise designation.

Ultimately, the actual path to implementing these recommendations may change somewhat, but they are relevant to our changing profession and the reason we ask for your ideas and thoughts. Please keep them coming!

**About the Author:** *Jim Dodson CMCA<sup>®</sup>, AMS<sup>™</sup>, PCAM<sup>®</sup>, LSM is CAI's President Elect for 2020 and also serves on CAI Hawaii's Board of Directors. He has also served CAI on the Board of Trustees, the APCM Board, and as chair of the Large-Scale Managers Education Committee and CAI Hawaii's Designation Committee*



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## ASSOCIA HAWAII CELEBRATES WINNING AND GIVING BACK!



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- Associa Hawaii nominated for Hawaii's Best Workplace, Large Company 2019 Second Year in a Row
- Associa Home Office - Industry's largest Community Management Company
- Great Place to Work Certification 2019 - Third Year in a Row
- President Pauli Wong, PCAM, RS has been nominated for the 2019 Pacific Business News Business Leadership Hawaii Awards & Human Resources Director Bridgette Devore, aPHR has been nominated for the 2019 Pacific Business News Workplace Champion.



**Pauli Wong, President, and Bridgette DeVore, Director of Human Resources, at Associa Hawaii**

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## PRODUCT MANUFACTURER WARRANTY CLAIMS IN BUILDINGS OVER TEN YEARS OLD

by Kenneth S. Kasdan\* and Brittany L. Grunau\*,

In buildings over ten years old, issues such as leaks at windows or plumbing can be one of largest burdens an association or property may face, particularly if no recovery is available against the builder because the statute of limitations has run. The good news is that claims against product manufacturers for components such as these may still be available.

Product manufacturers' warranties may have lengthy warranty periods in which an association may assert a claim. These periods are often beyond the "typical" construction defect statutes of limitation, attempts

by a builder to limit claims to one year, or the statute of repose.

### CONSTRUCTION DEFECT CLAIMS STATUTES OF LIMITATIONS AND STATUTE OF REPOSE

A statute of repose serves as the absolute deadline by which a person or entity may file a claim. A statute of limitations is usually triggered by the occurrence of an event (e.g. discovery of the problem) and may be extended in certain circumstances. In contrast, a statute of repose serves as a firm deadline after which all claims are barred.

In Hawaii, generally speaking, the statute of limitations for breach of con-

tract claims is six years from discovery of the breach. See HRS § 657-1(1). These claims require analysis of the building contract documents to determine whether a violation of the terms has occurred. Professional negligence claims may be limited to two years.

HRS § 657-8 prescribes a statute of repose that states no construction defect action based upon deficiency or neglect may be brought more than ten years after the date of completion of the improvement. However, the statutes preclude a presumption that the completion is measured from publication of Notice of Completion in a newspaper of general circulation

*continued on page 10*

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# BYU Cannon Activities Center

2017 RCAH Commercial Steep Slope Tile Roof Award Winner



"We contracted with Commercial Roofing and Waterproofing to remove the old and install new concrete roofing tile system on the Cannon Activities Center here on our campus. This building is one of our largest buildings on campus with a roof that is very high. The biggest challenge and concern for this project was the safety of our students, faculty, staff and visitors. This building was in use the entire time of the re-roofing project, with heavy pedestrian traffic. Because of the excellent professionalism and the safety awareness of the staff and employees of CRW, we had no incidents with any of our patrons. It has been a pleasure to work with CRW and we would highly recommend them to anyone for future roofing projects."

Billy Casey Jr., Design & Construction Manager  
BYU Hawaii Facilities Management, (Retired)

## ABOUT THE PROJECT

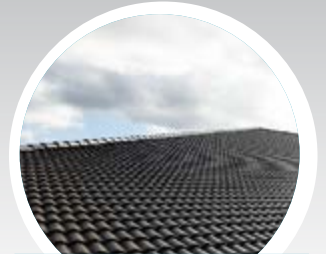
BYU's Cannon Activities Center was the largest tile re-roof on campus. As the sports auditorium, the interior is almost as large as a football field with rafters 240 feet in length. Due to the size of this project, special methods were implemented to get the job done safely and efficiently. A total of 730 squares of concrete tile roofing were removed and replaced.

