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

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

## 2019 FREE ANNUAL SEMINAR FOR BOARD OF DIRECTORS

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

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

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



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Amanda Canada

## EDITOR

Don Chapman

## ASSOCIATE EDITORS

Brett Alexander-Estes

Priscilla Pérez Billig

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Barry Redmayne

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## BINDERY OPERATOR

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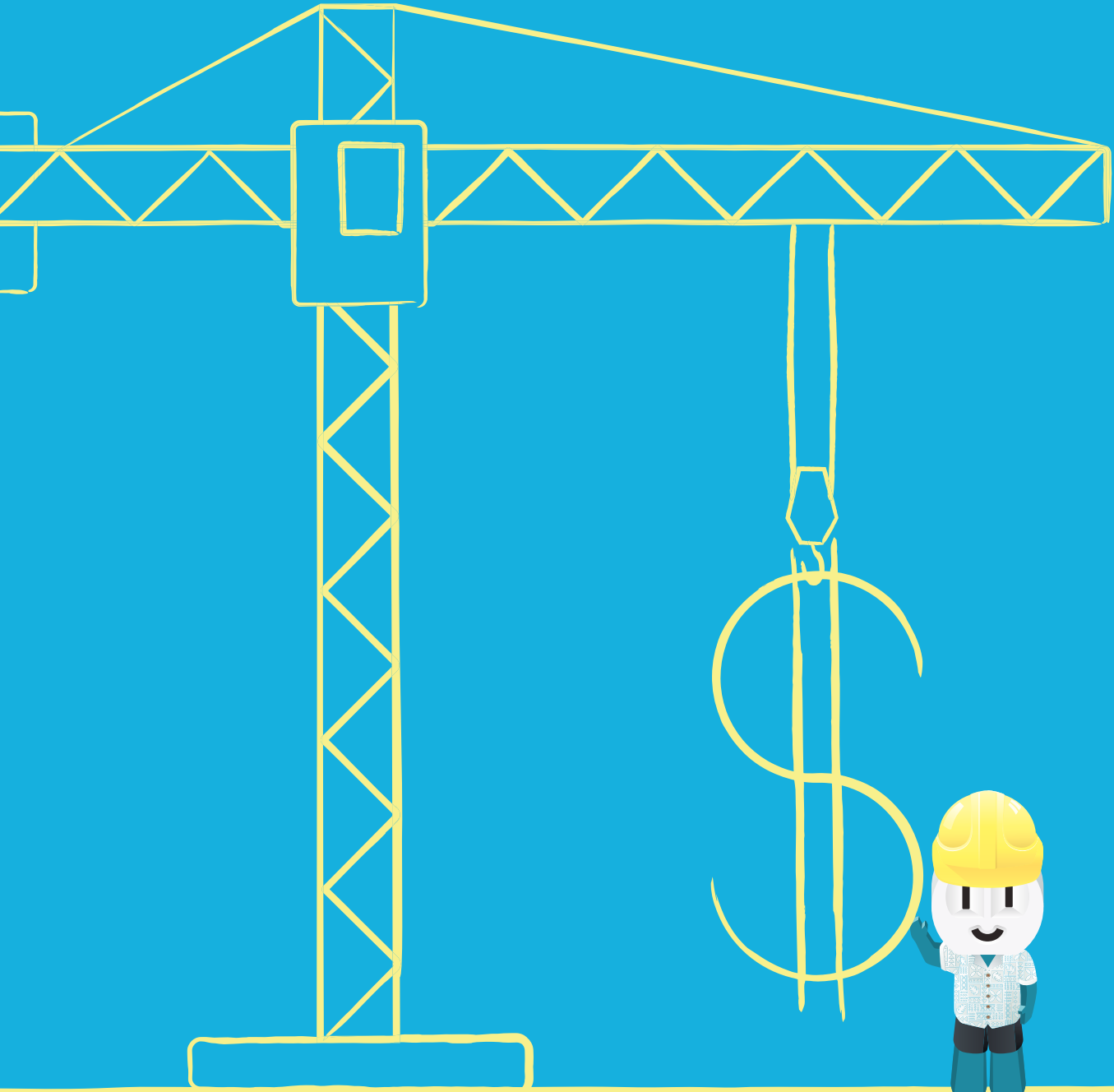


**About the Cover:** Concrete spalling in Hawaii is a huge nightmare for residents and property managers alike

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- Bridgette DeVore-Director of Human Resources – 2019 *Honoree Workplace Champion, Large Hawaii Business*
- *Pacific Business News* Named Associa Hawaii *Best Place to Work in the Large Company* Category-Second Year in a Row
- Associa earned National *Great Place to Work* Certification Status-Third Year in a Row!
- \$66,000 was raised for *Friends of Shriners* and *Associa Cares* Charities
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**L TO R: Dianne Gatmen, Brandee Orozco, Pauli Wong, Kristina DiFazio,  
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Associa Hawaii's 21st annual Associa Cares & Friends of Shriners Golf Tournament was a huge success. With 160 golfers at the Hawaii Prince Golf Club we raised \$66,000 for the two organizations, exceeding last year's fundraising by \$11,000!



Associa Hawaii's Vision of Aloha Committee sorted and organized 7 palettes of food at the Hawaii Foodbank... a grand total of 3,600 pounds!

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# On the Brink of an Insurance Crisis

Stop it.

Just stop it right now.

That's the message I'd send to the condo boards and owners whose litigious ways have put all Hawaii community living associations on the brink of an insurance crisis.

Which is what happens when Hawaii leads the nation in condo boards getting sued.

I'd heard that rumored and thought, nah, cannot be.

But then Surita Savio confirmed it during a community law seminar I covered for this issue of *BMH* (page 49).

Then Carole Richelieu, the state senior condominium specialist, told me the same thing for a story on the work of her office (page 18).

So much for Hawaii being the isles of aloha. When it comes to condo associations, it's too often the isles of litigation.

And it comes with a price.

Which brings us to the brink of crisis.

Because not only are condo association insurance rates going up for everyone, it's likely deductibles will too. Worse, some insurance companies are leaving the market. D&O liability coverage is at risk.

*Hawaii leads the nation in condo boards getting sued.*

Richelieu says she has heard rates will go up anywhere from 10 to 50%. Savio says it could go as high as 58%.

Nonjudicial foreclosure suits have much to do with the problem, but not all.

And there are unintended consequences, such as making both banks and buyers skittish when it comes to fi-

nancing and buying a unit in a building that is in litigation or has a history of it.

But there is good news.

As described by Richelieu and as detailed in five expert pieces by attorneys Katie Ranney, Keri Mehling, Melanie Oyama, Na Lan and Lance Fujisaki (starting on page 34), state law now mandates that before filing a lawsuit, condo associations and owners must first try some form of alternative dispute resolution, including mediation and arbitration. It's less costly in terms of money, time, stress and reputation.

Basically the state is saying stop it. Just stop it right now. ♦

*On another note, if you'd like to be included in our "BMH Asks" surveys of building managers—or to comment on our stories—please shoot me an email at [don@tradepublishing.com](mailto:don@tradepublishing.com).*

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# How Managers Can Prevent Turkey Day Fire Risks

More kitchen fires happen on Thanksgiving than any other day, a third of them in condos, so managers should be proactive in promoting safety

Thanksgiving is a time of reflection and of gratitude for all of life's blessings. It's a time of giving, of sharing, and of family togetherness. Unfortunately, it's also a time of residential fires. So it's imperative that property managers are proactive about reducing the risk of fires during the long holiday weekend.

## Some facts to consider:

- According to the National Fire Incident Reporting System and the Federal Emergency Management Administration, the risk of fire on Thanksgiving is 2.1 times greater than on all other days of the year.
- Between 2011 and 2013, there were an estimated 2,100 residential building fires reported to fire departments each year.
- Altogether, these fires resulted in an estimated 50 injuries, \$28 million in damages and, worst of all, 10 deaths. The average dollar loss per fire over Thanksgiving Day weekend was \$11,360.

A third of these fires occurred in multi-family dwellings, and cooking-related fires made up the vast majority of them (71.6%). The rest of the year, cooking causes only 49% of all reported residential fires. Risk peaks around midday, prime turkey-cooking hours. In contrast, on other days of the year, the residential fire risk peaks between 5 and 8 p.m., when families are cooking dinner.

So why is Thanksgiving so dangerous? There are a number of reasons, but more commonly these days: fried turkeys.

Many chefs swear by the fried bird. But people using turkey fryers on Thanksgiving aren't usually professional chefs, and are prone to errors like filling the fryer with too much oil, trying to fry a frozen turkey, or in the case of townhouses, frying it too close to the building.

Take action now by emailing residents. Remind them how dangerous turkey fryers can be when not used safely. Send them these cooking and fire safety outreach materials developed by FEMA and these safety tips from State Farm. Foodborne illnesses are incredibly common this time of year too. Share the following food safety tips with them to help keep them stay healthy through the holiday season!

- Keep young children away from the kitchen and deep fryers.
- Don't cross-contaminate. Segregate everything that came into contact with uncooked turkey. Thoroughly wash all plates and utensils that come into contact with raw turkey immediately. Do not leave them lying around the counter.
- Do not re-use uncooked marinades.
- Store turkeys at or below 40 degrees F.
- Thaw the turkey thoroughly. If you thaw it in a sink of cool water, change

the water out every 30 minutes so bacteria does not get a chance to grow and spread.

- Do not wash the turkey. This can spread salmonella, clostridium perfringens and other foodborne pathogens to other dishes and food prep areas. Simply cooking the turkey properly will be enough to kill any bacteria.
- Use a food thermometer to ensure that the interior of the cooked turkey reaches 165 degrees F before you take it out of the oven. Check the stuffing temperature, as well. Ensure the stuffing reaches 165 degrees or higher before you remove the turkey from the oven.
- Use a cooking temperature of 325 degrees or higher. Use time, rather than temperature, to adjust to the size of the bird.
- Ensure leftovers are refrigerated within two hours.
- Store leftovers in shallow pans or trays. If you leave them in larger trays it will take longer for them to cool in the refrigerator, increasing the possibility of foodborne illness.
- Don't store stuffing in leftover turkey carcass. Remove the stuffing when you serve the turkey, and store leftovers in a separate container away from the leftover turkey.
- Reheat leftovers to 165 degrees F.
- Throw away or freeze any Thanksgiving Day leftovers by Tuesday.
- Sending leftovers home with someone? If they live over two hours away, send it in cooler with ice or frozen gel packs.

Source: *buildium.com*



Shown are employees from Hawaiiiana's Oahu office. Hawaiiiana has over

# Ohana. Excel Company Values That

While we are grateful to be named a "Best Workplace," by *Pacific Business News*, we are not surprised! Here are some first-hand comments from Hawaiiiana employees:

- ◆ "I have owned my own business and worked for Fortune 500 companies, but I truly appreciate Hawaiiiana's unique commitment to their employees. Hawaiiiana consistently maintains a level of excellence. I am proud to be part of this team!"
- ◆ "While our clients often demand 'excellence,' our team always strives to exceed their expectations."
- ◆ "I love the open door policy. As a newer employee, I felt welcomed and part of the team from day one."
- ◆ "I have worked for several management companies in Hawaii, but Hawaiiiana truly cares about its employees. Our entire team works hard for our clients, which in turn makes everyone's job easier!"
- ◆ "My workplace is my home away from home! I have been here for almost 13 years and I still look forward to coming to work every single day."
- ◆ "I love working for Hawaiiiana because we are treated like gold. My contributions are always appreciated."
- ◆ "The supervisors at Hawaiiiana really care about their employees. I've never felt so grateful to be where I am career-wise. Mahalo!"
- ◆ "I've worked for two other management companies, but Hawaiiiana stands out!"
- ◆ "The Aloha Spirit is expressed here. I hear 'Good Morning' 'How can I help you?' and 'Have a great day!' every day. We are a working ohana, and Hawaiiiana is a wonderful place to work!"
- ◆ "I am a returning employee and can testify how much I love working at Hawaiiiana. What drew me back here is definitely the people! We have such a family oriented atmosphere and I love it."
- ◆ "I love my job and my co-workers. I am approaching five years with Hawaiiiana and hope for many more!"
- ◆ "I love working for a company that gives so much back to the community! I am proud that much of the charity work is driven by fellow employees, rather than simply cutting a corporate check."
- ◆ "Hawaiiiana is truly an 'ohana,' where employees ARE family!"

