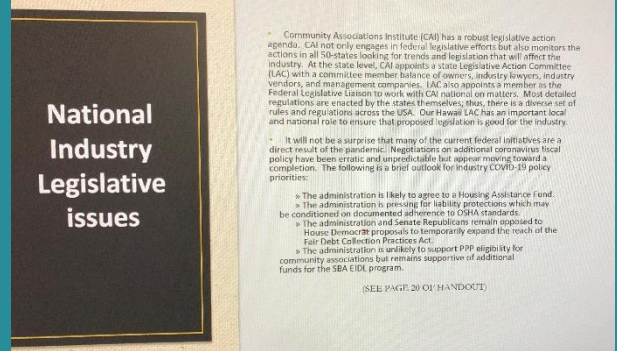
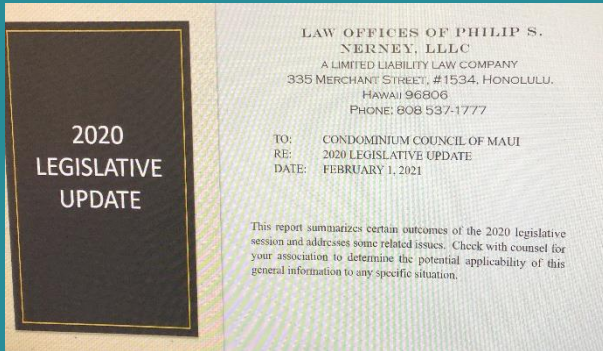
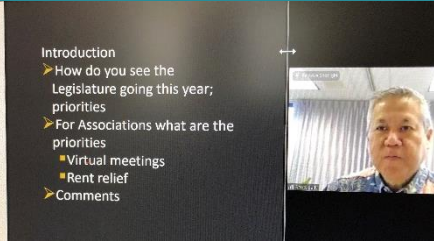


September 2021



BIG MAHALO TO OUR SPEAKERS AND ATTENDEES OF OUR LATEST ZOOM WEBINAR!



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.

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A Message from the President

Dear CCM Members,

As you can see from our email blasts, the Board of Directors are engaged and meeting every month to hold Community Council of Maui to its mission statement, "...to educate, promote leadership and provide resources for all affected by condominiums and community associations". Especially during these times, it's our obligation to provide educational opportunities and keep our Hawaii Association Community informed. We hope you folks will log in to our upcoming seminars, because when you do, you are supporting the vendors and Platinum Sponsors that work for you AND support us!

CCM is on alert and prepared to have in-person seminars as soon as they can be held safely. The October and November seminars have confirmed dates at King Kamehameha Golf Course, and we will continue to prepare for live seminars. And if we are unable to meet live, we are working on an alternate way to have a tradeshow. With live interactions, giveaways and break out rooms for different topics and speakers.

On behalf of the Board, I want to thank you folks for sticking with us, renewing your memberships, and participating in our Zoom seminars. We look forward to a great Fall Season and hope to see you soon!

Respectfully, your Board President,

Lisa Cano



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“Helping To Build Stronger Community Associations on Maui”

**REGISTRATION NOW
OPEN!**

CCM ZOOM SEMINAR

**Friday, September 17, 2021
10:00 a.m. – 11:30 a.m.**

**DISASTER PREPAREDNESS:
Handling Various Emergency
Situations**

“Active Shooter/Attacker Awareness”

Sergeant Jan Pontanilla
Maui Police Department

“First Aid”

Jeffrey M. Later, RN, BSN, BA, CEN
Trauma Program Manager - Trauma
Services
Maui Health System
Maui Memorial Hospital

“Clean-Up”

Anthony Nelson
President
Premier Restoration Hawaii

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EVENT!**

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Shannon Sheldon is a Partner with McKeon Sheldon Mehling LLC. Shannon represents over 200 condominium and community associations throughout the State of Hawaii. Shannon works with associations to establish sound organizational and administrative practices while maintaining a sense of community. Shannon manages an efficient collections practice and advises boards of directors and property managers on issues related to governance, fiduciary duties, reserves, statutory compliance and enforcement.

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Navigating COVID-19 Now

By now, almost everyone knows someone affected by COVID-19. This year, I lost my grandmother to COVID-19 while she was in a nursing home. She died alone because the nursing home would not admit family members because of COVID-19. A month ago, my father, who is fully vaccinated, had a “breakthrough” COVID-19 case and contracted the Delta variant. The ambulance rushed him to three hospitals that were completely full before a fourth hospital admitted him to give him fluids and oxygen to save his life. If you and your association have not implemented any actions or policies to attempt to reduce the spread of COVID-19, please do not wait any longer. This article discusses the latest developments in the law to minimize the spread of COVID-19.

