# Difficult Owners and Frivolous Lawsuits




DCCA HAWAII
Real Estate Branch

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**Visit the Real Estate Branch's website at www.hawaii.gov/hirec to view all of the Branch's condominium brochures and to learn about the many resources the Branch has for condominium owners and boards.**

This webinar is approved by the Community Association Managers International Certification Board (CAMICB) for 1.5 credit hours to fulfill continuing education requirements for CMCA® certification.

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CAI HAWAII

## Difficult Owners and Frivolous Lawsuits

**October 29, 2026**

**AGENDA**

Melanie Oyama
CAI Hawaii Programs Chair
2026 CAI Hawaii Board President

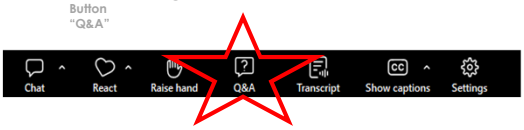


| | |
|---|---|
| 12:00 – 12:05 p.m. | Welcome & Introductions |
| 12:05 – 12:25 p.m. | Cathy Juhn – Vexatious Litigants and Frivolous Lawsuits |
| 12:25 – 12:35 p.m. | Dan Oyasato – Difficult Owners & Frivolous Lawsuits |
| 12:35 – 12:50 p.m. | Lou Chang – Hot Heads, Bullies, Difficult Personalities, and HCPs |
| 12:50 – 1:25 p.m. | Q & A |
| 1:25 – 1:30 p.m. | Closing |

# LIVE STREAM

## QUESTIONS

Submit them using the Zoom Q&A Button
"Q&A"




## Program Coordinators

Richard Ekimoto



Paul Ireland Koftinow



Richard Ma



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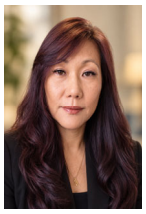
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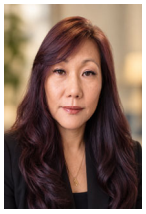
*Kanoelehua Renaud*
*Chris Holley*

## OUR SPEAKERS


Cathy Juhn


Dan Oyasato


Lou Chang



**Cathy Juhn** a insurance defense panel attorney and is currently Of Counsel at Roeca Luria Shin. She has represented numerous businesses, shopping centers, condominium associations, and property management companies in civil litigation and liability matters. Prior to entering insurance defense, Cathy S. Juhn served as a deputy prosecutor, gaining extensive trial and courtroom experience. Cathy S. Juhn holds a B.S. in economics, a Juris Doctor and an LL.M in Information Technology.

# Vexatious Litigants and Frivolous Lawsuits

Presented by Cathy S. Juhn

## Agenda

1. Overview (always keeping costs in mind)
2. Key Terms and Essential Distinctions
3. Recognizing Escalation Before a Lawsuit Is Filed
4. Reduce Litigation Risk
5. When Litigation Has Already Begun



## Key Terms and Essential Distinctions

**"Difficult Owner" as a Management Description**

**"Vexatious Litigant" as a Statutory Concept**

**HRS §634J-1** who abuses the court system through repeated, unmeritorious, or harassing lawsuits.

**"Frivolous" Versus "Unsuccessful"**

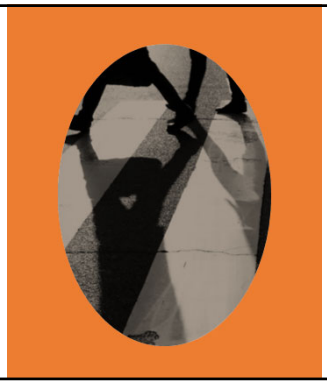
## Goal

De-escalate.

- Communication Discipline
  - Avoid legal terms or un-appealing descriptive words.
    - Crazy
    - Dangerous
    - Vexatious

  Write as though someone else will judge you based on it because they will.