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*I've been with Hawaiiana for 35 years and watched our ohana get married, have kids, and even become grandparents! Where else can you say that? This is a wonderful place to work!"*

- ◆ *"There is so much that makes this company special! Educational growth, training and certifications are encouraged. Quarterly recognition events provide opportunities for people to shine. Summer picnics and holiday events allow everyone to have fun and build lasting relationships."*
- ◆ *"I am provided with an excellent salary, good benefits, supportive leadership and a great working environment; it is a pleasure to come to work every day."*
- ◆ *"I love working for Hawaiiana! This place truly is 'ohana.' We don't just say it, but believe it and back it up with our support for one another. There is truly NO place like this place to work!"*
- ◆ *"I love Hawaiiana because the bar is high! People here are caring and committed to doing a great job for our clients. I love the people I work with, and enjoy coming to work as much today as when I started over 20 years ago!"*
- ◆ *"I can trust that those I work with have as much passion to do a great job for our clients as I do. I appreciate that!"*

- ◆ *"After some time away, I'm glad to be back at Hawaiiana. From the bottom of my heart, it feels like home here. It's good to be home!"*

Since 1964, Hawaiiana has had the privilege of providing association management services to condo and community associations in Hawaii. Hawaiiana employees currently serve over 742 associations state-wide. We are truly thankful to have one of the best jobs in the world – "managing paradise!"



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# Communication, Communication, Communication

Greg Stancil says that's the key to working with an AOA board and keeping your property in top shape

BY DON CHAPMAN

**G**reg Stancil's working career began as a lineman for an electric company in California, and later he came to Hawaii to do reconstruction projects.

*"After one of those trips, I went back to California and thought, why the heck did I just come home?" he says. "I love Hawaii. And my family had a place on Kauai."*

*So that's where he moved, and where his building management career began. Not to mention where he met his wife, Mary Jane Melchor of Koloa.*

*"At first I was doing audits for some hotels," he says. "My wife's father was working at the Waikomo Stream Villas in Poipu. He said they had an opening for a general manager, and one thing led to another. I spent seven years there."*

## Greg Stancil

**TITLE:** General Manager,  
The Ironwoods at Kapalua

### Q: Tell us about The Ironwoods.

It's 40 units, townhouses, two- and three-bedrooms with garages, about nine acres in all. We have a fitness center, pool, tennis courts, library, executive center. We're right on the ocean and the Kapalua Bay golf course. We have no full-time residents, and we do not do vacation rentals. We work with Hawaiiana management. I live on the property.

### Q: What brought you to Maui?

After a stint on the Big Island when my eldest son was attending HPA, we came to Maui and I got a job managing Hono Keana in Napili.

I was there eight years and did a lot of construction bringing it back up. It was literally sinking.

That's part of what I like about his business, keeping properties up to date.

I don't like deferred maintenance. It's the single biggest problem any association can have. Boards or owners think that things will work out better down the road if they wait to do a project, but it never happens that way.

Anyway, I was at Hono Keana for eight years, got it in really good shape and then Penny Munroe of Hawaiiana called about this job at Kapalua. That was five years ago.

### Q: Speaking of boards, yours must be unique with so many part-time residents.

We have five board members. We meet five times a year, board members will fly in for meetings. This is the best board I've ever worked with. Some boards can be a challenge if they don't understand property management.

### Q: Any new projects at Kapalua for you?

We're right in the middle of repaving our roads. They were originally paved 40 years ago, then over-laid 20 years ago, so it was time to take it all the way down to grade and repave. And as long as we're doing that, we're also putting in all new curbing. In my five years here, we've also done repainting of units, new rain gutters, new garage doors, repaved the tennis courts and re-did the entry.



The Ironwoods at Kapalua

*"I don't like deferred maintenance. It's the single biggest problem any association can have. Boards or owners think that things will work out better down the road if they wait to do a project, but it never happens that way."*

**Q: Big projects like those require buy-in from the board and owners.**

I always say, in real estate it's location, location, location, but in property management it's communication, communication, communication. Nothing is worse when you have a lot of money invested in a home and you don't know what's going on. Whether it's good or bad, you have to communicate with the board and your owners.

**Q: Any new projects on the horizon?**

Actually, I'll be relocating to Oahu after this paving project is completed. I gave the board a lot of time so they can make plans. So I'll be looking for a job.

**Q: You're leaving one of the most beautiful places on Earth for the big city?**

Yes, my son Leland was accepted at Iolani—he's a competitive swimmer—so he and my wife have already moved to Honolulu, where Mary Jane is working at the The Ritz-Carlton Residences. Family comes first. My eldest son Travis, who played baseball at UH-Hilo, is doing real estate on Kauai. ♦



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# Help for Condo Associations

Carole Richelieu heads the state's condo office with the goal of limiting disputes

BY DON CHAPMAN

Hawaii's thousands of condominium associations, representing upwards of 160,000 units and counting, are governed by a statute known as 514-B. Carole Richelieu, senior condominium specialist with the Department of Commerce and Consumer Affairs' Real Estate Branch, brings along a copy for a conversation with *BMH*.



Carole Richelieu

The document runs 97 pages.

"It consists of two parts," she says, "half dealing with registering your project so you can sell it with full disclosure, and the other half is all governance, how to run a community living situation."

Her office is "statutorily charged" with providing information, advice and referral on 514-B and condominium-related matters.

Richelieu is well qualified for the position, and not just because of a distinguished legal career that includes heading the State Supreme Court's Office of Disciplinary Counsel for 20 years.

"When I became the senior condominium specialist, I had at that point owned and been on condominium boards of directors, usually as president, for at least 40 years," she says. "I started as a child."

Her office has a mission heavy on education, and Richelieu and her staff attend trade show, fairs, board meetings and Real Estate Commission meetings across the state, happily answering questions and distributing brochures that deal with everything from boards of directors to budgeting and reserve funding to alternative dispute resolution.

"We have a great website," she says, "but a certain percentage of the population really isn't into that, and

## DCCA Info

To reach the DCCA's condo office in the Real Estate Branch:

**Website:** [hawaii.gov/hirec](http://hawaii.gov/hirec)  
**Hotline:** 586-2644

that's where the brochures are helpful."

Most questions from the condominium community, she says, regard governance:

"The concept is self-governing, and it always has been, but there have been a lot of issues over the years with self-governing. Therefore you get laws.

"I've heard anecdotally through the insurance industry that Hawaii is leading (nationally) as far as boards being sued. As a result, premiums are probably going up 10-50% for Directors' and Officers' liability, and some insurance companies are pulling out of the market.

"Boards have a fiduciary duty that is written into the statute, and it's to the association as a whole. Their job is to maintain the health, safety, welfare (of residents), and to preserve property values. It's for the whole

*"The concept is self-governing, and it always has been, but there have been a lot of issues over the years with self-governing. Therefore you get laws."*

project, not any one person. It is a hefty responsibility, which is why we want board members to understand their roles. It's not something one just does—oh, I have nothing better to do, I think I'll go be on a board. They have to be educated and trained and to know the law, and how to govern.

"From my experience, you have to be part psychologist, part mediator, you

need lots of skills to be a good board member. And they're held up to the same standards as a non-profit board by the statute—you have the duties of loyalty, no conflicts of interest."

Most disputes, she says, are "based on misunderstandings, not understanding the community living concept, and being self-governed. The old-time friendly, neighborly, civil kind of thing works wonders, and it works wonders with boards—boards should be open so any owner can come in and say what's on their mind."

The volume of lawsuits is "really unfortunate because it's so unnecessary, if they learn to resolve disputes rather than litigating. The statute provides a lot of solutions. It is replete with alternative dispute resolution and offers two types of mediation, facilitative and evaluative. And it's subsidized by the Real Estate Commission.

"Litigation is extremely expensive, very time-consuming and exhausting. And it puts a burden on all the other owners."

When *BMH* mentions a case in which a Maui condo association lost a \$3.2 million discrimination suit, Richelieu groans.

"Why that case was never mediated . . . it was shocking," she says, "And now all the other owners are going to be responsible to pay that, because the association has no money.

"We want people to know we are available as a resource if they aren't able to govern themselves, although we hope they will be able to with a certain amount of decorum and civility, and keep the lines of communication open."

All that helps explain why her office is taking a new tack in hopes of limiting disputes.

"We're really trying to encourage

folks to learn about community living, get trained in it, and get engaged in community living,” Richelieu says. “We have extended our outreach, trying to reach prospective buyers so that folks understand the kind of situation they’re buying into and perhaps avert problems later on. It’s not the same thing as your single-family home and you can do whatever the heck you want. We’re trying to extend our educational efforts to prospective buyers. They’re making one of the biggest investments of their lives, and we want to help them understand it’s got benefits—you share expenses, the roof leaks, you don’t have to shoulder the cost for all of it—but at the same time you have an obligation to help maintain that property.

“The other outreach we’re trying to do is to the real estate licensees, so that when they have a prospective buyer they will be able to educate them that this is a special form of living arrangement, and there are some restrictions—there are rules and regulations so that other people can have quiet enjoyment, and keep up



property values. You may not be able to paint your door purple. We hope to be able to get to folks that way too, so both the licensees who are selling and the people who are buying go in with their eyes wide open, so they understand there are advantages but they’re also responsible to obey the house rules that are there for a reason.”

For example, Richelieu recalls buying a condo and being told by the real estate agent that she could plant a garden in a small plot, which she soon found out was in fact a common area.

Personally, Richelieu—she points out that she shares a name with one of the bad guys in the classic *Three Musketeers* film, Cardinal Richelieu, played by

Charlton Heston—attended Star of the Sea, UH-Manoa and Richardson School of Law. “A totally local product,” she says.

“I knew in law school early on I wanted to do public service work, and my four years in a private firm doing civil litigation work cemented that. I’ve always been more drawn to professions that help and assist.”

Away from the office, she serves on the Supreme Court’s Commission on Professionalism and its Board of Bar Examiners, and volunteers with the Bar Association’s Senior Counsel Division and Transitioning Lawyer Committee, as well as with animal welfare causes and public radio. ♦



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Anthony Nelson

# How to Identify, Prevent Outside Water Intrusion

Having a solid plan in place is the best way to prevent water from entering your building

When I write about water damage, we're usually focused on issues that originate from inside the building envelope. This article will be about the top sources of moisture intrusion we, as restorers, see most often.

Before diving into specifics, it's important to make a clear distinction. When it comes to determining the category (or sanitary condition) of the water with outside sources, it's all about what the water came into contact with before it entered the structure. Any water that has run across the ground before entering a structure would be considered category three (black water) and would require the removal of porous building materials affected by the water.

Here are the top sources of water intrusion.

## 1. Roof Leaks

This is by far the most common source we see. Today's commercial and residential structures are often plagued by a backlog of maintenance

perspective, this is short sighted. The damage that can be caused by one roof leak is pretty significant and I would always advise to perform temporary repairs even if the replacement is already scheduled.

