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25th Annual Community Association Law Webinar

FOR DIRECTORS, OWNERS & MANAGERS

FRIDAY, DECEMBER 11, 2020

12:00 PM. - 1:30 PM.

MOTOOKA ROSENBERG LAU & OYAMA

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December 11, 2020

To our Valued Clients and Invited Guests,

Welcome to our twenty-fifth Annual Law Seminar; we thank you for attending. This year, as a result of COVID-19, for the first time we are presenting our seminar as a Webinar. We value our relationship with you. To show you our appreciation and to better serve you, we will discuss several key issues affecting community associations.

Melanie Oyama will address COVID-19's impact on annual and Board meetings and how to handle requests for the deferral of maintenance fees and other assessments.

Carol Rosenberg will address COVID-19's impact on the use of amenities and how to handle notification of residents or staff testing positive for COVID-19.

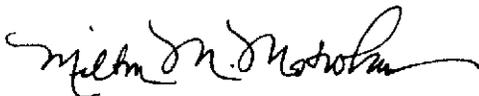
Janelle Lau will discuss the 2019 legislation affecting community associations.

Surita Savio of Insurance Associates, who insures over 1,000 community associations in Hawaii, will address the crisis in Directors & Officer's insurance.

Information on each topic is included in this PDF, including handouts to accompany the slide presentations. The materials for each speaker have been numbered to simplify finding them. The PDFs of the seminar materials, and the updated Hawaii Revised Statutes Chapters 514B, 421I & 421J are available on our website at <https://www.myhawaiiilaw.com/downloads>. We hope you find the program informative and useful.

Sincerely,

MOTOOKA ROSENBERG LAU & OYAMA



Milton M. Motooka

Motooka Rosenberg Lau & Oyama



25th Annual Law Webinar

December 11, 2020

AGENDA

- | | |
|---------------------------|--|
| 12:00 – 12:05 p.m. | Welcome and Introductions
Milton M. Motooka, Esq. |
| 12:05 – 12:25 p.m. | COVID-19 Issues – Meetings and Deferral of Fees
Melanie K. Oyama, Esq. |
| 12:25 – 12:45 p.m. | COVID-19 Issues- Amenities and Positive Test Results
Carol A.L. Rosenberg, Esq. |
| 12:45 – 1:00 p.m. | Legislative Update
Janelle M.F. Lau, Esq. |
| 1:00 – 1: 25p.m. | Crisis in D&O Insurance
Surita Savio |
| 1:25 – 1:30 p.m. | Questions & Answers |
| 1:30 p.m. | Closing and Evaluations |

Speakers

Milton M. Motooka, Esq.

Mr. Motooka, Senior Partner of Motooka Rosenberg Lau & Oyama, has been practicing law in Hawaii for more than 40 years. His practice is devoted almost exclusively to representing homeowner associations. Mr. Motooka was the only attorney from Hawaii initially selected to become a member of the Charter Class of the College of Community Association Lawyers, comprised of attorneys who have distinguished themselves in the field of community association law and community service. He was awarded the Richard M. Gourley Distinguished Service Award in 1997 for his contribution to Hawaii's community association industry in law. He was one of the founders of CAI Hawaii.

Melanie K. Oyama, Esq.

Ms. Oyama is one of the Partners in the firm of Motooka Rosenberg Lau & Oyama. Her primary practice areas are delinquency collections and general counsel for Condo and Community Associations, including Litigation, conveyance matters, mediation, and rendering opinions on House Rules Violations. She earned her Juris Doctor at Arizona Summit School of Law in 2015, where she completed a three-year juris doctor program in just over two years, including courses in Ireland. Prior to attending law school, Melanie received her Bachelors in Justice Administration from Hawaii Pacific University in 2013. Melanie previously worked for Motooka & Rosenberg for thirteen and a half years as a Legal Assistant and Paralegal. This is her fourth year as co-chair of CAI's Board Leadership Development Workshop, and she is Co-Chair of the Programs Committee. In 2019, she received the Hoku Award, which is given in recognition of participating in support of CAI education programs, and demonstrated leadership skills, and an interest in being a future leader with CAI Hawaii.

Carol A. L. Rosenberg, Esq.

Ms. Rosenberg is a Partner in the firm of Motooka Rosenberg Lau & Oyama. She began her career as a civil litigator, but now focuses almost exclusively on representing homeowner associations. Ms. Rosenberg's practice involves helping association clients with all issues related to their operations, including general matters, collections, contract review, and mediation, arbitration and litigation for covenant enforcement and disputes with owners and vendors. She served on the Board of Directors of the CAI Hawaii Chapter as Treasurer in 2016, President-elect in 2017, and as President in 2018, and is currently serving as a Director. She is also Co-Chair of the CAI Hawaii Programs Committee, which is responsible for coordinating all of CAI Hawaii's educational seminars. Ms. Rosenberg received the CAI Hawaii Hoku Award in 2016, and the CAI Hawaii President's Award in 2017.

Janelle M. F. Lau, Esq.

Ms. Lau, a Partner in the firm of Motooka Rosenberg Lau & Oyama, began her practice in 2007 as a personal injury civil litigation attorney. She now almost exclusively represents homeowner associations in various matters, including general counsel matters, mediation and litigation for covenant enforcement and disputes with owners, and collection of delinquencies, including foreclosures. Ms. Lau is a graduate of the William S. Richardson School of Law, and she contemporaneously earned her Master's degree in Business Administration from the Shidler College of Business at the University of Hawaii at Manoa.

Sue Savio

Ms. Savio has been President and Owner of Insurance Associates, a kama'aina insurance agency, since 1975. Insurance Associates specializes in providing insurance services for Condominiums, Cooperatives, Homeowners Associations and similar developments. Insurance Associates today represents over 1000 community associations throughout Hawaii. Ms. Savio has served as President of the Hawaii Independent Insurance Agents Association (HIIA), has served as the President of Community Associations Institute (CAI) Hawaii, and has served on their board in different capacities for several terms since 2000. She was awarded the Richard M. Gourley Distinguished Service Award for her contribution to the community association industry in insurance. She currently serves on the boards of three condominium associations. You may reach her at (808) 526-9271 or by e-mail at sue@insuringhawaii.com.

Coping with COVID-19 (Part I)

Impact on Annual & Board Meetings, and Deferral/Waiver of Assessments

**By: Melanie K. Oyama, Esq.
Motooka Rosenberg Lau & Oyama LLLC**

Part I includes:

- (I) Impact on Annual Meetings;
- (II) Impact on Board Meetings; and
- (III) Deferral/Waiver of Assessments

I. Impact on conducting annual meetings

Associations must conduct business but the Board does NOT have the authority to cancel annual meetings:

One of the impacts we saw with COVID is that several Associations cancelled the 2020 annual meeting whether the cancellation was prior to the notice going out or after the notice went out. However, the Board does NOT have the authority to cancel the annual meeting. So, if you are an Association that cancelled the 2020 annual meeting due to COVID, then the Association did not act in accordance with the requirements because most, if not all, Association Bylaws provide that the annual meeting “shall” be held within a certain timeframe. Typically, our recommendation has been to postpone the annual meeting instead of cancelling. However, we are in unprecedented event and given the current state we are in, it is not likely an owner will challenge the Board’s decision to cancel the meeting. However, if a challenge is raised, we believe that a strong argument can be made that the health and safety of the owners are of paramount importance and outweigh strict compliance with the timeframe requirements.

Review Bylaws for (1) timeframe required to hold annual meeting, (2) timeframe requirements for postponement of the annual meeting, and (3) voting requirements (such as secret ballots or authority to conduct elections via mail-in ballots)

Consult with the experts: (1) Attorney, (2) Parliamentarian, and (3) Association’s CPA

Condominium Associations:

HRS §514B-121(a) states that, “A meeting of the association *shall* be held at least once each year.” But there is no provision within HRS 514B that addresses conducting an annual meeting by electronic means and we are not aware of any Bylaws for Condos that have a provision that allows for an annual meeting to be conducted by electronic means. Many Associations inquired about the ability or authority to conduct the annual meeting by electronic means. While yes, conducting annual meetings online is arguably allowed, given the pandemic (and nothing in HRS 514B that prohibits it and likely the Bylaws do

not prohibit it either), but unless there is some kind of technology that could meet the statutory voting requirements, it would be very difficult to hold an electronic annual meeting. A Bylaws amendment could be done to allow annual meetings to be conducted by electronic means but the Association will still run into issues with the statutory voting requirements.