## PAST PROJECTS FOR STEEP SLOPE TILE ROOFING

- Punahou School
- Eaton Square
- Hilton Waikiki
- Embassy Suites
- Sheraton Poipu
- Fairmont Kea Lani
- City Hall
- CSWo Kapolei
- Kalapawai Café
- Kamehameha Schools



INTERIOR



EXTERIOR



Roofing



Waterproofing



Solar PV



Raint gutters  
& Downspouts



Maintenance  
Repairs



ON THE CUTTING EDGE

LIC # BC - 18179

## WARRANTY CLAIMS

*continued from page 8*

and filing of an affidavit as to such with the court. One of the pitfalls here is that our courts do not maintain a readily available ledger to identify such filing. There is no web-based index which can be searched.

All of the foregoing is just to place the concept of the limitations period in context and to allow focus on possibly how to assert claims long after the ten years has passed.

There may be circumstances where a statute of limitations may not have run, but the statute of repose bars the claim. For example, if an AOA discovers the builder breached its contract nine years after the date of completion of the construction, the AOA only has one year to file the claim, rather than six, due to the ten-year statute of repose cut-off.

### **BREACH OF EXPRESS WARRANTY CLAIMS MAY EXIST OUTSIDE THE TEN-YEAR STATE OF REPOSE**

Warranty claims may fall outside the parameters of the statute of repose as they do not concern the act of constructing the improvement, but rather act as a guarantee of the product by the manufacturer itself. Frequently, manufactured products such as roofs, plumbing fixtures, and windows contain express warranties that extend beyond ten years. The statute of limitations for breach of express war-

ranty claims against a manufacturer is four years after discovery of the claim. Thus, if an issue with a roofing product is discovered fifteen years after installation, the claim against the builder/subcontractor may be barred, however there may still be a claim against the roofing material manufacturer if the manufacturer's warranty prescribes a period over fifteen years.

### **PRODUCT FAILURE AND WARRANTY EXAMPLES**

Below are some examples of product failures that may occur outside of the ten-year statute of repose along with examples of manufacturer warranty durations and transferability terms. Not all warranties are transferable to a subsequent owner and therefore it is important to speak with an attorney to determine if the manufacturer's warranty covers your claim.

#### **Siding Products**

Defects that have been identified to exist on certain siding products such as flaking, discoloration, cracking, warping, and shrinking.

Certain siding manufacturers warrant certain products including for thirty years from the date of purchase of the product. They also warrant that the product is free from defects in material and workmanship. This warranty only extends to the first retail purchaser, the first owner of the struc-



**Siding cracking**

ture, and the first transferee. Thus, this warranty is not applicable to subsequent purchasers of the property.

#### **Roofing Products**

- 1) Asphalt Shingle Roof  
Common signs of asphalt shingle roof defects attributable to the manufacturer include cracking, deformation, curling, and blistering.



**Asphalt shingle cracking**

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**Asphalt shingle deformation**

Asphalt shingle manufacturers frequently warrant products against manufacturing defects for thirty years. The warranties also frequently may be transferred from the original property owner to a subsequent purchaser one time.

2) Single Ply Membrane Roof (TPO or EPDM)

Common signs of single fly membrane roof defects attributable to the manufacturer include shrinking, cracking, and UV failure.

Certain manufacturers of TPO roofing systems provides warranties that range from twenty-five to thirty years on many of its products. TPO warranties widely vary as to the transferability to subsequent owners and therefore must be analyzed carefully by an attorney.

3) Built Up Roof

Common signs of asphalt shingle roof defects attributable to the manufacturer include premature wear, deterioration, cracking, blistering, bubbling, and separation.

Many built up roofing manufacturers provide a material defects and workmanship error warranty of a



**Built Up Roof bubbling and deterioration**

maximum of twenty years on membrane products which are transferable to the next owner.

**Plumbing Products**

1) Yellow Brass Dezincification/Corrosion



**PEX fitting corrosion**

Indicators of dezincification or corrosion of yellow brass includes white or green meringue and the brass may take on a reddish tint. This is a sign that the fitting has been weakened and the fitting may be obstructed.

PEX fittings warranties widely vary and can range from ten years upwards of fifty years from installation and may be transferrable to subsequent owners.

2) Valve and Fitting Corrosion

The most obvious indicator of corrosion of a valve is rust, red or green tint to the metal, and white and green meringue. Valves are found in boilers, fire protection systems, sinks, toilets, and other plumbing systems.

