

A Message from the President

Aloha CCM Faithful Followers:

Our Summer pause from major seminars will soon end with the Sept. 14th “Legislative & Law Updates Seminar” led by Chris Porter, Esq. He has brought together a panel of legal experts to help you stay abreast of changes in the law and how to protect your Associations thru proper Board actions. The discussion items will include everything from Fair Housing & Legal Aid claims to Construction issues & Covenant Enforcement. You will be privileged to hear from three distinguished attorneys (in addition to Chris): Shannon Sheldon, Rebecca Filipovic, and Phil Nerney. It is rare to have this much Association Law expertise together on the same stage. You and your Association cannot afford to miss this seminar.

September 2018



Our finale of 2018 will be moderated by Lisa Cano and will be held in conjunction with our Annual Trade Show on November 16th. The seminar will feature Alan Crandall and Andrew Brock who are both experts in technology security. Every company and Association needs to be aware of the risks and the newest protection software available and how they work. This seminar will both shock and encourage you to protect your company or Association.

A special thanks to Tom Boomer for overseeing the “Hot Topics Series” and Mr. William Bennett of Energy Consulting Associates for presenting valuable information on Energy Conservation. Of course, we wish to thank Mila Salvador for again making the conference room at The Whaler available to us.

The Board is already working on topics for 2019 seminars and we ask you to tell us what you think CCM may wish to cover in the coming year. We appreciate your participation and are always interested in your comments on how to improve our efforts to educate.

Your Board of Directors wishes to extend our sorrow & support to the many families who lost their homes in the recent fires in the Lahaina area and those who suffered at the hands of Hurricane Lane on the Big Island. You are in our thoughts and prayers.

Mahalo Nui Loa!!!!!!!!!!!!!!



Visit our website
www.ccmmaui.org



Welcome to the Community Council of Maui (CCM)

Originally formed in 1991 as The Condominium Council of Maui (CCM) and now known as The Community Council of Maui (CCM), we are committed to hosting regular meetings to provide the opportunity for association members to exchange information, share experiences, form ideas and reach solutions. We offer a forum for educational programs that feature recognized experts in Condominium and Community Association affairs for the benefit of each property and individual owners. With our established relationship with State agencies, our Board of Directors remains up-to-date on newly proposed and enacted laws that affect associations and its owners.

"Sharing Knowledge for Community Association Management and Governance in Maui"

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Property Spotlight: Makena Surf Resort

By: By Ann Shipman, General Manager

Aloha from the Historical Makena area of Maui!

Makena Surf Resort has 105 luxury units, in six two and three-story buildings built in 3 stages 1984, 1989 and 1994. Of the 105 units approximately 68 are vacation rentals with a 5-night minimum. The resort is located on one of the island's most beautiful beaches, Po'olenalena also known as Paipu Beach, which is perfect for swimming and well-known for its abundance of tropical fish, sea turtles and small tidal pools. The resort is surrounded by more than 10 acres of lush tropical landscaping and boasts some of Maui's most breathtaking ocean and island views which can be seen from every unit. Makena Surf Resort also offers a secluded, quiet location unlike any other on Maui!



Makena Surf Resort, a gated community, offers its owners several amenities which include two luxury swimming pools and spas, four professionally designed tennis courts, basketball hoop, two herb gardens, BBQ facilities, and we pride ourselves on industry-graded, top quality on site security.



The South Pool – Makena Surf Resort

A little history: Makena is part of a larger ancient land division named Honua'ula. Honua'ula encompassed land from the rough lava flow terrain of LaPerouse Bay on the southeast shore, to the sprawling lush pastures of Ulupalakua upcountry, to pristine Keawakapu Beach, just north of Wailea. First settlers were thought to be followers of Moikeha, a Polynesian voyager believed to have arrived from Tahiti around

1300 A.D. LaPerouse, the first European explorer to land on Maui, came ashore at Makena Bay, documenting the spot in his journals. The Makena name is derived from the word mak'ke, meaning



Po'olenalena Beach



Makena Surf Resort

“many gathered”. The reefs around Makena were abundant with many species of sea life and Makenans exchanged fish for most of their other food needs grown up country. Makena Surf Resort is centered on one of the historical u’ula heiaus, which is a fishing shrine and thought to be one of the landmarks which pointed to where the best fishing places lay.



Lush tropical landscaping



The North Herb Garden



Hot Topics

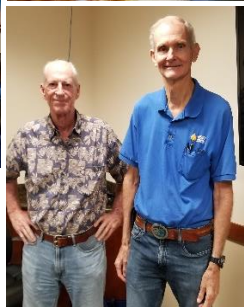
The Community Council of Maui in partnership with Mr. William Bennett, CEM of Energy Consulting Associates, LLC presented the Hot Topic Workshop 2018! This was a special complimentary seminar limited to Site, Resident, and Assistant Managers of condominium and community associations. Lunch and refreshments were provided to participants. We wish to thank Mr. Bennett for sponsoring the Hot Topic for 2018.



On July 20, the Hot Topic Workshop for the South Side was held at the Hawaiian



On July 19, the Hot Topic Workshop for the West Side was held at the Conference



Room of the Whaler on Ka’anapali Beach. Following the Workshop, Shawn Racoma, Chief Engineer of the Whaler did a tour for a few property managers of the Whaler’s chiller room, HVAC System, and Templifier.



Islands Humpback Whale Sanctuary.

Topic: Energy Conservation

Lessons Learned by Monitoring Condo Hot Water Systems

Discussed was the types of water heating and their reliability, purchase and

operating cost, and maintenance expense.

Monitoring was demonstrated and lessons learned from the monitoring data shared.

If you participated in the Workshop and have further questions on the topic, please feel free to reach out.

<https://energyconsultingassociates.com/contact/>



Community Organization Spotlight:

HĀLAU KE'ALAOKAMAILE & HOKUNUI MAUI LLC



Keali'i Reichel's Hālau Ke'alaokamaile is working to integrate Hawaiian culture with several agroforestry projects to regenerate a portion of former pineapple land on Pi'iholo Road in Makawao. In a unique collaboration with the owners of Hokunui Maui LLC, Erik and Karin Frost, and Kanu Ka 'Ike, a non-profit created by the Hewahewa 'ohana the halau plans to create a 6-acre forest surrounding their proposed 6,000 sq ft hālau and resource center.