Association Meetings

I have been informed by the First Deputy Corporation Counsel for the County of Maui that rules have been submitted to the Governor’s Office to be effective September 15, 2021 to prohibit in-person meetings for associations. The rule is: “In accordance with Act 83 (2021), condominium and other similar associations must conduct meetings remotely in a manner consistent with state law.” While not entirely clear, it appears this rule will apply to both board and owners’ meetings.

Act 83 enacted by the Governor on June 24, 2021 amends the law for condominium associations, HRS § 514B-121, to allow electronic meetings and electronic, machine, or mail voting during any period in which a state of emergency or local state of emergency is in effect in the County in which the condominium is located, despite the language in the association’s governing documents. It also amends the community association law, HRS § 421J-3.5, to allow associations to conduct owners’ meetings remotely subject to certain requirements notwithstanding any provision to the contrary in the association documents.

There is presently a state of emergency. Therefore, association meetings after September 15, 2021, should be conducted electronically/remotely. The most widely used and effective methods seem to be GoToMeeting or Zoom, and Zoom allows owners to cast votes during the meeting.

There are several benefits to electronic meetings. It obviously reduces the risk of spreading COVID-19, thus reducing any liability to the association.



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BASIC TRAINING MANUAL FOR BOARD MEMBERS

MSM publishes a Basic Training Manual for Board Members, which is available for free on our website. The Basic Training Manual provides an overview of the types of associations most common in Hawaii, and discusses the legal authorities governing these associations. The Manual also provides Boards and Property Managers with guidance and information about association management, board duties and responsibilities, maintenance obligations, records and disclosure obligations and reserves.

For your copy, visit:

www.msmhawaii.com



What associations really need to know about the state of COVID-19

Shannon Sheldon provides specific guidance on how associations should navigate COVID 19 at projects and in the workplace.

It also allows greater participation by owners at a lesser expense, particularly off-island owners who are following the Governor's request on August 23, 2021 – "It's not a good time to travel to the islands." Hospitals, including Maui Memorial, are over-crowded and beds are literally in the hallways. It is not a good time to encourage owners to attend meetings in person. While proxies are always an option, Robert's Rules of Order discourages the use of proxies and many owners do not like them.

In addition, directors and management can easily share their screen during electronic meetings allowing for power point presentations and sharing of photographs. Owners tends to conduct themselves more civilly and professionally on electronic meetings, perhaps because of the ability to mute any owners who use profane or offensive language. Utilizing Zoom polls, electionbuddy or other electronic voting method or mailed ballots in advance of the meeting also reduces the time of the meeting and potential error and allows votes to be quickly tabulated and announced.

Mandating Vaccines for Employees

You have likely heard that many employers – including the State of Hawai'i – are mandating vaccinations for employees or weekly COVID-19 testing for those employees who refuse to vaccinate. The U.S. Justice Department issued an opinion on July 6, 2021 that "We concludes: that section 564(e)(1)(A)(ii)(III) concerns only the provision of information to potential vaccine recipients and does not prohibit public or private entities from imposing vaccination requirements for vaccines that are subject to EUAs."

Since issuance of this opinion, and with the U.S. Food and Drug Administration approval of

the Pfizer-BioNTech COVID-19 Vaccine on August 23, 2021, many employers are now requiring employees to be vaccinated

Employers may terminate employees that refuse to be vaccinated if those employees present a direct threat to the safety or health of themselves or others in the workplace that could not reasonably be accommodated. To determine if a direct threat exists, employers should conduct an individualized assessment of four factors: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm. A determination that an individual presents a direct threat would "include a determination that an unvaccinated individual will expose others to the virus at the worksite." For example, an employee that works at the front desk and interacts daily with many people is more of a direct threat than an employee that performs landscaping outdoors and interacts with no one. If not a direct threat, the employer may instead want to require wearing a mask at all times rather than requiring vaccination.

Critically, there are exceptions where an employee cannot require an employee to be vaccinated. Employers must make accommodations for religious beliefs, disabilities and pregnancy related objections.

Some associations are concerned about losing employees if vaccinations are required and are instead offering incentives, such as a monetary bonus and paid time off to get the vaccination, to those employees who are fully vaccinated. If requiring vaccinations and/or COVID-19 testing, it is recommended to implement a policy in order to avoid asking pre-screening questions that could violate the prohibitions against disability-related inquiries. It is recommended to consult with your association attorney or even an employment attorney to develop a policy.

CORONAVIRUS

Mandating Vaccinations for Others

Can associations mandate vaccines or proof of vaccination for people who come to the property?

The law is not fully developed in this area, but at this time, mandating vaccinations for owners, residents, or vendors or requiring proof of vaccinations is not a good idea. It opens a can of liability worms.