*continued on page 12*



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# WARRANTY CLAIMS

continued from page 11



**Waterway fitting corrosion**

Plumbing valve and fitting warranties widely vary and can range from one year to upwards of fifty years from installation and may be transferable to subsequent owners. An experienced attorney can provide an association with analysis of whether an association's claim is viable under the applicable product warranty.



**Fitting corrosion**



**Angle stop corrosion**

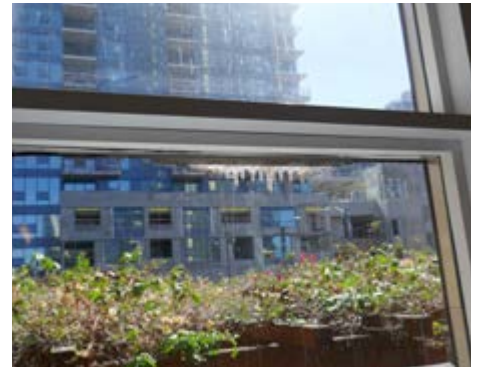
## Windows

- 1) Window failures

Typical signs of window failure include corrosion of the framing, fogging, sealant dripping, and condensation within the panes of the window unit.



**Low E coating failure**



**Sealant drip**

Some manufacturers provide a lifetime warranty on many of their products. One warranty provides a lifetime warranty on defective materials and workmanship to the original owner of the property. However, if the property is sold within ten years of the date the original purchaser bought the property, the warranty only extends coverage to the subsequent purchasers until the ten-year period. Thus, this is only a ten-year warranty for subsequent purchasers and is a good example of why property owners must be diligent in enforcing the terms of their warranties.

## Composite Decking

- 1) Composite deck failure typically exhibits flaking, mold, and discoloration.

Given the potential for viable claims outside of the ten-year statute of repose, it is vital for a property owner or AOA to contact an attorney when signs of a product failure are present so that the matter is handled



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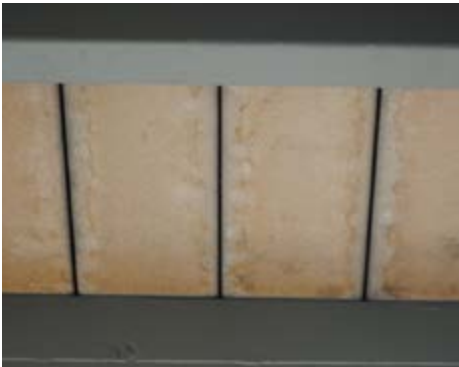
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**Composite decking discoloration**

with the appropriate diligence to protect the claim. An experienced attorney will be able to assess the terms of the warranty as to whether it is applicable to the property owner or AOAO and assess whether the defect is covered under the warranty. Further, an attorney will hire the specialized experts who frequently deal with the specific product to determine if it is a manufacturer defect or an installation issue.

\*Admitted in Hawaii, Arizona, California, and New Mexico

**About the author:**  
Kenneth Kasdan is a senior partner at Kasdan Lippsmith, LLC.



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# TIPS FOR SAVING WATER

by Alan Takumi, CMCA®, AMS®, PCAM®

Water conservation is an important issue for the association and owners—and not just because we want to be environmentally responsible. An equally important reason is that we want to keep assessments/costs as low as possible. Here's how you can help:

## KITCHEN AID

Large appliances—washing machines and dishwashers—consume the most water, so they are important places to start any water-conservation efforts.

Set the water level on your washing machine to match the size of your load. Try to avoid doing frequent small loads; whenever possible, run the machine only when you have a full load.

You don't need to rinse dishes before putting them in the dishwasher! No, really. Hand rinsing dishes under the faucet uses 15-18 gallons of water per load. If your dishwasher has a pre-rinse cycle, try using it instead of hand rinsing. If a dish or two isn't completely clean after the dishwasher cycle, finish the job by hand. It's much more efficient to handle the few dirty dishes after the wash cycle than to rinse all dishes prior to running the dishwasher.

Like the washing machine, only run the dishwasher when it's full. If you have only a few dishes, wash them by hand in a sink or basin—not under a running faucet. Use a second basin or dishpan for rinsing, or spray rinse all the soapy dishes at once.

You can also save on electrical costs by turning off the heat dry function of the dishwasher and air dry your dishes. I always open my dishwasher after the rinse cycle so my dishes can air dry while it's still hot, only takes a few hours.

## SPLISH-SPLASH—CONSERVING IN THE BATH

After these major appliances, the bathroom offers the next biggest opportunity to save water.