  Preserve Everything



## Recognizing Escalation Before a Lawsuit Is Filed:

## EARLY ASSESSMENT

**DO:**

**Preserve the communication and all attachments**

**Designate one primary contact**

**Notify:**

- **Association Counsel**
- **Board President or Designated Director**
- **Insurance carrier as required**

**Governing Documents: Know them**

**Document requests: Address it quickly**

**Mediation: As soon as possible**

**DO NOT:**

**Take it Personal**

**Recuse anyone personally involved as soon as possible**

**Discuss it among yourselves by email in a disparaging way**

**Only communicate verbally**

**Ignore it hoping it will go away**

**Forget about it or fail to follow up**

**Assign it to the Manager and do not follow up with the manager.**

**Delay**

## Reduce Litigation Risk:

## Triage Questions

## ASK YOURSELF HONESTLY

1. What relief does the owner actually seek?
2. Does the owner identify a specific statute or governing-document provision?
3. Has the association previously addressed the same issue?
4. Was the prior decision documented?
5. Has the association treated comparable owners consistently?
6. Are relevant records complete and accessible?
7. Does the matter implicate insurance coverage?
8. Is there an immediate health, safety, access, or property-damage concern?
9. Is the owner represented by counsel?
10. What is the history with this person?
11. **What does the Governing Documents say?**
12. **DO NOT DELAY**



## When Litigation Has Already Begun:

Prepare, Gather, Designate and Stop Communication

## Build a Neutral Chronology

| | | |
|---|---|---|
| Dates | Nature of the Complaint | Association Response |
| People involved | Investigation performed | Board action Taken |
| Notices and Discussion opportunities | What documents are involved or requested | Communicate by writing as much as you can |
| What solutions were offered | Pictures and videos | Surveillance cameras |
| Prior interactions | How many units/owners are involved | Limit contact to one person. |

## Bottom Line: Early Resolution

**How lawsuits without merit can costs associations time and money**

Attorney fees
Repeated Litigation
Time
Individual Claims (notify personal Insurer)
Insurance Premiums
Assessments

## References To Keep in Mind:

HRS §421J (For Planned Community Associations)

HRS §514B (For Condominiums)

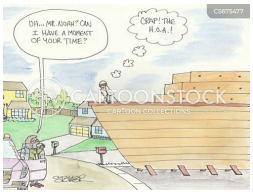
Governing Documents



**Dan Oyasato** a attorney with Ekimoto & Morris, LLLC since 2010 focusing on enforcement and civil litigation. He is a graduate of Iolani School, Tufts University and the William S. Richardson School of Law. Before joining Ekimoto & Morris, Dan served as a law clerk to the Honorable Yoshimi Hayashi, Associate Justice of the Supreme Court of Hawaii and the Honorable Robert Won Bae Chang, Judge of the First Circuit Court of Hawaii. Dan spent over 16 years as a deputy prosecutor with the Honolulu Prosecuting Attorney's Office where he tried over 120 jury trials and served on the faculties of the American Prosecutors Research Institute and the National College of District Attorneys where he lectured on various topics in the area of trial practice.

Since joining Ekimoto & Morris, Dan has appeared on behalf of clients in state courts on every island and in federal court in mediations, arbitrations, trials and appeals. Dan is well-aware of the difficult decisions boards have in balancing the need to enforce the association's governing documents while remaining fiscally responsible in an ever-increasing litigious world.

## DIFFICULT OWNERS & FRIVOLOUS LAWSUITS







## HARASSMENT

1. Abusive, threatening or hostile conduct
2. Interference with governance
3. Online harassment
4. Retaliation
5. Excessive records requests

## RESTRAINING ORDERS




## CIVIL HARASSMENT

(1) Physical harm, bodily injury, assault or the threat of imminent physical harm, bodily injury, or assault;

## CIVIL HARASSMENT

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual, and that serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

## RESTRAINING ORDERS

SEEKS TO ENJOIN:

(1) Contacting, threatening, or physically abusing the protected party;

(2) Contacting, threatening, or physically abusing any person residing at the protected party's residence; or

(3) Entering or visiting the protected party's residence.