## 2. Flooding

As our weather patterns have shifted over the past 20 years, we're beginning to see more events where streams are overflowing and causing property damage. Unfortunately, these types of losses usually cannot be prevented. The best thing you can do to protect your property in these instances is to secure federal flood insurance if you're in a registered flood plain. The type of coverage afforded by these programs is different than a normal property or commercial liability policy. Also, make sure storm drains and culverts on the property are kept clean and clear of debris. Any type of flooding is regarded as category three, meaning the quality of the water is regarded as grossly unsanitary. Last year,

by simply correcting the spray pattern of the sprinkler. In colder climates, this is a less common problem because most sprinkler systems are serviced at least twice throughout the year. Once to winterize the system to prevent flooding and then again in the spring to get the system back up and running. In Hawaii, these systems operate year around. For most properties, I always recommend making sure there's someone inspecting the sprinkler system monthly to prevent these types of losses from occurring

## 4. Wind-Driven Rain

Most common during Kona-wind storms, we'll get a lot of calls for wind-driven rain. These are usually from buildings with a south or west facing exposure and the point of entry is the sliding patio door. For these, prevention is pretty simple. When severe weather is imminent, just place a water sock or other water barrier device in front of the sliding glass door. We've seen instances where this simple step has prevented hundreds of gallons of water from entering the building. Making sure your windows are not beyond their service life is also important.

For most of these sources, the fixes are remarkably simple and cost-effective to prevent the losses from occurring. Having a solid plan in place is always the best way to prevent water from entering or to lessen the damage from water entering your building.

As a wise person once said, "An ounce of prevention is worth a pound of cure." ♦

*For most of these sources, the fixes are remarkably simple and cost-effective to prevent the losses from occurring.*

projects. When you couple that with the fact that most densely populated areas in Hawaii are in the leeward side of the island, these old roofs don't have much of an opportunity to shed water day to day. With the exception of wind damage, most roof leaks are easily prevented by an annual roof inspection and by repairing or replacing damaged sections of the roof. Most properties would defer temporary repairs opting to wait until reserves permit them to replace the entire roof. From my

when East Oahu had massive flooding, we did some water quality testing. Our findings indicated that water from stream flooding contained almost three times the contamination as a normal sewer pipe overflow.

## 3. Irrigation

Ever drive by a property when their sprinkler system is on and see one sprinkler spraying water directly at the side of a building? It happens often. These types of losses are easily avoided

*Anthony Nelson is senior VP of operations and certifications at Premier Restoration Hawaii, as well as a wide array of applied technical and specialty experience. Reach him at [anthony@premhi.com](mailto:anthony@premhi.com).*

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# When Rec Decks Leak on Floors Below

## A reminder of the importance of waterproofing

Many condominium and hotel structures in Hawaii have beautifully landscaped recreation decks. Typically, the decks are located at an upper “podium” level above parking garages or interior spaces. These amenity decks may feature wonderful facilities such as vegetated planters, paved walkways and seating areas, and may even include a swimming pool or hot tub.

But too often when you go to the floor level below, the ceiling is covered with ugly efflorescence stains, water leaks, stalactites and possibly cracks and spalls in the concrete structure. In these circumstances, it is likely the waterproofing system has failed in some manner, or that there are discontinuities in the waterproofing system.

Unfortunately, leak sources and failures in the waterproofing system are difficult to find because much is hidden beneath the overburden materials.

So what can be done to resolve such problems? Or better yet, what can be done to avoid such problems in the first place?

The solution generally boils down to a few key things: 1) selection of an appropriate type of waterproofing system, 2) effective management of bulk water, and 3) good detailing during design and installation.

### Waterproofing System Selection

Waterproofing systems vary from fluid-applied materials to sheet products. Some common types of fluid-applied systems include hot rubberized-asphalt, asphaltic urethane, polyurethane, and polymethyl methacrylate (PMMA). Commonly used sheet systems include polyvinyl chloride (PVC), ethylene propylene diene monomer (EPDM), synthetic rubber and self-adhering rubberized-asphalt membranes. There are many different waterproofing systems to choose from, and each type has pros and



Water stains, efflorescence, corroded steel reinforcing, spalled concrete and previous repair attempts visible at the ceiling of a parking garage located below a recreation deck

cons that must be carefully considered.

Depending on the size of the installation and specific project conditions, fully-reinforced and fully-bonded fluid-applied systems are often a good choice for long-term performance and value. Proper application of fluid-applied waterproofing systems will reduce potential for leaks at labor-dependent details, such as at critical flashing locations. Fluid-applied systems are typically fully adhered to the deck, reducing potential for lateral movement of water below the membrane if a leak should occur, thereby improving the probability of finding the location of the leak source. Because the waterproofing will be located below difficult-to-remove overburden materials, we recommend consideration for a robust waterproofing system from a manufacturer that has more than 10 years of successful installations on podium-level decks.

Be careful of hasty statements made by waterproofing system manufacturers that claim their product is most appropriate for any deck. It is important to choose a waterproofing system for the conditions anticipated on each individu-

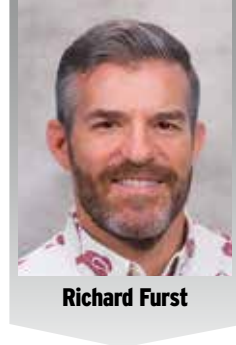
al project. The selection of an appropriate waterproofing product can depend on many project-specific factors, including the intended overburden materials and potential ponding conditions. An experienced architect or engineer will evaluate the project conditions to assist the owner in selecting systems appropriate to anticipated in-service conditions and the project budget.

### Effective Management of Water

No matter what waterproofing system is selected, “bulk” water—such as rainwater or planter irrigation—must be effectively managed to avoid problems from water infiltration. If water is not directed along a specific drainage pathway, it will find its way into other parts of the building, causing a myriad of unwanted issues. Careful coordination is also needed between architect and mechanical engineer to ensure that code requirements are met for both primary and overflow drainage for all areas of the deck. Even areas beneath pools and planters require nuisance drains to capture and divert water that makes its



Bernie Wonneberger



Richard Furst

way below these amenity deck features. Proper planning by an experienced project team can help ensure the deck is designed to evacuate bulk water and keep it from causing leaks.

## Design and Installation Detailing

“Experience counts” is a phrase that really applies to the successful design and installation of a waterproofing system. It is critically important for architects and engineers to have a complete understanding of the principles of good waterproofing practice, working knowledge of products that are most suitable for specific applications, and a thorough understanding of how to detail the multitude of project-specific conditions that come up on each job, particularly unforeseen conditions that may be discovered after demolition of existing decks. Those who have spent time working with manufacturers and contractors to understand warranty and constructability concerns can refine their craft to provide better detailing to a project.

Similarly, those contractors with experience working with specific products and systems are best suited to provide better waterproofing installations. Many manufacturers require a contractor to complete certification training with their specific products before they will offer a warranty through that installer. Others require that a contractor has a minimum number of years of experience installing waterproofing systems. Including these manufacturer warranty requirements in bid documents is an excellent way to ensure that contractors are qualified to perform the work they are bidding on.

It is important to never “hang your hat” on the manufacturer’s warranty for a waterproofing system. No matter how robust a warranty, it will still be a major inconvenience to make a warranty claim and undertake repairs. Depending on the limitations of the warranty, it is likely the building owners will still need to spend money from their own pockets before the repairs or replacements are completed. Proper detailing and quality installation of an appropriate waterproofing system will provide better peace of mind

for a successful long-term performing waterproofing system than a warranty.

## Conclusion

Recreation decks are not only a relaxing environment for people to rest and enjoy the scenery, but can also increase property values and promote occupant satisfaction. Where robust vegetation and planters are included, they can even help slow storm water runoff from undulating overburdened sewer systems. By selecting appropriate waterproofing systems, managing water flow and proper detailing and installation, building owners and occupants can enjoy years of problem-free performance from their recreation amenity decks. ♦

*Bernie Wonneberger is a licensed architect with more than 33 years at Wiss, Janney, Elstner Associates, Inc. (WJE), a global firm of engineers, architects and materials scientists. Richard Furst is a licensed architect with over 18 years in the building design and construction industries in Hawaii. Reach them at 591-2728 or [wje.com](http://wje.com).*

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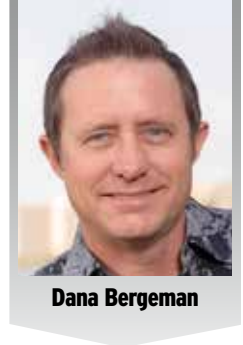


**Park Lane Ala Moana**

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Dana Bergeman

# Planning a Big Spalling Repair Project?

## Here's a step-by-step guide to successful completion

Throughout the years, our construction management firm has managed and monitored many types of construction projects, including those involving waterproofing and concrete spalling in AOA properties. One of our missions is to help owners and associations understand their property's issues and the process to successfully address them.

Typical concrete spalling can be reduced in severity and frequency through maintenance practices such as maintaining good coatings (paint), and maintaining sealants and similar preventative maintenance.

In other situations, spalling may not be avoidable. In all cases, however, unchecked concrete spalling is prone to spread, resulting in increased maintenance, higher maintenance costs, and can result in a decreased service life of the concrete or component in question. Developing a good preventative maintenance plan and setting goals to address and mitigate water-intrusion-related issues is one of the most important steps you can take to manage concrete maintenance costs, preserve the longevity of building components and positively impact financial value of a property.

One of the first phases of a successful capital improvement project is to have a construction manager gather information and assess a building's current status. This often requires a site visit and a review of building-related documents provided by the association or owner. This allows your consultant to obtain a general familiarization of the property, preliminary understanding of the areas needing repair, and comprehension of the various concerns that are known to exist.

The next recommended phase is to proactively work to identify areas that may require additional research, investigation or due diligence. Evaluation and due diligence help clarify the elements needed to define the scope of the project



or evaluate the proposed repairs or improvements. This can be done through a property condition assessment or general constructability review and, depending on the areas impacted and age of the building, may also include laboratory testing and analysis. Depending upon what is to be reviewed and analyzed, your construction manager may or may not recommend that you engage design professionals, environmental specialists or others at this phase of the project.

After completing the due diligence, the project scope is then refined to include the features, functions and items needed to achieve the goals to repair a spalling project. This includes documenting inclusions and exclusions to the proposed scope of work. Once complete, the project scope is presented to the decision makers for approval.

It is important to decide if a traditional "design-bid-build" or a "design-build" project delivery method is to be chosen. For a traditional design-bid-build, an experienced team will orchestrate the production of plans and specifications

by design professionals prior to placing the project out to a competitive bid. If a design-build project delivery format is chosen, your construction manager will produce a design-build bidder's manual to list project requirements of the area in question, whereby the bidding contractor will also be responsible for the development of the repair design, in addition to actual construction.

For most AOA projects, and especially for larger or more complicated projects, a traditional design-bid-build format is preferable and is far and away the most common project delivery method. It maintains traditional industry roles and is considerably more effective in obtaining comparable bid offerings from prospective contractors.

Taking a design-build approach can be faster, although this comes at the expense of other items. First, much of the control maintained by the owner, construction manager and engineer are lost using the design-build format, as duties such

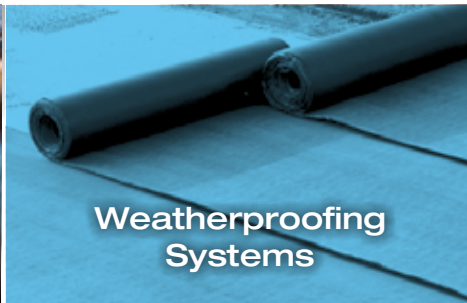
*Continued on Page 28*

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#### *Continued from Page 24*

as product selection, design details and workmanship requirements are delegated to the choice of the contractor. Second, the design-build approach is perceived as being cheaper, but this is often an illusion. Management and design costs that ordinarily would have been separate are simply reassigned and submersed into the contractors proposed cost of repair. You should discuss the pros and cons of both project delivery methods with your construction manager. They will be able to help you select the method that best meets your needs.

During the bidding phase, a professional construction management firm makes sure prospective contractors provide apples-to-apples bid offerings for the proposed scope of work. By thoroughly vetting and critiquing each bid, the firm advocates on behalf of the association by ensuring each bid meets project requirements.

After reviewing and analyzing the contractors' competitive bids, a construction manager should organize and present them to the association or owners for their review. Once you select a contractor, your CM representative will coordinate with the key decision

makers to develop an owner-contractor agreement and negotiate the terms with the contractor.

Assistance with the preparation of permit applications and submission of the construction documents to governing authorities for approval is often the next phase. The construction management team coordinates with the contractor to obtain the requisite building permits.