The statutory requirements for voting are found in HRS § 514B-121(b) which states:

Notwithstanding any other provision of this chapter or the declaration or bylaws of a condominium to the contrary, at any association meeting the board may direct the use of an electronic voting device regardless of whether a secret ballot is used or required. Such use shall be subject to the following:

- (1) The electronic voting device and all associated equipment shall be isolated from any connection to an external network, including the Internet;
- (2) The board shall establish reasonable procedures to provide for the secrecy and integrity of the unit owners' votes, including but not limited to procedures that ensure the availability of a printed audit trail containing:
 - (A) The reference number of the electronic voting device;
 - (B) Each common interest voted; and
 - (C) The vote that was tabulated;
- (3) A copy of the printed audit trail shall be available to owners after the meeting in the same manner provided by sections 514B-154 and 514B-154.5; and
- (4) A copy of the procedures established pursuant to paragraph (2) shall be available at no charge to any owner and a copy shall be available at any meeting at which the association uses an electronic voting device.

Due to the issue with electronic voting not allowing voting through the internet, which would include any votes emailed in, we are unaware of any system that would allow the Association meeting to be held electronically with voting.

Incorporated Planned Community Associations:

Oddly, HRS § 421J (Planned Community Associations Act) does not contain a requirement to hold an annual meeting. However, HRS § 414D (Hawaii Nonprofit Corporations Act) does have a requirement that, "A corporation with members shall hold a membership meeting annually" For an incorporated PCA, the Board does have the option of conducting the annual meeting electronically because under the incorporation statute, annual meetings can be conducting by means of electronic

transmission. The Hawaii Nonprofit Corporations Act is found under 414D. Specifically, HRS § 414D-101(g) provides as follows:

If authorized by the board of directors *in its sole discretion*, members or proxies of members may participate at an annual or regular meeting of members *by means of the Internet, teleconference, or other electronic transmission technology* in a manner that allows members the opportunity to:

- (1) Read or hear the proceedings substantially concurrently with the occurrence of the proceedings;
- (2) Vote on matters submitted to the members;
- (3) Pose questions; and
- (4) Make comments.

A member or proxy of a member participating in a meeting by means authorized by this subsection shall be deemed to be present in person at the meeting. The corporation **shall implement reasonable measures to verify that each person deemed present and permitted to vote** at the meeting by means of the Internet, teleconference, or other electronic transmission technology is a member or proxy of a member.

If the Association is able to meet all the requirements set forth above, the Board of Directors may elect to hold the annual meeting via electronic means. However, please keep in mind that HRS § 414D-101(g)(2) requires a platform that will allow owners to vote on matters such as the election or motions raised at the annual meeting. We are not technology experts, but in our experience, virtual platforms such as Zoom do not have an option for voting. However, there is one planned community association (“PCA”) that we are aware of that conducted online voting using Zoom’s chat box but it took three days to complete. Whereas, another large PCA completed the entire annual meeting with elections in 20 minutes. That is because the Bylaws for this PCA had very unusual language for how the Board size is determined and how voting is conducted.

If there are owners without internet, the Board would need to ensure a platform that allows for an owner to call in. As we understand it a platform such as Zoom allows participants to login via the internet or dial in via phone. But, how does one vote via phone? Another technological aspect that needs to be considered.

Annual Meeting: Alternatives

- (1) The Board may elect to do a combination in-person and an electronic annual meeting, if the Association is primarily owner occupied, where voting would take place at the physical location and opened for owners to attend electronically. If the

Board is interested in this option, our recommendation is to: (1) mark the physical location with measured six feet distancing in order to determine the max capacity, (2) allow owners to attend in person until the max capacity is reached, (3) allow owners who cannot attend physically, but are physically on site at the property, to attend via video/teleconference, (4) create protocols for attending the annual meeting, and (5) send out the notice/protocols to the owners at least seven (7) days or more prior to the scheduled annual meeting. As an example, if the max capacity for the physical location is reached, the owners who are physically present at the property can participate via video/teleconference from their unit. They would check-in and receive their ballots and return to their home where they can participate in the meeting via video/teleconference. When it is time to vote, the owners will need to fill in their ballot and deliver it to the registration desk (or a designated area).

- (2) Some Associations “held” the 2020 annual meeting if there were enough proxies for quorum but only to conduct the required business and not the elections. Ex: Association held meeting to complete the tax rollover resolution then adjourned the annual meeting. In essence there was a 2020 annual meeting which complies with the Hawaii Condominium Property Act and the Hawaii Nonprofit Corporations Act and most Association Bylaws. In order to address the elections, the Board considers calling a Special Meeting at a later date to conduct the elections.
- (3) Combination 2020 and 2021 annual meeting: While there is no parliamentary rule prohibiting a combination 2020/2021 annual meeting, there are some factors to consider. First, there is the potential for owners to get “proxy confusion” in that they may think that since they submitted a proxy for 2020, they may not submit one for 2021. While this could be addressed by attempting to make it clear in the 2021 notice, it is still a possibility that an issue may arise. The second factor to consider is the possibility of incorrect check-in for each. For example, having a check in for the 2020 and then have a separate check for the 2021 annual meeting – this is the suggested manner instead of one check in at the beginning for both annual meetings. Again, it is a factor to consider and measures could be put in place to ensure check in is accurate as to each annual meeting. It is a logistics issue which might be doable but ultimately, it is the Board’s decision (which has an effect on the managing agent because it is the property manager and the management’s staff that have to handle the mailouts, proxies, and check-in).

If you are an Association that cancelled the 2020 annual meeting, please be aware that this will likely double the number of directors being elected in 2021 and may impact the number of directors to be elected annually.

Note, there are some condominiums that are incorporated, so if you are wondering why a Condo association cannot conduct its annual meetings by electronic means by following HRS Section 414D-101 which allows nonprofit corporations to hold annual meetings via the Internet, it is because there is a provision in HRS 414D that states, “In the event of any conflict between the provisions of this chapter and the provisions of

chapter...514B...the provisions of chapter...514B...shall supersede and control the provisions of this chapter.” See, HRS Section 414D-311.

Therefore, the electronic voting requirements of the Hawaii Condominium Property Act supersede HRS Section 414D-101 that allows nonprofit corporations to hold annual meetings via the Internet.

II. Impact on conducting Board meetings

Many Association Boards are conducting Board meetings via electronic means. Board meetings are different and can be held online, so long as the meeting, except for the executive session, is open to all members of the Association and are permitted to participate in the deliberation or discussion. HRS Section 514B-125(d) states:

All board meetings shall be conducted in accordance with the most recent edition of Robert’s Rules of Order Newly Revised. Unless otherwise provided in the declaration or bylaws, a **board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other** during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the board, any unit **owner may participate in a meeting conducted by a means of communication** through which all participants may simultaneously hear each other during the meeting, provided that the board may require that the unit owner pay for the costs associated with the participation.

The statute allows the Board authority to permit Board meetings be held through “any means of communication” so long as *all* directors who are participating are able to hear each other. Therefore, Board meetings could be held either through a teleconference or video conference as long as all directors can simultaneously hear each other. However, the Board must ensure all owners have access to the teleconference or video conference platform that is used to hold the Board meeting in order to provide the owner with the means and opportunity to participate in deliberation and discussion (see below for more on right of owners to participate).

If there is no prohibition against electronic Board meetings in the governing documents of the Association, then the Association can rely on the statute. However, keep in mind that HRS 514B does require all board meeting be open to the owners so the right of owners to participate in the Board meetings must be preserved.