A two-year, \$240,000 OHA grant was received last year in which the group worked with over 1100 volunteers (80% Hawaiian youth) planting more than 3,500 endemic forest and canoe crops on three acres. They were required to learn an entrance chant, attend a briefing on the cultural aspects of sustainable agroforestry and get muddy in the fields regenerating the soil and creating a watershed for the future.

The hālau was notified last week that they will also receive a Beginning Forestry and Ranching Grant from the USDA. The title of this educational opportunity is "Agroforestry Training for Native Hawaiians To Increase Economic Opportunity, Food Security and Cultural Connection" and is a three-year \$600,000 award which will commence in the fall.

The grants will enable the hālau and Hokunui Maui to continue to expand their cultural Ag programs and educate a greater population of Hawai'i's children at a much faster pace thanks to the generous state and federal funding.

In addition, the hālau has submitted architectural plans to the Maui County Planning Commission for a 6,000 sq ft cultural center which will include hālau (hula dance space), two classrooms, a Maui-focused resource library and an agricultural processing center. If all goes as planned the \$2.5 million educational center will break ground in the Spring of 2019.

To support the halau's vision or to sign up for one of their monthly planting events please contact Puna at admin@kealaokamaile.org or visit www.kealaokamaile.org

Contact: Puna Krauss
808-870-8057
admin@kealaokamaile.org

The Legacy

"As po'e hula (hula practitioners) we cannot help but revel in the brilliant creativity of our kūpuna. Our thoughts invoke their lessons. Our voices carry their power. Our bodies become their vessels.

Such is the power, purpose and function of hālau - the singular place where our collective breath and individual lives converge. Each and every one of us consciously choose to walk this ancient path - and in doing so, ensure the cultural heritage of our future generations.

I am thankful, honored and humbled to share my life and path as we embrace all that the ancients offer us ..."

—Keali'i Reichel



Emergency & Flood Preparedness

It's easy to forget about potential flooding in the midst of enjoying another beautiful summer, it's incredibly important to stay prepared and ready at all times.

Floods are unpredictable and, unlike a predicted hurricane, leave little time to prepare. Following a hurricane especially, flash flooding can occur suddenly due to rapidly rising waters in low lying areas after days of heavy rains.

Floods are not only the most frequent natural and human caused disasters, they are also the most costly. And with the recent record flooding that wreaked havoc on Kauai's North Shore in April of this year, and the hundreds of millions of dollars that have been estimated to repair the damages in residential, agricultural and commercial areas, it's that much more evident that being prepared and informed in Hawai'i is incredibly crucial.

See below for a very helpful list from the Hawaii Emergency Management Agency on what to do before, during and following an unexpected flood.

Before a flood

- Gather important documents like your flood insurance policy and homeowner's insurance details.
- Reduce the risk of damage from flooding by elevating critical utilities, such as electrical panels, switches, sockets, wiring, appliances and heating systems.
- Keep a supply of sandbags to direct floodwater away from your home.
- Plan places where your family will meet, both within and outside of your immediate neighborhood.
- Become familiar with alternate routes and other means of transportation out of your area. Choose several destinations in different directions so you have options in an emergency.
- Leave early enough to avoid being trapped by severe weather.
- Follow recommended evacuation routes. Do not take shortcuts; they may be blocked.
- Make an emergency supply kit to include:
 - Water, one gallon of water per person per day for at least three days, for drinking and sanitation
 - Food, at least a three-day supply of non-perishable food
 - Battery-powered or hand crank radio and a NOAA Weather Radio with tone alert and extra batteries for both
 - Flashlight and extra batteries
 - First aid kit
 - Whistle to signal for help
 - Dust mask, to help filter contaminated air and plastic sheeting and duct tape to shelter-in-place
 - Moist towelettes, garbage bags and plastic ties for personal sanitation
 - Wrench or pliers to turn off utilities
 - Can opener for food (if kit contains canned food)
- Turn off utilities. Disconnect electrical appliances and do not touch electrical equipment if you are wet or standing in water.
- Call or text an out-of-state contact (non-808 area code contact) in your family.
- Leave a note telling others when you left and where you are going.
- Wear sturdy shoes and clothing that provides some protection such as long pants, long-sleeved shirts and a cap.
- Be aware that flash flooding can occur quickly and without warning so be prepared to move to higher ground and do not wait for instructions to do so.
- Secure your home and elevate essential items above potential water line. Turn off utilities. Disconnect electrical appliances.



A **DKI** Member Company

During a Flash Flood: Stay informed!

- Listen for the State Outdoor Warning Sirens
- Emergency Alert System (EAS). EAS is used to alert the public about disasters using radio and television:
 - Island of Oahu: KSSK-AM 590, KRTR-FM 96.3
 - Island of Maui: KMVI-AM 550
 - Island of Kaua'i: KQNG-FM 93.5
 - Island of Hawai'i (Hilo): KIPA-AM 620
 - Island of Hawai'i (Kona): KKBG-FM 97.9
- Avoid contact with floodwaters which can be contaminated by gasoline or raw sewage. Floodwaters may also be electrically charged from downed power lines.
- Do not touch electrical equipment if you are wet or standing in water.

Following a flood

- Return home only when authorities have indicated it is safe to do so.
- Address damaged sewage systems as soon as possible due to serious health hazards attached to overflowing septic tanks, cesspools and leaching systems.
- Clean and disinfect everything that got wet.
- **Contact** an IICRC Certified professional water damage restoration company on your island to dry all affected areas that may have come in contact with the flood water as areas like drywall, carpet and flooring exposed to **moisture may encounter mold growth after 72 hours of saturation.**



Service Values

From the Desk of Craig Tanaka, President, Ka'ana'ikepono, LLC

The physical layout of your building, the soothing waterfalls, strategically placed artwork and inventory, and the creative lighting to create that perfect ambiance. All elements to creating that experience for your visitors and patrons.