Make sure your toilets are all working efficiently. According to the American Water Works Association, the average American home loses 14 percent of all water used to leaks. (And, remember, the toilet is not a waste basket.)

If you have an old toilet, consider changing it to the newer low-flow models that are currently on the market. Old model toilets used up to 7 gallons per flush while the new models only use 1.6 gallons per flush.

Keep your showers as brief as possible or turn the water off while shaving or scrubbing in the stall. Consider installing water-saver showerheads and faucets.

When taking a bath, close the drain while the water warms up then adjust the temperature. Monitor the tub as it fills, and turn the water off at the half-way mark.

## RUNNING HOT AND COLD

There's nothing as refreshing as a cold drink of water, but don't let the faucet run to get it. Chill a container of water in the refrigerator instead.

Avoid running hot tap water over frozen food to defrost it; put it in the refrigerator the night before or if it's a large item, two nights before. Not only will this save water, it's safer by reducing the opportunities for food poisoning.

Rethink any tasks you usually perform under running water—like washing vegetables or brushing your teeth. (A gallon of water a minute flows through a tap that's only half open.) Use a dishpan or bowl of water instead of letting the tap run. Then pour the water from the bowl on your house plants.

## "USED" WATER

Before pouring that half-filled glass of water down the sink, ask yourself where it could be put to good use? How about pouring it in the dog's bowl? And the condensate from the dehumidifier is suitable for watering plants. Other sources of "used" water are suitable for reuse—it just takes a little imagination and a change in routine.

Water conservation begins with each of us. If each resident makes a few simple adjustments in household routine, the association and owner can conserve thousands of gallons of water and save thousands of dollars each year.

[Some of the information for this article came from Community Associations Institute.]

**About the Author:** Alan Takumi is on the Community Associations Institute (CAI) national faculty and teaches five CAI classes.



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# Who Is Covering What? Coordinating Property Insurance Coverage Between The Association And The Unit

By Elaine Panlilio, CRM, CIC, CISR, Atlas Insurance Agency

One of the most common disputes in condominium living arise from determining whether the association or the unit owner would be responsible for making certain repairs.

In a condominium, all unit owners share ownership of the common elements. There are some that are categorized as limited common elements which are for the exclusive use of one or more but fewer than all of the units. While some are categorized as being owned exclusively by a unit owner. So with multiple owners involved, who is responsible and who is covering what?

The answer to this will always lead us back to the Condominium Association's Declarations, Bylaws and Rules because these governing documents define and list what the association is responsible for and what the individual unit owners are responsible for.

Most condominium declarations or bylaws take the position that common elements are the association's responsibility to insure, maintain, repair and replace; while personal property of the unit owners as well as any renovations or additions for a specific unit will be the responsibility of their respective owners.

But what about limited common elements, whose responsibility is it to insure, maintain, repair and replace the limited common elements? Once again, the answers to these will be in the association's governing documents. The responsibility to insure, maintain, repair and replace a limited common element is usually the association's responsibility with the exception of when the declaration shifts this responsibility to the unit owner.

## ASSOCIATION'S MASTER INSURANCE POLICY:

### Building

The association's policy covers the buildings and the common elements that typically include exterior and interior walls, floors, ceilings, including elevators and other building

equipment as defined by the association's governing documents.

### Fixtures

The association's governing documents will also define and list the fixtures inside the units that it is responsible for. These can include but are not limited to refrigerators, cooking ranges, built-in appliances, built-in cabinets and countertops or any other fixture as originally installed in a unit. The association's insurance policy

will cover the fixtures as originally installed and will repair or replace with like kind or quality as that of the originally installed fixture.

## UNIT OWNER'S INSURANCE POLICY:

### Building Additions and Alterations

For condominiums, under the Hawaii Revised Statutes §514B – 143(b), unless otherwise provided in the dec-

*continued on page 16*



### 2020 Annual Pass Seminars

**Option 1: provides the follow six seminars:**

- February 6\* – Do's and Don'ts in Design Review**—issues related to the design review process; Anne Anderson, Seminar Chair
- March 12\* – Disaster Preparedness**—issues that Boards need to plan for when disasters occur; Bernie Briones and Pauli Wong, Seminar Co-Chairs
- April 16\* – Condo Wars: Mediation, Arbitration, & litigation**—methods by which disputes with owners are resolved; Melanie Oyama and Carol Rosenberg, Seminar Co-Chairs
- August 13 – Steps to Successful Home Owner Association Living (including reserves information)**—Sue Savio and Debi Balmilero, Seminar Co-Chairs
- September 17 – Technology Issues Affecting Community Associations: The Future is Now**—Neil Ross and Steve Glanstein, Seminar Co-Chairs
- October 8 – Community Management is a Marathon: Featuring Nationally Recognized Speaker, Matt Jones;** Pauli Wong, Seminar Chair