With that said, the Association could purchase a platform, such as the executive version of Zoom, to conduct Board meetings but the platform chosen must have the capability that will accommodate enough people as the number of owners and allows for both teleconference and video conference so that any owner who does not have internet (and therefore, cannot use the video conference feature) will have the alternate choice of participating by phone.

Please keep in mind that should the Board choose to conduct the Board meetings by way of teleconference or video conference, it is recommended that security measures be taken to ensure the confidentiality of executive session. Finally, the Board should consider adopting rules for owner participation in Board meetings so owners are put on notice as to the standard of conduct when participating in Board meetings.

Hawaii Revised Statutes § 514B-125(a) provides as follows:

All meetings of the board, other than executive sessions, shall be open to all members of the association, and association members who are not on the board shall be permitted to participate in any deliberation or discussion, other than executive sessions, pursuant to owner participation rules adopted by the board.

Again, electronic Board meetings (any Board meetings) must provide the owner with the means and opportunity to participate in deliberation and discussion. If not already done, consider adopting rules to address electronic Board meetings. If the Board has already adopted rules for owner participation but does not address electronic meetings, the Board may want to consider amending the participation rules. But again, the statute requires Board meetings to be open for all owners to participate in any deliberation or discussion even if the Bylaws restrict owner participation.

As an example, here is a Bylaws provision that allows the Board discretion in allowing owner participation:

All meetings of the Board of Directors shall be open to all members of the Association; provided, however, that any such member who is not also a director shall not be entitled to participate in any deliberations or discussions at such meetings unless authorized by the vote of a majority of a quorum of the Board.

The statute cited above, HRS § 514B-125(a), and the Bylaws conflict because HRS § 514B-125(a) requires Board meetings to be open to all owners to participate in deliberation and discussion but the Bylaws allows the Board discretion in allowing owner participation in deliberation and discussion by requiring a vote of the majority of the quorum of the Board. In other words, the law provides the owners with the right to participate in Board meetings but the Bylaws do not provide that same right which creates a conflict. Because of the conflict, we turn to the hierarchy of authority and that is, if the Bylaws (or governing documents) conflict with the statute (the law), the statute will prevail.

Therefore, the owner's right to participate in Board meetings must be preserved because HRS § 514B-125(a) provides owners the absolute right to participate in Board meetings – subject only to meeting participation rules, which the Board can adopt.

The statute that governs how the Board can adopt participation rules is found under HRS §514B-125(b) which provides:

Following any election of board members by the association, **the board may**, at the board's next regular meeting or at a duly noticed special meeting, **establish rules for owner participation in any deliberation or discussion at board meetings**, other than executive sessions. A board that establishes such rules pursuant to this subsection:

- (1) **Shall notify all owners** of these rules; and
- (2) **May amend these rules** at any regular or duly noticed special meeting of the board; **provided that all owners shall be notified** of any adopted amendments.

Ownership participation rules can be established by the Board AFTER an election of the Board members and once adopted, the Association must notify all the owners. If the Board amends the participation rules, it can be done provided the owners are notified of the amendments.

III. Requests for deferral of maintenance fees

Requests come from owners in different forms, some legit and some not. Unfortunately, there is no simple answer. The question to ask is whether the Association is in a financial position to allow deferment of maintenance fee payments and still have the cash flow to pay the Association's operating costs.

Board Fiduciary Duties

The Board of Directors owes the Association a fiduciary duty to collect regular assessment payments from all owners. Directors must discharge their obligations in good faith, and in the best interest of the Association as a whole. If the Board were to provide a blanket approval allowing owners to defer making payments for the regular common assessments, it could be construed as a breach in the Board's fiduciary duty to collect the regular assessments, and protect the financial stability of the Association. Therefore, we recommend against a blanket approval allowing deferment of payments by owners. Nor should the Board agree to deferment of payments on a case by case basis, as that could be construed as selective enforcement. The next few sections discuss alternative actions the Board can consider.

Association Expenses

Unlike mortgage companies and other for-profit organizations, Condominium and Community Associations are non-profit. As such, the Association is not structured to make money; it is structured to pay the Association's operating expenses and maintain the property using the owners' regular assessment payments. In other words, the

Association uses the regular assessment payments, collected from the owners, to pay bills such as utilities, insurance, and landscaping, as well as employee's salaries. The Association also uses the regular assessment payments to properly maintain and repair the property. It is likely that the Association's expenses will remain constant with very little room to reduce expenses until the COVID-19 pandemic ends. However, **the Board may wish to consider any of the following, if applicable, to reduce expenses:** (1) decrease or postpone discretionary services, so long as it will not have a significant impact on the Association or reduce property values, (2) delay or cancel non-urgent repairs or construction, if permissible under the contract, and (3) if a contract is up for renewal, consider reducing services or obtaining other proposals.

Assessment Revenue

As you know, both the Governor and Mayor ordered businesses to close and issued stay home/work from home orders. This has already resulted in many people in the state losing their jobs, having their work hours drastically reduced or furloughed without pay. It is likely that some of the owners in your project will be affected by this, and it is reasonable to assume that those owners will not be able to pay their regular assessment payments. **The Board can consider offering and/or accepting payment plans from owners affected in this way.** However, even with payment plans, there is an expectation that the Association will likely receive less assessment revenue, which will likely cause a shortfall in funds to pay the Association's operating costs. In anticipation of having a shortfall, the Board may want to consider other ways in which to make up the shortfall now; such as, borrowing from the reserves.

Reserves

Association may be in a dire need for funds to keep operations of the property going. Borrowing from the reserves might be the only option for some Associations. However, keep in mind that if considering BORROWING from the reserves that *borrowing* means the Association will need to replenish the funds used.

Section 16-107-66(c) of the Hawaii Administrative Rules ("HAR") states in relevant part:

(c) The association board shall use replacement reserves **allocated to a particular fund** only **for the stated purpose** of that fund, except:

(1) In **an emergency or emergency situation** the board may use the replacement reserves in any fund for **any legitimate association purpose**, provided the board passes a **resolution containing written findings as to the necessity** of using the replacement reserves for other than their designated purpose, the **necessity of the expense** involved, and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the **resolution shall be distributed** to all members of the association

Should the Association find itself in a position of not having enough funds to pay the Association's operating costs, and choose to use its replacement reserves to fund operating costs until the pandemic ends, the Board will need to adopt the necessary resolution. Please keep in mind that if reserves funds are used, HAR §16-107-67 requires the reserves to be replaced within a certain time period.

Informational Letter to Owners

The Board may want to consider sending an informational letter to the owners reminding them that the Association still needs maintenance fees from owners to keep the property operating. It can encourage owners who are having a difficult time making their payments to submit a letter of explanation, along with a proposed repayment plan. In addition, **the Board would be within its authority to suspend late fees and/or interest to help minimize the financial impact on the owners during this time.** Finally, the Board can encourage owners to use the resources available through government agencies to find financial assistance.

Our office is doing a "modified" demand letter to encourage owners to submit a payment plan request.

If an owner does submit a payment plan request, the Board has the opportunity to review (and approve) but also provide some help by offering a waiver of past late fees and suspension of future late fees so long as the owner adheres to the plan.



COVID-19 Pandemic:

Dos & Don'ts of Closing and Opening Amenities

Carol A.L. Rosenberg, Esq.
Motooka Rosenberg Lau & Oyama

Are Boards Allowed to Close Amenities?

- YES – most Association’s governing documents authorize the Board of Directors to operate, manage and supervise the common elements of a project, which could include the Board’s discretion to close a project’s amenities during a global pandemic

How Do Boards Decide Which Amenities to Close and Which to Keep Open?

- Follow the rules and restrictions established by government authorities
- Follow recommendations by the Centers for Disease Control and Prevention (“CDC”)
- Consider the safety of the Association’s members
- Consider the Association’s ability to enforce restrictions and limitations

Proclamations, Orders and Rules (Oh My!)