Service, or at least the customer's perception of the service received, is often the "score" that is most relevant, and measured, by all businesses. A score that all too often, businesses place above the value of people, their people.

Important to remember is that customers also refer to our internal customers – our employees, colleagues and team members.

A value system I have become familiar with and use in teaching and training, Hilton's Core Values, will be the focus: Hospitality, Integrity, Leadership, Teamwork, Ownership, and Now.

Hospitality

As a simple definition, "the friendly and generous reception and entertainment of guests and visitors."

Here in Hawaii, this value, *Ho'okipa*, is a part of our culture.

Not just the first and most important core value, but a Hilton promise for the delivery of true, memorable and authentic hospitality and service.

With Hilton or any business, hospitality and service center around a singular principle: people. What we do, how we dress and how we speak are an outward expression of an inner commitment.

How we treat our team members are equally, if not more, important than how we treat external customers. After all, isn't it true that our employees are often the ones with the highest level of "touches" with our customers, guests and visitors?

There is much focus on the bottom line, profitability and guest satisfaction. Truly focusing our unique value of *Ho'okipa* to our employees will naturally raise trust and performance, which translates to higher morale and consistency of, and an increased desire to be hospitable to others...our customers. The resulting customer loyalty and satisfaction will have positive impacts on desired metrics. Focus on your people, not the numbers, statistics and metrics.

Integrity

Once again, a cultural equivalent: *Pono*.

This Hilton value is the belief in not only doing the right things, but also in doing it in the right way.

Both the technical knowledge and application is equally as important for the purpose of doing that which is the right thing.

Duplicity is the common concern with this value. It is quite easy to say one thing in front of others, and do another. This is NOT integrity.

A simple barometer to test this. Watch your direct report, or anyone you trust and respect, see how they act or speak around their children, in front of their superiors or an audience, then watch and listen to them when they aren't.

True integrity is doing the right thing, even when no one is around.

LEADERSHIP

Hilton focuses on the need to be leaders in both industry and the community.

Alaka'i is our Hawaiian cultural equivalent to this value.

The most respected of leaders embody a courteous and professional style about them. They act with integrity and discretion. They are articulate and knowledgeable, and extremely passionate about what they do and who they serve. They take complete ownership and responsibility in all things, are highly observant, responsive and as such, are able to be highly anticipatory.

We also must not confuse leadership with being a leader. One is simply a title, the other is again, an outward expression of an inner commitment – a behavior. One may have a leadership title of a manager,

yet it does not automatically translate to being a respected leader.

TEAMWORK

At Hilton you are inspired to work with the team. In everything that it does, it acts a team.

In Hawaii, the value of *Laulima* is that we work together to achieve more.

Stephen Covey's 6th Habit, Synergize, inspires us to combine the strengths of people through positive teamwork, so as to achieve goals no one person could have done alone, and getting the best performance out of a group of people through encouraging meaningful contribution and modeling inspirational and supportive leadership.

Each and every business likely depends upon individuals carrying out specified tasks. Collectively, these individual efforts meet a departmental objective. These objectives come together to meet the mission and vision of the company.

OWNERSHIP

Accepting ownership and responsibility to resolve challenges as our own. It is a principle of success for Hilton. It is also central to our culture in Hawaii, that of *Kuleana*, the privilege it is of ours to act on this responsibility with genuine concern and a sense of urgency.

Hospitable service requires an accepting responsibility, taking ownership, and working towards resolution and satisfaction. This starts with our employees, empowering them to engage, to anticipate, to act, and be able to make decisions towards a resolution. Holding them back may only mean more situations escalating up the chain.

NOW

This Hilton value teaches us that the focus must not shift from the most important things, and that there is always a sense of urgency and discipline in the air.

However, the value of integrity must also be applied: doing the right things in the right way.

In the Seven Habits of Highly Effective People, Stephen Covey's four-quadrants is a commonly utilized tool to ensure this is met. And it can often help us get out from the constant fire-drill of just getting things off your plate, to getting the things that really matter – to us and others – and become more effective, efficient and productive.

Putting it Together

In 2016, Forbes published an article in which it outlined three “must have” customer service secrets for the hospitality industry. Two of which have been touched upon in this article.

The empowerment factor: Great customer service depends on empowering your employees. Great hotels and restaurants empower their frontline employees to proactively fix customer problems without waiting on management approval. This employee empowerment—the permission to be creative, and

even spend money, on behalf of customers, is a master stroke in hospitality.

An excellent example is The Ritz-Carlton Hotel Company, where even hourly employees have permission to spend up to \$2,000 per guest to solve any problem or dissatisfaction that may arise, “without needing to ask permission, without needing to involve management or worry that they’re going too far,” as Herve Humler, President and COO of The Ritz-Carlton Hotel Company President puts it.

Genuine, individualized and authentic: Scripted, insincere customer service is an ultimate turnoff for today’s customers, says Richard Branson, of Virgin Hotels. Today’s customers, including the important millennial demographic, demand a customer service style that feels authentic and unscripted, what I call an “eye level” or “peer to peer” style of customer service. They’re looking to be served by a fellow human being who speaks authentically rather than following a script.

This empowerment and genuine, individualized and authentic service is a foundational pillar of Hilton’s Waldorf Astoria.

Regardless of the size of the business, the property, and the organization, these values hold true for our employees, guests and customers...and our success.

Craig Tanaka has been working in security with the hospitality industry for thirty years, the last 23 years in the capacity of an Assistant or Director of Security/Loss Prevention. He is a State of Hawaii PVL/DCCA Board Approved Security Guard Training Instructor and President of Ka’ana’ikepono, LLC. He may be contacted at kaanaike@gmail.com.



Malama Our Home



Malama means to care for, to nurture. We must care for the ‘aina (the land) and the kai (the sea/ocean) and all of the creatures within so that they **can** give back all **we** need to sustain life for ourselves and our future generations. Part of our responsibility as stewards is to learn, act, and educate others. The ancient concept of ahupua’a, the use and management of resources, based on communities living in a division of land that connects the mountains to the reefs and the sea teaches us about sustainability. From the mauka (mountain side) to makai (ocean side), let’s be the difference and make a difference. As part of our quarterly CCM newsletter, an article on matters of environmental stewardship, responsibility, and sustainability to help us safeguard our resources and thrive as a community will be included in this new section.

