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HAWAII

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## Focus: Maui

Community living has never been more vibrant on the Valley Isle, and *BMH* visits to have a look.

Pictured here is the Makena Surf condominium





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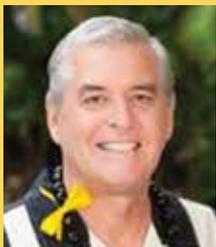


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# Maui's Magic



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Cover photo courtesy Makena Surf

Maui.

There's always been something magic about the name.

It's a place as much as a state of mind.

There's something unique about each of Hawaii's islands, but Maui is special, even by our high standards of beauty. Call it the Wowie Island, and not just because of the infamous pakalolo.

On Maui, life is good.

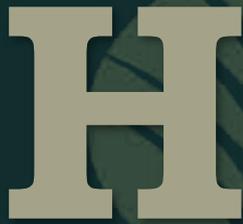
For residents of Maui condominiums, life is even better thanks to the work over the last 30 years of what is known these days as the Community Council of Maui, an influential resource for managers and boards in the growing Maui condo market.

That's reflected in several stories in this issue, including on former Oahu cop **Bill Richardson**, who took over as manager at the Makena Surf in December and is the subject of our monthly Meet a Manager series; a remarkable repipe project at the Mahinahina Beach condominium in Lahaina, as told by property manager **Marilyn Chapman** (no relation); and a brief history of CCM by two men who've been there since the early days and have been instrumental in its growth, **Al Andrews** and **Robert Miskae**. Also, Tracy Tominc of Maui contributes an expert article.

*BMH* columnist **Jane Sugimura**, an attorney specializing in condo law, tells me that bill SB2007, requiring that property managers be certified by a nationally recognized body, died in committee at the end of February.

By the way, kudos to **Carole Richelieu**, state senior condo specialist and also a *BMH* columnist. Prior to the recent "Do's and Don'ts of Design Review" legal seminar (see page 22), CAI Hawaii president **Sue Savio** presented Carole with the Condominium Industry Appreciation Award, "in recognition of your contributions to the education and support of homeowners, boards of directors and associations in Hawaii." Well deserved.

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Wednesday, March 11, 2020  
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This session is designed to clearly define the obligations and objectives of a Community Association Board and how to become an effective member by promoting good business practices and avoiding bad ones.

Learn about key issues associated with the following five areas:

- How does the role and responsibilities of the Board differ from that of the managing agent?
- What is “fiduciary duty” and best ways to avoid exposure?
- “Obligation of good faith”; protection (and exclusions) under D&O and Fidelity Insurance
- Best practices in establishing and implementing employment policies and creating a handbook
- What are the best ways for Board Members to communicate amongst each other and with Association members?



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# Hawaiiana launches new website with client services in mind



Hawaiiana Management Company is very proud to debut its new website, built with our clients in mind! From the early stages of development, our objective was clear: To provide easy access to the information our clients care about the most. We began by carefully surveying the requests which came through our switchboard, which averages nearly 200 calls daily. An overwhelming number of clients call with accounting-related questions or concerns, or to provide us with updates to their account information. Our objective was to provide simple and time-saving ways for these issues to be addressed.

Even prior to the launching of our new website, a dedicated team of accounting specialists was created to assist clients with their specific accounting needs. That department now receives web inquiries directly, and assures that requested information is provided to owners in a timely manner. In addition, the accounting specialists process online forms such as Change of Address, SurePay automatic fee deductions and others. As always, owners are able to pay their maintenance fees online at [www.hmcmgt.com](http://www.hmcmgt.com).

Our second most frequent request from owners calling Hawaiiana is to be connected with their Hawaiiana management executive. Again, our new platform provides an easy, “self-service” way for clients to gain access to their property-specific management team and other property information, without having to wait on the phone. An easy search link called “Find a Community” can direct users to the phone number and email for their Hawaiiana Management Executive and the site manager for their property.

Hawaiiana’s website is also a great resource for those who want to know more about association management in Hawaii in general. The “Resources” page includes informative video links such as *What to Expect from My Association’s Managing Agent* and *Where Do My Maintenance Fees Go?* There are also informative blogs accessible under the “News” tab, at the top of the home page.

The “About” tab offers information and key statistics about our company and services, and is helpful for those who want to

## With Hawaiiana’s new website, users can:

- Contact their property management team
- Ask questions about their bill
- Change their contact address
- Pay online
- Replace lost payment coupons
- Apply for SurePay automatic payment deductions
- Learn about Hawaiiana’s services & personnel
- Access news & educational information
- And more!

know more about Hawaiiana. Those requesting more specific information may submit a “Request a Proposal” form, found at the bottom of that page. We invite you to visit our website at [www.hmcmgt.com](http://www.hmcmgt.com).

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

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# Making Maui Management *Nō Ka 'Oī*

Photo Courtesy of Jim Mullhaupt/Flickr

**Building management veterans Al Andrews and Robert Miskae offer a brief history of the Community Council of Maui and how it has become a great resource for Maui condo managers and board members**

**BY DON CHAPMAN**

**I**t's hard to imagine being a Maui condominium manager or board member today without the support of the Community Council of Maui. From continuing education to networking opportunities to technical and legal expertise, CCM is there for managers, owners and board members.

CCM's growth has coincided with the boom in Maui condos. In fact, CCM's predecessor, the South Maui Condo Council, was founded just 30 years ago, in 1990.

*BMH* asked two veterans of the Maui condo scene, Al Andrews and Robert Miskae, to share some of CCM's history and roots.

"It was started by Jack Esker, and the SMCC was for South Maui only," says

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Associa welcomed a whopping 58 new client condominium and community associations in 2019 with another 4 added first quarter 2020

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Waikale Community Association, comprised of 2,937 homes, is an award-winning planned community development managed by Associa Hawaii. *Photo Credit-Terry Reis*

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Al Andrews presents an award from CAI to Dave Ferguson for his longtime service to association management.

Miskae, who would go on to serve as SMCC president, among many roles he's had in condo management.

"It was started by a group of concerned association owners who wanted to figure out the truth about management issues and to then educate other association owners with their findings. The group was made up of condominium board members, one association manager (me), one master association manager from the Wailea Community Association and regular homeowners. We wanted a diverse group with different backgrounds so we could educate our condominium owners and future board members.

**"We had many mission statements over the years, but all pertained to the education of associations."**

**—Robert Miskae**

"One item that everyone liked," Miskae adds, "was a seminar that taught them about association documents. When they were done, they had a binder to put in all the property documents, rules, resolutions, minutes, etc. We started them off with the state laws in the binder and tabs for all the other items to collect and put in there. They were instructed to then pass the binder on to the next board member when they were done.

"Many properties to this day still retain this type of system. It makes me feel proud when I go to a site office to perform a reserve study or for some other meeting, and I see binders like this on the office shelf."

Soon, says Miskae, the word started getting around beyond the confines of South Maui. "Other condos and associations wanted to attend, and we later formed the Condominium Council of Maui (the original CCM)," he says. "We began holding our educational seminars and sharing our findings in various locations across the island. Management companies began to send property managers, and we even had attendance from Molokai, Lanai and Oahu."

Miskae, who chaired SMCC and CCM for 18 years and was on the board as an officer for another 10, was there in June 1995 when the organization incorporated, with attorney John A. Morris assisting on documents.

"Recently we had a name change again, to the Community

Council of Maui, so the name would not sound exclusive to condominiums only," Miskae says. "We had many mission statements over the years, but all pertained to the education of associations."

Miskae says condo management in the 1980s was generally "mom and pop," but before long Chaney Brooks would have the majority of property management while also doing real estate sales.

"There was only one other large company, Oihana Management Company, that was run by a husband and wife team, Dick and Nona Weaver," Miskae says.

Andrews was also there from the early days of CCM.

"We used to meet at the small Cameron Center, 20 to 30 people, depending on the topic, with board training being one topic every year," Andrews says. "Once a year the annual meeting was held at Kahili Golf Course with 40 to 60 attendees because attorney John Morris would give us the legislative update.

"Tom Boomer and I took over leadership roles and completely changed the seminars by bringing in new speakers from Oahu and the Mainland. We instituted a sponsorship program, shifted from mailing to emailing. Robert revamped the old website, and we put together the first CCM brochure, plus a trade show.



Robert Miskae

"Membership grew and we moved some seminars to the Tropical Plantation, then more at Kahili, and finally I negotiated an agreement with the King Kamehameha Golf Club to hold all seminars there."

How has CCM managed to keep up with the industry?

"Many people stepped up to help us succeed," says Andrews, who has served as CCM chair several times. "We have the good fortune of having the support of all

the major management companies and the attorneys that specialize in association management. Their knowledge and involvement is key. National speakers have brought us an expanded look at the industry and we constantly seek information through other national organizations."

Today, Miskae serves as CCM board treasurer and is owner of Hawaii Inspection Group, providing inspection and consulting services to associations and non-profits, including reserve studies, water intrusion assessments and mold collections. He also is licensed for lead and asbestos surveys and testing.

Andrews, recently "retired" from management consulting, is on the CCM board and served as a moderator and coordinator of the February seminar on association project management. He also serves on the boards of the Maui Humane Society and St. John's church in Kula.

Both men say it's gratifying to see where young leaders, such as current President Lisa Cano, are taking CCM.

"We have board members now with great knowledge and new ideas, which will only make CCM better in the future," Andrews says. "The future is brighter than ever before, and information is more easily attained through the internet. This allows a greater sharing of ideas and experience from across the nation.

"Our board has more knowledge and a greater ability to share information through our newsletters, seminars and our updated website—the future is now." ♦



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# Managing a Maui Gem

**A career in law enforcement leads Bill Richardson  
to condo management**

**BY DON CHAPMAN**

# Bill Richardson

**TITLE:** Manager, Makena Surf

**O**f all the paths that can lead to a career in building management, few are more roundabout than Bill Richardson's.

"My first career was in law enforcement. I started with Hawaii's Finest, the Honolulu Police Department, in 1991," says Richardson, a Kamehameha Schools alum.

"In 1998-99, representatives from Washington state arrived in Honolulu and recruited heavily from HPD. I was interested and took a few trips to research schools for my children and housing, and was fortunate to interview with a few departments that gave me options to choose. I was approached by the Bureau of Indian Affairs and asked if I'd

be interested in becoming the director of public safety for the Sauk-Suiattle tribe. I accepted the position and moved my family to the reservation. My building management experience started with HUD, the federal Department of Housing and Urban Development, that provided Native American tribes with homes on their reservations. I had many awesome experiences that followed, such as serving as deputy director of the Tulalip Tribal Gaming Commission, executive director of the Upper Skagit Regulatory Gaming Commission and the Snohomish County Prosecuting Attorney's office as their investigator."

It would take a meeting with one of Hawaii's legendary condo managers to get him turned toward property management.

## Please tell us about the Makena Surf Resort:

We're located on one of Maui's most beautiful beaches, Po'olenalena ("yellow head"), that is said to refer to a long-time landmark, a yellow-streaked rock on the Wailea golf course across the road.

Makena Surf Resort was built in three stages—the B, E, F and G buildings were completed by 1984, while the A and C buildings were added on between 1989 and 1994. It was the first condominium constructed in the highly sought-after area after the Makena Resort. Since its conception 36 years ago, the neighborhood has only gained popularity with owners and regular vacation-goers alike.

Makena Surf Resort features 105 luxury units in seven two- and three-story buildings sitting on approximately 10.81 acres, which includes a very close proximity to both Chang's and Paipu beaches.

## Management company?

We're currently contracted with Associa Hawaii for fiscal operations only. We contract our human resource responsibilities with ProService Hawaii.

## Do you live on property?

The association can accommodate a resident manager's unit, but both parties agreed it was not necessary for the general manager to live on property. I reside in South Kihei. My travel time to the property is approximately 15 minutes.



Bill Richardson (center in dark trousers) with his Makena Surf team

## Number of board members, and how often do you meet?

The AOA has seven board members and we meet four times annually, with our annual board meeting scheduled in February, consisting of a full breakfast for our homeowners, and a tennis tournament that is sponsored by Destinations Hawaii, including a barbecue. We complete the week with a homeowner's dinner at our south pool deck.

## Number of staff?

Makena Surf Resort AOA staff has a total of 18 employees: four security, five maintenance, six landscaping, one housekeeping and two management/administration.



## Do you offer vacation rentals?

Yes, we allow rental units through different property management companies here on Maui. Of our 105 units, approximately 68 are vacation rentals with a five-night minimum.