**Option 2: provides the six seminars listed above plus Legislative Update:**

**July 16—Legislative Update**—presented by the Legislative Action Committee

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\*This seminar or educational presentation is entirely or partly funded by funds from the Condominium Education Trust Fund (CETF), for condominium unit owners whose associations are registered with the Real Estate Commission. The CETF is administered by the Real Estate Commission which is attached to the Department of Commerce and Consumer Affairs, State of Hawaii, through the Professional and Vocational Licensing Division.

## Who Is Covering What? *continued from page 16*

laration or bylaws, the association's insurance need not cover improvements or betterments to the units. What this means is that renovations, improvements or betterments made by unit owners within their units will be their respective duty to insure, maintain, repair and replace.

For example, in a condominium where the bylaws read that the unit owners are responsible for any improvements or betterments made to the unit, if at some point the original carpet flooring was replaced with hard wood, the unit owner will need to insure the upgraded replacement cost of the flooring. If coverage applies in a claim, the association's policy will only pay for the cost to repair or replace carpet of like kind or quality as originally installed. The cost difference between repairing and replacing damaged carpet to hard wood floors will then be covered under the unit owner's policy.

The association's insurance policy and the unit owner's insurance policy dovetail and fit together like puzzle pieces to make the association and the unit owner whole again, and restore them to the same condition before the loss occurred.

### Contents/Personal Property

Another important feature of the unit owner's policy is coverage for personal belongings owned by the unit owner since these items are not covered by the association's policy.

### Loss of Use Coverage: Additional Living Expense or Fair Rental Value

When a unit becomes unlivable from a covered loss, the additional living expense like the cost of temporary housing in a hotel and the increased cost of meals are covered under the unit owner's policy.

For a unit owner that rents out their unit, when the unit becomes unlivable from a covered loss, the rental income that the unit owner is missing out on is covered under the Fair Rental Value Coverage.

It is also best practice for unit owners that rent out their unit to require their tenants to carry Renter's Insurance. Renter's Insurance will cover the tenant's loss of use and additional living expense; additionally this insurance will also cover the tenant's contents or personal belongings and the tenant's liability – since these items are not covered under the unit owner's policy and are not covered under the association's policy.

Claim payments under loss of use coverage are typically made after the expenses are incurred. This means the insurance company will reimburse rather than covering the cost upfront.

### Personal Liability

In this increasingly litigious society that we live in, liability coverage becomes increasingly important. Personal Liability Coverage is included in a unit owner's policy.

When someone is injured in a common area such as lobbies or hallways, elevators and clubhouses, the association's Commercial General Liability Policy will provide coverage. However, if the injury occurs inside a unit or if a unit owner is legally liable, for example: a unit owner's dog bites someone, the unit owner's Personal Liability Coverage will be the one to provide coverage.

### Loss Assessment Coverage

Loss Assessment is a unit owner's share of a loss to the common elements. Under the Hawaii Revised Statutes §514B – 143(d), the board may assess the association's master policy deductible to the unit where the loss originated or to the units affected by the loss. The association may also charge a special assessment to all the unit owners following a bodily injury or property damage in a common area.

With multiple owners and multiple insurance policies involved in a typical condominium claim, it is obvious why the most common dispute would arise from trying to determine which party is responsible or which policy is going to cover. The answer to this type of dispute should always be researched by reviewing the association's governing documents which define who is responsible for what.

**About the Author:** *Elaine Panlilio is an Account Executive in the AOA Unit at Atlas Insurance Agency. She holds the Certified Risk Manager, Certified Insurance Counselor and Certified Insurance Service Representative professional designations from the National Alliance of Insurance Education and Research. She can be reached at (808)533-8766 and at epanlilio@atlasinsurance.com*



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# WHY DO WE HAVE TO HAVE A FEE INCREASE?

by Alan Takumi, CMCA®, AMS®, ARM®, PCAM®

You get the dreaded annual budget letter stating that the assessments will be increased for next year. You will of course wonder why it needs to be done.