[10 Little Things That Help Hawaiian Coral Reefs and Wildlife](#)



- 1) Please report any injured wildlife (marine mammals and sea turtles) to the statewide stranding number: 1-888-256-9840. Mahalo!
- 2) Wear sun protection like rash guards, wetsuits and hats, and when you do have to apply sunscreen make sure it doesn’t contain chemicals like oxybenzone and octinoxate that harm the reef. Poison!

3) If you're lucky enough to see a Hawaiian monk seal or sea turtle on land, this is quite normal in Hawai'i and a wonderful opportunity to observe them. They need their rest just like we do, so speak softly and take photographs (without flash) from >15 feet away. Sssshhh!

4) When you're in the ocean... If you have to stand, stand on sand instead of the reef- it's alive and full of creatures that don't want to be stepped on. Show respect for the reef ecosystem by keeping a 10-foot distance from all animals. It is illegal to approach humpback whales closer than 100 yards. Keep them wild!



5) Only go on tours with responsible tour operators who never promote the harassment of animals (no chasing, touching or feeding). They need their space!

6) Fishermen and fisherwomen: please learn the best techniques to prevent catching a turtle, monk seal or shark, and be prepared to know what to do if that does happen. Use biodegradable fishing line and barbless hooks that will increase the animal's chance for survival. And, take all hooks and line away with you so they don't further harm animals or people in your absence. Ouch!



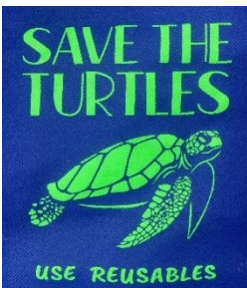
7) If you see any trash, please take a second to pick it up and put it in the proper recycling or trash bins so it doesn't get mistaken as food by animals or leach chemicals into our environment. Yuck!

8) When dining out and shopping, bring your own bags and to-go containers to Ocean-friendly Restaurants that are not serving plastic straws, utensils and plastic or foam to-go containers. Having your own re-usable items saves more of those silly single-use ones from being made and potentially ending up in our ocean

and landfill. What a waste!

9) Support the politicians, legislative actions and other initiatives that help the environment, no matter where you live. Get out and vote!

10) Learn all about these beautiful and amazing coastal environments, and volunteer with us to help protect them!



For more information and to get involved, please see:

Seaturtles.org, Hlhawkbills.org and SHARKa

Condominium Insurance Forecast for Second Half of 2018

Ron Tsukamaki, CPCU, Atlas Insurance Agency

We are now well into 2018 and here is a general overview of what we expect for the remainder of 2018 and into early 2019. On the heels of the large number of catastrophic events in 2017, it would appear that the insurance market is showing signs of instability. Even closer to home, the loss at the Marco Polo condominium (which will be well over \$100 million in total costs) has shaken the local markets. All insurance companies purchase Reinsurance on the Global market. Even if the local admitted markets did not suffer losses in Texas or Florida, the Reinsurance markets certainly took a hit and will be passing on their costs to everyone who purchases reinsurance. First Insurance Company who handles the Marco Polo has already indicated that they are reviewing their exposures and Non-sprinklered High Rise condos will begin to see significant changes. As a guess, as insurance carriers renew their reinsurance treaties, there will be an impact. For those insurers who have an excellent loss history with their reinsurers, there may be increases up to 5%. For those who have loss ratios that are less favorable, the increases may be higher. The property insurance market will be more volatile than in the past few years.

In addition, accounts that individually have experienced losses will be impacted since insurers are concerned about accounts with loss ratios above 50%. We are seeing carrier's non-renewing accounts or are significantly increasing pricing and deductibles for accounts with poor loss histories. A non-renewal can force associations into "non-standard" or "excess & surplus lines" markets where rates and deductibles are not regulated by the State Insurance Department. Rates can double or triple if this should occur. Therefore, those associations who have loss issues, should be pro-active by addressing causes of losses in order to offer the insurance underwriters "an account that is working to reduce or eliminate the causes of future losses."

Another area that should be reviewed by associations should be the replacement cost values. Carriers are looking closely at the costs per square foot values and if the values appear lower than they would get from Marshall Swift cost estimates, the carriers could recommend increases in values or some type of appraisal. We recommend increasing values by at least 2-3% annually to keep up with inflation. This increase in values will also increase the property premium accordingly. Therefore, I'm going to estimate that for clients with good property loss ratios the increase in rates will be 2-5%. *If you include increases in Values the overall increase could be from 4-6%.*

For those clients with Loss Issues, increases can be much higher and should be discussed with your agent to get a good idea of what might be expected.

There is good news for most associations, the General Liability, Crime and Umbrella Liability coverage appear to be stable and we do not anticipate large premium increases but again losses for these lines will also impact the renewal. For most Association clients, for these lines of insurance, we would budget flat or with very minor increases.

National Flood Insurance Rates will continue to rise.

The National Flood Insurance Program is currently being debated in Congress for Re-authorization. With the flooding in Texas and Florida, I am pretty confident that the program will be Re-authorized but the losses will also force the NFIP to continue to pass on rate increases. The rate increases have continued for 2018 through the National Flood Insurance Program. In 2017, the average rate increase was close to 8%.

In prior years, because of the fee increases many associations got quite a shock in their overall premiums. Now that the fee increases are built into the current premium, the association can focus on the rates increases. *This should be approx. 5% this year for risks in the non-hazardous areas with an X zone. For risks in an A or V zone the rates will increase between 10% to 18% depending on their location above or below the Base Flood Elevation.* The Private Market might be an alternative since with the significant rate increases in the National Flood rates, the Private Market might be able to compete. Since there are so many variables that affect the total flood insurance cost, we recommend that you consult with your insurance agent. You may discuss your particular situation with your agent to prepare for these increases and to possibly come up with potential alternatives.