- Governor Ige's Emergency Proclamations

<https://governor.hawaii.gov/emergency-proclamations/>

- Mayor Caldwell's Emergency Proclamations, Orders and Rules (and Guidance Memos)

<https://www.honolulu.gov/mayor/proclamations-orders-and-rules.html>

- **Mayor Kim's Emergency Rules**

<https://www.hawaiicounty.gov/Home/Components/News/News/2733/720?backlist=%2four-county%2fmayor>

- **Mayor Victorino's Public Health Emergency Rules**

<https://www.mauicounty.gov/2370/COVID-19-Coronavirus-Information>

- **Mayor Kawakami's Emergency Proclamations and Emergency Rules**

<https://www.kauai.gov/Government/Departments-Agencies/Emergency-Management-Agency-formerly-Civil-Defense/Emergency-Proclamations>

CDC Guidelines

- Wear a mask that covers your nose and mouth
- Stay at least 6 feet apart
- Avoid crowds
- Wash your hands often for at least 20 seconds, or when you can't, use hand sanitizer with at least 60% alcohol
- Stay home and quarantine if you have symptoms
- Go to the hospital if you have trouble breathing or other emergency symptoms

The Board's Priority is the Safety of its Members

- Common areas and close living quarters in multifamily housing situations increase the risk of getting and spreading COVID-19.
- The Board should consider that COVID-19 is mostly spread person-to-person through respiratory droplets that are released when people cough, sneeze, or talk.

- 
- If not prohibited by government entities, is it worth the risk of spreading COVID-19 through your project to leave amenities open?

Board's Ability to Enforce Restrictions and Limitations

- Ability to have a reservation system
- Cost considerations:
 - Extra staff for:
 - Temperature checks
 - Ensuring rules being followed
 - Enhanced cleaning
- Difficulty determining household members

If Amenities are Closed When Should They be Re-opened?

- Determine if government regulations allow them to be re-opened
- Can they be re-opened and comply with governmental restrictions?
- Can the amenities be used safely?

- Cost considerations:
 - Extra staff for:
 - Temperature checks
 - Ensuring rules being followed
 - Enhanced cleaning
 - Extra equipment and supplies

- Can regulations be enforced?



COVID-19 Pandemic:

**Dealing with Residents and
Employees Who Test Positive for
COVID-19**

When a Resident Tests Positive

- Consider the health and safety of all residents and the privacy of the resident who tested positive
 - Report positive test to Department of Health (“DOH”)
 - Notify all residents and owners that a resident has tested positive and of all the precautions being taken
 - DO NOT identify the resident
 - Resident should quarantine in the unit for as long as instructed by medical professional

- 
- Different considerations for projects with common entrances and projects of single-family homes or townhouses
 - Projects with Common Entrances
 - Resident should be instructed to inform management if he/she needs to leave the unit to seek medical attention
 - Resident must wear face mask outside unit
 - Reserve elevator for resident to use then disinfect common areas

- If resident cannot quarantine in unit
 - The DOH has hotels that the resident can stay in to quarantine
 - The State of Hawaii covers the cost of the hotel stay for the period the resident needs to quarantine
 - The State does not cover the cost of transport to the hotel. The resident must pay for this
 - Since the resident tested positive for COVID-19, he/she is not allowed to drive, and cannot use a taxi or ride-share service
 - The only acceptable method of transportation to the hotel is through American Medical Response (AMR), a private ambulance service, whose responders would be suited up with appropriate PPE

When an Employee Tests Positive

- Again, consider the health and safety of all residents and the privacy of the employee who tested positive
 - Report positive test to Department of Health (“DOH”)
 - Notify all residents and owners that an employee has tested positive and of the precautions being taken
 - DO NOT identify the employee
 - Employee should quarantine at home for as long as instructed by medical professional

- 
- All employees who were in close contact with the employee who tested positive should not come to work until they either quarantine for the recommended time period, or take a COVID-19 test and received a negative result.
 - Disinfect the areas of the project that the employee worked in
 - Employee should not return to work until he/she has been cleared by a medical professional and/or received a negative test result



Questions?
Contact me at
Carol@myhawaiiilaw.com

THANK YOU!

2020 LEGISLATIVE UPDATE SUMMARY OF LEGISLATION

By: Janelle M.F. Lau, Esq.

State Laws

Act 56 (SB2421 SD1 HD1) – Condominiums; Associations; Cure of Default; Assessments

Repeals the sunset provision of Act 195, Session Laws of Hawaii 2018, permanently codifying the amendments to Sections 514B-105, 514B-146, and 667-94, Hawaii Revised Statutes.

Act 195 clarified several issues pertaining to nonjudicial foreclosures as follows:

- An Association may utilize the nonjudicial foreclosure remedy regardless of whether or not the Association’s governing documents contain a power of sale provision.
- If an Association begins a nonjudicial foreclosure and then comes to an agreement with the owner for a payment plan, the Association does not have to rescind the notice of default and intent to foreclose and restart the nonjudicial foreclosure if the owner defaults on the payment plan.
- Any fines incurred while the owner is on a payment plan shall not be deemed a default of the plan.

Dispute of Debt: Only common expense assessments must be paid before an owner can dispute amounts owed. Unit owners who dispute amounts owed may request a written statement from the Association and may demand mediation prior to paying contested charges other than common expense assessments.

Priority of Payments: All payments made by or on behalf of an owner must be first applied to outstanding common expenses, unless otherwise designated by the owner. If no designation is made, payments may be applied to other charges owed to the association only after said outstanding common expenses have been paid in full. Other charges include charges assessed to the unit such as ground lease rent, utility sub-metering, storage lockers, parking stalls, boat slips, insurance deductibles, and

cable. After such charges are paid, other charges, including unpaid late fees, legal fees, fines, and interest, may be assessed in accordance with an application of payment policy adopted by the board.

Effective retroactively to June 29, 2020.

Act 57 (SB2425 SD1) Condominiums; Associations; Unit Owners; Mediation; Arbitration

Repeals the sunset provision of Act 196, Session Laws of Hawaii 2018, making permanent the amendments to Sections 514B-71(a), 514B-72(a), and 514B-161, Hawaii Revised Statutes, which created rules relating to alternative dispute resolution and mediation. The Act expanded the scope of the condominium education trust fund to cover voluntary binding arbitration and detailed when mediation is mandatory and when it is not.

Mediation is mandatory when:

- The dispute involves the interpretation or enforcement of the Association's declaration, bylaws, or house rules;
- The dispute falls outside the scope of 514B-161(b)(i.e., non-mandatory mediation);
- The parties have not already mediated the same or substantially similar dispute; and
- An action or arbitration concerning the dispute has not been commenced.

Mediation is not mandatory when the dispute involves:

- Threatened property damage or the health or safety of owners or any other person;
- Assessments;
- Personal injury claims; or
- Matters that would affect the availability of any coverage of insurance obtained by an Association.

Effective July 1, 2020.

Statutory Amendments of Interest

Act 16 (HB2060 SD2 HD2) – Coastal Zone Management; Sea Level Rise; Coastal Erosion

Amends coastal zone management laws to further protect against the impacts of sea level rise and coastal erosion. No variance for private facilities or improvements that may artificially fix the shoreline shall be granted in areas with sand beaches or where artificially fixing the shoreline may interfere with existing recreational and waterline activities unless clearly demonstrated to be in the interest of the public. This measure potentially prohibits the construction of shoreline hardening structures, including seawalls and revetment. The Act also increases the shoreline setback boundary thereby encompassing more facilities that will be required to comply with this Bill and other existing related statutes such as variance permits. Thus, more costs and time will be required to maintain existing facilities. Owners of single-family homes situated in areas impacted by waves are required to obtain a Special Management Area Permit if they wish to obtain a variance or certain building permits. This changes minor approvals into major permit requirements that are costly for homeowners.