People may have medical or religious reasons for not being vaccinated, which will require the association to determine whether these exceptions are valid. Children under 12 currently cannot be vaccinated, but the association cannot ban children from facilities without a potential violation of the Fair Housing Act. A wrong step may result in a discrimination or an invasion of privacy claim. We recently had a case where an owner refused to allow an association vendor to enter her unit without being vaccinated. When asked for vaccination proof, the vendor refused to disclose asserting a privacy right thus creating a legal issue.

Association boards can require masks and social distancing because the County and State laws require it; however, there is no federal, State or County law mandating vaccinations at this time.

There is nothing in the Condominium Property Act that provides the board authority to require residents to subject themselves to vaccines to access and live in the condominium project.

You have likely heard of the “vaccination passports” or “Safe Access Oahu” that will allegedly be implemented on Oahu on September 13.

People will need to show proof of a COVID vaccination or a negative COVID test within the past 48 hours to get into restaurants, bars, museums, movie theaters, commercial pools, and gyms on Oahu. You may have also heard that large venues, such as concert halls, require proof of vaccination. Public venues can require vaccination because no one is forced to attend a concert, however, owners and tenants have a legal right to use the common elements. Owners have an interest in and easement to use the common elements and facilities, and an owner may claim the association breaches this right if it restricts use for owners and their tenants, guests and family.

Requiring vaccinations or proof of vaccination for vendors may limit the number of vendors available and increase costs. If the association places a limitation on owners' vendors, owners could sue the association for interference with contractual relations. It may, however, be reasonable to require vendors to either show proof of vaccination or negative COVID-19 test in the last 72 hours, which is not as intrusive as requiring a vaccination.

Enforcement may be difficult and potentially expensive. COVID vaccination cards are pieces of paper that can easily be forged.

Most associations do not have the manpower to request and review vaccination cards from every visitor to the property. However, there is new vaccine verification app, Excelsior Pass, which may make it easier for associations to verify vaccination or negative COVID tests.

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Governance

We take pride in our prompt responsiveness to managing agents, directors and general managers to allow boards to timely make important decisions that directly affect their association's daily governance..

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We help associations quickly and efficiently collect delinquent assessments, which are the financial backbone to the maintenance and stability of our clients' communities. We use sophisticated programs to track collection matters and effectively recover amounts owed to associations.

Governing Documents

Our attorneys strive to ensure that our clients' governing documents are compliance with updates in local, state and federal law. We frequently draft and amend governing documents, including declarations of covenants, conditions and restrictions, association bylaws, house rules and policies of the Board.



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Mandating Masks and Other Protection Measures

Before the recent outbreak this summer, I travelled to the mainland. Coming from Hawai'i, I was shocked to walk into a packed Las Vegas casino to find everyone, and I mean everyone, unmasked. There were signs posted everywhere stating "Masks are required for unvaccinated persons". Obviously not everyone was complying and there was no enforcement, nor any viable way to enforce. I found the same thing in Arizona, California, Washington and Oregon. Not surprisingly, there were massive outbreaks of COVID-19 and masks are now required indoors in these western States.

In Hawai'i, masks are currently required inside. Governor Ige's Emergency Proclamation of August 5, 2021 states: "All individuals shall wear face coverings over their noses and mouths when in public settings." There are exceptions, such as individuals with medical conditions, children under the age of 5, while eating, drinking and smoking, and while outdoors. The Proclamation explains: "the recorded number of cases and deaths has continued to increase, with more than 44,617 documented cases of COVID-19 in the State and 538 deaths attributed to this disease".

Associations should require all persons, whether or not vaccinated, to wear masks inside any association facilities – lobbies, meeting rooms, etc. While not common, fully vaccinated persons can contract and spread COVID-19, and particularly the Delta variant.

There are several other precautions to implement. Associations should encourage people to socially distance that are not from the same residence or household.

Display signs in highly visible locations that promote social distancing and handwashing and have sanitizer available. Implement rules to limit occupancy in small, enclosed spaces such as elevators and gyms, or even consider closing the gym. Limit association facilities to residents only – do not allow residents to bring in outside guests. Do not host social events or happy hours that result the potential spread of COVID-19.

The sooner we reduce the spread of COVID-19, the sooner our world can go back to "normal" and Hawai'i's economy can recover. I encourage you to implement policies and strategies to do your part to help your association or your association clients and Hawai'i.



How Your Water Heaters Can Become Smart

That water heater you rarely think about can be an invaluable tool to help our community use our grid more efficiently, and if enough of us participate, we can reduce our island's reliance on burning imported fossil fuels. A Hawaii-based company is working with Hawaiian Electric on a free smart water heater upgrade that brings this technology to Maui homes.