Directors' and Officers' Liability Rates are Rising

Most associations are insured with a handful of companies including Continental Casualty, Great American, USLI and Travelers Insurance. *Continental Casualty effective July 1 is significantly increasing rates due to their adverse Hawaii loss history. Some clients can see a 25-35% increase in premiums.* We have not seen this type of increases from the other carriers but anticipate that their loss history will also require upward rate adjustments later in the year. *For most associations we suggest a 5% increase but any Continental Casualty renewals could see a much larger increase.* Unfortunately, those accounts that have losses will either be seeing increases in premium and/or deductible or will likely only find coverage in the Excess and Surplus lines (non-standard) insurance market. Premiums and coverage terms will vary based on the claims history. If forced into the non-standard markets, the premiums cost could easily triple or quadruple and the deductible is also sure to significantly increase.

Workers' Compensation Rates are Leveling

In 2017 the Hawaii Insurance Department approved rate increases that averaged 3% over all classes of business. We reviewed a sample of 2018 rates from companies that frequently write workers' compensation for condominiums. It revealed that the condominium associations will be mostly flat with no large increases in rates. This doesn't take into consideration past loss history (experience modification factors) or increases in payroll which will also impact the premiums. There are some new Worker's Compensation carriers who appear to have competitive rates and these could assist in helping to keep overall worker's compensation premiums lower.

Final Word of Caution

For most clients, the property premiums are a significant amount of the total insurance costs. At the time of printing, we have not seen a large increase due to the Catastrophic losses created by Harvey or Irma but Property Insurance is more volatile than the other lines of insurance due to the possibility of natural catastrophes. There has been a significant amount of excess supply of property capacity which has been keeping prices stable and pricing competitive.

The impact of major catastrophes can cause the market to significantly change and make obtaining insurance very difficult for many clients, as we saw after Hurricane Iniki in 1992 and Hurricane Katrina in 2006. Since Hurricane Harvey (which is being reported as the Third Largest Global Catastrophe) and Irma losses in the billions, the impact is yet to be felt. Remember, we are entering Hurricane Season for Hawaii. As noted in all areas, having a good loss history certainly will help keep the rate increases minimized. A poor loss history will penalize the client.



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2018 Legislative Update for Condominium Associations



Na Lan, Of Counsel, DAMON KEY LEONG KUPCHAK HASTERT

If you are wondering what new laws passed in 2018 could affect condominium associations in Hawaii, here is the scoop.

- **“Cure of default” clarified for nonjudicial foreclosure; priority of payment policy abolished; “pay first, dispute later” principle severely undermined**

Act 195 – HB1873 (effective 7/1/2018, sunset on 6/30/2020)

This new Act clarifies that the parties’ mere agreement on a payment plan is not considered a cure of default in an association’s nonjudicial foreclosure. So, the association does not need to rescind and release the recorded notice of default and intention to foreclose until the payment plan is completed according to its terms or the owner pays off the delinquency.

A payment plan agreement will lead to a hold on the foreclosure process. If the owner defaults on the payment plan, the association can resume the proceeding to foreclose on its lien. However, unpaid fines the association imposes on the owner during the payment plan period shall not be deemed a default under the plan.

Board adopted and distributed priority of payment policy is no longer permissible, i.e., you cannot apply a portion of the common expense payment from an owner to first cover unpaid late fees, interest, fines or legal fees.

The “pay first, dispute later” principle is now limited to common expense assessments only. A unit owner may demand mediation contesting any fines, late fee, legal fees or other charges, except common expense assessments, prior to paying those charges.

It is very important now for association counsel to send a clear written statement verifying the itemized amounts owed, as the owner has 30 days from the date of such a statement to file for mediation. If the owner misses this deadline, the association may proceed with collection of all amounts owed. In contrast, if the owner timely requests for mediation, the association is obligated to cease collection and participate in the mediation, provided that if the mediation cannot be completed within 60 days or the parties are unable to resolve the dispute by mediation, the association can then proceed with collection of any and all amounts due from the owner.

- **Voluntary binding arbitration subsidized by the condo education trust fund; incentive for more mandatory evaluative mediation and less court action**

Act 196 – HB1874 (effective 1/2/2019, to be repealed & reenacted on 6/30/2023 subject to exceptions)

If you have attempted the subsidized evaluative mediation but are unable to resolve the dispute, you should consider proceeding to a voluntary binding arbitration; as such arbitration will be subsidized by the condo education trust fund under this new law. There is a \$6,000 cap on the subsidy per arbitration, but you may include additional issues and parties as long as all parties agree to that.

If one party requests for evaluative mediation, the other party cannot choose to do facilitative mediation instead, as that would be treated as a rejection to mediate.

Legislators imposed conditions and a \$1,500 ceiling on award of legal fees and costs to discourage parties from prematurely filing court action to compel for mediation.

This Act also clarifies that each party shall bear its own attorney’s fees and costs incurred in mediation, unless the parties agree otherwise in writing or obtains a court order or arbitration award providing otherwise for legal fees and costs.

There is a \$3,000 cap on the subsidy per mediation, but you may include additional issues and parties as long as all parties agree to that.

The court or arbitrator now has discretion to stay any action or proceeding for a period up to 90 days and refer the matter to mediation.

- **Salary history inquiry or consideration prohibited during job application or offer process; enforced wage secrecy and retaliation or discrimination prohibited**

Act 108 – SB2351 (effective 1/1/2019)

Inquiring about or relying on the salary history of a job applicant is now prohibited during the hiring process, including the negotiation of an employment contract, provided that this does not apply to internal transfer or promotion with current employer.

An employer shall not retaliate or discriminate against an employee for, nor prohibit an employee from, disclosing his or her wages, discussing and inquiring about the wages of others, or aiding or encouraging other employees to exercise their rights to do so.

- **Civil penalty for knowingly misrepresenting an animal as a service animal**

Act 217 – SB2461 (effective 1/1/2019)

A person knowingly misrepresents an animal as a service animal will be subject to a civil penalty (1st violation - \$100 to \$250 fine; 2nd violation - \$500 fine or more).