Act 61 (SB2820 SD2 HD2) – Renewable Energy Technologies; Income Tax Credit

Preserves the tax credit eligibility of projects submitted for approval to the Public Utilities Commission (PUC) prior to December 31, 2019 but removes the tax credit for other projects larger than five megawatts that require a power purchase agreement approved by the PUC if such projects were not submitted for approval prior to December 31, 2019. Grandfathers in systems that already operate under power purchase agreements but reduces the tax credit to only 35% of the actual cost of \$500k for systems that have an output of 1,000. Earlier versions of the bill increased the income tax credit for multifamily residential properties; however, the increase was removed from the final version of the bill.

County Ordinances

Oahu

20-6 Condominium Property Regimes

Amends provisions of the Land Use Ordinance relating to condominiums to reference the governing laws as the State of Hawaii Condominium Property Act instead of HRS Chapter 514A and 514B.

20-28 Building Permit Applications and Restrictive Covenants

Requires applicants for building permits for residential structures to attest that the construction complies with all restrictive covenants to which the property is subject. While violations of restrictive covenants are generally a private matter, noncompliant dwelling result in negative impacts to the surrounding neighborhood and raise concerns among area residents. The person applying for the permit must attest that the construction complies with all applicable covenants and the proposed use complies with all codes. False attestations can result in criminal and administrative remedies and revocation of the permit.

Ordinances of Interest

Oahu

19-32 Real Property Taxes

Creates a new tax classification for bed and breakfasts. Clarifies that any permitted transient vacation unit is classified as hotel and resort for tax purposes. Bed and breakfasts operating with a valid nonconforming use certificate are classified based on their underlying zoning. Properties operating as bed and breakfast homes as otherwise permitted under Chapter 21 are classified as bed and breakfast homes.

20-10 State Energy Conservation Code

Adopts the State Energy Conservation Code to regulate the design and construction of residential and commercial buildings for the effective use of energy subject to local amendments.

20-13 Affordable Rental Housing

Amends the definition of affordable rental housing unit and Declaration of restrictive covenants. Clarifies that to be considered an affordable rental housing project the units must be rented at or below the HUD rental rate limits for 15 years after the certificate of occupancy is issued. Provides exemptions from certain requirements under the Land Use Ordinance for buildings with an assessed value that does not exceed 30% of the land value.

20-20 Accessory Dwelling Units

Provides incentives to create accessory dwelling units by waiving the following fees:

- Wastewater facility charges.
- Permit fees for grading, grubbing, and stockpiling.
- Plan review and building permit fees.

20-29 Building Permit Exemptions

Updates exemptions to building permit requirements by broadening repairs to existing buildings and amending the exemption for satellite antennas to comply with federal law. Repairs totaling \$5,000 or less in any 12-month period are exempt regardless of whether they involve electrical, plumbing, or mechanical installations.

20-30 Short-Term Rentals

Delays the requirement to register and regulate newly permitted bed and breakfasts and their hosting platforms until April 30, 2021. Enforcement and advertising provisions became effective on August 1, 2019.

Hawaii

20-61 Construction Code

Repeals and consolidates provisions of the building code to streamline permitting and plan review processes.

20-19 Signs

Provides that applications for sign variances are to be considered by the Department of Public Works. Previously, the County Council reviewed them.

20-39 Real Property Taxes

Provides a two-tier tax rate for residential properties with no homeowner exemption. Properties with a net value of less than \$2,000,000 are taxed at \$11.10/1,000 and properties with a net value over \$2,000,000 are taxed at \$13.60/1,000. For comparison purposes, the rate of such properties with a homeowner's exemption is \$6.15 per \$1,000.

20-10 Energy Conservation

Adds a new article to the Building Code to adopt the International Energy Conservation Code to promote the design of energy efficient buildings and the installation of energy efficient systems during construction or remodeling.

20-07 Special Assessments

Provides a process for the County Council to designate units within an improvement district as affected assessment units if there is an anticipated change in the classification or use of the unit and if the unit will enjoy increased benefits because of the change. Once deemed an affected assessment unit, the fees assessed to that unit are subject to change when the change in use or classification is effective. If an improvement district is proposed via a petition of owners, the County Council must find it in the public interest prior to approval.

Maui

5001 - Unpermitted Transient Accommodations

Implements amendments regarding fines for unpermitted transient accommodations. Allows for service by mail with proof of mailing for notices of violations if personal service is unsuccessful. If proof of mailing fails the director shall post the notice in a conspicuous place on the property or at the last known address of the violator, or by publication in a newspaper. The initial civil fine is capped at \$20,000 and the daily civil fine is capped at \$10,000.

5011 - Renewals for Bed and Breakfasts

Provides a 60-day extension for Bed and Breakfast and Short-Term Rentals to continue operating if the permit expires while the application for renewal is being processed.

5016 – Real Property Tax Tiers

Establishes three property tax tiers for properties classified as owner-occupied, non-owner occupied, short-term rental, commercial, and industrial. The tiered rates are determined by property values.

5047 - Unresolved Land Use Violations

Prohibits or suspends the processing of an application if there are unresolved enforcement action by the department on a lot or on a unit in a condominium property regime. If the applicant pays all associated fines and if approval of the application would resolve the enforcement action, then it is not automatically deemed incomplete.

Kauai

1055 - Guest Houses

Allows for kitchens within a guest house and removes the limitation on parcel size on which guest houses can be built. Clarifies that guest houses may not operate as transient vacation rentals or homestay operations regardless of their location within a designated Visitor Destination Area.

1059 – Additional Rental Units

Establishes an exemption from the filing and processing fee zoning permits for additional rental units that are certified by the Housing Agency as affordable housing and conform to the affordable housing program. Also establishes a subsidy to for the water facilities reserve charge and an ARU repayment subsidy.

1060 – Environmental Impact Assessment on Land Development

Established an exemption from Environment Impact Assessment (EIS) for additional rental units certified as affordable housing.

Directors' and Officers' Liability Insurance

Is Hawaii in the middle of a claim crisis?

Presented by:

Sue Savio, President

November 2020



Agenda

- ▶ **Basic Directors' and Officers' Terminology**
 - Insured
 - Wrongful acts
 - Claims
 - Claims made coverage

- ▶ **Directors' and Officers' Claims Data**
 - Most common types of claims
 - Claims statistics

- ▶ **Projected Directors' and Officers' Liability Changes**
 - Rate changes
 - Coverage changes

Basic Directors' and Officers' Terminology



Basic Directors' and Officers' Liability Terminology

► Insured

- Employees
- Board Members
- Volunteers
- Property Manager while acting on the association's behalf

*Disclaimer: Policy language differs. Refer to your policy's definitions.



Basic Directors' and Officers' Liability Terminology

▶ Wrongful Acts

Any actual or alleged act, error, omission, misstatement, misleading statement, breach of duty or neglect.

*Disclaimer: Policy language differs. Refer to your policy's definitions.



Basic Directors' and Officers' Liability Terminology

▶ Claim

- Written demand for monetary damages or non-monetary relief
- Civil proceeding commenced by service of complaint or similar proceeding
- Criminal proceeding commenced by filing of charges

*Disclaimer: Policy language differs. Refer to your policy's definitions.



Basic Directors' and Officers' Liability Terminology

▶ Claim (Continued)

- Formal proceeding, commenced by a filing of a notice of charges, service of summons or similar document

- Arbitration, mediation, or similar dispute

*Disclaimer: Policy language differs. Refer to your policy's definitions.



Basic Directors' and Officers' Liability Terminology

► Claims Made Coverage

Coverage is triggered when a claim is made against the insured regardless of when the wrongful act took place.

Example:



Directors' and Officers' Liability Claims Data



Directors' and Officers' Claims Data

- ▶ **Most Common Claims***
 - Wrongful Foreclosure
 - Breach of Fiduciary Duty
 - Improper Assessments
 - Breach of Contract
 - ADA/Discrimination

*CNA 2020



Directors' and Officers' Claims Data

► Claim Statistics

- Nationally: \$30,000-40,000*
- Hawaii: \$50,000 - \$75,000*
- Hawaii is one of Travelers' worst performing States with an estimated 275% Loss Ratio**
- Hawaii is CNA's worst performing State***

* Estimate from Ian H. Graham Insurance 2020

** Estimate from KevinDavis Insurance Services 2020

*** CNA 2020



Projected Directors' and Officers' Liability Changes



Projected Directors' and Officers' Changes

▶ Rate Changes

- 10%-30% for claims free associations
- \$15,000 minimum premiums for associations with claims

▶ Coverage Changes

- Potential exclusions for claims related to liens
- Higher retentions for associations with claims



Mahalo!