## HOW TO RESPOND

1. Determine if the alleged conduct is related to association functions
2. Identify evidence refuting allegations
3. Identify witnesses
4. Seek legal counsel

## RECORDS REQUESTS -AOAOS




**HRS § 514B-152**
**HRS § 514B-153**
**HRS § 514B-154**
**HRS § 514B-154.5**

## RECORDS REQUESTS - HOAS

**HRS § 421J-7**




## MANDATORY DISCLOSURE

- Financial Records
- Governing Documents
- Common Element Expenses
- Monthly Delinquencies
- Management Contracts
- Employment Contracts
- Other contracts
- Board Meeting Minutes
- Association Meeting Minutes
- Election Records
- Membership Lists

## BEST PRACTICES FOR COMPLIANCE

1. Respond within 30 days of receipt
2. Explain any refusal in writing
3. Require owners to provide affidavits
4. Contact counsel early for assistance

## HRS § 514B-191(a)(2)

Prohibits retaliation "against a . . . board member, managing agent, resident manager, or association employee who, through a lawful action done in an effort to address, prevent, or stop a violation of this chapter or governing documents of the association . . . causes a complaint or report of an alleged violation to be filed with the association, the commission, or other appropriate entity."

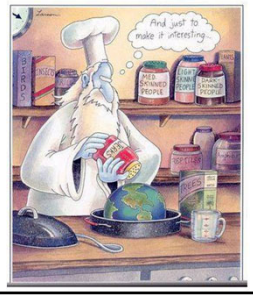
## DEFEATING A CLAIM RETALIATION

1. Be consistent
2. Maintain professionalism
3. Respond promptly
4. Keep detailed records
5. Seek legal counsel early



**Lou Chang** a commercial lawyer, arbitrator, and mediator concentrating in design and construction, commercial, corporate, real property, insurance, financial services, employment, labor, probate, franchise, professional malpractice, and other civil matters. Recognized by peers as a Best Lawyer in the fields of arbitration and mediation (2005-2026), Mediation Lawyer of the Year (2018 and 2024), and Lawyer of the Year for Arbitration (2016) and Alternative Dispute Resolution (2013).

## Hot Heads, Bullies, Difficult Personalities and HCPs




## Hot Heads, Bullies, Difficult Personalities and HCPs

Emotional, Angry
Fearful, Defensive & Distrustful
Unrealistic
Victim of Multiple, Historic, Unjust Wrongs
Aggressive, Abusive, Attacking
Extreme Defensiveness



Personality Types: Narcissistic, Bi-Polar, borderline, antisocial, paranoid or histrionic

## Drivers and Motivators

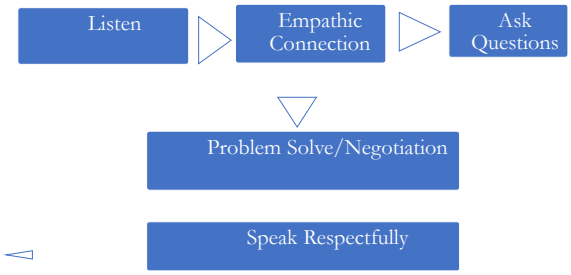
- Seek to understand what is driving the conflict or disagreement
- Fear, Anger, Injury, Rejection, Disrespect, Pride call for different responses
- Feeling threatened and at risk triggers high emotions, defensiveness and distrust triggers the self-preservation part of the brain. Must address this before the logical, reasoning part of the brain can be activated.
- Identify the motivators that encourage resolution.

## Negotiating and Mediating with HCPs

- Erratic, aggressive, uncooperative, difficult to deal with.
- Don't push, oppose or label the behavior.
- Try to use their momentum to guide direction in positive direction.
- Futurize. Focus on future.
- Observe the behaviors.
- Apply the EARS & One-Two Punch processes.