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

- **Service of summons made easier in cases involving real property**

Act 094 – HB2033 (Effective 7/1/2018)

In an action where the real property owned by a defendant is not a resident of State of Hawaii, this new Act allows a plaintiff to serve the summons by certified, registered, or express mail with return receipt to the address of the defendant with the real property assessment office. Even if the defendant refuses to sign and return the receipt, service is completed upon delivery of the summons and complaint to the defendant.

- **Honolulu: Fire Sprinkler Retrofit and Life Safety Evaluation in High Rise Residential Buildings**

Ordinance 18-14 – Bill 69 (2017) (Effective 5/3/2018)

Buildings with exterior corridors and buildings less than 10 floors are exempt.

This ordinance updates the fire code to require fire sprinkler retrofitting in high-rise residential buildings; existing buildings not protected by an automatic fire sprinkler system shall be subject to a life safety evaluation code assessment (16-item score recording matrix), which needs to be conducted by a licensed design professional within 3 years from May 3, 2018. Buildings shall comply by passing the building fire and life safety evaluation within 6 years from May 3, 2018. An extension may be granted if automatic fire sprinkler systems are used to achieve compliance. All buildings must continue to maintain a passing status on their respective building fire and life safety evaluation code assessments.

A condominium association or cooperative housing corporation may opt out of the automatic fire sprinkler system requirement, provided that a majority of unit owners or shareholders vote to opt out within 3 years of the completion of the building fire and life safety evaluation at a regularly scheduled or special meeting of the association or corporation, as long as the building receives a passing score through the implementation of alternative fire prevention and fire safety systems. However, buildings that have opted out shall provide verifiable public disclosure of its action to all current and future owners and residents, including sign posted in the building's public notification areas and real estate sales disclosures.

Each building owner shall file a written statement of its intent to comply with this new law with the Authority Having Jurisdiction for approval within 180 days from May 3, 2018.

Compliance with the automatic fire sprinkler system throughout the building or alternative fire prevention and fire safety systems shall be achieved as follows:

Common areas for building 20 floors or higher – within 8 years from May 3, 2018

Common areas for building 10 to 19 floors – within 10 years from May 3, 2018

All buildings regardless of the number of floors – within 12 years from May 3, 2018

An extension to 15 years from May 3, 2018 may be approved if compliance using an automatic fire sprinkler system in the common areas related to building egress path has been achieved.

- **Condo association assessments that become due after a debtor has filed for bankruptcy under Chapter 13 are dischargeable under 11 USC § 1328(a).**

Goudelock vs. Sixty-01 Association of Apartment Owners, Case No. 16-35384 (9th Cir. 2018)

Our 9th Circuit adopted the 7th Circuit's lines of reasoning as stated in Matter of Rosteck, 899 F.2d 694 (7th Cir. 1990), and held that post-petition condominium association assessments are dischargeable, when the owner surrenders the property in the Chapter 13 bankruptcy, as the

obligation to pay association assessments is an unmatured contingent debt under the Bankruptcy Code that arose pre-petition (when the debtors purchased the property) and that merely became mature when the assessments became due post-petition. The Court commented that this is consistent with the Bankruptcy Code's goal of providing debtors a fresh start.

The 9th Circuit disagreed with the 4th Circuit's opposite view in In re Rosenfeld, 23 F.3d 833 (4th Cir. 1994) that the obligation to pay association assessments ran with the land and arose each month from the debtor's continued post-petition ownership of the property.

- **Recording the deed and getting a new Certificate of Title number assigned are not equivalent to an entry of a certificate of title, even if it takes four years to get one.**

Wells Fargo Bank, N.A. vs. Omiya et al., SCWC-13-0000133 (Haw. 2018)

In this case, AOA Olikai Apt. Bldg. completed a non-judicial foreclosure sale at which Omiya purchased a unit for \$15,000. The AOA executed a quitclaim deed to Omiya and recorded the deed in the Land Court and obtained a Certificate of Title number. The mortgagee Wells Fargo filed a complaint against Omiya and the AOA in the Circuit Court, alleging that the sale of the property was not conducted legally because Omiya did not pay reasonable value and seeking cancellation of the new transfer Certificate of Title number. The Circuit Court granted summary judgment against Wells Fargo in favor of Omiya. On appeal, the Intermediate Court of Appeals upheld the Circuit Court's decision.

Due to the processing delay and backlog of land court recordings and registration in the State of Hawaii, the Assistant Registrar of the Land Court was nearly four years behind in physically producing and certifying a new certificate of title in the registration book for properties registered in the Land Court system.

HRS § 501-118 precludes a mortgagor or other person in interest from impeaching foreclosure proceedings after the entry of a new certificate of title for land court properties.

Our Supreme Court reversed the ICA's decision and held that assignment of a new certificate of title number is not the statutory equivalent of an entry of a certificate of title.

If you have any further questions, please feel free to contact the author, Na Lan, at (808) 526-3617 or nl@hawaiilawyer.com

Why Sealcoat?

WHAT EVERY PROPERTY MANAGERS AND RESIDENT MANAGER SHOULD BE AWARE OF:



“Just as paint can protect wood and metal from the elements, sealer protects asphalt,” says GemSeal’s Lee Lewis. “It also helps to keep the pavement flexible by sealing in the asphalt oils.”

The reason to sealcoat asphalt pavement is to extend the life of the pavement investment. It’s as simple as that. Whether contractors are sealcoating driveways or parking lots, the original pavement investment by customers is significant. So, anything contractors can do to slow the rate of pavement deterioration improves the life cycle costs of that pavement investment. And sealcoating – as part of a comprehensive pavement maintenance program – plays an important role in extending pavement life.

“Sealcoating is essential in pavement preservation and extending the life of your asphalt pavement,” says Greg Houser, vice president of research and development for Neyra Industries. “There are many benefits of sealcoating asphalt, including improving visual aesthetics, resisting oxidation from the sun, replacing eroded surfaces, extending the life and optimizing the overall value of the asphalt pavement.”