***ALOHA Collect* – a Successful Approach to Delinquency Collection – by Milton Motooka**

At Motooka Rosenberg Lau & Oyama, we work hard to continually find ways to help our clients and their members facing the misfortune of foreclosures. We recognize that delinquencies and collection costs have a significant impact on the bottom line of an association’s budget, so we’re pleased to announce the continuation of our *ALOHA Collect* program that will make a difference and can immediately be incorporated into your budgets. We are also pleased to report that 47% of delinquency claims submitted to ALOHA Collect yielded payments for our clients.

We know that even a simple initial demand letter adds to the burden for the homeowner and our clients. So, we decided to see what we could do about reducing that cost first.

Research shows that the threat of reporting a debt to credit bureaus often results in homeowners paying off their delinquent maintenance fees or making arrangements for acceptable payment plans. But the cost of reporting a debt even to just one credit bureau is often prohibitive.

We designed and implemented an innovative collections program which combines the steps that have proven most effective—the demand letter, skip trace if necessary, and credit bureau reporting services, all at a very reasonable price. The cost savings is possible because it is based on our volume of files and our prepaid arrangement for “bundled services.” We can utilize any or all of the services to improve collection efforts while reducing the overall cost to our clients.

The emphasis is to attempt to clear delinquencies before any costly legal action is necessary. Instead of separate charges for the demand letter and skip trace services (with a total value of about \$450) the *ALOHA Collect* program charge is a flat fee of \$200 (plus tax). We’ve also added credit bureau reporting in this bundle. So, for \$200 per account (plus tax), our clients will get the following services:

- 1) initial 30-day demand letter
- 2) skip trace service, if necessary
- 3) reporting of the debt to three credit bureaus if payment or payment arrangements are not made with us

A Collections Professional that we have retained will make the initial contact and the homeowner will be directed in all communications to work with our firm to make payments or payment arrangements. Keeping in mind that in many cases we are dealing with neighbors and friends of our clients, we emphasize a cordial and helpful approach to dealing with homeowners in this initial phase. We know this is Hawaii, and that a little “aloha spirit” can sometimes go a long way. The information we obtain will also be helpful for those times when it becomes necessary to file a notice of lien and proceed with legal action.

ALOHA Collect: A Legal Ohana Helping Associations Collect—and get more for less.

Credit Reports: A Surprisingly Simple Step to Help Recover Delinquencies – By Carol A.L. Rosenberg, Esq.

A person's credit score, or FICO score, is one of the most important pieces of information in one's financial life. Lenders, landlords, insurers all scrutinize this rating—which sums up all of the information in one's credit reports with three digits ranging from 300 to 850.

According to various national studies, associations trying to collect delinquent assessments are enjoying surprising success with an old-fashioned way to get people to pay - credit reporting.

Spending several hundred dollars in legal fees to collect some amounts doesn't make sense. Even when the Board doesn't pay the collection costs, adding such large fees to some assessments only makes it harder for their neighbors in these communities to catch up.

Unfortunately a maintenance fee is one of the first things homeowners will stop paying when financial difficulties arise. In fact, many families may still pay their cable bill and other minor luxuries instead of their maintenance assessments. But if pursued early in the delinquency cycle - after late notices fail and before the delinquent dues become a big problem - homeowners still have a chance to right themselves. In fact, data across fourteen states proves families recover from these early stages of delinquency about 40% of the time when you follow a simple formula, which Motooka Rosenberg Lau & Oyama has implemented.

Families stop paying their dues because obviously something has changed. A natural response is to 'hide' a little bit when money is tight. The question for Association Boards becomes, "How can we get these families to come back to the table and work with us?" The key to remember is that at this point these families don't want their other creditors to know there might be an issue. Being credit reported would notify their other creditors, and possibly impact such things as their interest rates or the availability of credit. And that's something families starting to feel the pinch want to avoid. The potential of a report to the credit bureaus puts their homeowner dues back up on the list of obligations that must be paid.

The inherent benefit to restoring communication is that a family that is in real trouble may not realize that keeping current on their assessments is crucial to help them if a short sale is necessary. And this benefits the homeowner and the Association. Their dues become almost more important than any other bill, because sometimes the shortest path to foreclosure is to stop paying one's association dues. Restoring communication enables Boards to help these families.

In contrast, there are other owners who are simply ignoring their responsibility. Some are innocent misunderstandings - like landlords whose accountants aren't aware the dues have increased. Some are owners who just have a gripe, and withholding dues is how they communicate it. However, none of the myriad of reasons diminishes the fact that these people are neglecting a contract they entered into with their neighbors when they bought their property. By motivating such owners with a softer approach and communicating the need to pay their dues and avoid more fees, there's a better chance of finding them to be more reasonable to work with, even down-right neighborly. This allows the Board to reserve any un-neighborly options for use only when necessary.

With this in mind, we arranged for Collections Professionals to convey to homeowners that if they don't get in touch with us and pay their dues and fees directly (or make arrangements to do so), the debt will be reported as unpaid to all three national credit bureaus. We'll make sure homeowners are clearly advised that all they have to do to avoid being reported to all three major credit bureaus is to communicate directly with us so we can work with them at the lowest fees possible.

Reporting a maintenance fee delinquency requires detailed adherence to the Federal Fair Debt Collection Practices Act and can be a very costly process if not purchased in large volume. We have prepaid for these services along with other support services to enhance collection efforts in the early stages. Credit reporting is a universal incentive which has a positive impact when its potential is communicated early. When it's used in earnest (not as an idle threat) it can restore communication and allow Boards to help neighbors.

That's the goal of **ALOHA Collect: A Legal Ohana Helping Associations Collect**—and get more for less.



UNIQUELY QUALIFIED TO SATISFY A WIDE RANGE OF LEGAL NEEDS OF ASSOCIATIONS FOR CONDOMINIUMS, PLANNED COMMUNITIES, AND COOPERATIVES

Motooka Rosenberg Lau & Oyama combines decades of experience and expertise representing associations for condominiums, planned communities, and cooperatives (collectively referred to as “homeowner associations”).

Whether as advisory counsel, rule enforcement, contract reviews or delinquency collections, we have the people, the resources, and the knowledge to provide reliable and expert legal services unmatched by others. We also have standing relationships with highly respected litigation firms in Honolulu to refer complex litigation matters, such as representing homeowner associations in construction litigation.

OUR VISION AT MRLO:

A pre-eminent homeowner association law firm renowned for industry expertise and the consistent delivery of highly skilled, ethical, and high quality legal services for a reasonable fee. Everyone in our firm works to exceed the expectations of our clients in all aspects of service, by:

- Having a clear understanding of our clients and responding to their explicit needs, observable needs, tacit needs, latent needs, and emerging needs;
- Managing our clients’ matters in an efficient, caring, and proactive manner;
- Communicating regularly and clearly with our clients to assure they are informed and can enjoy a greater peace of mind;
- Focusing on achieving the end result.

INSIDE

Partners.....2-4
 Associates.....4-5
 Staff.....5-6
 About Our Firm.....6-7
 Inquiries 8

DID YOU KNOW:

- The firm consists of nine attorneys, one law clerk, and eight paralegals
- We currently represent more than 320 homeowner associations throughout the State of Hawai’i

MOTOOKA ROSENBERG LAU & OYAMA

Attorneys at Law
 A Limited Liability Law Company
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Juris Doctor, Dickinson School of Law (1972);

BA, Political Science, Bucknell University (1969).

Milton is the Senior Partner of MRLO, with more than forty years of experience in Homeowner Association Law. Milton's practice includes General Counsel, Covenant Enforcement, and Contract Review.