Shifted Energy is a clean energy company founded by Hawaii residents. The team ran their first energy pilot on Maui in 2013. Now, they have received funding to install 1,000 water heater devices on Maui by winter at no cost to participants, a \$250 value per tank. They contracted with Maui-based John Cano and Makai Power Systems to handle the installations, which take about 20 to 30 minutes per tank.

Hawaii is the first state to mandate that electricity be generated from 100% renewable energy sources by the year 2045. Energy independence from imported oil and coal will mean drastic reduction of carbon emissions as well as lower costs for everyone. Maui is already more than halfway there, and we can each play a role to cross the finish line.

Peak energy demand happens in the morning and the evening, yet the grid supplies the most energy in the middle of the day when the sun is shining on solar panels across the island. Shifted Energy's smart device can be installed on any electric resistance water heater to occasionally shift the time of day the water gets heated. This means it can take better advantage of the clean, locally-produced energy and lower demand for fossil fuels.



This program prioritizes resident comfort. (No one likes cold showers.) Using Intelligent software to predict hot water needs minimizes impact to participants. As a thank you for participating, the bill-payer receives \$3 to \$4 off their electric bill each month for the five years of the program, which is likely to be extended beyond that. While clean energy programs are usually for owners of single family homes with roofs for solar panels and garages for electric vehicles, now families living in multi-unit buildings and townhomes can benefit too, even renters!

As an added bonus, the smarter water heaters can provide advanced warnings of problems with heating elements or even leaks allowing maintenance staff to get ahead of **late-night and weekend emergency maintenance calls**. The more residents who join, the more problems and expenses can be avoided.

Because the device is only connected to the electrical line (not the tank itself), the water heater's warranty remains intact and, even if replaced, the new tank will immediately connect to the program.

Electric water heaters are already in people's homes making it easy to empower residents to participate in the clean energy transition. Working together, we can make a difference. Shifted Energy will cover the costs for qualified participants and do the work while residents and managers reap the benefits.

Program funding will be exhausted by December 2021, so this is a limited time offer. If you would like to sign up your property or learn more about the program, please email nicole@shiftedenergy.com or call/text 808-427-9658.

*Criteria for participation

- Electric resistance water heaters of 35 gallons or more (solar thermal and gas water heaters do not qualify at this time)
- Two or more bedrooms
- Short-term rentals are not eligible



Property Condition Assessments, Construction Defects, and the Duty to Inspect

By: Brittany Grunau, and Ritchie Lipson

In this new decade, Association's should thoroughly review their Declarations to determine if an annual Property Condition Assessment (PCA) is required. The trend in many States is for developers to include a requirement Associations hire an independent 3rd party to complete an investigation and issue a detailed report to be shared with all Members and the Developer. Even if the documents do not require a formal inspection, Declarations do require the AOA to maintain the common area, and often to a high standard that is defined in the documents by the Developer. To meet its fiduciary duties, the Board should undertake a detailed review of the common area on an annual basis. It is a best practice!

What is a PCA? Who performs the Assessment? Why should Property Managers and Board Members care if one is completed? This article addresses these questions and more and will put in context how these periodic assessments can protect AOA's from litigation and save significant amounts of money on long term maintenance issues.

First and foremost, let's start with what the assessment is not. It is not a Reserve Study – a Reserve Study documents and catalogues elements of the common area, determines their useful life based on guidelines, and periodically values these elements based upon very limited site inspection of existing conditions. The Reserve Study is a critical association management tool, but generally, it is used for preparation of general budgeting, and not a detailed assessment of the condition.

A PCA is a review of the general overall condition of the building, as well as any relevant construction documents, and includes a sampling of interior and exterior observations by the expert, a list of general property conditions, specific repair and maintenance items, and an opinion of probable repair costs.

The PCA will examine the major building components and evaluate potential failures. Major components inspected in a high rise or midrise building would include the components of the building envelope, including windows, sealant as well as cladding, metal, stone or glass. Often, an assessment on larger buildings will be done by a drop-down at a portion of the building on window washing scaffolding or rope lines; sometimes a ground level survey will be performed with a boom lift. The PCA has the potential to reveal corrosion and failures at insulated glass panels (IGU's) or failures of the sealant that is not easily seen during a quick visual inspection. These more thorough PCAs yield valuable information and whether further maintenance is needed.