Be aware that approval time by local officials may vary, which can delay a project or adjust its scope.

And, yes, the repair of concrete spalling is usually a permit-required event.

Once the final bids are received and a contractor is selected, an updated project budget is assembled for approval by the board or owner. Upon approval, the contractor's performance during construction is monitored and the monthly budget is updated, assisting with cash-flow forecasting.

If reserves for the repair project are not available and residents want to avoid a substantial special assessment, an owner's representative can assist with finding appropriate options for the funding of a renovation or repair project. They will research, compile and present a comprehensive list of funding sources for review and approval.

*Typical concrete spalling can be reduced in severity and frequency through maintenance practices such as maintaining good coatings (paint), and maintaining sealants and similar preventative maintenance.*

Pre-construction communication is needed to ensure owners and residents are fully informed of the planned improvements or repairs, and how these could impact their daily routines. Town hall meetings can communicate the improvement plan to the members of the residential community. These meetings are typically open to all stakeholders and are held at critical junctures. They are designed to help obtain “buy-in” and ease anxiety surrounding the project, providing peace of mind.

Preparing for construction is an essential phase and one often overlooked by inexperienced firms. Before green-lighting actual construction, your construction management firm reviews that all the pre-construction elements are in place and in accordance with the defined project scope, including things like preparatory requirements, protection of private property, insurance and bonding requirements.

During the construction phase, a construction management firm acts as a representative and advocate. Its team monitors the budget and details the contractors’ progress, quality and overall performance. Construction in a residential building can be especially unsettling for residents and owners. While the

inconveniences of construction can never be fully eliminated, an owner’s representative should strive to minimize the inconveniences often associated with capital improvement projects.

During construction, the owner’s representative will monitor and report on the progress of the project. These can include scheduled construction coordination meetings, developing and maintaining a tracking log and regular site observations.

Upon project completion, a record of the project is provided, including key documents, drawings, specifications, the final budget and applicable warranties and guarantees from the contractor. We

have found that providing a brief satisfaction survey for clients allows them to share feedback about each party’s performance during the project.

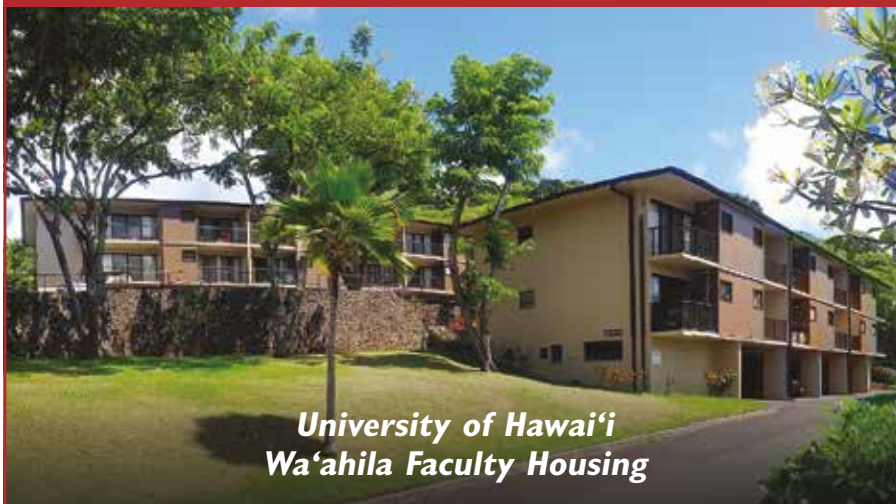
Each project, each building and each owner is unique. Because of this, following a proven process in order to deliver tailored solutions is the best path to the successful completion of a capital improvement project. ♦

*President and CEO of Bergeman Group, Dana Bergeman brings over 25 years of experience in the architecture, engineering and construction industry. Reach him at [info@bergemangroup.com](mailto:info@bergemangroup.com).*



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Ken Kasdan

# Spalling's Hidden Secrets

There can be more damage than meets the eye

Concrete is the most widely used building material in the world, and if designed and installed properly it has close to an indefinite lifespan. Concrete is versatile—it will conform to virtually any shape it is placed in, allowing for creativity in design and durability.

But concrete's simplicity ends here.

It is subject to damage and deterioration by a number of mechanisms, whether it be mechanical damage caused by impacts, cracking or leaning due to earthquakes, damage due to environmental exposures such as chemical attacks, or damage due to improper placement of reinforcing steel.

As the owner/operator of a property, you need to promptly act to mitigate damage so that the appearance and value of the property is maintained and to

ensure you have safe premises for guests and employees.

## Concrete Damage and Walkway Crack Patches

One of the most obvious aspects of concrete damage is cracking of the flatwork. Cracks are often caused by a combination of poor construction and soils movement.

If there is mechanical damage causing a spall, a mere patch of additional concrete will often not result in a lasting repair. Generally, the area of the damage should be cut out and a new section of slab placed. So that a good visual appearance is maintained, it is important to consider the size of the cut-out due to a potential mismatch in color and appearance.

If there is vertical displacement or a raised crack, the initial repair is often grinding of the two adjacent surfaces until there is a smooth transition. This will prevent a trip hazard, whether by a heel getting caught in the crack or a toe of the shoe tripping over the raised concrete.

Grinding is typically viewed as a temporary measure, and eventually slab replacement is necessary. Just replacing one slab section is merely a band aid and does not provide a remedy for the underlying issue. Cracks are often caused by expansive soils, which are common here in the Islands. There may not be an adequate thickened edge on the slab to provide a stronger foundation and barrier the moisture movements. Verify that adjacent planters and lawns are not being subjectable to uneven moisture conditions.



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## Spalling of Tops of Walls, Fences and Benches

It is not uncommon to see spalling, or the breaking off of concrete chunks, along the tops of walls or fences. This is not the failure of the concrete cracks but rather corrosion of the embedded steel. Often the rebar which reinforces the concrete is placed too close to the surface of the concrete and is not protected from moisture intrusion, as concrete is porous and allows water to pass. A patch over these areas will do no good and the damaged section will need to be replaced. The damaged section needs to be carefully examined to make sure structural integrity of the concrete section has not been compromised and that a patch can be properly integrated into the wall.

If the cracking is occurring along the length of a concrete post that supports a fence, or along the railing of a fence, it is highly likely that the cracks had adversely affected the integrity of the post, creating a significant failure hazard. Railing failures have happened here in Hawaii, whether it be from the corrosion of a metal post embedded in concrete or spalling of concrete adjacent to the post,

guardrails can and will fail. What could be viewed as a simple bench, can be a major source of potential liability if it fails when a couple sits on it.

Our cooling ocean breezes also bring chlorides in the mist. Chlorides accelerate corrosion, and once the embedded steel or rebar corrodes, it effectively cannot be stopped once it begins. The rusting steel occupies up to six times the volume of new rebar and literally breaks the concrete apart, resulting in chunks of concrete falling off, often exposing the rusty steel beam. If not caught early enough, the integrity of the structure is compromised.

## Chemical Attacks on Concrete

Soils can have corrosive levels of chemicals in them. Whether due to irrigation or rainfall, water enters the soil and dissolves chlorides or sulfate deposits or the residue of chemical fertilization, all of which we have here in Hawaii. We often find sulfates of magnesium or sodium in the soils, which can get into concrete through the inherent porosity of most concrete mixes. Unless a foundation is totally isolated by a thick plaster

membrane, with no holes or punctures and raised all the way to the top of the foundation above the soil, the soil gets into the concrete, dissolving a portion of the cement matrix and forming new crystal deposits inside the concrete. This causes initial cracks, which can spall the outside edge. This continues until the concrete is compromised.

## Physical Salt Attack

Here in the Islands, some say we really have only two seasons, day and night. At night the temperature drops and during the day the sun heats on the concrete surfaces drawing moisture up through the concrete all day, causing crystals to form on exterior edges, spalling off smaller layers of concrete. Day by day, year by year, spalling that starts as fine (or map) cracks can damage the concrete surface. Eventually a repair is necessary. ♦

*Ken Kasdan is considered one of the nation's leading construction defect authorities. He is the senior partner with Kasdan LippSmith LLLC, with its primary office in Oahu. Reach him or his director of client relations Louisa Percudani at 369-8393 or visit [kllawhawaii.com](http://kllawhawaii.com).*

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# Bridging the Gap When Needing Concrete



Kimo Scott

Every building owner or manager wishes for as few concrete repairs as possible, and even fewer concrete headaches, but many times when it comes to their properties' concrete, they experience many repairs and even more headaches.

However, knowing the leading headache culprits, and a few key questions to ask when you need concrete product, will help alleviate these issues.

**Culprit #1:** Hawaii's high humidity corrodes concrete product quickly.

**Culprit #2:** The ready-mix producer offers the contractor several product options. The contractor chooses the least expensive. The least expensive product provides not-so-ideal water-to-cement ratio, therefore causing premature cracking especially in our



humidity-laden conditions.

**Culprit #3:** A lawyer is brought in to defend the specification. Liability is passed from the contractor to the ready-mix producer to the engineer to the architect, and ultimately to the owner.

These headaches can be alleviated

if you remember to ask the following questions when looking into concrete:

## 1. What is the class of concrete?

For example, Class A concrete is ideal



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for either reinforced or non-reinforced concrete structures, as well as concrete pavements. Class B concrete is better used for sidewalks, curbs and gutters.

## 2. What is the Water-to-Cement Ratio?

Too much water will cause quick corrosion. If you're not careful, you may choose this because it is simply the cheapest (short-term) and unknowingly you may sabotage your own project. You typically want a water-cement ratio of .40 – .50. For higher-strength concrete, you want lower ratios

## 3. Look for Integral admixtures that can be added to the concrete at the central batch plant.

These products change the inherent nature of concrete to become water-proof all by itself and have been field tested for over 20 years. Some of these systems even have built-in warranties and insurance components. Look for a 10-year warranty and a \$10,000,000 policy. This results in a more durable concrete product at a lesser cost to the owner and protects the owner, architect, engineer, ready mix producer, and contractor from liability.

Speak with a local concrete manufacturer to learn how you can have the admixture provided to the ready-mix producers, who in turn will add the mixture to the concrete at the central batch plant.

Taking these precautions when looking into your concrete project will accomplish a better end product without everyone hiring a lawyer to defend the specification and then still not having a solution to the problem. This is a win-win solution to lessen time, cost, and a provide you with an all-around better longer-lasting product. No headaches required. ♦

*Kimo Scott graduated in 1973 from the University of Hawaii. Later worked for Graham Construction as an outside salesman until 1978. In 1978 started OK Hardware & Construction Supply. Reach him at 808-671-2886 or okhardwr@hawaiiantel.net.*



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# 7 Reasons to Avoid Litigation in Association Disputes



Keri Mehling

Time, money, stress, reputation, property values are all factors

Litigation can be an effective and efficient way of definitively resolving disputes between owners and associations or associations and third parties. But litigation carries significant disadvantages, which must be considered before deciding whether to seek the court's intervention in dispute resolution.

This article will give you a litigator's perspective on some of the disadvantages of litigation for condominium, community and commercial associations.

## 1. Pure Economics: Litigation Costs Time and Money

Litigation is expensive. Hiring counsel and going through formal litigation has significant monetary implications that are generally not accounted for in the budget. This often results in special assessments to cover expenses, even when insurance coverage is involved. Telling an owner that they are responsible for funding another owner's legal dispute is never popular.

Beyond money, litigation is time-consuming. Property managers, boards and owners who have knowledge of or are involved in the dispute commit significant time to the litigation process. Court deadlines dictate. Vacations and work get rescheduled to accommodate hearings, depositions, conferences and trials. Special board meetings and protracted executive sessions to discuss litigation can become the norm.