## Amenities?

Makena Surf Resort, a gated community, offers its owners and guests several amenities, including two luxury swimming pools and spas, four professionally designed tennis courts, basketball hoop, two herb gardens, BBQ facilities, and we pride ourselves on industry-graded, top-quality on-site security staff. Our ultimate amenity is the Pacific Ocean and the first-class views of Kahoolawe and Molokini that the property is fortunate to have at our back door.

## When did you come aboard?

I started here on Dec. 10, 2019.

## Any current or planned projects?

Makena Surf Resort has a few projects that we have planned for 2020—resurfacing our north tennis courts, adding two new CCTV cameras on our property, adding glass railings to our A building, a gutter project with flashing and soffit repairs, and we are discussing repainting our pool decks.

## Previous building management jobs?

As the director of public safety for the Sauk-Suiattle Tribe in Darrington, Wash., I worked closely with HUD and

was responsible for the enforcement of its housing rules and regulations. I completed my law enforcement career in Washington state and moved home to Hawaii in 2010, and was blessed to meet my mentor, Davie Felipe. He played a big role in me getting into property management. He gave me an opportunity to work for him at Capitol Place as a residential specialist for a few years. I also worked for the Hawaii Public Housing Authority, working on special assignments and eviction processes. I followed Davie a few years later and was involved with opening ONE Ala Moana as the lead residential specialist. I worked both at HPHA and ONE for a few months until I was promoted to operations manager and was responsible for the day-to-day operations. After Davie left ONE to open Anaha, I was placed in the leadership role at ONE and was promoted to general manager.

## How did you get into the industry?

I can say very proudly that (Chief) Davie Felipe was my start into this industry approximately 10 years ago, at Capitol Place. He sat me down one day and told me that he wanted me to attend the IREM ARM course to obtain my certification. I did not take that advantage then, and Davie soon left Capitol and went over to Ko‘olani. A few years later I was able to reunite with Davie during the opening of ONE and I knew right then that this was my second chance to obtain my certification and learn from Davie how to be successful in this industry.

I am so proud to be part of the GM stable that Davie Felipe has tutored and provided growth and opportunities for many of us like Ray De Smet, Ed Wolf, Duane and Ron Komine, Gerald Nakashima, some of the “Big Dawgs” in this industry.

## How did you meet Davie?

I knew David Felipe when I was working undercover in Waikiki with HPD. Davie was the security director at the Moana Surf rider and we would work together. I moved back to Hawaii in 2010 and found a rental that was owned by Davie’s in-laws—he and his wife managed the property. I ended up renting their place in Nuuanu for seven years.

## Where are you originally from?

I was born at Castle Hospital in Kailua and raised in Maunawili—a true-blue Kailua Boy.

## Schooling?

I attended Kamehameha Schools-Kapalama from kindergarten till I graduated in 1986. I entered the U.S. Army from 1986-1989, attended the Honolulu Police Academy and graduated in 1992. I attended the Bureau of Indian Affairs Law Enforcement Academy in 2000 and completed the Federal Navy Police Academy on Pearl/Harbor Hickam in 2010.

## What do you like about building management?

I wake up and, on the way to work, start planning out the day. You look forward to your week, and you



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vision how to accomplish this work so you can follow up in a month. This is shared in our leadership meetings every morning—communication is key to accomplishing these tasks and having the team being part of planning and decision-making. It's the teamwork, making decisions, promoting the next leader in this industry that I enjoy about this career.

## Most important qualities for a condominium manager?

Being a positive leader, communicating with your staff, listening to their needs and working with them to find solutions, empowering them to improve and help with reaching their goals. Knowing your homeowners and guests, knowing what their wants and needs are and being able to stay ahead to provide the services they bought into. Above all, being true and respectful. ❖

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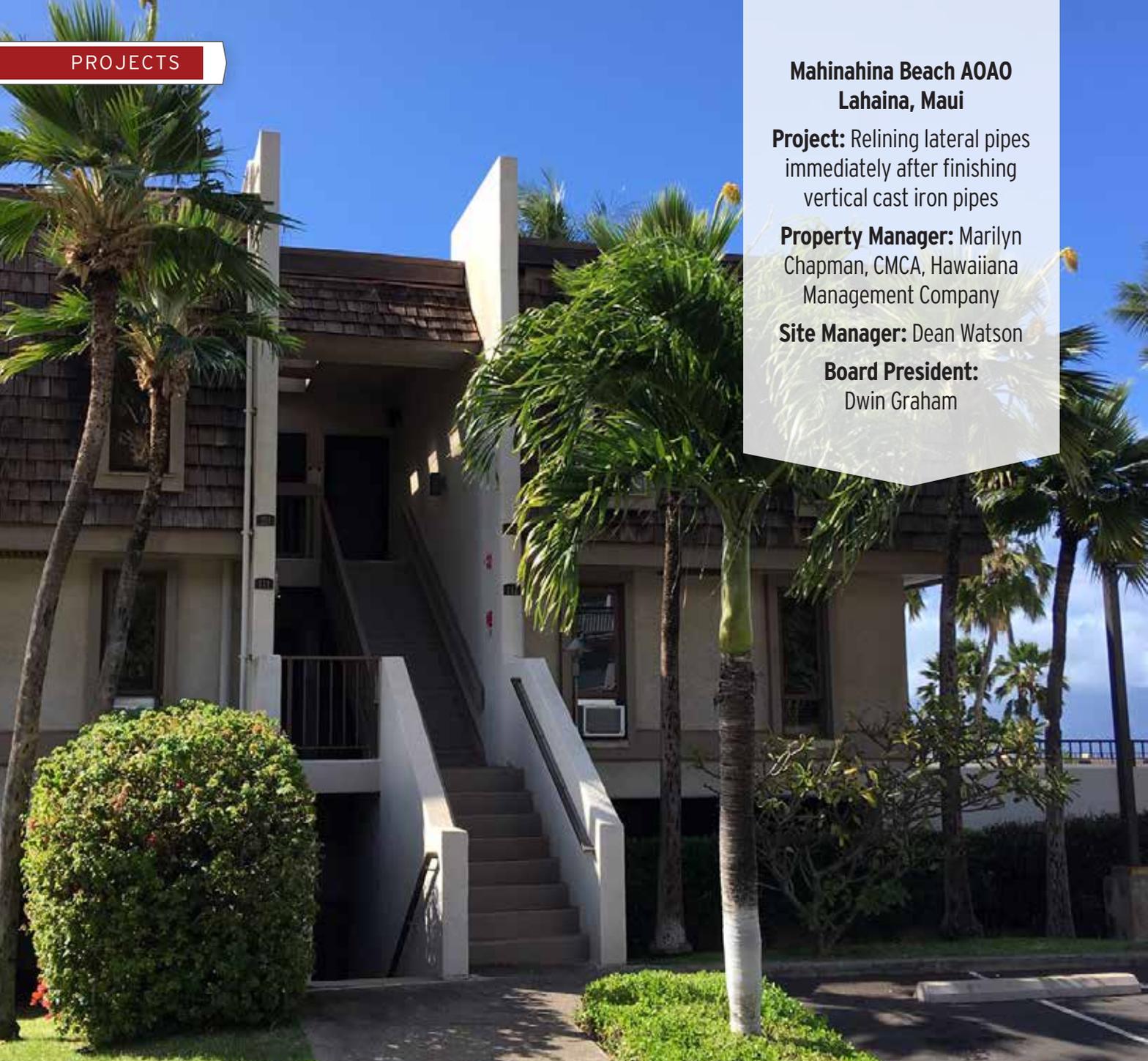
**Mahinahina Beach AOA0  
Lahaina, Maui**

**Project:** Relining lateral pipes immediately after finishing vertical cast iron pipes

**Property Manager:** Marilyn Chapman, CMCA, Hawaiiana Management Company

**Site Manager:** Dean Watson

**Board President:**  
Dwin Graham



# A SUCCESSFUL REPIPE Case Study

**A Lahaina condo finds there's much more to relining pipes than just the pipes, says property manager Marilyn Chapman**

**BY DON CHAPMAN**



Marilyn Chapman

### When did Mahinahina Beach open?

It opened in 1978 and consists of 32 units in four buildings with another building for the pool bathrooms, exercise room and library. The property is oceanfront with a garage under the recreation deck that connects two buildings.

### What caused the project to be undertaken?

The project was in the reserve study, but no one knew or expected how quickly this item would move to the forefront of the projects we needed to complete.

Because of pipe failures, followed by claims, then insurance issues, the board moved into relining the vertical pipes. While doing so, it was discovered through the connections from vertical to lateral at the showers and toilets that there was deterioration in the laterals as well. When they were scoped with a camera, all appeared to be OK, but that changed quickly.

### Number of units and common areas affected?

This affected all units including the pool bathrooms. When the lateral pipes below the bottom floor units were being worked on, water was off to the entire building. Each upstairs and downstairs took approximately one week for the pipes alone, and then the tile had to be replaced after new shower pans, painting and clean up. Many owners did stay in their units during the repair and would use the pool bathrooms during the day and Maui Plumbing would turn the water on again in the evening.

### How did you (manager/board) initially respond?

This is such an intense project for the property that response by the current board was swift. The response from the ownership, however, was not great. If an owner had not been affected by a plumbing issue, they didn't see the importance, and many owners were unaware of claims for other units. The disruption to each unit is considerable and we went back into 16 units after the vertical pipes to redo the laterals and had to totally disrupt the units again. The board president is a retired attorney and currently a middle school teacher who worked tirelessly on the numbers for this project. She was determined to do the right thing by the association and each owner.

So many items were involved other than just relining the pipes. Appliances had to be moved, calculations had to be formulated for tile replacement cost and painting cost, as well as the cost for original-build units versus those that had

“The board president is a retired attorney and currently a middle school teacher who worked tirelessly on the numbers for this project. She was determined to do the right thing by the association and each owner.”

—Marilyn Chapman

been remodeled, which units had pipes replaced during previous plumbing issues. Also, painting costs and storage lockers that are approximately 10 by 10 feet. Coordination had to be made with these owners to move their belongings so pipes in the ceiling could be reached, and then where could owners store their belongings? And on and on.

### How was the management company involved?

My job has been more administrative since the project was awarded. Knowing the marketplace and vendors is important for the managing agent just to help guide the board and offer feedback. My job was to secure the quotes, request the contract, forward back and forth from the attorney to the board to the vendor. Once the contract was in place, notifying the ownership was of utmost importance, and how many different ways can you notify the same owners? Coordination was key for the timing of each building as the plumbers moved from one unit to the next. The only way to do that was through notices to the owners.

After the project began, my job was far less important and site manager Dean Watson stepped in as project manager. At that point, my main job was charging back owners for appliance moving or replacement tile or replacement valves, etc., found needing replacement during the relining process. We were working with disgruntled owners who would insist they were not aware and have tenants. Also, watching invoices and checking



Dean Watson



A Mahinahina Beach rainbow

and double-checking the various vendors involved for not only the re-lining, but also the painting and tiling.

Some owners brought in their own contractors to replace the tile and that is where Dean Watson was invaluable. He monitored and managed the multiple contractors on-site, ensuring everyone abided by the rules and did what they were supposed to do.

Then the noise. Not only did we have noise from jackhammering the concrete at each shower and toilet, but then you would have a rogue contractor from a unit owner that would be excessively loud, and there Dean would go and put the kibosh on the noise. He actually had to have one contractor turn off their radio completely because they would talk or yell loudly to hear each other over the radio.

### **How involved was the board and what actions did they take?**

The immediate past board and the present board were very involved in the editing and revisions to the contract, planning letters to owners explaining the details such as the timing to go into each unit and then onto the next, calculating all additional costs to

unit owners that have upgraded their units from the original build, choosing replacement tile for units that took that avenue, calculating costs for owners that wanted to choose their own tile but take the credit for what the association would pay. It was a very complex process, but Board President Dwin Graham was exceptional. This property should be very thankful she was on the board during this period.

### **Did you bring in an outside consultant?**

The expense was as much as the project itself; therefore, we relied on Hawaiiiana's vast reach to a number of properties and managers that have already gone through the process. The past board made a very smart decision and hired a full-time site manager to fill the role of project manager during multiple reserve projects the property is going through. Dean Watson currently has brought us through four projects and has been well rewarded for a job well done. The property is so fortunate to have someone of his caliber on Maui to run the day-to-day operations of the property as well as these reserve projects.