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## LEAPS Model by Psychologist Bill Crawford




- All conflict is emotional
- When emotions are high, logic is low
- When emotions are high: Sense of isolation, abandonment, exclusion, negative self worth
- Triggers survival instinct: Fight, Flight or Freeze
- Demonstrate your ability to be calm, balanced, patient, centered, steady, compassionate, understanding, non-judgmental, connected
- Listen to understand, acknowledge and show compassion

Paul Randolph: The Psychology of Conflict, 2016

- In Conflict, people protect & hide their true complete selves
- Fear & Anger, We want to be seen as:
  - someone who matters
  - someone whose words, ideas, and opinions have value
  - a generally fair and reasonable human being
  - valued member of our tribe (team, family, friends), valued enough that our place in the group is secure and we can remain in fellowship
  - capable, even if we are not competent in every single thing we do, valued for being a generally effective human

Tammy Lenski: Every conflict contains a bid to be seen. 2019

- With your ears, eyes and heart
- Model listening for the other parties to hear and understand
- Example: Burning Man 30 minute mediation
  - 5 minutes with egg timer/each party
  - Tell me as open heartedly as you can, what is going on?
  - Ask no questions, make no comments, just listen
  - Summarize (active and reflective listening)
  - Confirm (Do I have that right?)

Listen for the keys to their cooperation

## Empathic connection

- Demonstrate that you truly understand
- Attend to the emotional component. Make an emotional connection. Create a safe environment for expression. Being tuned in. Reflect the feeling. Acknowledgement of speaker's concern, viewpoint, pain, fear, emotion. Validation.
- "It must be _____ to be…like that."
- "Let me be sure I heard what you said, you are feeling … because of …, is it right? "
- "What you're saying matters to me. Help me understand better."
- "I understand that you are really upset and this has you very angry. Let's talk about what might be done to improve the situation."

**EMPATHY AND EARNING TRUST**

- Understanding someone in the way the person want to be understood'
- "I can feel that something is deeply troubling you. If you don't mind sharing with me, can you help me understand what it is?

- Humility
- Honesty
- Caring, Non-judgmental
- Confidence, Prepared

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## Ask Questions to understand

- **Tell me more about….**
- **Help me understand….**
- **What are your highest hopes and wishes to come out of this mediation?**
- **What ideas do you have for possible agreements and solutions?**

## Central Recommendations of LEAPS Model

- With angry, fearful, defensive, wary, deceptive person, you **must** proceed through the Receptive Steps (Listen, Empathic Connection, Ask Questions) **before** moving to Problem Solving.
- Do not jump to problem solving, even if you think you have good ideas or strategies for resolution.
- Manage and limit resistance. Build trust and connect with the person first.

Always

- Treat all equally
- Help to save face
- Do not criticize. It invites resistance and resentment
- Remember: The Stupid Idiot Rule
  - Never phrase a statement that the listener can add "you stupid idiot" at the end of your statement

**Speak Respectfully**

**EARS** Model. Designed for HCPs (Nadine Ryan Bannerman) (Bill Eddy)

**Empathy**

**Attention**

**Respect**

**Set Limits**

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Managing the aggressive, abusive, unreasonable, hardball "My way or the highway, first and last best offer" type of negotiator

- Do not oppose but do not capitulate.
- Don't back down.
- Confront the tactic
- Work to change the dynamics

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## EARS Model.

- Act in non threatening manner,
- Try to reduce the fears,
- Maintain a calm, even-tempered manner,
- Avoid rejecting or abandonment,
- Don't try to convince them of your trustworthiness. Be matter of fact.

## EARS, version 1.0

- **Show empathy and concern and explain the rules/reasons that behavior needs to be stopped and what the consequences can be if continued**
- **Express regret that need to address the behavior and explain how you want to help.**
- **Show/explain how different behaviors will be more effective at getting them what they want and accomplish the goal or objective or need underlying their conduct/concern.**
- **Avoid Giving Negative Feedback. Negative feedback is taken personally and feeds the MAD which triggers BAD as a defense against the perceived danger**
- **Instead, focus on reducing emotional threats. State your desire to help through your attitude and behavior**

## Setting Limits: Max Factor, III's One-Two Punch Strategy



**Punch One**

- Respond in kind
- Ignore the tactic
- Call out hardball tactic. State conditions for continuing
- Acknowledge the firmness of their belief/opinion
- Co-opt and offer the potential of future dealings
- Humor to defuse
- Take a time out
- Respond with a slightly bigger demand

**Punch Two**

- Play the hardball game…better
- Continue interest-based negotiation.
- Reframe positions to interests. Explore options that meet interests.
- Switch to reaching agreements on all other issues, except hardball issue.
- Negotiate a new process. Unless tactic is changed, terminate discussion
- Invite new negotiation session, with a mediator.
- Add or change players