An association is a not for profit organization that needs to collect fees to pay for the association bills and, sometimes, increases are unavoidable. Here are some of the reactions homeowners typically have when they hear that their fees are about to increase, followed by the related rationales for an increase.

## ***“I can’t afford the increase.”***

When you live in an association, you need to be willing to share the costs, as described in the governing documents to which you agreed in escrow. Keep in mind that if the association does not receive the association fees from owners, the bills cannot be paid and if the association cannot meet its financial obligations (utilities, insurance, maintenance of the property, employee costs, etc) your property values can decline. I’ve had one association who could not pay their electrical bills and almost had their electricity disconnected.

## ***“I probably won’t be living here in 15 years when the streets need repaving. Why should I have to pay now?”***

Senior citizens, as well as young people living in condos they consider to be starter homes, often pose this question. The problem with this “short-timer” logic is that these people are themselves benefiting from the use of the streets, pool, and other common assets paid for by members who lived there before. Members should pay for the incremental use of these items each year they live there.

## ***“Why don’t we just have a special assessment for a specific project?”***

It can be difficult to collect money when you suddenly have a large expense. It’s better to collect it gradually, so the funds are there when you need them so you won’t be hit with a special assessment. Many owners are on a fixed income and a large special assessment wreaks havoc with their budget and could drive them into foreclosure. Also, a special assessment unfairly penalizes homeowners who happen to live in the association at the

time. After all, you would probably find it unfair to be hit with a special assessment for a roofing project if you just purchased your unit and the previous owner did not pay for the use of the roof for the past 20 years. Also for Hawaii condominiums, it is a requirement to fund a 20 year planned reserve study.

## ***“Why do we have to maintain the property?”***

The Board has a fiduciary responsibility to maintain your association. We have all seen some homes who are not in a community association that have not been maintained (peeling paint, overgrown landscape, etc) and you don’t want that for your association. By keeping your association in shape with good maintenance it retains property value and leads to an attractive community to live in.

Please keep in mind that as buildings age, more maintenance is required, utility costs and insurance generally keeps increasing. If you have employees, you should consider increasing their pay to at least keep up with the cost of living or they may find another job elsewhere. Then your association will have to go through the painful process of hiring a new employee, provide the training and hoping they will fit in well with the community.

[Some of the information for this article came from Community Associations Institute.]

**About the Author:** Alan Takumi is on the Community Associations Institute (CAI) national faculty and teaches 5 CAI classes. He is currently the Secretary of the board for CAI, Hawaii Chapter

## WOULD YOU BELIEVE!

One of the large condominiums on the island of Oahu had a water leak. When troubleshooting the water leak, the manager noticed something strange happening. The ceiling was becoming discolored so the maintenance person cut open the ceiling. Out fell unused charcoal briquettes. The manager was curious on why there was charcoal in the ceiling and it does not appear the ceiling was previously cut open, so another hole was cut in the ceiling to see if there were more briquettes hidden in the ceiling. No more briquettes were found. It appears that the charcoal was in the ceiling from the time the building was built. Why and who would have thought to do such a thing! One can only wonder what else may be hidden behind the walls.



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**Do's and Don'ts in Design Review—issues related to the design review process**  
Anne Anderson, Seminar Chair

March 12, 2020\*

**Disaster Preparedness—issues that Boards need to plan for when disasters occur**  
Bernie Briones and Pauli Wong, Seminar Co-Chairs

April 16, 2020\*

**Condo Wars: Mediation, Arbitration, & litigation—methods by which disputes with owners are resolved**  
Melanie Oyama and Carol Rosenberg, Seminar Co-Chairs

May 16, 2020\*

**Board Leadership Development Workshop- The ABCs of Community Association Management**

July 16, 2020

**Legislative Update—presented by the Legislative Action Committee**  
Phil Nerney, Seminar Chair

August 13, 2020

**Steps to Successful Home Owner Association Living (including reserves information)**  
Sue Savio and Debi Balmilero, Seminar Co-Chairs

September 17, 2020

**Technology Issues Affecting Community Associations: The Future is Now**

Neil Ross and Steve Glanstein, Seminar Co-Chairs

October 8, 2020

**Community Management is a Marathon: Featuring Nationally Recognized Speaker, Matt Jones**  
Pauli Wong, Seminar Chair

November 6, 2020

**Annual Membership Meeting**

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