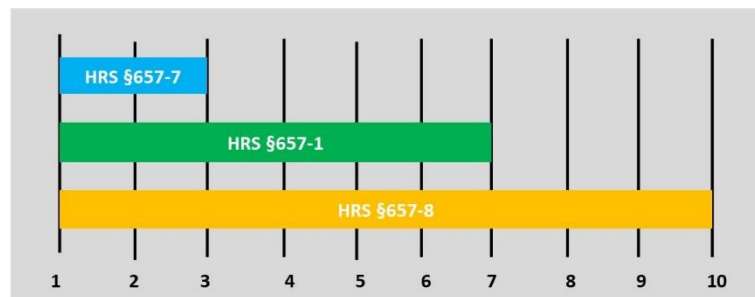
The fire and life safety components of the building are also generally inspected during the PCA. The PCA will answer questions such as: Is the equipment in working order on a high-rise pressurized stair? Are the fire assemblies properly designed and constructed?

The PCA will assist the Board to determine if any construction defects exist. Hawaii has a broad statutory definition of a construction defects as follows: "a deficiency in, or arising out of the design, specifications, surveying, planning construction, supervision, or observation of construction of a dwelling or premises". HRS § 672E-1.

Finally, it is important to conduct PCAs at the direction of an attorney as PCAs completed at the direction of the law firm are protected as privileged work product. Most important is to set up a regular investigative process to protect the long-term value of assets, avoid unwanted financial surprises, and pursue responsible parties for damages instead of through special assessments of members.

If the PCA discovers that construction defects exist, the Board should seek legal advice to determine the deadlines to bring a claim for faulty construction. The time frame is limited by Statutes of Limitations which depend on the type of claim. Many buildings receive an express warranty in their construction and sale documents which is usually limited to one or two years. Hawaii also provides for claims based on negligence, and breach of contract and implied warranties, which have different deadlines to bring a claim associated with each cause of action. As you can see in the chart below, claims for negligence have a two-year statute of limitation from when the Association knew or should have known that defects existed. Claims for breach of contract or implied warranty have a six-year statute of limitations from the date the claim accrued. The negligence and breach of contracts statutes of limitation can begin to run any time within the outside deadline date based on substantial completion called a Statute of Repose. This is generally 10 years from substantial completion. The chart below reflects how the deadlines can occur within the 10-year time frame.

Preserving the Claims



Years from Triggering of Statute

HRS §657-7 Damage to Property (negligence) - Two (2) years from when the association knew or should have known

HRS §657-1 Breach of Contract - Six (6) years from date the cause of action accrued

HRS §657-8 Statute of Repose - Ten (10) years from date of completion of structure

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Brittany Grunau's practice emphasizes resolving complex disputes through mediation, arbitration, and litigation for homeowners association claims, municipal claims, and single-family claims. Brittany's practice also encompasses municipal litigation, products liability, general business litigation, and personal injury. Practicing in Hawaii, Arizona, California, and New Mexico. Brittany oversees all aspects of litigation in federal and state courts.

Brittany earned her Juris Doctor from Loyola Law School, Los Angeles, California. She graduated from the University of California, Santa Barbara with a B.A. degree in Ethics and Public Policy.



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Ritchie Lipson is Executive Director of Client Relations for Kasdan Turner Thomson Booth LLLC. For the past 20 years, Lipson has worked with Commercial investors, Municipalities, School Districts, Homeowner Associations, Association of Apartment Owners and Residential Property Owners, to assist in the fair resolution of their claims for defective construction.

He earned his Juris Doctor from the Sandra Day O'Connor College of Law at Arizona State University, and a Master's in International Business from the American Graduate School of International Management. He studied international law at the University of Exeter in England. He received his undergraduate degree in Political Science from Colorado College. He is admitted to practice law in the State of Arizona and the District of Columbia only.

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Hawaiiana is Maui's #1 Management Company



Doug Lefler, CMCA
Vice President,
Maui Operations

Hawaiiana Management Company, Ltd. currently serves 110 properties on Maui, Lanai and Molokai. Maui County clients include Andaz Wailea Hotel, Aina Nalu, Sugar Beach Resort, Wailea Golf Estates and the Hotel Hana-Maui Condominiums. In addition, Hawaiiana manages several associations on the island of Lanai including Villas at Koele Phase II and Terraces at Manele Bay, plus Molokai's Wavecrest Resort and Molokai Shores. Hawaiiana's Maui County Associations are served by a total of 15 Management Executives and the industry's most experienced accounting, administrative and technical property management staff.

Hawaiiana serves many of its Maui County clients from its primary office in Kihei. In addition, Hawaiiana's West Maui office in the Kahana Gateway Professional Building is conveniently located to serve over 30 west side clients with their association management needs.

Why choose Hawaiiana?