Juris Doctor, William S. Richardson School of Law (1987);

BA, Business Administration (Finance), University of Hawaii-Manoa (1985).

Carol's previous experience includes insurance defense litigation. Her practice now focuses on General Counsel, Mediation, Covenant Enforcement and Contract Review.

2

MILTON M. MOTOOKA

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Our homeowner association advisory practice is headed by Milton Motooka one of the founders of the Hawaii Chapter of the Community Associations Institute.

Milton Motooka has been practicing law in Hawaii for over forty (40) years. Highlights of his distinguished career include induction into the Charter Class of the College of Community Association Lawyers, which is comprised of attorneys who have distinguished themselves through published writings, teaching and speaking in the field of community association law, and community service. He was also selected as the recipient of the Richard Murray Gourley Distinguished Service Award for outstanding contribution to Hawaii's community association industry as an industry leader in community association law in the State of Hawaii, in 1997.

In 1987, Milton worked with the Chairs of the House and Senate Consumer

Protection and Commerce Committees to organize the Condominium Property Regime Blue Ribbon Advisory Panel ("Panel"). The Panel reviewed proposed legislation relating to condominiums and advised the legislature of its thoughts on the legislation. Milton was a member of the "Blue Ribbon Recodification Advisory Committee" (BRRAC) which worked on the recodification of Chapter 514A (the condominium statute) of the Hawaii Revised Statutes into Chapter 514B.

He is also active in two organizations directly related to homeowner associations. Milton served as President of CAI for two (2) years and Chairman or Co-Chairman of the Programs Committee for over twenty-five (25) years. Milton has also been involved with the Hawaii Council of Community Associations (HCAA) for more than twenty (20) years, including serving as the Vice President of the HCAA for several years.

CAROL A. L. ROSENBERG

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Carol Rosenberg began her practice with Schneider Love & Yamamoto, a predecessor to our current firm, straight out of law school. Her practice was primarily in the area of civil litigation and business law.

As a civil litigator, she worked on lawsuits involving condominiums, insurance, construction litigation and personal injury. As a business law attorney, she represented corporations and management companies in their day-to-day operations, contracts and litigation matters.

In 2009, she shifted the focus of her practice almost exclusively to representing homeowner associations.

She assists associations in all facets of the operation of the association, including providing guidance on difficult issues, contract reviews, enforcement actions and their collection of delinquent accounts.

Carol is a member of the Board of Directors of the CAI Hawaii Chapter, previously served as its President & Treasurer, and currently serves as a Director and Co-Chair of the Programs Committee. She often serves as a speaker at CAI Hawaii educational seminars, and at Board and management training seminars. She received the 2016 CAI Hawaii Chapter Hoku Award and the 2017 President's Award for her service to CAI Hawaii.

JANELLE M. F. LAU

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Janelle Lau began her practice in 2007, representing individuals in personal injury civil litigation and employee benefit plans governed by the Employee Retirement Income Security Act of 1974 (“ERISA”) in transactional matters. As a civil litigator, she managed personal injury cases from inception to completion in all aspects from negotiation, pretrial discovery, and litigation. As general counsel for employee benefit plans, she became familiar with working with boards to resolve various issues and advising on plan compliance with ERISA.

In 2013, Janelle joined our predecessor firm, Motooka & Yamamoto, and now almost exclusively represents homeowner associations in various matters, including general counsel matters, mediation and litigation for covenant enforcement and disputes with owners, evictions, and collection of

delinquencies, including foreclosures. Janelle regularly attends board meetings to provide educational presentations to boards on various collection law updates and collection processes and procedures.

Janelle speaks regularly at the Annual Community Association Law Seminar that our firm sponsors on topics of relevance to Associations and Property Managers. She is also a member of the Community Associations Institute (“CAI”) to stay informed of current issues for Homeowner Associations, Condominium and Cooperative owners.

She is a graduate of the William S. Richardson School of Law, and contemporaneously earned her Master’s degree in Business Administration from the Shidler College of Business at the University of Hawaii at Manoa.



Juris Doctor, William S. Richardson School of Law (2006);

MBA, University of Hawaii-Manoa (2008);

BA, English, University of Hawaii-Manoa (2001);

Janelle’s previous experience includes litigation and her practice now focuses on Delinquency Collections, Covenant Enforcement, Mediation, and other General Counsel, including contract reviews.



Juris Doctor, Arizona Summit School of Law (2015);

BA, Justice Administration, Hawaii Pacific University (2013);

Melanie’s previous experience includes ten years as a paralegal in delinquency collections and litigation and her practice now includes Delinquency Collections, Covenant Enforcement, Mediation, and other General Counsel, including contract reviews.

MELANIE K. OYAMA

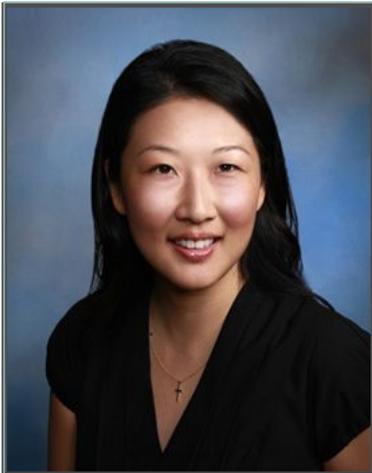
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Melanie Oyama started at Love Yamamoto & Motooka a predecessor to our current firm as a legal assistant, part time while in high school, then became a collections and litigation paralegal for more than ten years.

Her current practice focuses on representing homeowner associations. She has experience in collections, litigation, general matters and rendering opinions on house rules violations, and also handles conveyance matters for our firm. She speaks regularly at the Annual Community Association Law Seminar that our firm sponsors on topics of relevance to Homeowner Associations and Property Managers. In addition,

she is a member of the Hawaii Chapter of the Community Associations Institute, has served as Co-Chair for the CAI’s annual Board leadership workshop known as ABCs since 2016, is a regular speaker at various CAI and other board training programs, and is the CAI Hawaii Programs Committee Co-Chair.

Melanie is a graduate of the Arizona Summit School of Law where she completed a three-year juris doctor program in just over two years, including courses in Ireland. Prior to attending law school, she received her Bachelors in Justice Administration from Hawaii Pacific University.



HWA KYUNG SONG

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Hwa Kyung Song has been with the firm for more than ten years, since graduating from UCLA School of Law in 2009.

Kyung began her practice in litigation, representing AOA Boards in construction defects and financial misrepresentation/underfunding disputes that often plague new buildings.

She now concentrates her practice in general counsel work for AOAOs and homeowners' associations, guiding Boards of Directors through restatements, amendments, interpretation of the governing documents of the association, contract review, and any other issues that may arise in the Board's administration of their associations.

Having personally experienced the condo world from both the attorney and owner's point of view at multiple buildings, Kyung believes in guiding Boards who are volunteering their valuable time, with the big picture in mind: maintaining the value of their building while making it a pleasant place to live, with integrity and fiscal responsibility.

After growing up on the U.S. East coast, Kyung attended Yonsei University in South Korea for her bachelor degrees. Upon graduation, she travelled the world and worked as an advertising executive in an international setting for a number of years before changing careers and attending law school.

Kyung is fluent in Korean and can assist in communicating with Korean nationals.

Juris Doctor, UCLA School of Law (2009);

BA, English Language & Literature, Yonsei University (2003);

BA, Library and Information Science, Yonsei University (2003).

Kyung is a Non-Equity Partner in the firm and her practice is primarily devoted to General Counsel Matters and Contract Reviews.

ASSOCIATES:

SETH J. CORPUZ-LAHNE

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Juris Doctor, William S. Richardson School of Law (2017);

BA, Political Science, University of Hawaii – Manoa (2005); Seth has experience with Affordable Housing, Condominium Formation, and Collections; Seth was previously with the DCCA in the Office of Consumer Protection and the Office of Administrative Hearing.