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## Key Paradigm Shifts: EARS 2.0

- Don't open up emotions and feelings. Avoid asking questions like "How are you feeling? Are you feeling better?" Focus instead on thinking and doing.
- Avoid dwelling on the past. Some reference to what happened in the past may be unavoidable and necessary to understand what happened and how parties got to where they find themselves. Try to change or move the focus instead on the future.
- Don't try to change the HCP. Avoid giving HCPs insight into themselves. That is pointless.
- Avoid Opening Statements.

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## Paradigm Shifts-2

- Engage and involve the party(ies) in making the process decisions, setting agendas, who goes first and crafting proposals and ideas for resolution.
- Encourage the HCP to convert demands, must haves, last best offers to concrete proposals that are specific as to what is to be done, when and by whom. Have the HCP make the proposals for moving forward. (Pivot to the future.)

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## Paradigm Shift-3

- Establish an Accept, Think About It (Ask questions) or Make a Different Proposal protocol for the consideration of proposals for resolution. With this protocol, the party receiving any proposal cannot just simply reject it. Instead, if the proposal is not acceptable, the party receiving the proposal should be encouraged to either think about it and if after doing so finds it still not acceptable, the receiver must make a different proposal. This process continues until there is agreement or conclusion that there is an impasse and further negotiations at this time are fruitless.

## HCPs and "Regular" People

Does EARS 2.0 work equally well?

## CLOSING

## Mahalo and Aloha

- Thank you to our speakers and to everyone who joined us today.
- Email us if you would like to review the recording: ced@caihawaii.org
- Evaluation and feedback – the form will pop up when you exit. It will also be emailed to you. Use whichever method is easier for you.

## 2025 Calendar of Events

**February 12*: "Meetings, Meetings, and More Meetings, Oh My"** – Kanani Kaopua & Nikki Sen

**March 6*: "Major Project Management"** – Sue Savio & Bernie Briones

**May 8*: "Where's the Money – Association Funding"** – Anne Anderson & Melanie Oyama

**June 14, 21*: "Board Leadership Development" –** Keven Whalen & Melanie Oyama

**July 17: "2025 Legislative Update"** by Legislative Action Committee – Phil Nerney -Chair

**August 21*: "Mixed Plate" –** Nikki Sen & Stephanie Poree

**September 25*: "Owner Rights, Board Rights,** and **Association Rights"** – Chris Goodwin & Sue Savio

**October 23*: "EV, Fires, and Sprinklers" -** Bernie Briones

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## 2026 Calendar of events

**2026 Calendar of Events January 29, 2026* – The Nuts and Bolts of Major Construction & Repair Projects -** Co-Chairs: Anne Anderson & Sue Savio

**March 5* – Meet the Experts— Disaster Preparedness & Recovery** – Co-Chairs: Pauli Wong & John Baleix

**May 14, 2026* – Mixed Plate of Do's and Don'ts for Boards -** Co-Chairs: John Morris & Kanani Kaopua

**June 13, June 20, 2026*– Board Leadership Development Workshop** – , Co-Chairs: Melanie Oyama, Keven Whalen **July 15 – Legislative Update** – presented by the Legislative Action Committee – Phillip Nerney, Chair

**August 13 – Effective Ways to Reduce Association Expenses to Avoid Drowning in the Red Sea* -** Co-Chairs: Bernie Briones & Joshua German

**September 17* Hoarders, Boarders, & Boomers -** Co-Chairs: Melanie Oyama & Chris Goodwin

**October 29* – Difficult Owners and Frivolous Lawsuits -** Co-Chairs: Richard Ekimoto & Paul Ireland Koftinow

**November 6 – Annual CAI Membership Meeting Virtual**

**November 21– Condorama XVII**

**January, May, July, August, September, October Seminars are at the Japanese Cultural Center and will also be livestreamed and recorded. March Program will be at the Neal Blaisdell Center and will also be livestreamed and recorded. June program is a virtual program that will also be recorded.**

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