- We serve 110 associations in Maui County
- Local (vs. mainland) banking
- All employees are in Hawaii

Maui County Clients:

- Aina Nalu
- Coconut Grove on Kapalua Bay
- Cottages at Kulamalu
- Emerald Plaza Place
- Emerald Plaza II
- Haiku Town Acres
- Hale Kai
- Hale Kamaole
- Hale Royale
- Hokulani Golf Villas
- Hololani
- Honokowai East
- Honu Alahahe
- Ho'olea Terrace at Kehalani
- Ho'olei
- Ho'onanea at Lahaina
- Hotel Hana Maui Condominiums
- Island Sands
- Kaanapali Plantation
- Ka'anapali Royal
- Kahana Village
- Kai Malu at Wailea
- Kalama Terrace
- Kamalani
- Kamani at Kehalani
- Kamaole Beach Royale
- Kamaole Grand
- Kamaole Heights
- Kamaole One
- Kamoku Condominiums
- Kana'i A Nalu
- Kanani Wailea
- Kanoë Resort
- Kapalua Golf Villas
- Ke Alii Ocean Villas
- Keala o Wailea
- Kehalani Community Association
- Kehalani Gardens
- Kepuhi Beach Resort
- Kihei Beach Condo
- Kihei Garden Estates
- Kihei Villages
- Kilohana Kai Vistas
- Kilohana Waena
- Koa Resort
- Kua'aina Ridge
- Kulamalu HOA
- Lahaina Roads
- Lanikeha
- Luana Kai
- Ma'alaea Banyans
- Ma'alaea Kai
- Ma'alaea Mermaid
- Ma'alaea Surf
- Ma'alaea Yacht Marina
- Mahana Estates
- Mahanalu Nui HOA
- Mahina Surf
- Mahinahina Beach
- Makali'i at Wailea
- Makena Surf
- Maluhia at Wailea
- Maui Kaanapali Villas
- Maui Lani Community Association
- Maui Parkshore
- Meadowlands HOA
- Milo Court at Kehalani
- Milowai-Maalaea
- Molokai Shores
- Napili Point Resort, Phase I
- Napili Point Resort, Phase II
- Napili Bay
- North Shore Village
- Opukea at Lahaina
- Pacific Shores
- Paki Maui
- Paradise Ridge Estates
- Pohailani Maui
- Pu'unoa HOA
- Royal Kahana
- Sandhills Estates HOA
- Southpointe at Waiakoa
- Spinnaker
- Sugar Beach Resort
- Summit at Kaanapali, Phase I
- Terraces at Manele AAOO
- Terraces at Manele Bay, Phase IV
- The Ironwoods at Kapalua
- The Mahana at Kaanapali
- The Office Centre
- The Palms at Manele, Phase I
- The Ridge at Wailea
- The Vintage at Ka'anapali
- Valley Isle Resort
- Villas at Kahana Ridge
- Villas at Koele, Phase II
- Wailea Beach Resort & Residences (Andaz Hotel)
- Wailea Golf Estates
- Wailea Golf Estates II
- Wailea Golf Vistas
- Wailea Highlands
- Wailea Kai Homesites
- Wailea Kialoa Homesites
- Wailea Pualani Estates
- Wailele Ridge
- Wailuku Heights Ext. Unit II
- Waiolani Community Assn.
- Waipuilani
- Wavecrest Resort
- West Kuiaha Meadows



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Director, West Maui Office



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Executive



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Rising Construction Material Costs and How They Impact Insurance Claims

Summer is the time of year when we want to head outside, start up the barbecue, and enjoy long days. If you're like anyone who has recently survived a year of being couped up in your home, you've either performed some improvements to your home or at least thought about it. This is not an on-record statistic, but one of our local paint suppliers saw a 20% increase in sales with a 140% increase in the total number of invoices. This means they were selling more to end users (i.e. home owners) than contractors. If you painted your home last year, you were not alone.

Property restoration is a unique industry in the fact that we receive monthly pricing updates from the provider of one of our estimating platforms, Xactimate. Xactimate provides pricing to 460 markets throughout the U.S. and Canada. The State of Hawai'i has three markets according to Xactimate; Honolulu (Oahu), Wailuku (Maui & Hawaii Island) and Outer Island (Kauai, Lanai, Molokai). Additionally, the Xactimate pricelist has 15,000 material components. This means they publish almost 7 million prices every month!

Layered in with the complexity of the impact of the pandemic on the building materials manufacturers, keeping pricing current at a national level is an absolute impossible task. The price of an 8 foot 2x4 at Home Depot has ranged anywhere from \$4 to \$14. We cannot accurately predict what the price is for this one material let alone the other 15,000 possible materials we could use. Despite this, there is an expectation on behalf of our property managers, insurance carriers and adjusters, and owners that we know and quote these prices upstream of performing the work.