## 2. Litigation Affords Less Flexibility Over the Process

Litigation has a specific, court-mandated processes and rules governing discovery, dispositive motions and trial. Alternative forms of dispute resolution, such as mediation or arbitration, do not have the same rigidity and offer parties greater

flexibility in how the resolution process will unfold. In mediation or arbitration, discovery may be limited, depositions and formal motions may not be necessary. Mediators and arbitrators can act as third-party facilitators, advisors, and decision makers, depending on what the parties need and want. Through alternative dispute resolution, parts of a dispute may be resolved, while more contentious issues remain to be resolved, thereby streamlining the litigation process.

## 3. Litigation Affords Less Flexibility Over the Outcome

Litigation is intended to yield a win-lose result. It is not uncommon for judges to suggest to the parties an alternative dispute processes because "you may not like the outcome" rendered by the court. In association disputes, oftentimes a rule change, writing off a

will not lend on a project involved in litigation, particularly in the early stages of litigation. The uncertainty of litigation may deter buyers from buying into a project and may adversely impact property values, especially where litigation threatens serious financial consequences to the association.

## 5. Litigation is Inherently Divisive

How often do all unit owners agree on anything? Litigation is like talking politics with friends—everyone has an opinion of what happened, who it happened to and what should happen next. Because litigation is inherently divisive, people have a greater propensity to pick sides. Boards of directors are pitted against owners; property managers pitted against the board, or owners pursue their own agendas while making everyone else pay for it. Parties

*Boards and litigation committees should explore all dispute resolution options before deciding to pursue litigation.*

fine or a simple apology is enough to get the parties across the finish line and resolve a dispute. In court, those opportunities for hand-crafted results rarely exist. Avoiding litigation and pursuing alternative dispute resolution can often occasion a win-win result.

## 4. Litigation Risks Owners' Ability to Refinance or Sell and Decreases Property Values

When an association is involved in litigation, refinancing options for owners and financing for new buyers may be reduced. Certain loan programs

and their supporters push their agenda while barricading themselves from compromise. Communities erode into caustic and contentious battlegrounds and the divide grows wider. With alternative dispute resolution, the goal is to find a solution that has the least divisive and detrimental impact on the whole, even if it means that no one party is entirely happy with the outcome.

## 6. Litigation Deters Owner Participation

People do not like to be sued. When an association is involved in litigation, volunteer owners are less inclined to get involved or place themselves in the middle of a lawsuit. Owners resign from the

board or withdraw from participating in committees until the litigation dust settles. Those who continue to serve often find their friendships compromised, their personal time impacted and on the receiving end of owner frustration.

## 7. Litigation Decreases Associations' Ability to Find/Retain Good Property Managers

Few property managers are willing to step into a buzzing hornet's nest. Associations that are known for litigating as a first option are riskier clients for management companies. These associations take more time, more resources and more effort. Some property managers will avoid projects known for being litigious and others will charge more to those projects to help manage litigation. When you have a great property manager, you want to retain them.

## Takeaways

In the United States, we have the freedom and opportunity to have our legitimate legal claims heard in court. Litigation is an effective and impactful tool to compel uncompromising parties to behave appropriately. But litigation is not always the best way to resolve association disputes. Fortunately, Hawaii's condominium and community association statutes require associations and owners to participate in mandatory alternative dispute resolution in certain situations before embarking down the litigation path. The legislature has recognized that litigation is not always the best means of dispute resolution.

Boards and litigation committees should explore all dispute resolution options before deciding to pursue litigation. That way, when the decision is made to litigate, it is well-informed and strategic, rather than reactionary. A well-informed board also puts us—the litigators—in the best position to advocate successfully on behalf of our clients. ♦

*Keri Mehling is a partner with McKeon Sheldon Mehling, LLC, and has engaged in complex litigation, real estate and business transactions for the past 20 years in Hawaii. Reach her at 242-6644 or [keri@msmhawaii.com](mailto:keri@msmhawaii.com).*



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Melanie Oyama



# Alternative Dispute Resolution

## Hawaii state law provides for several methods short of litigation

When determining whether to file a lawsuit, a party should always weigh the costs and risks of litigation with the potential reward—which is not guaranteed—and consider other options. Settling a dispute out of court typically takes less time and less money than a lawsuit. To settle a dispute without the court's assistance, parties can engage in alternative dispute resolution methods such as direct negotiations, mediation and arbitration.

### Direct Negotiation

The old-fashioned one-to-one conversation is a common approach to resolving a dispute. The parties come together in private to allow an open discussion of various issues and resolutions. You may learn that the other party is not fully aware of the problem or of extenuating circumstances, and might be open to a reasonable resolution that both parties can accept. If you do agree on a resolution, be sure to document it and have each party sign the agreement. It is always best to have an attorney review the agreement to be sure each party's respective interests are protected.

### Mediation

Mediation is a private and confidential method to resolve a dispute. Mediation is a process that is more

formal than direct negotiations, but less formal or adversarial in nature and less restrictive regarding evidence and witness rules than litigation or arbitration, but provides a useful tool to help the parties resolve the dispute through compromise. Mediation can be used for practically any dispute that arises between parties.

In Hawaii, by law, association disputes that involve the interpretation or enforcement of the declaration, by-laws and house rules require mediation before a lawsuit can be filed. In addition, some contracts have provisions that may require mediation of a dispute before a lawsuit is filed. Mediation is especially helpful when a dispute involves various and complex issues, and there is a continuing relationship between the parties.

In mediation, a neutral third party helps the parties compromise to come to a resolution. The mediator does not decide on the outcome of the mediation, but rather evaluates each party's claims by pointing out the strengths and weaknesses of the claims and may advise the parties on how a judge or jury may decide. This can provide the parties with an avenue to come to an amicable agreement. The parties may or may not come to a resolution but the goal is to use the mediation process to reduce the number of cases that go to court.

If the mediation results in a resolution, the parties can make it legally binding by preparing a settlement agreement that each party signs. A signed settlement agreement is enforceable in court if either party fails to follow the terms. It is important to have an attorney review the settlement agreement to ensure that your rights

are protected.

Depending on the number of issues and the complexity of the issues, mediation fees vary, but for disputes involving condominium associations, some of the mediator's fees might be covered under the Condominium Education Trust Fund. The parties may or may not be represented by legal counsel at the mediation, but if they are, each party is responsible for the costs and fees of its own attorney.

### Arbitration

Arbitration is another private process similar to mediation. Parties come together with a neutral third party (or a panel of neutrals) to examine the claims and explore possible resolutions. The difference is that instead of just trying to get the parties to compromise, the arbitrator makes a decision on the case, which can either be binding or non-binding on the parties. If it is binding, the arbitrator's decision is final, can be enforced by a court and can be appealed. If it is non-binding, the arbitrator's award is merely advisory. Arbitration is similar to litigation in that parties do not have control over the decision. In this regard, arbitration is typically referred to as "quasi-litigation" because the parties must comply with the arbitration rules, may conduct discovery with the arbitrator's permission, and present the legal arguments as if it were being presented in court.

The arbitrator might be an attorney, a retired judge or an expert in a particular field, like engineering or construction. The arbitrator's decision is called the "award" and it must comply with the law or a judge may overturn it. It is often

recommended that each party have legal representation, given some of the legal requirements for arbitrating a dispute.

Because arbitration is decided on legal issues rather than compromise, it is often recommended when money is the central claim rather than one involving neighbors or an owner having a dispute with an association over parking or noise. Arbitration may be chosen because it can be faster, simpler and less expensive than going to court. Or it may be required because parties signed a contract that contains an "arbitration clause" requiring it for any dispute relating to the contract.

Arbitration tends to cost more than mediation but typically less than court cases. But keep in mind that the arbitrator's award may include an award of attorneys' fees and costs to the prevailing party.

## Other Dispute Resolution Methods

Other types of dispute resolution may apply in a specific field of business or type of claim. For example, you may be able to resolve a dispute involving a licensed professional by filing a complaint with the State of Hawaii's Department of Commerce and Consumer Affairs' Regulated Industries Complaints Office.

Attorneys can help establish internal dispute procedures so that by-laws or house rules, and contracts specify the method to resolve a dispute that may arise. Determining the best resolution method may help legal dollars go farther and save valuable time. Your attorney can help you make the best choice for your situation.

For up-to-date information, mark your calendars for CAI Hawaii's April 16, 2020, seminar: "Condo Wars: Mediation, Arbitration and Litigation." ♦

**Melanie Oyama**, a partner at *Motooka Rosenberg Lau & Oyama (MRLO)*, received her Juris Doctor in 2015. She rejoined MRLO after more than 10 years of previous paralegal experience at the firm. Her practice includes general counsel, mediation, covenant opinions and enforcement, and collections. Reach her at 532-7266 or [mel@myhawaiiilaw.com](mailto:mel@myhawaiiilaw.com).

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# Talk it Out, Don't Fight it Out

## Why mediation beats litigation



Katie Ranney

The cost of not resolving conflict early is high. In addition to your time, lawyer's fees and court costs, there are hidden costs such as loss of productivity and loss of personnel. Simply finding a new tenant and turning over the unit can take about 96 hours, or just over two weeks' worth of work.

And the cost of conflict is more than just dollars and cents. Conflict elevates stress, decreases morale, decreases productivity and damages focus. Stress from conflict puts you under tremendous strain. Your body is subjected to increased wear and tear due to stress. And your immune system degrades,, thus increasing your chance of getting sick or suffering an injury. According to a 2008 study by CPP Inc., 25% of workers said that avoiding, rather than resolving, conflict led to sickness or absence from work.

Consider the following scenario:

A couple has been living in their unit for a little more than a decade. They've been good tenants except for the occasional mess from their parties. However, now several guests of theirs have been visiting at least once a week and making a lot of noise. Their neighbors have begun to complain.

The property manager sent the tenants a letter reminding them of the rules of the apartment complex: appropriate noise levels, guest policy and quiet hours. Their guests continue to visit, and the noise levels moderate for a little while, but then they become noisy again.

One of their neighbors in particular complains frequently about their parties. She has been gossiping with some of the other people in the complex, and the property manager starts receiving complaints from people far from the noisy tenants' unit. The property manager sends a violation of rules notice. Other neighbors learn about the letter and start complaining about the "harsh rules" in the complex, and the property manager notices some reviews online complaining about management not allowing tenants to live their lives.

It's becoming such an issue that a community meeting is called, which devolves into a yelling match between factions. The property manager is stuck in the middle.

To address issues early and avoid unnecessarily escalating the situation such as the scenario above, mediation should be considered as the first step. Mediation is a non-adversarial, cost-effective process for resolving conflicts creatively in a way that keeps you in control of the outcome and can result in restoring the relationships of the parties involved.

### What is mediation?

In mediation, an impartial third party (the mediator), helps the parties in conflict discuss their issues through a structured process and craft an agreement they both can agree to. Unlike court, it is not an adversarial process, and the mediator does not make decisions. The mediator brings out each side's perspectives and delves into the issues and the feelings that are fueling the dispute. Negotiation can happen with both parties in the same room or in private sessions with the mediator. The agreement at the end is a creation of the mutual effort of the parties in conflict, so they are more likely to follow through on the terms. Everyone can leave the mediation feeling better about the situation and each other, because they were able to talk through it.

**Cost-effective:** When accessed early, mediation stops the conflict before it escalates out of control. All of the costs that would have been incurred talking through lawyers, court fees and the time and energy you commit to a process that could extend for weeks, are eliminated through the use of mediation. A few hours of conversation with a mediator is well worth it to save the aggravation of a prolonged or intense conflict.

**Maintain relationships and reputation:** With mediation, you talk through the issues rather than fighting and trying to prove each other is

wrong. Interactions remain civil and the discussion focuses on what is important to each person. This way, dignity is maintained and relationships can be restored. For example, even if it is determined that a tenant does need to move, when the terms of the move are worked out together, there is less chance for "bad blood" and retaliation, such as a trashed unit.

**You craft the solution:** One of the main tenets of mediation is the empowerment of the parties to solve their own disputes. Instead of a judge or arbiter deciding what the solution will be, you craft your own solution with the other party. When you have agreed to the terms, they are written down and both parties sign the agreement, similar to a contract.