### **How did you decide on a contractor to do the repairs, and who was selected?**

There was not a giant decision on which contractor; it was more about which method: replacement or relining? I have worked with Maui Plumbing successfully for approximately three years on all types of projects and currently use them on all eight properties I manage. They have never been wrong, they always show up on time and when expected, and their rates are very competitive. They prepare the units with Ram Board on the floors and plastic on the walls. Their crew members take off their shoes every time each goes in and out of a unit if the weather is bad or they are having to work in a muddy area outside even if they have ram board down. Whenever I've had an emergency, they are willing to jump on it and find a technician for me.

The first time I used Maui Plumbing was to replace a 3-inch backflow valve from below ground up. The property was on a busy thoroughfare and the backflow is located right on the entrance to the property at a gate. They managed this whole project with ease, and I was hooked. I began using them at each of my properties.

Additionally, Maui is a small island and lots of stories of failed projects have circulated—you learn from others' errors.

### **How/when did you communicate with residents about the issue and then the work?**

Owners are always invited to board meetings and could stay up to date on the progress. Minutes from those meetings are also uploaded onto the website and then the mailouts began before each phase of the project, multiple letters about timing, the costs for retiling, about not doing this or that, and ensuring you do this. It has been a major project just keeping the owners informed, and yet you still have owners who must not open their mail because they say they have not been informed, and there was not returned mail. Once each owner had been notified about the schedule, Maui

Plumbing adjusted their schedule to accommodate a few owners that protested the date chosen for them.

### When did the actual work on the project begin and end?

The lateral project was scheduled from Nov. 4, 2019, to run through March 24, 2020. Most of these units are second homes for the owners and the holidays are when they plan on being on Maui. We scheduled during the holidays due to the unplanned nature of the project and Maui Plumbing's availability. We were able to fill up their schedule and they were able to get us done. The board delayed a roofing project that had been previously planned to occur next once they became aware of the way the lateral pipes looked.

### Cost?

Without giving the exact price, I will simply say that it was well over \$400,000 for the laterals, and that does not include other contractors for tiling, shower pan installation, drywall, wall-board, painting, appliance movement and our wonderful site manager.

### Any lessons learned that other buildings could benefit from?

Check your contract carefully, and it's best to use an attorney. Bring owners in on all plumbing issues from the beginning. The more ownership is aware of the cost of doing nothing, the quicker and more responsive they will be to the disruption caused by the project. If possible, let owners know years in advance so remodeling projects can be scheduled after the event. Do not make exceptions. We had water poured down the pipes where the water was off by an owner's contractor that completely ruined the relining for those two units and it had to be redone. We had some young people staying in their family unit as a graduation present and disregarded the tape across the kitchen sink and used it to be sick in. Check each appliance to ensure the lines have been reattached.

Prepare for the unknown and the unexpected. ❖

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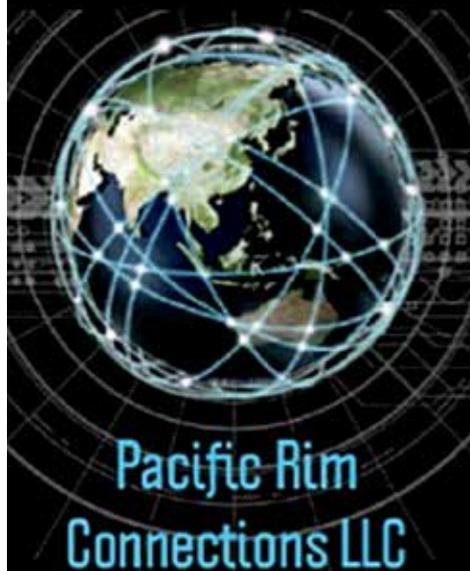


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# Navigating the DESIGN REVIEW PROCESS



Kanani Kaopua



Paul Ireland  
Koftinow



Melanie Oyama



Richard Ekimoto



Anne Anderson

## A CAI seminar offers practical advice for avoiding legal complications

BY DON CHAPMAN

**A** legal seminar on “Do’s and Don’ts of Design Review” drew more than 250 building managers, board members, unit owners and attorneys to the Japanese Cultural Center on Feb. 6. The Community Association Institute of Hawaii hosted the luncheon, with support from the state Condominium Education Trust fund and the Real Estate Commission.

Speakers included **Kanani Kaopua** (PCAM) of Hawaiian Properties (“Architectural Design Review Process: Beginning to End”), attorney **Paul A. Ireland Koftinow** of Anderson, Lahane and Fujisaki (“Covenants and Design Controls in Community Associations”), attorney **Melanie K. Oyama** of Rosenberg, Motooka, Kau and Oyama (“Case Study of Design Review Issues”) and attorney **Richard S. Ekimoto** of Ekimoto and Morris (“Design Review and Fair Housing”). **Anne Anderson** moderated.

Why so many attorneys when at first blush design review conjures images of architects and contractors?

Because, Ireland Koftinow said, “design controls are often the subject of disputes and costly litigation.”

Kaopua stressed the importance of properly completing the design application form, including details such as specifying where a contractor and crew can park, enter and move gear through the building, provide proof of insurance and guarantee disposal of items such as old flooring, light fixtures or cabinets off property.

“Your trash compactor is not going to be able to handle all that material,” she said.

Kaopua also emphasized the role building managers must play.

“Managers are limited to serving as a liaison between owners and the architectural design review committee, including confirming all required forms and plans are obtained from the owner for ADRC review and informing the owner of the timeline for review to be completed,” she said.

As for boards, she said it is crucial that, with the help of the association attorney, governing documents spell out exactly what is and is not permitted when an owner wants to replace flooring, repaint with a different color, add AC or solar panels or introduce new plant species.

In addition to adopting guidelines and house rules, Ireland Koftinow said board authority also includes appointing the design review committee, approving alterations and enforcing governing documents.

ownership demand no less. The individual ought not be permitted to disrupt the integrity of the common scheme through his desire for change, however laudable that change may be.”

To avoid lawsuits, Ireland Koftinow said, it’s essential to know and understand your AOA’s governing documents.

Oyama presented four case studies: fences, windows, floors and paint. Regardless of the project, she said, “asking the right questions leads down the right path.”

## Why so many attorneys when at first blush design review conjures images of architects and contractors? Because, one speaker said, “design controls are often the subject of disputes and costly litigation.”

He noted a recent case of a unit owner in a Naples, Fla., planned community who repainted his unit in multiple hues of “Technicolor” paint, in a style that can only be called psychedelic. (To see an image of the paint job, go to [hawaii.newsnow.com/2020/01/25/florida-man-turns-k-home-into-technicolor-nightmare/](http://hawaii.newsnow.com/2020/01/25/florida-man-turns-k-home-into-technicolor-nightmare/).)

And Ireland Koftinow cited a Florida judge’s classic ruling in another case: “Every man may justly consider his home his castle and himself as the king thereof. Nonetheless, his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others. The benefits of condominium living and

She spent some time on legal definitions of “common elements” and “limited common elements.” Answering who is responsible to pay for components depends on whether that component falls into “a common element, limited common element, part of a unit or a combination” can be a murky subject. There are some issues for which boards need to call in their attorney.

In any case, having up-to-date maps of the project is crucial.

Anyone doubting that fair housing laws are important for

...continued on page 23



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...continued from page 21

condo boards and managers to know and understand need look no further than The Villas at Kenolio in Kihei, Maui, losing a \$1.7 million case in a suit involving a blind resident who claimed the board failed to grant a reasonable modification to a disabled person.

That's one of five definitions of discrimination listed by Ekimoto, including intentional discrimination, statistical discrimination, permitting a hostile environment or permitting quid pro quo discrimination.

A "reasonable modification" applies to both interior and exterior elements, and there must be an identifiable relationship between the disability and the modification. As an example, with all things being equal, Ekimoto said, it would not be a reasonable modification for a blind person to request a wheelchair ramp. Also, the work is to be paid for by the disabled person.

For more information on CAI Hawaii, including a schedule of the other seminars scheduled this year, go to [caihawaii.org](http://caihawaii.org). ❖



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# CAREFUL With That Ladder

**March is National Ladder Safety Month,  
a good time for building  
managers to remind staff about  
staying safe**

**A**ccording to the American Academy of Orthopedic Surgeons, every year 500,000 people are treated for ladder-related injuries and approximately 300 of these incidents prove to be fatal. To put it in perspective, falls are the second-leading cause of death next to highway crashes.

When it comes to work-related fatal falls, 20 percent were from ladders, according to the U.S. Bureau of Labor Statistics.

To put it in perspective, falls are the second-leading cause of American deaths next to highway crashes.

Given the relatively high likelihood of hospital admission, and the predominance of injuries in non-occupational settings, increased efforts are needed to prevent ladder-related injuries.

Thus, March is National Ladder Safety Month, not so coincidentally coinciding with college basketball's March Madness, which concludes



with the winning team climbing Werner ladders to ceremoniously cut down the nets.

Here are some helpful tips from OSHA to keep in mind when using a ladder:

- Read and follow all labels/markings on the ladder.
- Avoid electrical hazards. Look for overhead power lines before handling a ladder. Avoid using a metal ladder near power lines or exposed energized electrical equipment.
- Always inspect the ladder prior to using it. If the ladder is damaged, it must be removed from service and tagged until repaired or discarded.
- Always maintain a 3-point (two hands and a foot, or two feet and a hand) contact on the ladder when climbing. Keep your body near the middle of the step and always face the ladder while climbing.

- Only use ladders and appropriate accessories (ladder levelers, jacks or hooks) for their designed purposes.
- Ladders must be free of any slippery material on the rungs, steps or feet.
- Do not use a self-supporting ladder (e.g., step ladder) as a single ladder or in a partially closed position.
- Do not use the top step/rung of a ladder as a step/rung unless it was designed for that purpose.
- Use a ladder only on a stable and level surface, unless it has been secured (top or bottom) to prevent displacement.
- Do not place a ladder on boxes, barrels or other unstable bases to obtain additional height.
- Do not move or shift a ladder while a person or equipment is on the ladder.
- An extension or straight ladder used to access an elevated surface

must extend at least 3 feet above the point of support. Do not stand on the three top rungs of a straight, single or extension ladder.

- The proper angle for setting up a ladder is to place its base a quarter of the working length of the ladder from the wall or other vertical surface.
- A ladder placed in any location where it can be displaced by other work activities must be secured to prevent displacement, or a barricade must be erected to keep traffic away from the ladder.
- Be sure that all locks on an extension ladder are properly engaged.
- Do not exceed the maximum load rating of a ladder. Be aware of the ladder's load rating and of the weight it is supporting, including the weight of any tools or equipment. ❖

Sources: [ezsmarttools.com](http://ezsmarttools.com) and [oshaeducationcenter.com/month/](http://oshaeducationcenter.com/month/)



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MELANIE OYAMA

# Board Member Fiduciary Duties

The role comes with legal responsibilities, so boards must know and follow the laws governing condos

The annual meeting season is in full swing, so this is a good time to provide a refresher on board member fiduciary duties. The following is a review of board fiduciary duties, roles and responsibilities.

First, we start with some of the statutory provisions that govern fiduciary duties. For brevity, the statutes are not repeated but are being provided as reference. The applicable statutes are Hawaii Revised Statutes (HRS) § 514B-106(a) and § 414D-149. Note that HRS Chapter 414D is the Hawaii Nonprofit Corporations Act. But also note that pursuant to HRS § 414D-311, “In the event of any conflict between the provisions of this chapter and the provisions of chapter 421J [or] 514B . . . the provisions of chapter 421J [or] 514B . . . shall supersede and control the provisions of this chapter.”

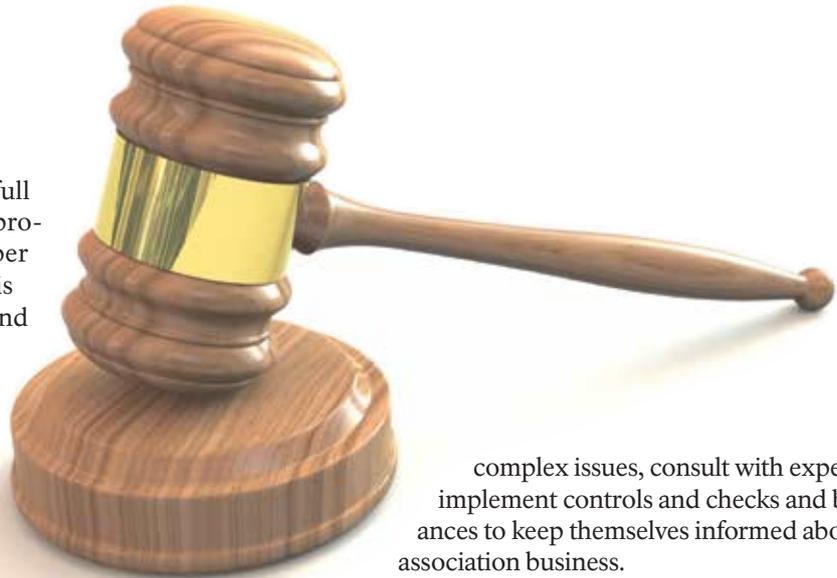
Fiduciary duties can be summarized to include duties of good faith and fair dealing, care, loyalty, due diligence and obedience.