While Xactimate and their pricing database is helpful, they also challenge our industry. The mistake many people make is assuming that these prices are always correct or at least correct on the average. Recently, we did a quick survey of 100 commonly used material line items— things like drywall mud, screws, pre-hung doors, base molding, etc.—and the results indicated that 75% of those materials components were anywhere from 5%-75% less than actual pricing here in Hawai'i. For this reason, Xactimate states in their licensing agreement that the users of the software are not to "prohibit or preclude deviations from the Price Data where contractor requirements, market conditions, demand or any other factor warrants the use of a different line item price for the specific situation." They do this because they know that updating 7 million prices every month is almost impossible.

My advice for property managers who are experiencing a water damage or fire damage event, or any sort of capital improvement project, is to take time to ask the following questions from your contractor:

1. Were material prices verified before receiving my estimate?
2. If they change between now and when I contract for service, what happens?
3. Are the materials I need available now? If not, what is the lead time for them?
4. When does the clock start on that lead time?

Our intention is to always educate the property and building managers on issues the restoration industry is facing and to serve as a resource whether or not you are a customer. Please feel free to email or call our office if there is anything we can do to assist you in caring for your buildings or their residents – (808) 694-3552 or office@premhi.com.

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HO6 Insurance and the Master Policy

An essential part of owning a condominium unit is ensuring that one has proper insurance coverage for that unit. Naturally, when it comes to condo unit ownership, some questions come to mind:

1. What kind of coverage should unit owners look into obtaining?
2. How should a unit owner determine how much coverage they should have?
3. Why is it important to have this coverage?
4. What is the current market like for such coverage?

The HO6 Policy

A unit owner of a condominium unit should look into obtaining a Condominium Unit Owners or HO6 policy. According to the International Risk Management Institute, the HO6 policy covers the “real property interest and the personal property of insureds who own a unit in a condominium or share an ownership interest in a cooperative building”.

The Condominium Association’s responsibility is to cover the structure and common elements of the building, as well as the original construction of the units within the building. This includes all original, permanently attached components of the units, as designed and built by the developer of the building – including, but not limited to – the walls, floors, and ceilings.

The recommendation to obtain one’s own HO6 policy, when the Condominium Association has its own master insurance policy for the building, originates from Hawaii Revised Statutes (HRS) Chapter 514B, on Condominium Law. The wording of this statute states that the master insurance “need not cover improvements and betterments to the units installed by unit owners”. This leaves a gap in insurance that must be filled by the HO6 policy.

One of the benefits of having an HO6 policy would be to cover the “improvements and betterments” of a condominium unit. In determining how much coverage to have for improvements and betterments, one must ask the question: “How much did I put into renovating my unit?” If there is a particular dollar figure that comes to mind in answering this question, that figure is how much should be put into the “Dwelling” coverage of the HO6 policy – which corresponds to coverage for the improvements and betterments.

Additionally, the HO6 policy offers coverage for one’s Personal Property, Loss of Use, and Personal Liability. It is vital for a unit owner to discuss these coverages with their insurance agent, so as to obtain suitable and adequate coverage to fit one’s needs. At the same time, it is important that one’s individual insurance coverage complements the insurance coverage provided by the Condominium Association. For example, when there are losses that occur on common property, or losses involving multiple units, the Association may assess their master policy deductible to a unit owner, or multiple unit owners. This leaves another coverage gap that must be filled by the HO6 policy.

Currently, there is no uniformity among insurance carriers in the HO6 marketplace, as far as what coverage will apply when a unit owner is assessed the master policy deductible. Generally, there are 3 different coverages that may apply:

1. Dwelling
2. Personal Liability
3. Loss Assessment

In most HO6 policies, “Loss Assessment” is provided at a minimum limit of \$1,000. Some coverage enhancements and endorsements may increase this limit further. It is important that a unit owner knows what the master policy deductible is for their particular Association. Being liable for a deductible of \$5,000 – and for some Associations – upwards of \$50,000, could prove to be financially catastrophic for many.

Compared to the cost of insurance for single family homes, the insurance market for HO6 policies remains quite competitive. Many condominium buildings in Hawaii were built in the 1960s and 1970s. Aging condominium buildings mean aging components, including the roofing, plumbing, electrical, and HVAC systems. With the aging of these various components comes the increased susceptibility – and eventual inevitability – of these components to fail.

When these components fail, buildings may experience an uptick in both the frequency, and severity of fire and water losses. Property damage from these, and other causes of loss, have cost Condominium Associations, unit owners, and consequently insurance companies, hundreds of thousands of dollars. With this increase in property losses, it is only a matter of time before the cost of HO6 insurance catches up to the cost of insurance for single family homes. The level of protection alone that the HO6 policy provides for a unit owner is worth the premium paid.

In harmony with the aforementioned statute, HRS § 514B, Condominium Associations have made it a practice to ensure that every unit owner has adequate HO6 insurance. This ensures that each unit owner is protected against paying any losses out of their own pocket. This also fills the gaps in insurance where the Association’s master policy leaves off.