“Whether it’s a refined tar sealer or an asphalt-based sealer, you want to put down a layer to slow down the degradation of the hot mix asphalt pavement,” says Rob Vance, vice president of sales and marketing for Vance Brothers and current chairman of the Pavement Coatings Technology Council (PCTC). “Is it going to *prevent* the deterioration from happening? No. But it will slow down the deterioration.”

Basically, the reasons for sealcoating revolve around the limitations of the asphalt concrete pavement on which it’s used. In his “Basic Sealcoating Principles” session at the 2015 National Pavement Expo, GemSeal’s Lee Lewis explained that asphalt pavement offers poor resistance to ultraviolet radiation and sunlight. He said that exposure

to sunlight results in oxidation of the pavement, which results in a loss of pavement “plasticity.” Lewis said oxidation allows the attraction of water molecules, which accelerates thermal and fatigue cracking and surface raveling.

So, the reasons to sealcoat are directly related to what sealcoating can do to address each of these issues. Assuming that most asphalt pavements are designed and constructed correctly – meaning the subgrade is sound and compacted, the appropriate base material is placed and compacted properly, and the correct thickness of hot mix (based on type and volume of traffic) is placed and compacted properly – sealcoating will extend pavement life by protecting the asphalt binder from oxidation, slowing the inevitable deterioration.

“Sealer is only as good as the bituminous pavement to which it is applied,” according to the Neal Mfg. *Total Maintenance Handbook*. “It will not prevent the cracking of bituminous pavements caused by excessive voids, poor mix stability, poor compaction or low use areas.”

Slowing oxidation

Because asphalt pavement offers poor resistance to UV rays and sunlight, it begins to deteriorate as a result of oxidation – exposure to the air and sun – as soon as it’s constructed.

“Oxidation deteriorates asphalt – the binder in asphalt pavement – quickly,” Vance says. “Oxidation speeds up the aging of asphalt pavement, so anything you can do to slow the oxidation process will extend pavement life,” Vance says. “Sealcoating will slow oxidation.”

Jeff Luzar, division manager of GuardTop, which recently opened an Atlanta branch to market its line of asphalt-based sealers, says that some oxidation is essential; the key is to sealcoat before oxidation goes too far.

“When you put that asphalt pavement down it’s loaded up with oils, and you need some of that oil to oxidize out, which strengthens the pavement. As the oils leave, the asphalt gets harder and harder,” Luzar says. “But if you allow too much of the oils to oxidize out the pavement becomes brittle and more susceptible to cracking. So, you need to sealcoat before that happens.”

As oxidation progresses, fines are released from the pavement surface, exposing larger aggregate, and as the pavement continues to dry out and is exposed to traffic (as well as a variety of weather conditions) aggregate can be pulled out of the pavement and small cracks begin to form. These cracks, if left untreated, eventually become larger, providing a way for water to work its way beneath the pavement.

“Once you get even one crack in there you’re going to get water in the subgrade and that water starts creating mini sinkholes,” Luzar says. “As traffic drives over that part of the pavement the soft subgrade makes it easier for the pavement to crack, and pretty soon you have alligatored areas that can only be fixed through remove-and-replace.”

He says sealcoating protects the asphalt surface by slowing oxidation and by filling the hairline cracks that eventually can become entryways for water. It also (because sealer contains fillers and usually sand) replaces some of the fines lost through oxidation and erosion and fills hairline cracks.

“If left unprotected, the asphalt binder, or glue that hold the stone and sand in place, loses strength and the mat becomes brittle, allowing stone and sand to roll out,” Houser says. “The surface will crack, allowing water to get in, creating alligatored areas, potholes and other defects.”

Sealcoating as Part of a System

“Keep in mind it’s a film we’re putting on there. I worry that sometimes people oversell it too much,” Vance says. “It’s a good practice and a smart practice to sealcoat a parking lot, but there are limits to what it can do,” Vance says.

For example, sealcoating doesn't stop water from coming in. "Water will find a way into the pavement if the pavement hasn't been built properly. Water always finds the path of least resistance," Vance says.

Which is why Luzar and Vance say sealcoating needs to be done in conjunction with other pavement maintenance practices, specifically cracksealing and remove-and-replace pavement repairs.

"It needs to be part of a system," Vance says. "If you have a damaged area or a pothole, that needs to be removed and replaced before sealcoating for sealcoating to be most effective. And cracks need to be filled properly because sealcoating isn't designed as a crackfiller. It will seal a crack, but that is not what it is designed to do."

Improving Pavement Appearance

There's no question that sealcoating improves the appearance of asphalt pavement, and in fact appearance is one reason many property managers sealcoat their pavement every year or two.

"The parking lot is the welcome mat to your property – to your store or your mall," Luzar says. "So, if you parking lot looks terrible then you don't present an inviting place and that's going to affect your store traffic. On the other hand, if it's nice and black with bright stripes – that tells the public that you run a nice operation and you take care of the place they're going to visit, so you'll probably take good care of them."

The Institute of Real Estate Management (IREM) confirms that the subjective idea of "curb appeal," or how a property looks to the public, is in fact a very real phenomenon. Houser says that on a scale of 10, appearance ranks 8 and the parking lot is a big part of that perception. So, one of the simplest things to improve a property and raise its "curb appeal" is to sealcoat the parking lot.

"One of the most important ways to attract and retain tenants in office building or property management settings is to maintain the property's exterior and curb appeal," Houser says. "The property's parking lot is the first impression for potential tenants and their customers, so curb appeal is paramount. A clean, well-maintained parking lot indicates a professional outlook in all aspects of business and translates into a positive first impression."

Refined coal tar sealer is a blacker product that many property managers prefer, but asphalt-based sealers also result in an improved pavement appearance, making striping stand out and improving the curb appeal of property.

"Aesthetically, sealcoating shows off the grass, the stripes and the building making it all look better and more appealing," Vance says. "We're a service-oriented society and an ego-centric society and we all like to look good. So, anything property owners can do to improve the appearance of their parking lot makes their shopping center or mall or office building that much more appealing to the public."

"Sealcoating does make a pavement look great and that's important to a lot of property owners and managers," Luzar says. "But the main reason for sealcoating is to keep the fines and the aggregate locked into the asphalt so the pavement doesn't crack. Sealcoating locks the fines and binder and aggregate into the asphalt."