Let's reconsider the original scenario. If the property manager had called for mediation after the first warning was ignored, both the property manager and the tenants would have avoided the escalation of the issue that ultimately involved others in the complex. They would have met with a mediator to talk through the initial guest problem. Before anything else happened, they could have negotiated a way for the guests to come over, with the tenant ensuring that their guests would adhere to all property rules. The agreement would also set out the consequences if the rules were broken again.

Conflict is a fact of life. To minimize its costly effect, mediation should be accessed early, before a dispute escalates. Through mediation, the participants can talk through their issues and negotiate agreements that resolve the dispute without incurring the high cost of fighting.

**Kathryn "Katie" Ranney** is special programs coordinator for the Mediation Center of the Pacific. She coordinates training, outreach and special program management. Ranney has been involved with conflict management and resolution for 13 years. Contact her at 521-6767 or [katie@mediatehawaii.org](mailto:katie@mediatehawaii.org)



Lance Fujisaki

# Guidelines for Mediating Condominium Disputes

Criteria are specific as to who can seek mediation and the disputes that qualify

Among the most important tools for resolving condominium disputes out of court is the subsidized mediation program under Section 514B-161 of the Hawaii Revised Statutes. If a dispute meets the criteria of the program, the Hawaii Real Estate Commission will pay for a portion of the costs of mediation, including the fees of a professional mediator. This is a major benefit, as many condominium disputes involve complex issues that require the expertise of a professional mediator.

## 1. What Kinds of Disputes are Subject to Mandatory Mediation?

The dispute must involve the following parties:

- Unit owner and the board, unit owner and the managing agent, board members and the board, or directors and managing agents and the board.
- The association involved must be registered with the Hawaii Real Estate Commission.
- The dispute must involve interpretation or enforcement of the association's declaration, by-laws, or house rules.
- The parties must not have already mediated the same or a substantially similar dispute.
- An action or an arbitration concerning the dispute must not have been previously commenced

## 2. What Kinds of Disputes are Excluded?

- Disputes involving threatened property damage or the health or safety of unit owners or any other person.
- Disputes involving assessments.
- Disputes involving personal injury claims.
- Disputes involving matters that would affect the availability of any coverage

pursuant to an insurance policy obtained by or on behalf of an association.

However, the above disputes may be submitted to voluntary mediation.

## 3. May Other Issues Be Included?

Yes, mandatory mediation may include issues and parties in addition to those identified above, provided that a unit owner or a developer and board are parties to the mediation at all times and the unit owner or developer and the board mutually consent in writing to the addition of the issues and parties.

## 4. Can the Board Deny a Request for Mediation?

No, upon written request, if the mediation meets the above requirements.

## 5. What is Evaluative Mediation as Opposed to Facilitative Mediation?

In facilitative mediation, the goal is to facilitate negotiations and communications between parties and to guide the parties so that they may reach amicable and mutual solutions to their disputes. In evaluative mediation, the mediator provides the parties with an assessment and oftentimes a recommendation as to an appropriate resolution.

## 6. May a Party Choose Facilitative Mediation if the Other Side Requests Evaluative Mediation?

No, if evaluative mediation is requested in writing by one of the parties, the other party cannot choose to do facilitative mediation instead, and any attempt to do so shall be treated as a rejection to mediate.

## 7. What are the Remedies if the Other Party Refuses to Mediate?

A unit owner or an association may apply to the circuit court in the judicial circuit where the condominium is located for an order compelling mediation in appropriate circumstances.

## 8. Are Mediations Subsidized by the Condominium Education Trust Fund?

Mediation may be subsidized by the Condominium Education Trust Fund if it meets the requirements for mandatory mediation. If so, the following conditions apply:

- The parties shall pay a fee of \$375 to the mediator.
- The mediator shall receive no more from the fund than is appropriate under the circumstances, and in no event more than \$3,000 total.
- The mediation may include any issues and parties in addition to those identified above (see questions 1 and 2).
- The mediation may include an evaluation by the mediator of any claims presented during the mediation.

## Summary

The subsidized mediation program brings within financial reach the services of professional mediators for condominium disputes. Property managers, board members and apartment owners should consider using this program to resolve disputes out of court. ♦

*Lance S. Fujisaki is an attorney with Anderson Lahne & Fujisaki LLP. His exclusive field of practice is in the representation of community associations, including counseling, contract negotiations and documentation for renovation projects. Reach him at 697-6005 or LFujisaki@alf-hawaii.com.*

# Tips for Property Managers Caught in the Middle



Na Lan

## Helping resolve disputes is part of the job

As property managers, you constantly need to assist clients in resolving disputes with owners, tenants, vendors or among board members. If you worked with clients who went through court litigation cases, you can probably attest to some or all of the following unpleasant realities arising from lawsuits:

- Escalating legal invoices and uncontrollable legal budget.
- Increasing insurance premiums and difficulty finding decent insurers that are willing to provide coverage during the renewal time period.
- Frustration of your client and its members who face challenges for refinancing while the legal action is pending.
- Tons of work for responding to discovery requests, which may involve digging up smelly old files in storage or intrusive searches for all your emails.
- Being grilled by opposing counsel during depositions or trials.
- Tension among the litigating parties, which tends to make your job more difficult.
- Delay tactics by opposing parties and the everlasting dragging ordeal in the court process.
- An unpredictable trial result, which your client usually realizes after the fact that it does not make any economic sense after crunching the numbers.

Because of all the above referenced negative consequences, most disputes are actually resolved out of court before filing lawsuits or before court trials.

You add more value to your clients when you effectively help them prevent disputes or efficiently resolve disputes before they escalate into court cases. Here are a few quick tips you may find useful:

### 1. Advise Your Clients to Avoid Making Hasty Decisions and Seek Timely Legal Guidance

People tend to make mistakes when they make hasty decisions without thorough consideration and adequate knowledge of the issues, rights/obligations and consequences involved. With your growing professional experience and institutional knowledge of your management companies, you can help clients identify when they should seek for legal guidance.

Certain clients may not be savvy enough to realize spending small money up front for legal consulting is a much better way to use attorneys, compared with being forced to spend heavily on litigation down the road. You can try persuading such clients by explaining that they, in their capacity as officers and directors, owe the association or corporation a fiduciary duty. The “business judgment rule” provides a safe harbor that shields directors and officers from liabilities when they rely on information, opinions, reports or statements prepared or presented by legal counsel. A director or officer is not acting in good faith if he or she has

knowledge concerning the matter in question that makes such reliance unwarranted. As a property manager, you should not advise your clients on legal issues, as doing so would be exposing yourself, your management company and your clients to potential liabilities.

### 2. Help Your Clients Improve Communication, Enhance Transparency and Keep Good Business Written Records.

A lot of disputes can be prevented and avoided by good and open communication. You are retained in your professional role, as you have the skill set of a good communicator. As George Bernard Shaw said, the single biggest problem in communication is the illusion that it has taken place. To avoid miscommunication, you as the client’s custodian of business records should be trained and equipped to keep good written records for your clients, including but not limited to meeting minutes, covenant violation incidents reports, emails and letters with unit owners.

*You add more value to your clients when you effectively help them prevent disputes before they escalate.*



Lawsuits involving factual disputes, especially on relevant and important facts that could impact the jury or judge's decision, will be much more expensive to resolve, as the case cannot be dealt with by summary judgment motions. That means the parties have to prepare for going through a costly trial. Familiarize yourself with Chapter 514-B, Sections 152 to 154.5, Chapter 421J, Section 7, and Chapter 421I, Section 6, of the Hawaii Revised Statutes on statutory requirements regarding condominium or community association or cooperative housing corporation records to be maintained and provided upon request from members. Also please bear in mind that communications between your clients and their attorneys are confidential and protected by attorney-client privilege. You and your client should seek timely legal advice to avoid jeopardizing such protection.

### 3. Work with Your Clients to Do Cost-Benefit Analysis Early on Before Investing In Litigation.

As managing agents, you are in a unique position to help your clients keep tabs on the overall costs of a dispute resolution process, reminding them to work with legal counsel to do cost-benefit analysis early on, hopefully before your clients have invested heavily in a court action. This should not be delayed until the busy time when you prepare the budget or annual meetings for your client.

### 4. Assist Your Clients to Tender Claims to Their Insurers in a Timely Way to Avoid Jeopardizing Insurance Coverage.

Certain clients may not realize failure or delay to tender claims to their insurance companies may lead to significant negative consequences to their coverage. So it is important to remind them to contact their insurance agents in a timely fashion and seek legal guidance whenever there is any question about when or whether a "claim" should be "tendered" to your clients' insurers. It is good practice to notify insurers of all lawsuits, arbitration demands, regulatory complaints and written threats to sue

or other contentious communications on potential claims.

### 5. Know the Basics About Negotiation, Mediation and Arbitration so that You Can Better Work with Your Clients and Their Counsel to Resolve Disputes Out of Court.

Alternative dispute resolution methods such as negotiation, mediation and arbitration are usually cheaper and faster than litigation. Settlement negotiation can be done orally and in writing, through counsel or among parties directly. Most associations' project documents provide unit owners with due-process procedural steps for them to dispute a citation for covenant violation. In certain circumstances, board directors, after consulting with counsel on the issues, the association's rights and obligations involved, can effectively use the appeal or hearing process to have direct dialogue with unit owners to

try to resolve disputes. When attorneys are helping your clients to negotiate for settlement, you often will see correspondence being marked "communication" made under Rule 408 of the Federal and Hawaii Rules of Evidence, which provides that evidence of conduct or statements made in compromise negotiations or mediation proceedings is not admissible as evidence to prove liability for or invalidity of a claim.

It is important to remind directors and officers any violation of HRS 514-B-161 and 162 may constitute a violation of their fiduciary duty, but a board member may avoid liability by indicating in writing the board member's disagreement with such board action, rescinding or withdrawing the violating conduct within 45 days of the occurrence of the initial violation. ♦

*Na Lan is an attorney with Damon Key Leong Kupchak Hastert. She has extensive experience representing condominium and community associations, as well as property management companies. Reach her at 526-3617 or [nl@hawaiilawyer.com](mailto:nl@hawaiilawyer.com).*

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Mahinahina Beach in Kahana, Maui

# BMH Asks: Pet Policies

BY DON CHAPMAN

About half of Hawaii families have a pet of some sort, whether it barks, meows, chirps or splashes. Dean Watson, site manager at Mahinahina Beach in Kahana, Maui, tells *BMH* about the joys of being a pet-friendly community

## Mahinahina Beach

**General Manager:** Dean Watson

» **What is your association's policy regarding owners having pets, including service animals?**

At Mahinahina Beach, we allow owners or tenants to have one dog (25 pounds or less) and/or one cat in their unit. Although there is a weight restriction on dogs, we remain flexible as long as there are no problems within the community. Dog owners are required to have a liability insurance policy naming the AOAO as additional insured. They are also required to submit a pet form to the site manager registering the pet with the AOAO.



Dean Watson

Owners are also required to diligently and promptly pick up and dispose of any solid waste in common areas. Any pet found by the board to be causing a nuisance or unreasonable disturbance to any occupant of the property can be permanently removed from the property upon proper written notice. No livestock, poultry, rabbits or other domestic animals shall be allowed to be kept on property.

Visually impaired persons may keep guide dogs. Also any physically

impaired persons may keep service animals as defined in Chapter 515, Hawaii Revised Statutes, in their units and may use their dog (animal) as reasonably necessary to enjoy the property.

» **What pet-friendly provisions/amenities do you offer?**

We are a smaller property with 32 units. Currently we have just five dogs and one cat that live with their owners. Two of the dogs are part-time residents, splitting time between Maui and the Mainland. We do not have any particular pet-friendly provisions or amenities for the animals other than some earnest petting, head scratching and loving words from the site manager whenever he gets a chance!