- **Duty of Good Faith and Fair Dealing:** Directors should act with honesty and fair dealing, in the best interests of the association they serve, without an ulterior motive, and treating all members of the association equally.

- **Duty of Care:** Directors should act with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

- **Duty of Loyalty:** Directors should not use their position for their own interests—the association’s interests must be placed before a board member’s individual interests. Directors should avoid even the appearance of conflict of interest. A director’s obligation to act in the best interests of the association does not mean that the director is empowered to act contrary to the will of the board.

- **Duty of Diligence:** Directors should act as a reasonably prudent person under similar circumstances, meaning directors need to be informed, research and understand



complex issues, consult with experts, implement controls and checks and balances to keep themselves informed about association business.

- **Duty of Obedience:** Directors should know and follow the law and their association documents, and not exceed their authority. Directors who are not sure what they can do should ask.

It is not appropriate for an individual director to take any action that may be construed to be an action of the board, or have the appearance of an official board action or communication, without the board’s explicit knowledge and specific documented approval.

If a board member breaches his or her fiduciary duty to the board, that board member exposes himself or herself to **personal liability**. Such instances will be governed by HRS § 414D, the association’s governing documents and relevant common law authorities.

Directors are often judged using the Business Judgment Rule, which is based on how an ordinarily careful or reasonable person would act in a like situation. In order for a person to challenge the actions of the board, he or she is required to demonstrate that the director:

- Failed to act in good faith;
- Failed to act in the manner he/she reasonably believed to be in the best interests of the association;
- Failed to exercise the care that an ordinarily careful person in a similar position would use in a similar situation.

In summary, it is important for directors to remember that each association is a business. As such, treat the operations of the association as the operation of a business.

Be sure to review the association’s bylaws for specifics

# Fiduciary duties can be summarized to include duties of good faith and fair dealing, care, loyalty, due diligence and obedience.

on the roles and responsibilities for officers of the board. More details can be found in educational materials such as books from Community Associations Institute. If the association is not already a CAI member, it is encouraged that the association register for a membership. There is an annual fee but the entire board can attend the seminars and have access to online resources along with discounted prices for books and publications. For more information on memberships and benefits please visit [caionline.org](http://caionline.org) or [caihawaii.org](http://caihawaii.org) for information on CAI Hawaii seminars and newsletters.

Finally, the following are some suggestions for limiting board liability:

- **Learn and follow prudent practices** by educating yourself on fulfilling your fiduciary duty and meet the standard of the business judgment rule. HRS § 514B-107(f) allows a board to use association funds to gain the education necessary to follow prudent practices.

- **Hire experts when necessary.** It may be an additional expense to hire an architect, engineer, contractor, accountant, attorney, etc., but they have the expertise to advise the board on technical aspects or problems. This is a form of insurance because the association may reasonably rely on the expert's opinion, which may protect the board.

- **Take action, do something.** If the board fails to act, the Business Judgment Rule may not protect the directors for failure to act. If the board knows there is a problem and does nothing, this could subject the directors to liability. In addition, under

the theory of negligence, knowledge that a problem exists can increase a directors' liability if the directors do nothing to correct the problem. Ignoring the problem or taking shortcuts to save money will not make the problem go away. In fact, the problem will most likely worsen and become an even bigger financial expenditure that affects all owners. ❖

*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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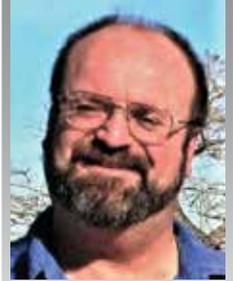
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KEN KEMPA

# OSHA's New Fall-prevention Rules

**It's a building manager's responsibility to know and follow the requirements when sending up a staffer or contractor to work at height**

**D**id you know that falls are the leading cause of traumatic workplace injury in the United States? Before you send up your employees or contractors to work at height, here are a few things you should know.

For the past nine consecutive years, fall protection violations have led OSHA's top-10 citations list. More than 48% of the citations issued in 2019 were related to working at height!

As a building manager, you need to understand definitions of the words/topics now addressed by OSHA and their requirements.



## DEFINITIONS & REQUIREMENTS

**Anchorage:** What many used to call an anchor, OSHA now clarifies as *a secure point of attachment for equipment* such as lifelines, lanyards, deceleration devices or rope descent systems. It may be an installed item, or a fixed structural member such as a beam, column or girder, or a floor or wall, that is an integral part of a structure. Any anchorage must be capable of safely supporting the impact forces applied to it during a fall by the fall protection system. Anchorages *must* be certified every 10-years, and be inspected annually by a certified person?

It's the responsibility of the building manager to ensure this is performed.

**Fall Protection:** Any equipment, device or system that prevents a worker from falling from an elevation or mitigates

the effect of such a fall. Under the final rule, building managers may choose from the following fall protection options:

**1. Guardrail System** – A barrier erected along an unprotected or exposed side, edge, or another area of a walking-working surface, to prevent workers from falling to a lower level.

**2. Personal Fall Arrest System (PFAS)** – A system that arrests/stops a fall before the worker contacts a lower level. Consists of a body harness, anchorage and connector, and may include a lanyard, deceleration device, lifeline or a suitable combination. Similar to OSHA's construction standards, the final rule prohibits the use of body belts as part of a personal fall arrest system.

**3. Travel Restraint System** – A combination of an anchorage, anchorage connector, lanyard (or other means of connection), and body support, to eliminate the possibility of a worker going over the unprotected edge or side of a walking-working surface.

**4. Ladder Safety System** – A system attached to a fixed ladder designed to eliminate or reduce the possibility of a worker falling off the ladder. A ladder safety system usually consists of a carrier, safety sleeve, lanyard, connectors, and body harness. Cages and wells are not considered ladder safety systems.

**Designated Area:** A distinct portion of a walking-working surface delineated by a warning line, within which work may be performed without additional fall protection.

**Warning Line:** A barrier erected to warn workers they are approaching the boundary of an unprotected side or edge. It delineates an area in which work may take place without using other means of fall protection. Workers may enter the demarcated area only if the employer provides them with the required fall hazard training and assigns work to be performed in that area. In part, a warning line is:

1. A rope, tape, wire or chain warning employees they're approaching an unprotected edge or side (200-pound minimum breaking strength).
2. Clearly visible from a distance of 25 feet, and anywhere within the designated area.
3. Erected as close to the work area as possible, while still allowing the task to be performed.
4. Installed so that its lowest point, including sag, is not less than 34-inches and not more than 39-inches above the

walking-working surface

**Infrequent Work:** Does not include tasks that workers perform as a primary or routine part of their job, or repeatedly at various locations during a work shift. A task may be considered infrequent when it's performed once a month, once a year, or only when needed.

1. Examples of "infrequent" include annual equipment maintenance, replacing filters/batteries monthly or quarterly, or responding to occasional equipment breakdowns.

2. Be aware that any service or maintenance performed more than once per month is considered regular or routine and is not considered infrequent.

**Temporary Work:** Refers to the duration of the task. OSHA states that temporary tasks are those that:

1. Can be completed in 1-2 hours,
2. Don't span into the 2nd day, and
3. Don't involve multiple trips to the roof.

4. Examples include changing a filter in a rooftop HVAC system, resealing the flashing around a hatch or skylight, or replacing a part on a security camera.

**Work on Low-slope Roofs:** A new position by OSHA establishes fall protection requirements when workers perform work on low-slope roofs (a 4-to-12 ratio rise to run or less, including "flat" roofs). The type of protection required depends on the distance working from the roof edge. The final rule breaks roof work into three zones:

1. **If less than 6 feet from the edge** acceptable forms of fall protection are guardrails, safety net systems, travel restraint or personal fall arrest systems.

2. **6 feet to less than 15-feet from the edge** acceptable forms are guardrails, netting, travel restraint or PFAS. An employer may use a designated area (warning line) when performing work that is both infrequent and temporary.

3. **15 feet or more from the edge** acceptable forms of fall protection are guardrails, netting, travel restraint or PFAS, or a designated area (warning line).

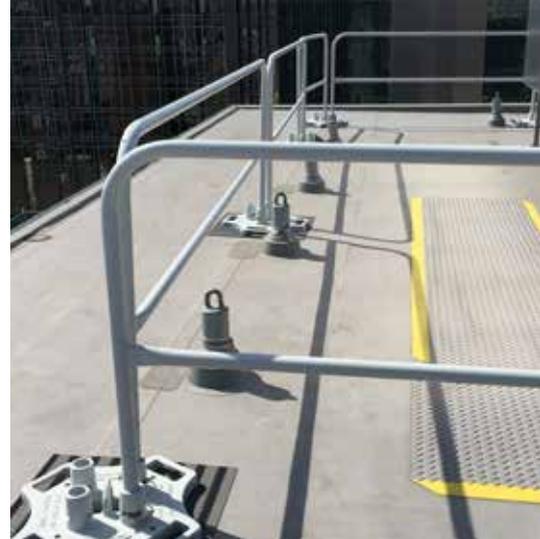
**NOTE:** A building manager is not required to provide any fall protection if work is both infrequent and tempo-

rary, and they implement and enforce a work rule prohibiting an employee from going within 15 feet of the edge, without using fall protection.

**WHERE TO NOW?**

These definitions and requirements are intended to give you an understanding of what your obligations are as a building manager, regarding having work at height performed on your facility. You should begin with identifying where your shortcomings exist, then create a detailed plan to address each one. The plan should be structured to include: 1) action items, 2) responsible parties, and 3) target completion dates. Aggressively pursue solutions toward action items, recording completions along the way. If you don't feel qualified to perform such an assessment, then seek the services of an outside professional.

Additional information on OSHA's rule on walking-working surfaces and personal fall protection systems can be found at [www.osha.gov/walking-working-surfaces/](http://www.osha.gov/walking-working-surfaces/). ❖



*Ken Kempa is manager of technical communications for Rooftop Anchor in Heber City, Utah. He's written assembly, owners, operators, maintenance and safety manuals. He has planned and executed complete fall-arrest systems for a 30-plus-building mine site. Kim Beattie of Roof Systems Hawaii is the Hawaii Manufacturer's Representative for RoofTop Anchor and can be reached at 286-8007 or [roofsystemshawaii@gmail.com](mailto:roofsystemshawaii@gmail.com).*