Which Type of Sealer?

Lewis in his Basic Sealcoating session said that because of its petroleum-based nature, asphalt pavement offers poor resistance to petroleum products, chemicals and salts. He said gasoline and oils dissolve directly into the asphalt and that petroleum products soften the pavement structure. So simply because of its chemical makeup refined tar sealer offers better protection than asphalt-based sealers against gasoline, oil, chemicals and salt.

And Vance says refined tar sealers generally last a year or so longer than asphalt-based sealers. But he says most sealer producers make both type of sealer (in addition to asphalt-refined tar blends) so the decision on which type of sealer to use is often dictated by contractor preference and market demand.

“Whether you use an asphalt-based sealer or a refined tar sealer as long as you’ve done something you’re money ahead,” Vance says.

And Houser agrees. “Sealcoating and other pavement maintenance techniques add value and extend the life of existing pavement, making the use of sealer a cost-effective approach to pavement maintenance.

According to the Asphalt Sealcoat Manufacturers Association, sealcoating makes it easier to keep pavement clean. As anyone who has used a broom on concrete pavement knows, the rough surface makes pushing the broom more difficult. Sealcoating a pavement makes sweeping easier, which makes keeping a clean parking lot easier too.

In some cases, such as newly constructed pavement, sealcoating can be done without other pavement maintenance practices. But in most cases sealcoating should be done in conjunction with other pavement maintenance practices such as cracksealing and patching.

“Just as paint can protect wood and metal from the elements, sealer protects asphalt,” says GemSeal’s Lee Lewis. “It also helps to keep the pavement flexible by sealing in the asphalt oils.”

GuardTop’s Jeff Luzar says that as water works its way beneath the pavement it softens the base and subgrade, and traffic driving over that area can force that material to move. The result at first can be a settling of the pavement or a depression, or it can result in “alligatored” pavement that requires remove-and-replace to be repaired properly.

When & How to Apply Sealer

Recommendations vary about how long before a pavement should be sealcoated. Guardtop’s Jeff Luzar says that when using an asphalt-based sealer sealcoating should be done between 90 days and two years after the pavement has been placed (the exact timing depends on a number of factors including thickness of the asphalt mat and weather conditions).

Luzar says pavement sealed too soon – before enough of the oils have oxidized – will become too soft because asphalt sealer is adding oils back on the pavement surface. Pavement sealed with asphalt sealer too soon will be so soft that traffic will tear the aggregate from the mat, creating what Luzar termed “pancakes,” and causing the premature pavement deterioration sealcoating is used to avoid.

But to be effective, sealer must be applied properly, according to sealer manufacturer’s recommendations. That means

- Apply sealer when ambient temperature is 50°F and rising
- Follow mix design directions including adding the appropriate amount of water, silica sand or slate aggregate – in the correct order.
- Prepare the surface properly, cleaning it thoroughly

In addition, sealer producers and most contractors recommend apply sealer in two thinner coats as opposed to one thick coat. Many contractors apply a slightly thicker first coat via squeegee (which fills slight defects and minor

depressions and cracks by forcing the sealer into them) and a slightly thinner second coat via spray. This approach can provide a more uniform surface and the spray can cover and marks left by the squeegee.

What Sealcoating Doesn't Do

Just as it's important to understand why to sealcoat, it's important to explain to customers what sealcoating doesn't do. Sealcoating doesn't:

Improve the pavement structure in any way. It's a preventive, maintenance process, not construction.
Fix damaged pavement or pavement defects. Once an asphalt pavement reaches a certain stage of deterioration sealcoating is a waste of money. It will make damaged pavement look better for a short time but the damage will continue to expand, causing additional pavement failure. At some point the pavement needs to be repaired before being sealcoated.

Level depressions or uneven pavement. It should be applied in thin coats.
Restore flexibility to the pavement.

The Value of Additives

Several types of additive are available to contractors, and additives can significantly improve the quality of the cured sealer film and enhance the appearance and longevity of the sealcoat.

Additives can be used to perform the following functions:

- Dry the film faster
- Cure the film faster
- Accommodate increased sand loading
- Toughen cured film
- Improve color
- Reduce tracking and power steering marks

However, additives will not:

- Correct poor application techniques
- Allow sealcoating in poor weather conditions

Before using an additive contractor should talk with the sealer producer to learn not only what additives work best with their sealer but also proper mix design procedures to make sure to get the most out of the additive and sealer.

For more information:

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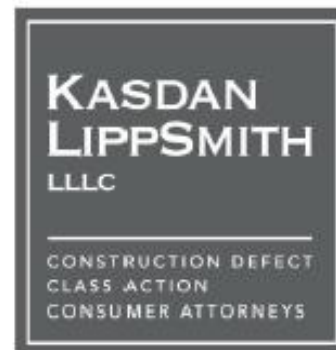


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Legislative Update & Legal Seminar

When: September 14, 2018

9:00 am - 1:00 pm

Where: King Kamehameha Golf Club

Vendor tables open at 8:00 am

Seminar registration begins at 8:30 am

Lunch buffet included

Topics Include:

Legislative Update and Cases Impacting Associations

Focusing on the death of priority of payments for Condo Associations, and other relevant laws.

Presented by: Philip Nerney and Chris Porter

Do's and Don'ts for Board Members

Tips and reminders to keep Boards out of trouble

Presented by: Shannon Sheldon, Rebecca Filipovic, and other speakers to be announced.

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We hope to see you at the remaining **2018 CCM seminars**. You will receive emails from CCM in advance of all seminars with instructions and reminders to register. Please be on the lookout and don't miss the deadlines. ***If you have any suggested topics for 2019 CCM Seminars, please let us know.***

2018 SEMINAR & TRADESHOW

Featured speakers are Alan Crandall and Andrew Brock who are both experts in the subject of technology security. This is a very important topic for all Associations. Due to the inherent risks in the digital age. They will discuss how Associations can safeguard against breaches. The Tradeshow will feature many vendors that can help you with your Association needs. Hope to see you all there!

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