» **What are the benefits of being a pet-friendly property?**

One advantage of being a pet-friendly property is that we do not limit the availability of ownership to those who do not have pets. When it comes time to buy or sell a unit, we want everyone to be included and feel welcome here at Mahinahina Beach. Judging by my own observations since being on property, everyone who comes across one of the dogs on a walk takes the time to acknowledge the pet with words or touch. Pets typically have a calming, loving effect on those they encounter. Animals are peaceful, gentle, and



*"One advantage of being a pet-friendly property is that we do not limit the availability of ownership to those who do not have pets."*

Watson's Yorkie and best buddy, Oscar

non-judgmental . . . excellent traits for us humans to emulate.

» **Do you have a pet?**

My wife and I have a mature, 12-year-old dog named Oscar. At 23 pounds he is an unusually large (I say man-sized) pure-bred Yorkie. Oscar is a jet-setter who is on his second stint living on Maui. Three years ago he spent time with us in Hana. My best buddy Oscar shares the same July birthday with myself and my son.



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# The Latest on Pet Laws for Condominiums

## Federal rules for fair housing take precedence

A condominium's by-laws typically provide whether or not pets are allowed. So prospective owners and renters who want to have pets should ask to review the condominium by-laws—or check with the resident or site manager—before they consider moving into a specific condominium.

I've been told that the Hawaiian Humane Society and other pet-friendly organizations have lists or information as to which condominium projects will allow residents to have pets.

In many instances, a condominium's "no-pets" policy was a result of a by-law amendment where over 67% of the owners voted to ban pets from the project and many owners bought units in the project because of the "no-pets" policy for any of the following:

- they had animal-related allergies,
- they were afraid of dogs or cats or
- they didn't want to live in a building with irresponsible pet owners.

For example: Pet owners who did not leash their pets, who did not clean up by

disposing of animal waste, who left dogs in their units that barked constantly, who did not practice good hygiene with their pets as to fleas and ticks, who did not groom their pets and did not clean up after them if they left hair in the building common areas.

Accordingly, prospective owners and renters who want pets should respect that policy and look for a pet-friendly building. Investor-owners in a condominium with a "no-pets" policy should make sure that their property managers and/or leasing agents comply with that policy when interviewing prospective tenants.

Service animals are allowed in condominiums with a "no-pets" policy under federal fair housing laws, which are the residential counterpart to the Americans with Disabilities Act that applies to condominiums and whose purpose is to prevent discrimination of disabled persons with respect to housing. A service animal is a dog—although federal law also defines miniature horses as service animals—that is trained to do work or perform tasks for a person with a disability.

In Hawaii, there is no registry or certification for a service animal. This means that the certificates and "logo pet jackets" that are available on the internet, and which some people try to use to "authenticate" their pet as a "service animal," are bogus.

In the case of a blind resident who needs a seeing-eye dog, there can be no dispute that the dog is a service animal.

In some cases, however, where the disability is not obvious, you are not allowed under federal law to inquire as to the nature of the disability. You can only ask what service the animal provides to the resident.

Federal laws relating to service animals are complicated, and I urge any condominium association to consult with their attorney in dealing with residents who claim that their animals are true service animals.

The Hawaii Civil Rights Commission



is the agency tasked with the enforcement of fair housing laws. HCRC investigates fair housing and discrimination complaints, holds hearings and issues fines and penalties

To have an assistance or comfort animal, the resident must make a request to the association through its board of directors for a “reasonable accommodation.” This is typically done

medical records, proof of training or insurance coverage for the animal.

In approving a request for a reasonable accommodation, the association can require the resident to comply with reasonable restrictions if they want to keep the animal. For example, the association can approve the request for reasonable accommodation allowing the resident to have an assistance or comfort animal so long as the resident complies with existing house (or building) rules, e.g., observing leash rules; assuming responsibility for damage caused by the animal; fumigating the unit and shampooing the carpet upon vacating; cleaning up animal waste; having the animal licensed by the county.

This means that if the resident fails to comply with the reasonable restrictions, the association can require the resident to remove the animal from the building. However, removal of the animal for non-compliance should be done under the direction and advice of the association’s attorney. ♦

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*Jane Sugimura is a Honolulu attorney specializing in condo law. Reach her at [ysugimura@paclawteam.com](mailto:ysugimura@paclawteam.com).*

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## *Federal laws relating to service animals are complicated, and I urge any condominium association to consult with their attorney in dealing with residents who claim that their animals are true service animals.*

in the event of a violation. Go to the website for information on assistance and comfort animals, which may also be allowed in “no-pets” condominiums as a reasonable accommodation under the fair housing laws. (The Hawaii Civil Rights Commission is at 830 Punchbowl St., Room 411, Honolulu, HI 96813; 586-8636; [labor.hawaii.gov/hcrc](http://labor.hawaii.gov/hcrc).)

An assistance or comfort animal is not a service animal and may provide aid to a disabled person that will allow that person to live in a “no-pets” condominium.

by having a healthcare professional, mental health professional or a licensed social worker write a letter to the board attesting that they are treating the resident for a disability (as defined under federal law), and the assistance or comfort animal is needed to alleviate one or more symptoms of the resident’s disability.

The resident cannot be asked to provide access to health care providers, or any details as to the diagnosis, the nature of the disability, symptoms,

# Condo Owners Catch a Break on State Fee

Condo owners across Hawaii received a bit of good news last month when the state announced it will cease collecting a \$5 per biennium fee from

unit owners that had been going to fund the Condominium Trust Fund.

The fund was supposed to support education and research into condominium management and disputes. As of fiscal

year 2018, it had grown to \$2.5 million, up from \$785,000 in FY2015. The Department of Commerce and Consumer Affairs (DCCA) said the state has been spending about half a million dollars per year from the fund, explaining the big surplus.

Gov. David Ige agreed to the “fee holiday.” Much of the groundwork was done by state Rep. Takashi Ohno, who represents Nuuanu, Liliha and Alewa Heights, and heads the House Intrastate Business Committee, in conjunction with the DCCA.

DCCA also cut fund fees to financial institutions and cable TV operators, and is looking at similar fund surpluses in other industries.

Said Carole Richelieu, senior condominium specialist with the DCCA’s Real Estate Branch (see page 18): “At this time, the one-year waiver from the Condominium Education Trust Fund

fee has not impacted the Real Estate Branch or fulfillment of its duties and responsibilities.”

## **In other condo news:**

Sales of Oahu condominiums in September were a mixed bag when compared to sales in September 2018. While there were 466 condo sales in September, down from 511 in the same month last year, a dip of 8.8%, condo sales cost rose 4.4%, from \$428,000 to \$445,000. The rise in sales price had much to do with a decline in sales of mid-range condos—\$300,000 to \$599,999.

Condo sales on the Big Island, Maui and Kauai presented slightly different pictures.

On the Big Island, sales volume rose from 59 to 61, 3.4%, as did the median sales price, from \$297,500 to \$354,500, 19.2%.



**Rep. Takashi Ohno**



**Carol Richelieu**



Stacia and Kehau Mendes, Airpro Indoor Solutions



Holly Morikami, Heide & Cooke; Lauren Kagimoto, IREM Hawaii; Melissa Pavlicek, Hawaii Public Policy Advocates; and Wendell Enomoto, Island Signal & Sound



David Porteus, Halle Melanson, Lindsay Garlia and Angela Jordan, Premier Restoration

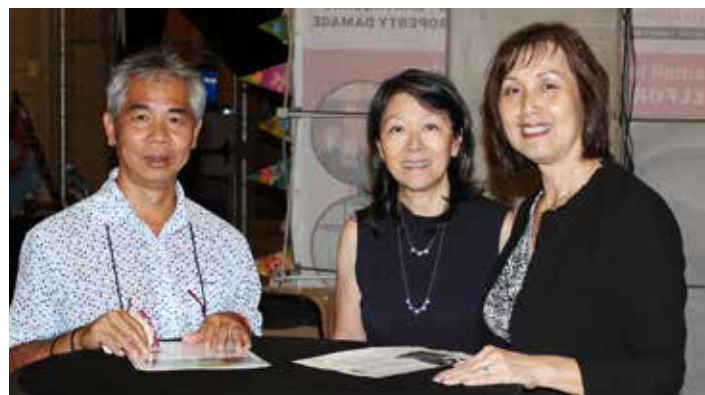


Phyllis Okada Kacher and Brittney Kekaulike, Associa Hawaii

## IREM and BOMA Co-host 'Vendor Blender' at SALT

PHOTOS BY DAVID KANYUCK

IREM (Institute of Real Estate Management) and BOMA (Building Owners and Managers Association) co-hosted a "vendor blender" at SALT at Our Kakaakao Barn on Oct. 17, bringing together folks from organizations that serve residential and commercial buildings. The theme was 'Building Aloha.'



Gifford Chang and Michelle Wong, Ideal Property; Mona Choy, Homestreet Bank



Luciano Pereira and Giovanni Camuso, Sagewater



Julie Jones and Shawna Lewis, Bergeman Group



Dicson Aggabao, Tricia Louie and Lawrence Ahn, Carrier Hawaii



Mike Greer and Bernie Wonneberger, Wiss Janney Elstner Associates



Steve Peterson and Sean Dunham, Kawika's Painting Inc.



Jodi and Steve Maero, Rainbow Roof



## SageWater Celebrates 10 Years

SageWater kicked off its 10th anniversary “Pau Hana” party at the rooftop lanai of Dave & Buster’s. The celebration expressed the company’s gratitude for all those who have helped SageWater to be the “simple smarter” choice for pipe replacement in the Islands. Pictured: (back row) Ralph Nishimura, Lisa Davis, Joe Brawley, Duane Komine, Giovanni Camuso, (front row) Rodelie Beck, Treymane Hanson, Jennifer Gaura, Miguel Rentas, Roberto Flores.

# Rental Housing Leads Hawaii Commercial Real Estate

Housing complexes provided the largest volume of sales in Hawaii commercial real estate through the first six months of this year, totaling \$469 million. That’s according to a report issued late last month by the brokerage firm Colliers International’s local office. Retail space was second at \$235 million. Vacant land was third at \$217 million. Resort, meanwhile, which has led the way in recent years, accounted for just \$194 million. Industrial sales generated \$135 million.

Overall, sales of Hawaii commercial real estate is taking a perhaps predictable dip after a record-setting 2018, when sales of rental apartments, hotels, shopping centers and other commercial properties totaled \$3.1 billion in the first half of the year. The tally for January through June of this year was \$1.3 billion, a drop of 58%.

Colliers noted that while stock market volatility and interest rates have

made commercial real estate attractive to investors, a strong dollar has made it less so, especially for overseas investors.

*Housing complexes provided the largest volume of sales in Hawaii commercial real estate.*

Also, the 2018 record was driven largely by 10 “megadeals”—more than \$100 million—such as \$1.1 billion for the Grand Wailea on Maui. So far this year there have been just three megadeals, the biggest being \$211 million for 520 rental homes in Kalaeloa.

Despite a drop in overall commercial real estate sales, the number of transactions was up to 135 this year compared to 117 in the first six months of last year.

## Planning a Paint Project? Check Out this New Website

The Painting & Decorating Contractors Association of Hawaii has unveiled a new website that will be used to educate the public as well as promote their unionized painting, decorating, waterproofing and industrial coating contractor firms in Hawaii. The website, accessible at [pdcahawaii.org](http://pdcahawaii.org), provides various resources to the public, including tools, tips and trends in the painting and decorating industry.

In addition, the site provides an online directory of PDCA of Hawaii painting contractors in Hawaii, filtered by market types including residential, commercial, government and industrial.

“Our new website will provide the public with much-needed information about selecting a painting and decorating contractor in Hawaii,” said Dean Nagatoshi, executive director of PDCA of Hawaii. “Our online directory is also a great tool to feature our union member contractors, some of whom do not have their own website to promote themselves or feature their work.”

Besides the new website, Facebook and LinkedIn pages were also created for the association to further connect with its current and prospective members and clients.