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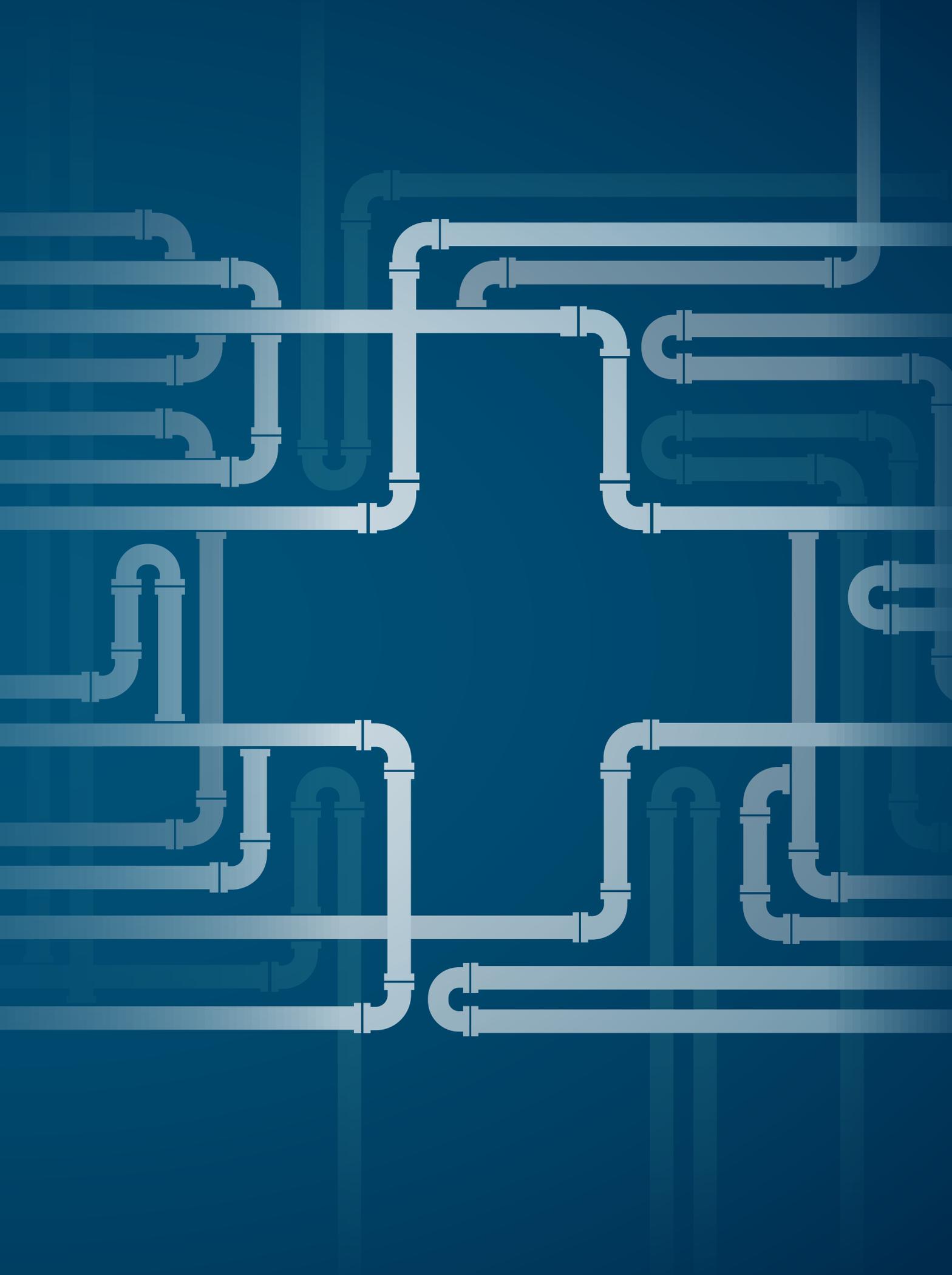
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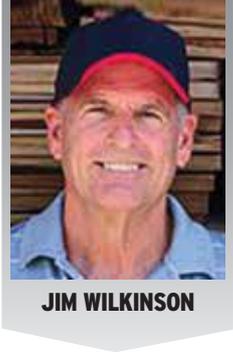
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JIM WILKINSON

# The Hunt for Hawaii's Perfect Wood Treatment

There are positives and negatives for a variety of roof-protection products

**D**o wood roofs really last longer with a surface treatment?

Early in my career, my customers would ask me what they should treat their new wood roof with, and at the time I did not know.

I had installed a shake roof for my dad in 1973, and he allowed me to experiment on his roof to compare different treatments. I striped his roof with many different brands of oil-based products. At the same time, as I worked on many roofs, I was gathering information from the customers as to the age and previous treatments that had been used. I could see firsthand the contrast of roofs that had been treated or stained that had lasted 60 to 80 years versus newer roofs that had no protection and were needing replacement in less than 20 years.

There were other factors in roof replacement—including poor application methods and low-quality fasteners—but I was focused on the weathering and deterioration of wood. During this time there was a sales pitch being used that wood shakes and shingles were not lasting as long because manufacturers were using second-growth trees to produce wood roof products. This thinking was being created by competitive roofing products and made believable by the contrast of older wood roofs lasting so long and newer roofs wearing out so fast.

I did my research and found that this was not true.

The Cedar Bureau informed me that it takes well over 100 years to grow a tree suitable to be used for shakes and shingles. They assured me that shakes and shingles are harvested from old-growth cedar.

As I continued my observation, the benefits of doing a surface treatment with something became obvious.

**I have CCA (brand names Osmos or Wolmanized) factory pressure treatment on my wood roof. Do I**



## still need follow-up treatment?

CCA pressure treatment for lumber and wood shakes and shingles has been a very effective treatment against termites and rot in Hawaii. But in 2003, the EPA and the lumber industry agreed to discontinue the use of CCA-treatment in most residential construction to protect the health of humans. But it is still used today to treat wood shakes and shingles. CCA is a very effective protection for a wood roof as it poisons the wood so that termites and the rot organism cannot attack and destroy the wood fiber. What most people do not understand about CCA is that without a follow-up surface treatment the CCA will leach out during normal weather cycles and it will not

protect the wood from the sun.

## I manage a condo that had fire-treated shakes installed. Won't a follow-up treatment void the warranty?

FTX is a vacuum-pressure fire treatment that will not wash out or leach away. The FTX fire treatment comes with a lifetime or your roof's limited warranty. I have installed and maintained many of these roofs and what I have observed is that the product is like fertilizer. Moss, mildew and rot are greatly enhanced due to the product. It does work against burning embers landing on the roof but a fireproof roof of any kind does nothing against fire starting from within the structure, and 99% of all fires start within the home.

As far as the limited lifetime warranty, the product will shorten the life of your roof in Hawaii's hot, humid climate, and I have never heard of anyone ever using the warranty. I recommend a follow-up water-based treatment that will not add fuel to a possible fire. I recommend adding to the water-based treatment a boost of a copper-based wood preserva-

...continued on page 34



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...continued from page 32

tive. This two-part formula will give an FTX fire-treated roof the most protection possible.

### So back to the original question.

I have been looking for answers to roof problems since I first started in 1972. I have found many great products that work only to have laws changed taking them off the market.

## As I continued my observation, the benefits of doing a surface treatment with something became obvious.

After years of testing and using many different roof treatment products, here is the bottom line:

Water-based products eliminate the threat of self-combustion during or after application like oil-based products.

Cleanup is considerably easier than with oil-based, as well as much safer for humans and pets. A stain color additive works like a sunscreen to stop the sunburn on your wood.

Every contractor recommends painting or staining wood siding, and the same goes for the wood roof. The product needs to have an additive to prevent or slow mildew, fungus growth and rot, and the application needs to be consistently done as the coating wears off. Every roof weathers differently due to location, direction to the sun, and pitch of the roof, so I always recommend a periodic inspection. The only product I have found that is designed specifically for wood shake and shingles is made by ISK Biocides under the brand name Sta Brite R. ❖

---

*Jim Wilkinson started in the roofing business in 1972, working for Peerless. In 1976, he earned his contractors' license and founded Wilkinson Shake Roofing. In 2011, he sold Wilkinson Shake Roofing to two key employees. After the sale, he went to work for his wife Judy, owner of JW Sales, a master distributor of building products servicing roofing and building supply dealers across the state. Reach him at 561-6930 or jimw.jwsales@gmail.com.*



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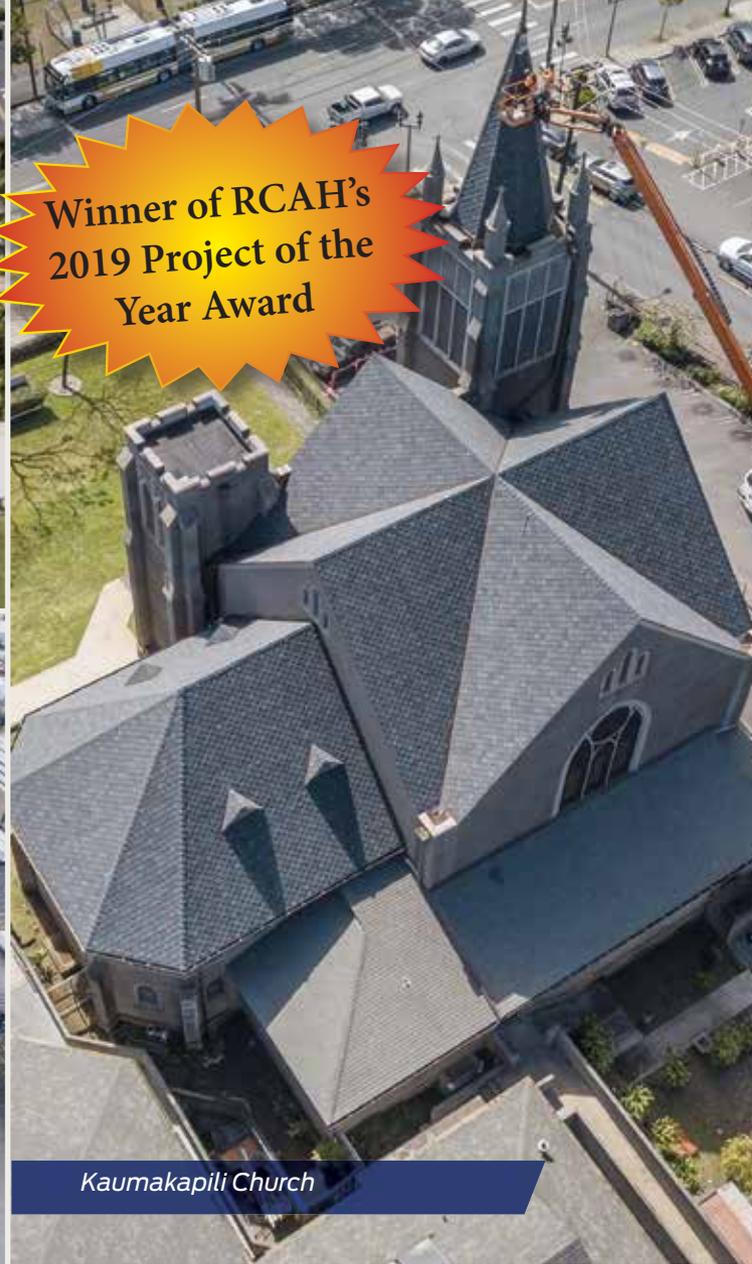
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LARRY YOUNG

# Putting Your Roof in a Wetsuit

## Fluid-applied rubber roof system technology is catching on in Hawaii

**W**e've all seen those neoprene rubber wetsuits worn by divers, surfers and others. The suit provides a watertight protective barrier preventing the water from touching the skin.

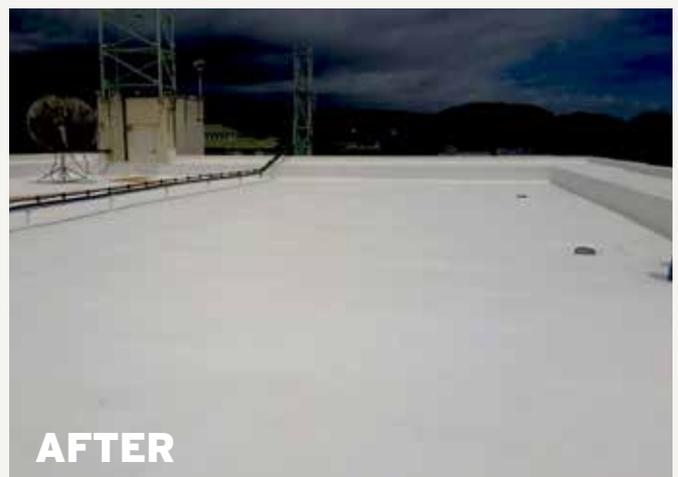
What if you could take that same wetsuit material and put it on your roof? Well, today you can!

We hear about fluid-applied roof systems—"coatings"—quite often. It's often the most economical way to keep your roof, gutters, decks and walls water-tight. But how do you decide what is the best option for your building for the long haul? Here's a look at one of the newer products on the market that might work for your building.

Fluid-applied rubber roof systems are quickly picking up traction in Hawaii. While newer to Hawaii's market, they have been installed on the Mainland for quite a while. These innovative systems are rapidly growing in popularity due to its instant-setting and extreme strength. The product builds to any millage quickly and easily adheres to a majority of surfaces. The product is a two-part material and typically spray applied. The product is black when applied and UV stable. However, a white reflective coating is usually applied for reflectivity.

The membrane coating is 80% cured in three seconds. It skins over, providing a protective barrier from water quickly and is great for areas where rain is unpredictable or constant. It is not affected by ponding, making it a perfect product to waterproof gutters and below-grade waterproofing. It has a 1,200% elongation and recovery, making it great for applications that would have a high degree of expansion and contraction. Other benefits include Class A fire-rated, high-wind uplift rating, environmentally friendly, highly resistant to puncture, hail and impact, water-based, zero VOC's and odor-free.