VINCENT G. KRUSE

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Juris Doctor, William S. Richardson School of Law (2009);

BA, Political Science, University of Hawaii-Hilo (2004); BA, Administration of Justice, University of Hawaii-Hilo (2004); Vincent has experience in Collections, Litigation, Contract Review and Negotiation, General Matters, Real Property Transactions and Covenant Enforcement.



ASSOCIATES:

GLENN R. PENDLETON

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Juris Doctor, William S. Richardson School of Law (2017);

BA, Political Science, University of Colorado at Boulder (2011); Glenn has experience in Public Advocacy, Legislative Research, Contract Review, and Collections.



JULIE A. SPARKS

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Juris Doctor, William S. Richardson School of Law (2014);

BA, Journalism, Central Michigan University (1989); Julie has served as a Legislative Analyst for the House Minority Research Office and was a Real Estate Broker for 14 years.



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Juris Doctor, Western State University College of Law (1995);

BS, Political Science, California State University, Northridge, CA (1991); Todd primarily focuses on Delinquency Collections matters.



For the latest HRS Updates for your Associations, and for copies of our Annual Seminar Booklets and Presentations, visit our website at:

[HTTP://WWW.MYHAWAIIW.COM](http://www.myhawaiiw.com)

PARALEGALS

LAUREN E. BEARD

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MBA, Chaminade University (present); BA, Justice Administration, Hawaii Pacific University (2013); AA, Criminal Justice, Golden West Community College (2010); Lauren started as a Legal Assistant, Billing Administrator, and is now a Collections Paralegal.

Zachary M. Bolda

(808) 532-7255 | ZACHARY@MYHAWAIIW.COM

BA, American Military University (present), AA, Paralegal Studies American Military University (2015); Zachary previously worked as a Paralegal Specialist in the US Air Force stationed in Louisiana, Hawaii, Korea, and Japan. He is now a Collection Paralegal.

CHRISTINE M. GEORGE

(808) 532-7248 | CHRISTINE@MYHAWAIIW.COM

BA, Finance, University of Hawaii-Manoa (2007) Christine's legal experience includes nonjudicial foreclosures for lenders. Christine also manages our Collections staff and is a Notary Public.

PARALEGALS

ROBIN M. HITCHCOCK

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Formerly with Community Associations Institute of Hawaii, for nine years; Robin was originally with our predecessor firm Love & Yamamoto, and is now a Collections Paralegal.

RON A. LEWIS

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Over ten years previous legal experience in Civil Litigation and Community Association law; Fourteen years of Collections experience; Ron is a Litigation Paralegal and handles Mediation matters; he is also the Executive Assistant to Janelle Lau and Melanie Oyama.

VANESSA M. PUOU

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Formerly with the Law Offices of Mark Van Pernis; twenty-seven years of previous legal experience in Real Estate, Estate Planning, Probate, Foreclosures and Guardianships. Vanessa is a Collections Paralegal.

JESSICA S. ROSE

(808) 532-7251 | JESSICA@MYHAWAII.LAW.COM

BA, Literature, Hawaii Pacific University (1999). Jessica is the Executive Assistant to Milton Motooka and Carol Rosenberg, and the Paralegal for General Counsel. Jessica also organizes the firm's Law Seminars.

TYLER K. YADAO

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BA, Government with an Emphasis in Legal Studies, Grand Canyon University (2019). With previous volunteer work experience at Legal Aid Society of Hawaii, Tyler has transitioned from Legal Assistant to Collection Paralegal.

“We’re here to help you succeed”

WE PROVIDE:

REPRESENTATION THAT MEETS YOUR NEEDS

We believe that responsiveness to our clients' needs is paramount. We start with the premise that the client ultimately decides the course of action. As legal counsel, we have the responsibility to give sound legal advice so our clients can make informed decisions. We see ourselves not just as lawyers but partners in protecting and promoting our clients' needs and interests. The most successful partnerships are those in which everyone works together toward a common goal in an atmosphere of trust and confidence. Your attorney should never be your problem.

COST EFFECTIVE RESOLUTION

When legal disputes involving homeowner associations arise, our case handling strategy balances the goals you want to achieve and the costs involved. We pursue the quickest, most cost-effective route to a favorable resolution.

Experience has shown that greater than ninety-five percent (95%) of all disputes settle. With that in mind, we work with our clients to determine early on whether the matter should be settled, and pursue the quickest, least costly route to reliable case evaluation and settlement. Our philosophy is driven by sound cost and benefit analysis.

OUR MISSION STATEMENT:

To serve our clients in stable, long-term relationships by applying our cumulative legal experience in an effective, efficient and economical manner for the benefit of our past, present and future clients. With an effective blend of experience and technology we efficiently address our clients' concerns and problems and provide a variety of favorable resolutions. We vigorously advocate the legal rights of our clients both in and out of Court.

On the other hand we are not milquetoasts. We are not afraid to pursue alternative legal action if warranted. When circumstances require that a case be mediated, arbitrated, or litigated, we are zealous, effective advocates as our track record shows. Our in-house attorneys are experienced at handling nearly all homeowner association matters that arise. We also have a standing relationship with well-respected litigation firms in Honolulu to co-counsel on more complex matters such as construction litigation. We know, however, that zealous advocacy is not "reckless" advocacy and we are vigilant in keeping a continuing watch over our clients' legal costs.

ADDITIONAL LEGAL SERVICES

In addition to our advisory and litigation services, we have the ability and resources to provide nearly the full range of legal services required by most homeowner associations. We have attorneys and staff experienced in covenant enforcement, debt collection and foreclosure, document evaluation and amendment, lease renegotiation, lease to fee-conversion, and contract and financing negotiations. We furnish our homeowner association clients and their property managers with regular progress updates regarding activity on all accounts we handle.

RESPONSIVE REPORTING & COMMUNICATIONS

Timely, responsive communication is important in any business relationship and critical in the

lawyer and client partnership. We believe it starts even before we are sent a matter to handle. We listen to our clients' philosophy, goals, and needs so we know what they expect of us.

With this in mind, when we receive a matter for handling, we can generally provide a preliminary case analysis and budget projection within thirty (30) days, so our clients have the information they need to decide how they want to proceed. We supplement our initial reports with timely interim reports so our clients can make informed decisions as the matter progresses.

ENHANCED SERVICES

Keeping abreast of changes in Hawaii law is difficult for most clients. We help by offering our clients free seminars on key topics as the need arises. We also provide periodic bulletins that discuss new legal developments that could affect our clients in Hawaii and annually provide our clients with a free PDF containing information on updated statutes, covering all new laws affecting homeowner associations.

SUPPORT THAT MEETS YOUR NEEDS

We understand that you need more than just a lawyer. We're here to help you succeed in your endeavors in any way we can.

"Experience has shown that greater than 95% of all disputes settle."

CLIENT SERVICES

Our dedicated phone line and email address are monitored carefully to assure that our clients can reach someone at our offices any time during the day. The phone number is routed to a cell phone, and the email goes to assigned staff for follow up.

EMAIL:
clientservice@myhawaiiilaw.com
PHONE: (808) 532-7240

HOMEOWNERS

We have a dedicated line and email address for homeowners who have been notified that they are delinquent in their maintenance fees. Experienced staff handle these contacts to answer questions or assure that their inquiries are forwarded to the person handling their accounts.

EMAIL:
help@myhawaiiilaw.com
PHONE: (808) 532-7246

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Upcoming CAI Seminars

All seminars are being presented as Webinars until further notice.
Register on line at www.caihawaii.org. Call 808.488.1133 for Pricing.

Pandemics I - A Whole New Can of Worms for Community Associations | January 14, 2021
Pandemics II - Budgeting and Finances; employment issues | February 18, 2021
Sprinkler Systems Update | March 11, 2021
Avoiding Recalls; Steps to Successful Homeowner Association Living | May 13, 2021
Board Leadership Workshop | June 19, 2021
Condo Wars – Mediation, Arbitration, Litigation | September 16, 2021
The Foreclosure Roller Coaster Ride - When and Where Will It End? | October 14, 2021
LAC Seminar | July 15, 2021