PDCA of Hawaii membership includes active unionized painting, decorating, waterproofing and industrial coating contractors, associate manufacturers, wholesalers, distributors and dealers and affiliate contractors with a multitude of skilled and bonded employees across the state. PDCA of Hawaii is affiliated with the International Union of Painters and Allied Trades (IUPAT), It represents Hawaii’s construction finishing trades, including the Painters Local Union 1791, Glaziers Local Union 1889, Floorlayers Local Union 1926, Drywall Finishers Local Union 1944, and Shipyard Workers Local Union 1941.

# Law Seminar Addresses Condo Issues

Motooka Rosenberg Lau and Oyama share the latest legal advice, including on poster-size porn

BY DON CHAPMAN

The case of a woman who enlarged pornographic images into posters and hung them on her walls, in view of her neighbors, was just one example of the challenges of community living cited during the 24th annual Community Association Law Seminar sponsored by the firm Motooka Rosenberg Lau and Oyama. More than 150 building managers and AOA board members gathered at the Japanese Cultural Center on Oct 4 for the luncheon meeting that was in equal parts educational and entertaining.

Leading off, **Melanie Oyama** spoke on the impact of condominium-related legislation passed in the most recent session. Act 282 clarifies what is known as the “Sakai ruling,” so that an association can now nonjudicially



**Melanie Oyama**

foreclose even without specific language in governing documents allowing it to do so. But it also provides for certain prohibitions, including consumer protection for deployed

active-duty military personnel. Act 282 also stipulates that the first step in a nonjudicial foreclosure must be mediation.

But Oyama stressed that there are risks that outweigh potential rewards involved in nonjudicial forecloses, including a process that can be costly and drag on for years. Perhaps of greater concern, insurance rates can be affected, to the point that one insurance company is now declining to insure nonjudicial foreclosure suits.

In short, she said, “When it comes to nonjudicial foreclosures, don’t do it.”

**Surita Savio** of Insurance Associates, who insures more than 1,000 community associations, echoed Oyama: “Don’t do nonjudicial foreclosures ... insur-



**Surita Savio**

ance companies are not going to do them anymore.”

And because 68 nonjudicial foreclosure suits have been filed in Hawaii, with the potential for more than \$700 million in losses, “rates are climbing and so are deductibles.”

Also at future risk is directors’ and officers’ coverage, especially for boards that have filed nonjudicial foreclosure suits.

Another big issue is water-related claims: “We see seven to 10 every day,” Savio said.



**Janelle Lau**

**Janelle Lau** addressed the topic of covenant enforcement issues, and emphasized that associations are obligated to enforce rules. Generally, an offense must impact common areas or

other units. She drew laughs in mentioning the unidentified condo where a woman “blew up huge porn posters and

put them on her walls, which neighbors could see.” The woman filed a counter-claim that took a month to resolve.

**Milton Motooka** spoke about effective rule making.

As the governing body of the association, he said, board members effectively



**Milton Motooka**

comprise the “executive, legislative and judicial branches of government. You establish the culture for the community. But with great power comes great responsibility.”

Rules and restrictions are designed,

he said, “to enhance property values and the quality of life within the community,” as well as to provide “certainty and order.”

Rules must be fair, clear and enforceable. As an example, a rule requiring residents to obtain guest parking passes 30 days in advance was deemed unreasonable. A rule barring owners from placing “unattractive yard art” in a townhouse complex was deemed unenforceable: “That might prevent the owner from being in the front yard!”

In general, Motooka said, “The fewer rules the better. People don’t like to be over-regulated.”



## CAI Hosts ‘Ask an Expert’ Seminar

The Community Association Institute (CAI) of Hawaii hosted an “ask an expert” seminar Oct. 10 at the Japanese Cultural Center. Speakers included Richard Ekimoto, M. Anne Anderson, R. Laree McGuire and John L. Knorek. CAI plans eight legal seminars for next year, beginning Feb. 6 on “Do’s And Don’t’s in Design Review.” For more information on CAI, go to [caihawaii.org](http://caihawaii.org).

# Stuck in an Elevator

## Here's a guide for what to do next



**Robyn Matsumoto**

How often do people get stuck in an elevator? The answer depends on several factors, including the type of elevator, how often it moves people, how many people it moves, how many floors it serves, etc.

There are approximately 900,000 elevators in the United States and the likelihood of an entrapment is one in every 100,000 elevator rides. Despite these low odds, the fear of becoming stuck in an elevator is relatively common.

Knowing what to do in the event of an elevator entrapment can help keep you calm, safe from injury and get you the help you need in an efficient manner. Below are some tips of what to do and what not to do in the unlikely event you are trapped in an elevator.

First, remain calm and do not panic.

Second, refrain from trying to pry the elevator doors open or putting pressure on the doors in either direction. Do not attempt to escape from the ceiling hatch, as it is locked from the top of the elevator. You are safest staying in the elevator

while you wait for a trained elevator technician or emergency responders to let you out safely. Attempting to leave the elevator on your own could result in serious injury or even death!

Only leave the elevator with the assistance of a professional elevator technician or emergency responders. The elevator is equipped with an exhaust fan and hidden vents that allow for constant air flow.

Also, take notice of the car position indicator, typically located at the top of the panel with the floor buttons or located above the elevator doors. The car position indicator identifies what floor the elevator is on. If the elevator is at a landing, try pressing the door open button to see if the elevator doors open. If this does not work, try to enter a floor number. If the elevator is still inoperative, locate the emergency phone and activate it to speak to either the elevator dispatch center, the security department or the front desk of the building. They can contact the proper personnel to get you out of the elevator safely.

If the phone does not work or no one answers, locate the emergency alarm bell button and press it. It will ring continuously while pressed. This may help to alert the building of your entrapment.

If all else fails, you can try to dial 911 from your personal cellphone, however, elevator cabs usually have poor cellular reception and your phone may or may not work.

Although it may vary from building to building or contract to contract, the typical response time of elevator personnel is 60 minutes for regular business hours or 90 minutes for other days or hours. Please be patient as safety takes time. The elevator technician will need to investigate why the elevator shut down before taking action to remove you to ensure your safety.

In the event you get entrapped due to a power outage, the elevator cab lights will most likely shut off. Some buildings have emergency power generators that enable the elevator to run as normal. Other buildings may not have any means for emergency power, but all elevators are required by code to have an operable emergency light and alarm bell that is powered by a separate battery source. Note, this light is a small light which may not illuminate the whole car. Some elevators may be equipped with emergency battery lowering, which allow the elevator to either travel up or down to the next available landing and open the doors to let the entrapped passengers out.

The key things to remember if entrapped are to remain calm, utilize the emergency alarm bell or phone in the elevator, wait for the proper personnel to release you safely and be patient. Help is on the way! ♦

**Robyn Matsumoto** serves as principal of Hawaii operations for Elevator Consulting Services Inc. (ECS). ECS brings together expertise in consulting, engineering, project management and technology. Contact her at 808-367-4929 or [robym@elevatoradvice.com](mailto:robym@elevatoradvice.com)



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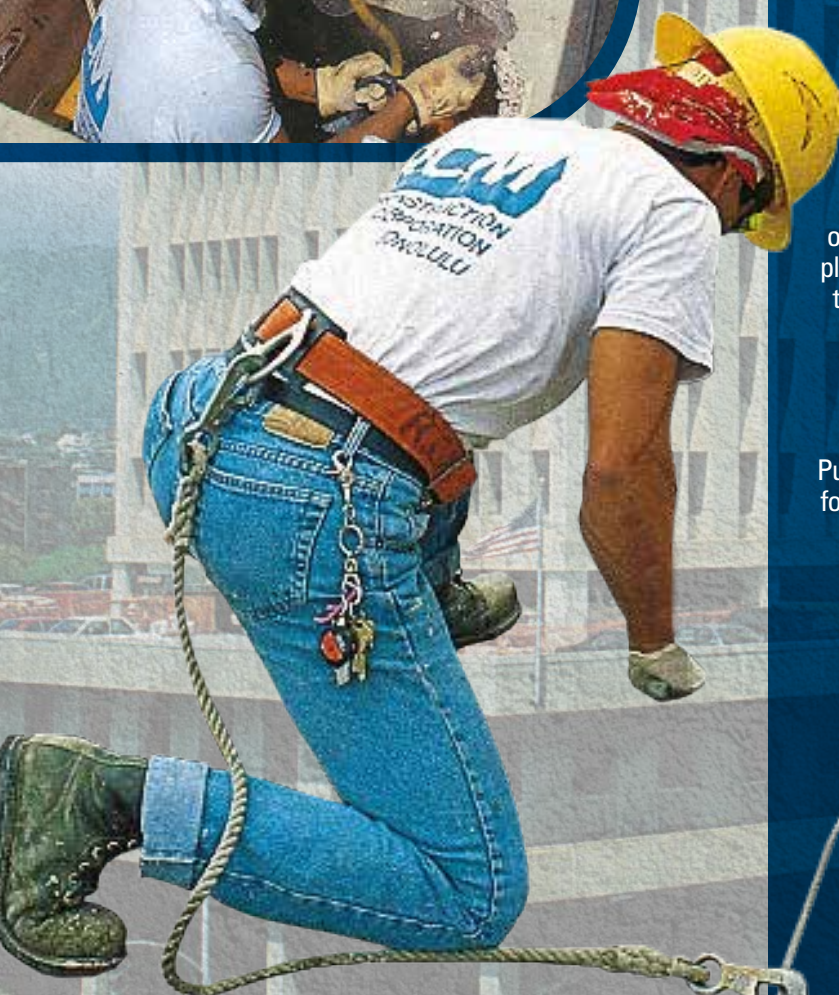
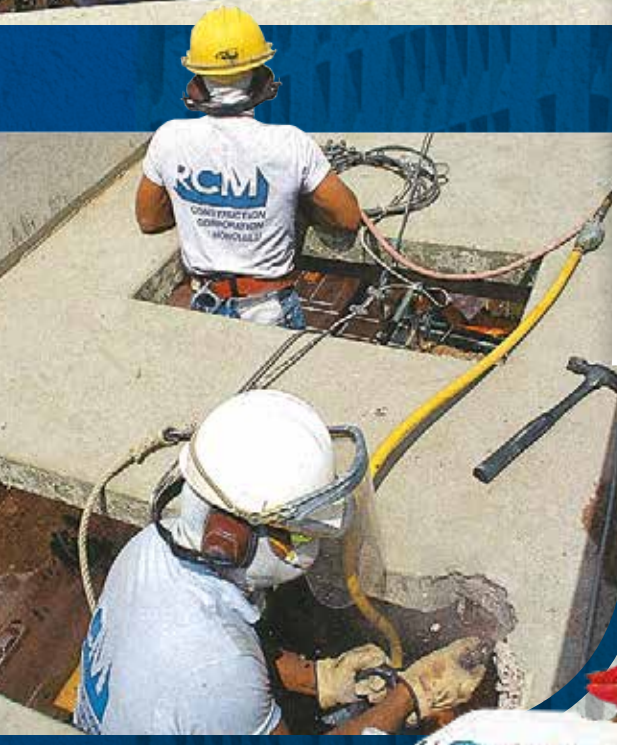
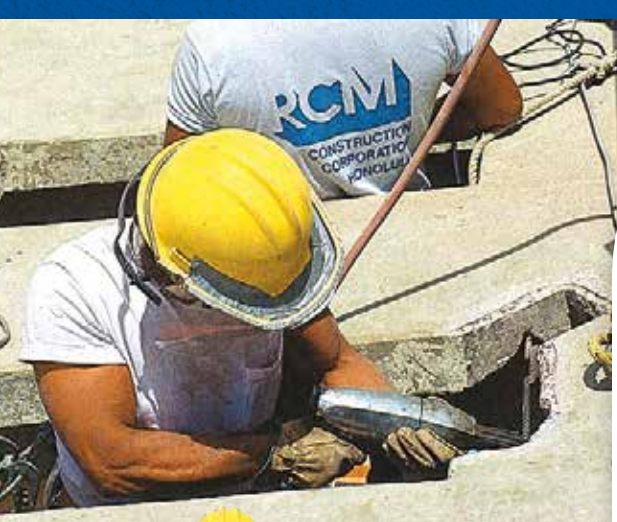
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