Applications include new and retrofit roofing, roof replacement, below-grade waterproofing, plaza decks, balconies and planter boxes. All the penetrations and walls are coated, thus providing a seamless membrane covering. The system comes with a 10-20 year manufac-



<b>System Benefits</b>
Great for areas where rain is unpredictable or constant
Great for applications with a high degree of expansion and contraction
Unaffected by ponding water
Class A fire-rated
High wind uplift rating
Environmentally friendly
Highly resistant to puncture

<b>Applications</b>
New & retrofit roofing
Roof replacement
Below-grade waterproofing,
Plaza decks, balconies & planter boxes

turer labor and material warranty depending on the millage applied. It can be repaired easily and recoated with the acrylic to extend the life of the roof system beyond the warranty period.

Current manufacturers include Neptune Coatings, Wetsuit and Triton Inc., Tritoflex 2K. To see a live demonstration, visit the Hawaii Buildings, Facilities & Property



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*Larry Young is vice president and project managing estimator at Commercial Roofing & Waterproofing Hawaii. He brings over 26 years of industry experience to the company, having worked on a variety of*

*projects spanning commercial, industrial, education, government and military sectors. CRW is one of the largest commercial roofing contractors in Hawaii, with services that include roofing, waterproofing, roof maintenance programs, repairs, gutter installation and solar PV. Reach him at [larryy@commercialroofinginc.com](mailto:larryy@commercialroofinginc.com).*



TRACY TOMINC

# The Real Cost of Deferring Repairs

Every dollar of preventative maintenance deferred to a later date results in four dollars of capital renewal

**W**ith limited funds and competing demands, property leaders are challenged with financially meeting the day-to-day operational needs of properties while balancing the need to make facility repairs. To keep overall operational costs in check, many facility managers find themselves in scenarios where repairs get deferred to a future budget cycle or postponed until funding becomes available, known as deferred repairs.

Deferred repairs may seem like a reasonable short-term fix, but in fact this is a growing issue with long-term adverse impacts. The effects of having to close even a portion

of a facility because of structural failures affects not only occupancy revenue, but guest experience and stakeholder confidence in the property's leadership. Additionally, aging, under-repaired facilities can end up costing more to repair or replace in the long run, draining operational budgets.

Another key point to consider when deferring repairs is that poorly maintained envelopes deteriorate exponentially faster than their expected end-of-life. Consider the following:

- Facility cracks, spalls and leaks receiving less than the recommended maintenance, per the International Concrete Repair Institute, will deteriorate before their projected replacement date, producing unsafe conditions.

A study conducted by the Pacific Partners Consulting Group determined that every dollar of preventative maintenance deferred to a later date resulted in four dollars of capital renewal.

- For many properties, deferred repairs have created a backlog of critical repairs during the *off-peak* season, often triggering emergency repairs, typically costing three to four times more than recommended scheduled repairs.

Buildings depreciate at approximately 2% a year, and the average Hawaii property is over 35 years in age. The good news is 80% of these properties can be kept fully operational with preventive repairs.

The following are generally recommended repair timelines for efficient performance of facilities:

Traditionally, deferred repair is calculated by subtracting the accumulated expenditures for preventive and regular repairs, minor repairs, system and component replacement from the current replacement value of a facility accumulated over the projected life of the facility, usually factored as a 25- to 50-year facility life.

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ing and upgrading current high-occupancy facilities should be required.

Generally speaking for facility M&O, a minimum of 3% of the current replacement value (CRV) should be budgeted annually. An additional 1% of the CRV should be budgeted annually to systematically reduce the accumulation of deferred repairs over the next 10 years.

With limited operational budgets, properties may consider packaging deferred repairs within a broad facilities master plan and vision to closely link property monies with low-profile envelope repairs.

How can properties plan for continuous facility upkeep and reduce deferred repair costs?

More proactive planning and a less reactive (“fix it when it breaks”) approach can help properties reduce deferred repair costs. Preventive repair planning starts with a data-driven strategy built on tracked metrics and an understanding of the optimal project investment for the building envelope required for a property. It’s critical to assess the envelope conditions using robust data collection. It’s also important to fully understand the condition of your property and how your operation affects occupant satisfaction, the facility’s financial well-being and overall community vitality. Strong data demonstrating property success, incorporating information from comparable properties, are also invaluable when prioritizing facility repairs. Collectively, these data points and metrics can provide a strong case for communicating the need for repair funding.

In addition to limited financial resources, it can be difficult for properties to find the time to create a strategic plan and sort through the best way to allocate funding for your property. Consult with a licensed structural repair expert to help navigate through an assessment and provide guidance to devise a plan that meets your property’s goals and objectives. ❖

*Tracy Tominc is president of Structural Concrete Bonding and Restoration on Maui. A disabled veteran, he is licensed in concrete and masonry, railing and waterproofing. He is a member of the Construction Industry of Maui, Community Council of Maui and the Maui Hotel and Lodging Association. Reach him at [tracy@scbri.com](mailto:tracy@scbri.com).*



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KEN KASDAN

# Does All Concrete Crack?

**Concrete doesn't need to crack, but when it does there can be legal recourse**

**I**t is a familiar refrain from a concrete contractor or builder that “all concrete cracks,” and hence the problems you might be experiencing are normal. Additionally, it is often heard that “it’s soil movement” or “tree roots” causing the cracking.

That is only partly accurate, as concrete that is properly designed and correctly placed should neither deteriorate nor crack. It may be soil movement that has caused the crack,



but that’s only because there was an underlying series of errors that caused the concrete to be deficient in the first place. More often the damage was caused because the design professional did not use adequate care in the design or selection of the concrete mix, and or the contractor failed to utilize proper procedures to install the cement.

Soils should be evaluated for two important aspects before

the concrete is designed. First, what is the expansion index (EI) of the soils? Is the soil largely clay or sand? If clay it’s likely to be expansive. What is the moisture condition expected at the site? If expansive soil is present there are many steps that can be taken to mitigate and prevent cracking. A concrete with a higher strength can be provided. Additionally, steps can be incorporated into the foundation’s design to add additional steel. Thicker concrete can be used. In highly expansive soil conditions an engineered slab can be constructed using post tension cables. In reality a combination of all these aspects should be considered.

If the concrete is deteriorating or cracking, why? It doesn’t do that all by itself. Was too much water added to the mix upon placement to make finishing the project easier, essentially dooming the concrete to failure? Was the concrete properly consolidated so that it is placed without voids? Is the embedded steel properly placed so that the depth of concrete covers over the steel as is required by code? Was the concrete over-finished such that a thin layer of paste was brought to the surface, leaving a thin layer susceptible to cracking? Was the concrete properly cured? Curing is not letting the concrete dry, rather it is the process of keeping it uniformly moist so that it cures properly over time. Not properly curing concrete increases the permeability of the concrete, allowing moisture to pass through and lower strength. This cannot be later remediated.

Soil conditions need to be considered. Soils can be corrosive. In and of itself, corrosive soil is not a defect, but its qualities must be considered. Here in Hawaii, many homes are built on a giant coral reef. Soils mixed with coral are often referred to a coralline soil. The coral was covered by water and sitting in the sea bed. The ocean is loaded with salt. The ocean water is loaded with chlorides. Salts can cause both chemical and physical attack to the concrete.

A frequent mistake made here on the Islands is a failure to properly consider all aspects of the corrosion potential of the soils, where many people address the impact on the metals embedded directly in the soil, ignoring what can happen if these corrosive elements make their way into the concrete. If the concrete is porous, if the vapor barrier is incomplete or punctuated, these corrosive elements will travel through the permeability of concrete and attack the steel rebar. The foundation system relies heavily upon metal component, including hurricane straps, anchor bolts, steel sill tracks and hardware. All must be protected.

So, don’t just assume all concrete deterioration is normal. There are examples of concrete structures built in the days of the Roman Empire still in good shape, much of it better

than the concrete that is only a few years old at today's building sites. If cracking or deterioration is present at your project in Hawaii, redress may be available if claims are timely made.

### Statute of Limitations

A statute of limitations is a state law that sets the deadline by which you have to assert your lawsuit against the offending party. Should you miss this deadline, you will lose your ability to seek a remedy for your claim.

In Hawaii, pursuant to Hawaii Revised Statutes section 657-7, all actions relating to "deficiency or neglect in the planning, design, construction, supervision and administering of construction, and observation of construction relating to an improvement to real property" must be brought within two years of accrual of the action, but no more than 10 years after completion of the improvement. Accrual of an action



occurs when a person knows or has reason to know that a wrong or harm has occurred. In the realm of construction defect actions, this typically means when the person is aware of, or should have been aware of, the defects (i.e., the cracks in the concrete develop).

As to actions that are based on breach of contract, generally speaking, the statute of limitations for breach of contract claims is six years from discovery of the breach. See Hawaii Revised

Statutes section 657-1(1). These claims require analysis of the building contract documents to determine whether a violation of the terms has occurred. ❖

*Ken Kasdan is considered one of the nation's leading construction defect authorities. He is the senior partner with Kasdan LippSmith, with its primary office on Oahu. Reach him or his director of client services Louisa Percudani at 869-8393 or visit [kllawhawaii.com](http://kllawhawaii.com).*

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**Ritchie Lipson**  
Executive Director of Client Relations



PAUL KANE

# The End of Spalling As We Know It

A new kind of rebar made from lava rock is changing the way concrete gets reinforced



**W**ith the advancement in technology in manufacturing and the advancement and refining of basalt rock fiber, BFRP (FRP = Fiber Reinforced Polymer; GFRP = Glass fiber; CFRP = Carbon) the end of concrete reinforcement corrosion is near, as all of these types of FRP are currently available in rods or rebar to reinforce concrete and to help with crack control. This is nothing new, as FRP rebar has been around for 30-plus years and FRP products and their use in reinforcing and strengthening concrete has been recognized by the American Concrete Institute for over 25 years.

What is new is basalt rock fiber.

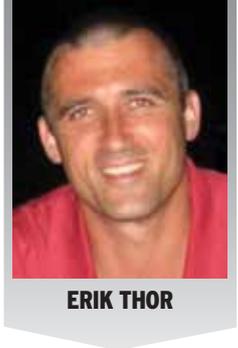
It was originally developed for the Russian space program, looking for a more cost-effective fiber than carbon and a fiber as strong or stronger than glass, and they

developed BFRP. Basalt rock fiber has been used for years in the form of “rock wool” or insulation. The same curly fibers fall to earth in Hawaii’s Volcano National Park, known as “Pele’s Hair.” The problem with using rock wool or a curly fiber in a reinforcing rod is that it needs to be made into something linear, smooth, straight and super strong.

With the development of basalt rock fiber over the last few years, companies have entered the basalt rock rebar business trying to tap into this huge transition from steel to FRP products for reinforcing concrete. The steel rebar business is in the multi-billions of dollars annually.

Neuvokas Corp. and its GatorBar rebar product is leading the way in converting how concrete is reinforced. Neuvokas’ #3, 3/8” BFRP GatorBar is two times stronger than steel, yet seven times lighter and will never corrode.

...continued on page 44



ERIK THOR

# Concrete Spalling: Proactivity Is Key

It's all too common in Hawaii, requiring regular inspection and maintenance

Over the past 20 years, concrete spalling has become a topic of great concern and of great, in-depth discussion in regards the effects it has on the aging buildings in our great state of Hawaii. So much so, that it feels as though anybody living in or managing a building constructed out of concrete material has become familiar with the term “spalling.”

If you're fortunate enough to have not had to deal with concrete spalling or you're simply unfamiliar with the term or how it occurs, here is a brief rundown. Concrete spalling is the result of corrosion to the embedded steel within a building's infrastructure. When the corrosion of steel occurs

and rust is produced, this rust, in turn, causes the embedded steel to swell in size. The surrounding concrete at a particular location where the steel swelling is occurring is put into a state of extreme tension that will eventually cause it to crack. If not repaired, the crack will continue to expand and grow in size until eventually the fractured concrete delaminates from the reinforcing steel.

The beginning corrosion of the reinforcing steel is caused mainly by three environmental components: oxygen, chloride (salt) and water. When these three ingredients—all constants in beautiful Hawaii—penetrate through the

...continued on page 45

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It was originally developed for the Russian space program, looking for a more cost-effective fiber than carbon and a fiber as strong or stronger than glass, and they developed basalt rock fiber.

...continued from page 42

What makes GatorBar so different is the proprietary manufacturing process. All FRP rods made for strength are manufactured in a process called pultrusion. It's a process where fibers, aka threads, are pulled from several spools through a dye of a set size, saturated with a polymer resin and

then heated and pulled through the production line, coming out the other end as a solid rod. I've seen the pultrusion process in a few different factories around the country, and the rod exits the pultrusion process at about 7 to 10 feet per minute. In Europe there is a company that celebrated running 10 to

12 feet a minute consistently in their production process.