Shane Choi is an Associate Account Executive with Atlas Insurance Agency’s AOA Department – which specializes in Condominium Association Insurance. Shane holds his Chartered Property Casualty Underwriter (CPCU) and Associate in General Insurance (AINS) designations.



WHAT *IS* THIS?!



WINDOW WIND LOADS: Windows Insufficiently Rated for High Winds

The third in a series of articles to alert owners of potential problems with their buildings.

By Kyle Pineo, Esq. of Berding|Weil LLP and William M. McKeon, Esq. of McKeon Sheldon Mehling, LLC

In the classic fairy tale, *The Three Little Pigs*, three pigs build three homes made of sticks, straw, and brick. A big bad wolf, who wants to eat the pigs, huffs, and puffs, and blows down the stick house and straw house, but cannot blow down the brick house. In Hawai'i, some homes are built with insufficiently rated windows—a building code violation—that could blow out of the

exterior wall in the event of a high wind storm or hurricane. The first step to identifying whether a window is sufficiently rated to withstand high winds is to find the rating value located on a window sticker. Verifying your window ratings are sufficient will help you rest easy that your home will be safe when the big bad wolf comes around huffing and puffing.

WINDOW STICKERS

The American Architectural Manufacturers Association (“AAMA”) and the National Accreditation and Management Institute (“NAMI”) provide certifications for windows that are tested, meet minimum standards, and are at least as strong as manufacturers claim the windows to be. These Associations certify

the windows with window stickers, which are placed on or within a window frame. Window stickers are proof for designers, builders, and buyers that windows meet minimum strength requirements. They may also indicate the manufacturer, model number, and other useful information about the window. The stickers almost always indicate the window wind load rating. Before addressing wind load ratings, it's important to have a general understanding of how wind affects buildings and windows in particular.

WIND LOADS

When wind blows into a wall, a force is applied to the wall in the direction of the wind. When the big bad wolf blows on the front wall of a house made of sticks, the force from the wind causes the sticks to fall over. But wind can hit a wall of a building in several directions, creating forces in different directions. Wind blowing against a window can push against a window towards the inside of the building. But wind blowing away from or along a window can create a suction force that effectively pulls the window, especially those on the back of the building, towards the outside of the building. If the big bad wolf huffed hard enough, a suction force could have sucked the sticks toward the outside of the home. Windows are designed with these different forces, or wind loads, in mind.

WIND LOAD RATING

Not all windows are manufactured equally. Some windows are designed to withstand higher wind speeds, while others are not as strong. Window designers and manufacturers quantify the different loads a window can withstand using a wind load rating, which is the maximum pressure a window can handle before failing (blowing out). These window ratings are shown on window stickers.

When wind blows directly against a window toward the inside of a building, the pressure is referred to as a positive wind pressure. When wind creates a suction effect that pulls a window towards the outside of a building, the pressure is referred to as a negative pressure. In the U.S., wind load ratings are measured in pounds per square foot, or "psf". Higher wind load rating values mean the windows can withstand higher pressures.

When an architect and structural engineer design a building, they specify the minimum wind loads the project's windows must meet as required by applicable building codes, which depend on how close the project is to the ocean and other buildings, among other factors. In other words, designers quantify the minimum positive and negative wind load ratings. If windows do not meet the minimum loads, they can fail in high wind events, like a tropical storm or hurricane.

INSUFFICIENTLY RATED WINDOWS IN HAWAII

In our construction defect practice here in Hawai'i, we have encountered a number of projects that were built with windows that do not meet the minimum required wind loads. This creates a significant life safety risk in the event of a hurricane. Windows can be sucked out of a building,

increasing risks of injury and death to occupants and those in the area near the building from windblown and falling debris.

WHAT TO DO

The only way to repair insufficiently rated windows that violate building codes is to replace them with sufficiently rated windows. This is an expensive repair for any sized building. In a low-rise project with many units, the repair costs can be hundreds of thousands to millions of dollars.

We recommend that an association inspect its windows, photograph window stickers, and retain a structural engineer to interpret the wind load data found on the stickers and verify whether the windows are sufficiently rated. If the building is less than ten years old, there may be time to hold the responsible parties liable for the cost of the repair.

Berding | Weil and McKeon Sheldon Mehling are experienced in investigating window wind load ratings, identifying whether windows are sufficiently rated, and if the project is young enough, pursuing developer claims. Please contact us if you are concerned about this issue, so your building residents will be safe when the big bad wolf starts huffing and puffing.



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September 17th 2021

10:00 am – 11:30 am

Disaster Preparedness

October 2021

To be Determined

November 2021

To Be Determined

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