The Neuvokas production line pultrusion line in Ahmeek, Mich., that makes GatorBar runs daily at 150 feet per minute, 22.5 times faster than any other manufacturer of pultruded rods on the planet!

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Imagine the money that can be saved in the construction industry as concrete reinforcement now costs less than steel, will last much longer than steel and will never corrode. So concrete never ever spalls. GatorBar being seven times lighter than steel there will be huge labor-saving transporting and laying out GatorBar on job sites. Some contractors have said that they can save 40% on labor when using GatorBar.❖

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*Paul Kane is the owner and manager of Aloha Marketing Manufacturers Representatives, based in Ewa Beach, covering Hawaii, Guam, Oregon, Washington, Alaska and California for Neuvokas. Contact him at paul@aloha-marketing.com.*

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...continued from page 43

concrete substrate and encounter steel, over time this concrete spalling will begin to occur.

But concrete spalling does not occur overnight. Typically, it takes 25 years to develop to the point where the effects become visually evident. About 90% of all spalling damage occurs on horizontal surfaces of a building or at locations along the building's edges. It is common to see spalling on lanais, walkways, window ledges, floor lines and railing post embedments. If not repaired, and the spalls continue to expand, they can become a potential fall hazard that can cause property damage and personal injury.

If your building has reached the quarter-century mark, a good rule of thumb to adapt is to have your building undergo an annual, comprehensive, concrete spall inspection. It is highly recommended that these inspections are performed by a professional with specific spalling knowledge, such as a concrete repair specialist or a structural engineer. Most concrete repair specialist companies will perform the inspection at no cost to the building owners. It is always best practice to identify and repair the spalls in their stages of infancy to reduce threats of liability and ultimate repair costs.

Being proactive to keep Hawaii's aging buildings on a regular maintenance schedule will not only keep building residents safe and insurance costs to a minimum, but also will maintain sound property investment and protect against a property values depreciation. ❖

*Erik Thor is a project manager and the director of client relations at Seal Masters of Hawaii, which specializes in exterior renovation and construction management. He joined Seal Masters in 2010. Reach him at (808) 841-7602 smh@sealmastershawaii.com.*



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DEAN NAGATOSHI

# Six Vital Considerations When Hiring a Painting Contractor

**Not all painters are created equal, so managers and boards must consider more than just the lowest bid**

**T**he following considerations could save you both money and frustration by preventing the risk of a bad painting project experience. The fact is, painters in general range in the quality of the services they provide. There are many inexperienced and unqualified people and companies that masquerade as professional painters. Oftentimes property managers and board members can become so focused on “how much” in an attempt to save money for their

All painting contractors are required to have a valid C-33 Painting and Decorating Contractor license. But what if your project is like most, and also requires waterproofing, structural spall repairs or wood repairs?

AOAO that they fail to consider quality above price. This can lead to hiring the wrong company and can expose them to potential liability due to shoddy quality and workmanship.



**Consideration 1 : Do They Have the Appropriate Contractor's License for Work Required on Your Building?**

By law, all painting contractors are required to have a valid C-33 Painting and Decorating Contractor license. But what if your project is like most, and also requires waterproofing, structural spall repairs or wood repairs? Each of these scopes of work relates to a different specialty contractor classification that requires a separate contractor's license. If a contractor does not have the contractor's license for the work required, it can be an indication that they lack the necessary expertise. Another consideration is that if the work is being performed by an unlicensed contractor, it may limit the AOA's recourse should the work prove defective in the future. It is easy to check by contacting the Department of Commerce & Consumer Affairs (DCCA),

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Professional and Vocational Licensing Service (PVL) or going online at [pvl.ehawaii.gov](http://pvl.ehawaii.gov).

### **Consideration 2: Do They Have Insurance and Are They Bondable?**

The value of insurance coverage is not so readily obvious until something goes terribly wrong. The law requires that all contractors carry worker's compensation insurance for their employees and general liability insurance. Property managers should request a certificate of insurance from the contractor's insurance company to confirm the insurance coverage amounts and the policy expiration dates. It is not uncommon to request that the property management company and AOA be added on as additionally insured for added protection.

The ability of the contractor to provide a project performance bond reflects the financial strength and health of the contractor. This also directly relates to the value of any warranties that the contractor is giving and provides a safety net for the owner should the contractor not be able to complete the project.

### **Consideration 3: What Kind of Training Do Their Employees Receive, and How Often?**

The fact is there's a big difference

between painting companies. The contractor's philosophy, organizational culture and leadership can determine the level of quality and service their workers are able to perform. Currently, all industries are faced with skilled worker shortages and the painting industry is no exception. A commitment to ongoing employee training in the skills and procedures of painting, waterproofing and safety makes for a smoothly running project, resulting in an aesthetically-pleasing finish that will last the longest time possible.

### **Consideration 4: Who Will be Assigned to the project?**

Depending on the size of the contractor, there may be only a few contacts in the contractor's company to communicate with. You may be dealing directly with the owner of the painting contracting company, but most of the time it may just be one of the workers doing the work. Remember, workers get transferred to other projects all the time. It is important to establish the lines of communication to address any issues that may occur during the project.

### **Consideration 5: What Kind of Warranty Will the Contractor Provide?**

The warranty that the contractor provides can vary by duration and

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SHELDON IBARA

# Mixing Paint and AI

From advances in safety to design, artificial intelligence is changing the industry

**A**rtificial intelligence, or AI, is an emerging reality in the world today. Regarded as science fiction not that long ago, it has now become science fact, and we see it in almost every facet of our daily lives.

For some of us in the building industry, AI is becoming an integral part of our business environment.

Safety has always been a high priority in the construction industry. Personal protective equipment (PPE) continues to be researched and developed to provide workers with the best possible equipment to perform their jobs safely. According to OSHA, the No. 1 fatality in 2018 was from fall-related injuries. In the next several years, I predict that artificial intelligence will enhance safety conditions in the painting industry through the testing of new simulation models to develop better fall protection equipment and standards. Hopefully this will help to lessen the statistics and continue to promote a safety-conscious environment.

Color is a very important factor in painting. For many, it is an extension of their own personality. Deciding on that

perfect color scheme may be an overwhelming task for many. Today, most major paint manufacturers have an online paint tool that allows a person to download a photo of any room in his/her home and digitally paint it on their smart phone or tablet.

While this type of artificial intelligence creates a visual experience for the user, I predict that AI technology will eventually be able to create a virtual reality experience where the user will be able to step into any VR living space and virtually paint a room without ever having to touch a key pad or screen. This technology will be beneficial for homeowners and designers, who will be able to create a 3D mock-up without having to purchase paint or pick up a brush. ❖

*Sheldon Ibara is the business development manager for JD Painting & Decorating. He has worked in both sales and operations in the paint industry since 1998. Reach him at 841-7100 or sheldon@jdpainting.com.*

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what it includes and excludes. Project documents may specify a warranty, but contractors could qualify their proposals by providing a shorter warranty than what is specified. Project warranties may also relate to the contractor license issue as stated in Consideration #1 above. If a contractor does not have a license to perform specific work on the project, they would be considered an unlicensed contractor. It is doubtful that an unlicensed contractor can provide a valid warranty for work that they are not licensed to perform. Paint manufacturer warranties can also add another complexity to the project. Warranties may be for paint adhesion and or waterproofing. Some manufacturers may also include the labor and materials in their warranties. All exclusions and notification requirements should be noted.

### Consideration 6: Who Will Oversee the Painting Project?

...continued on page 53



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# 2020 Legislative Agenda for Condominiums

## The Legislature is considering at least 10 condo-related bills this session. Here's a rundown.

The Hawaii State Legislature began its 2020 session on Jan. 16. On the deadline for introducing bills, there were over 20 condo-related bills introduced. After a few weeks of legislative hearings, there are at this writing 10-11 condo bills still viable.

• **Senate Bill 2421 (repeal of sunset provision in Act 195) and Senate Bill 2425 (repeal of sunset provision in Act 196)** appear likely to pass out due to the lack of any serious opposition. "Sunset provisions," which would have had the effect of automati-

the delinquency grew to a large amount without notice to the owners and in some instances resulted in the filing of foreclosure actions. Under Act 195, associations can no longer apply the current monthly maintenance fee payment to prior late charges and penalties.

Act 196 expanded the alternative dispute resolution remedies of mediation and arbitration for condo owners. If Senate Bills 2421 and 2425 pass, the matters covered by Acts 195 and 196 will become permanent.

• **Senate Bill 2200 Relating to Fair Housing Reasonable Accom-**

to the condo board from a Hawaii licensed healthcare professional or social worker stating that the resident has a disability and that allowing the resident to have an animal in the unit would relieve symptoms of the disability.

But it is clear to many associations that residents who want to live in their "no-pets" building are abusing their rights under the federal law, to the detriment of residents who chose to live in a "no-pets" building due to allergies or other concerns.

This bill requires that the licensed professional who prepares the request

**Senate Bill 2817 Relating to Waste would require high-rise (seven stories or more) condominiums and co-ops to provide at least one waste cooking oil receptacle on the property to allow residents to deposit grease and waste cooking oil.**

cally nullifying both Acts 195 and 196, were inserted in the underlying bills as a compromise because the House and the Senate could not agree on final language of the bills. Act 195 repealed the "priority of payments" policy for the collection of maintenance fees. Condominium associations relied on this policy, which allowed current monthly payments to be applied to prior late fees and penalties first with the balance of the payment being applied to the current maintenance fee, which would result in a shortfall in the payment and trigger a late fee and penalties for that month.

An unintended consequence of this policy—largely due to automatic monthly withdrawals from owners' bank accounts—was that many times

**modations.** Many condos have "no-pet" provisions in their by-laws that were adopted by at least a 67% vote of their owners. Any prospective owner or renter can find out from their Realtor or checking the association's by-laws to see if the building has a "no-pets" policy. There are many pet-friendly condominiums where people who wish to live with pets could choose to live rather than in one with an established "no-pets" policy.

Currently, a condominium with a "no-pets" rule is required by the federal Fair Housing law to make "reasonable accommodations" by not enforcing the "no-pets" rule against residents with disabilities (as recognized by the federal Americans with Disabilities Act). The current procedure is to submit a letter

for reasonable accommodation to the board is legally and professionally qualified, actually meets with and examines the resident to determine if the resident has a disability recognized by the ADA and make a written finding that the resident has a qualifying disability and has a need for an assistance animal to deal with the disability.

This bill was set for hearing before the joint Senate Consumer Protection and Judiciary Committees on Feb. 20.

• **Senate Bill 2817 Relating to Waste.** This bill would require high-rise (seven stories or more) condominiums and co-ops to provide at least one waste cooking oil receptacle on the property to allow residents to deposit

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There are various industry consultants that can work with the property managers and AOAOs to assist in selecting the contractors based on their past experience with the painting contractors that they have used on their projects. Consultants can also provide a level of comfort and safety by using their expertise to provide project administration services and oversee the work being performed. Due to the age of the buildings being repainted, it is very seldom just a repainting project. Usually surfaces need to be repaired, which will require a building permit.

In summary, the complexities of painting projects now require knowledge of building, environmental and

safety regulations that contractors need to follow. By hiring qualified and experienced painting and finishing contractors, building owners and managers will see long-lasting benefits that will result in a successful project that everyone can be proud of. ❖

*Dean Nagatoshi is executive director of the Painting and Decorating Contractors Association of Hawaii, whose*

*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. Reach him at 479-6825 or dean@pdcahawaii.org, pdcahawaii.org.*



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# Condo Associations and Assistance Animals

## HUD offers new guidance on reasonable accommodations for disabled persons and their animals

**W**hile possibly adorable, that four-footed furball may be prohibited by a condominium's governing documents as a pet. But service or working animals, therapy or assistance animals, and emotional support or comfort animals are not pets and cannot be prohibited as pets or subject to pet deposits or fees.

Condominium associations are subject to the federal Fair Housing Act (FHA) which is enforced by the

nized certifying agency.

Should an association have a no-pet or restrictive-pet rule, a reasonable accommodation could be an exception to that rule. The new guidance provides a step-by-step set of best practices for complying with the FHA, including the types of animals that may be appropriate and how to handle non-traditional animal requests.

Two types of assistance animals are recognized by the guidance: service animals and other trained or untrained



Requests for reasonable accommodations for people with disabilities are on the rise, and associations need to avoid expensive claims of discrimination in housing.

Department of Housing and Urban Development (HUD) as well as similar state laws and the Americans with Disabilities Act (ADA). Requests for reasonable accommodations for people with disabilities are on the rise, and associations need to avoid expensive claims of discrimination in housing.

For the first time since 2013, HUD has issued guidance on reasonable accommodations under the FHA relating to assistance animals. Associations are required by the FHA to make reasonable accommodations for people with disabilities who request an assistance animal. Any animal that provides physical or emotional benefits to a disabled person can be an assistance animal—no training or certification required.

In fact, there is no nationally recog-

animals that do work, perform tasks or provide assistance or therapeutic emotional support for individuals with disabilities.

Disability generally means physical or mental impairment that substantially limits at least one major life activity.

The guidance is especially helpful in that it walks through the analysis, criteria and questions that may be asked when evaluating a request for accommodation involving a service or other assistance animal. For example, if it is readily apparent that a dog is guiding a blind or low-vision person, the guidance warns against asking about the nature or extent of the person's disability. If, however, the impairment is not observable, the guidance provides that the associa-

tion may request information regarding both the disability and the related need for the animal, but not the actual diagnosis.

This information is for informational and educational purposes only. The guidance itself should be consulted and may be found at [hud.gov](http://hud.gov), FHEO Notice FHEO-2020-01, Jan. 28, 2020.

A final word to the wise: Any request, verbal or written, for accommodation should be promptly forwarded to the association attorney prior to any board response or action. ❖

---

*Carole R. Richelieu is the senior condo specialist in the state Department of Commerce and Consumer Affairs' real estate branch. Contact her at 586-2644 or go to [hawaii.gov/hirec](http://hawaii.gov/hirec).*

# 50% Fee Increase in Kakaako

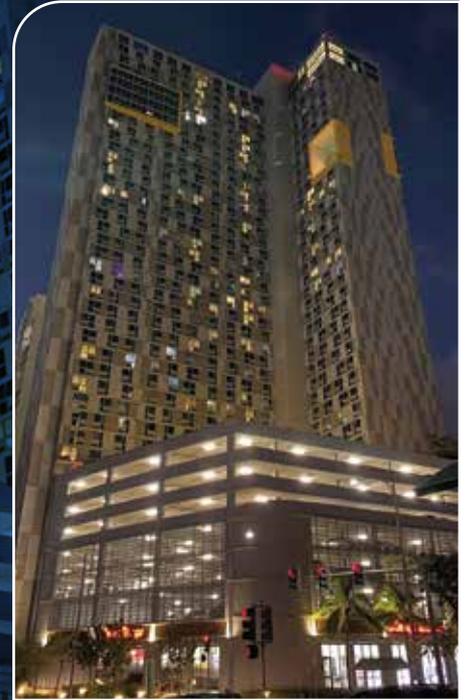
The new year brought a hefty increase in monthly maintenance fees for residents of Ward Villages' Ke Kilohana. Eight months after the opening of the 425-unit tower developed by The Howard Hughes Corp., residents began receiving notice that the fees are going up by as much as 50%.

The board said the increase is necessary to offset operational costs that have been higher than anticipated.

Hughes' prospectus for potential buyers says that "purchaser recognizes that and acknowledges that such common interests and maintenance fees are subject to change as the project evolves. Such estimates are not intended to be and do not constitute any representation or warranty by the developer."

Common areas include a karaoke room, movie room, music room, a children's playroom and barbecue area. Electricity use in these areas has been more costly than estimated, as were costs for staffing, security and maintenance. The result was an operating loss of \$50,000 a month.

The board is considering ways to cut costs, including possibly eliminating air conditioning in hallways and asking resident volunteers to pitch in with landscaping maintenance.



Courtesy of JCliff Kimura/Flickr

## In other condo news:

Claiming to have invested at least \$500,000 in two condo tower projects that broke ground a year ago in the Ala Moana area but have progressed no further, at least 28 foreign individuals have filed four separate lawsuits in Hawaii courts.

The projects are Hawaii City Plaza, which was to offer 184 condos in 27 stories (price range \$457,000 to \$11.2 million), and the Hawaii Ocean Plaza, 175 units in 40 stories (\$718,000 to \$2.2 million). Both are neighbors of the Walmart store on Keeaumoku.

The developer is Johnson Fang.

According to one suit, "complainants believe the undue delay was caused by inexperienced and incompetent management, and even worse, was caused by many dishonest management activities."

Fang's local attorney David Squeri filed a motion to have the matter decided by arbitration in California, per terms of a clause in the projects' investment contracts.

Central to the story is the U.S. government's controversial "EB-5" program that gives foreigners a green card in exchange for investing in projects that help create jobs in economically challenged neighborhoods. The two projects qualified.

- Condominium sales on Oahu were up in January compared with January 2019. Sales volume rose 16.3%, from 326 to 379, while the median price was up 7.5%, from \$399,000 to \$420,000.

On Kauai, condo sales in January compared with the previous year were a mixed bag. Overall sales were down 29%, from 41 to 33, while the median price rose 33.2%, from \$325,000 to \$430,000.

Sales on the Big Island were similar, with sales volume down 29%, from 48 to 34, while the media price was up 25%, from \$359,850 to \$450,000.

And on Maui, sales volume dropped from 127 from 130, 2%, while the price rose 8%, from \$740,000 to \$782,438.

The median is the price point at which half of condos sold for more and half for less. Sources include the Honolulu Board of Realtors, Kauai Board of Realtors, Realtors Association of Maui and Hawaii Island Realtors.

## Calendar of Events

DATE	ASSOCIATION	EVENT	TIME	LOCATION
March 11, 2020	BOMA	Member Meeting	11:30 AM	Hawaii Prince Hotel
March 11, 2020	Douglas Trade Shows	HBFPM Expo	9:00 AM	Blaisdell Center
March 11, 2020	IREM	Luncheon Meeting	11:30 AM	Blaisdell Center
March 12, 2020	CAI	Luncheon Meeting	11:30 AM	Blaisdell Center
March 12, 2020	IREM	Expo After Party	5:00P PM	Chingu
March 13, 2020	CCM	Luncheon Meeting	8:00 AM	King Kamehameha Golf Club
March 17, 2020	NARPM	Luncheon Meeting	11:30 AM	Japanese Cultural Center
March 18, 2020	BOMA	Lunch & Learn	11:30 AM	Alii Place
March 19, 2020	MRMA	Luncheon Meeting	12:00 PM	Waikiki Yacht Club
March 27, 2020	IREM	Golf Tournament	11:00 AM	Hoakalei Country Club
April 08, 2020	BOMA	Luncheon Meeting	11:30 AM	Hawaii Prince Hotel
April 09, 2020	MRMA	Luncheon Meeting	12:00 PM	Waikiki Yacht Club
April 15, 2020	BOMA	Lunch & Learn	11:30 AM	Alii Place
April 15, 2020	IREM	Luncheon Meeting	11:30 AM	Hale Koa
April 16, 2020	CAI	Luncheon Meeting	11:30 AM	Japanese Cultural Center
April 21, 2020	NARPM	Luncheon Meeting	11:30 AM	Japanese Cultural Center

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grease and waste cooking oil, which will be collected and disposed by a waste hauler permitted by the county.

I've been getting a lot of calls on this one, many of them outraged because single-family homeowners, low-rise buildings and townhouse owners are not required to take similar action with respect to their grease and cooking oil disposal.

The consensus is that this is a terrible bill because this assumes that people who live in high-rise buildings pour cooking oil down their drains, where would you put the receptacle that would be convenient to the residents and to the waste hauler who has to remove its contents, wherever the receptacle would be located, it would attract bugs and vermin, are there, in fact, waste

haulers who would remove this grease and oil and this law is unnecessary because there are products on the market that solidify cooking oil so that that it can be disposed of as rubbish.

This bill was set for decision-making in its second Senate Committee on Feb. 20. If this is a concern, contact your legislator right away.

Other bills are intended to clarify or amend existing law:

- **House Bill 2562** clarifies that a board member does not require the approval of the board to resign from the board.
- **SB2871/HB2315** provides that the Real Estate Commission can declare a moratorium on payments to the Condo-Education Fund.
- **SB2418** requires managing agents

to confirm the eligibility of candidates for board elections and the authority of proxy assignments.

- **HB2161** clarifies who is a tenant for purposes of whether a tenant can be a board member and also clarifies that the content of a 100-word statement by an owner wishing to run for board election is the responsibility of the owner, who will be solely liable for libel, slander or defamation charges.

- **SB2007** requires a property manager to be certified in property management by a nationally recognized body. ❖

---

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



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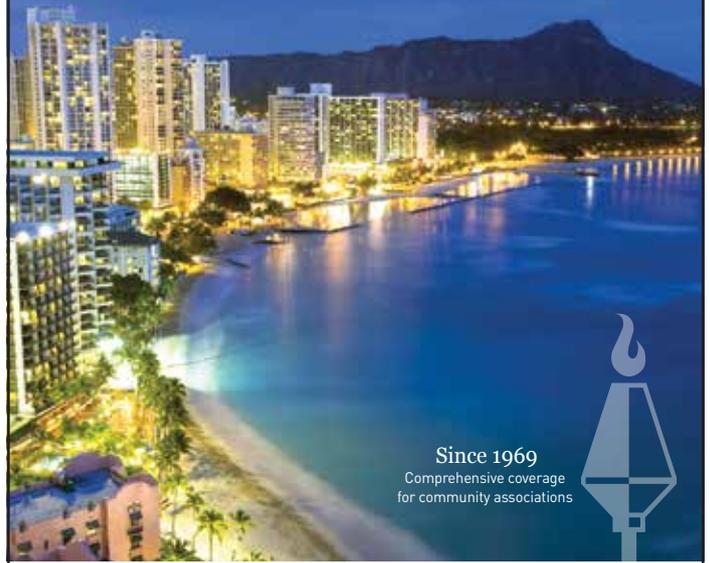
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# RCAH Honors Roofing Projects

The Roofing Contractors Association of Hawaii saluted the winners of its annual roofing awards at a banquet on Jan. 25 at The Pacific Club.

PHOTOS BY BARRY REDMAYNE



Tim Lyons, Roofing Contractors Association of Hawaii; Kim Beattie, Drone Vantage; Jack Miller, ABC Supply



Howard Melchan, Polyglass; Charlie Beeck, Tropical Roofing; Jack and Bonnie Morgan, Polyglass



Riann Cayaban, Tom Holland, Richelle Thomason, Anthony Channels Sr., Sonny Leandro, Larry Young, Katrina Akau, Keli Kenney, Dana Akasaki-Kenney, Keli Kenney and Steven Kalani, Commercial Roofing and Waterproofing Hawaii



Ernie Tulba, Jose Jimenez and Bruce Kim, Akamai Roofing



Ryan Lundquist, Caryn Yu, Lea Daguro, Jen Daguro, Denis Daguro, Edith Daguro, Amanda Gregory, Shon Gregory and Steve Carlson; Surface Shield



Sasha Miner, Justin Miner, Dan Jaeger, Sue Jaeger, Jeffrey Gowan and Nalu Kahanaoi, Honolulu Roofing



Kim Beattie, Drone Vantage; David Kanyuck, Charlene Gray, Lorraine Cabanero, Jennifer Dorman, Amanda Canada, Tess Redmayne and Barry Redmayne, Trade Publishing



Melanie Boehm, Joseph Boehm, Jeff Rapoza, Michael Tory, Louis Tory, Sandra Tory, Hunter Ward, Jessie Tory, Kai Tory and Denise Tory, Tory's Roofing



Scott Ai, Beachside Roofing



Fred Kaohe and Michelle Harris, Beachside Roofing



Amanda Canada, Trade Publishing; Tim Lyons and Cheryl Lewis, Roofing Contractors Association of Hawaii



Jeff Rapoza, RSI Roofing; Howard Wiig, Department of Business Economic Development & Tourism



Mapu Dillina, Terra Mahula and Keith Dillina, Beachside Roofing



Daniel Nakamura, Scott Madden, Eleilani Madden, Leila Kang and Jherard Miller, Malarkey Products



# LEAK REMEDIATION AND CONCRETE RESTORATION

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Not known to many, several of downtown Honolulu's low-rise buildings built in the late 1890's and early 1900's have a full, below grade basement. Whether occupied or used simply for storage, leaks and rusting reinforcing steel are not an uncommon occurrence at the basement levels given the nearness of many of the structures to the harbor and our slowly rising tide level.

RCM Construction used a combination of procedures, including epoxy injection and polyurethane group injection in conjunction with concrete spall repair, to help remediate this 75 year old basement.

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