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ACTIVE THREAT

By Raymond Craig

Active Shooter. Those words have been used too much lately and is a very sad and unfortunate place to be in our world. This is more often than we want, and we need to be aware of it. Due to recent events, the term *Active Shooter* was updated to *Active Threat*. The *threat* is no longer limited to firearms, but includes vehicles that plow through crowds meant to hurt innocent people, or other weapons that are meant to hurt or instill fear to the public.

There are several actions you can take to prepare yourself in case you are involved in such an event. Homeland Security recommends *Run-Hide-Fight*. Advanced Law Enforcement Rapid Response Training (ALERRT) recommends *Avoid-Deny-Defend*. They are both very similar. We understand that you should react when something bad happens. Most important is that there is a plan involved and not just running or hiding without one.

Environmental Awareness is key to being able to respond to any situation. Knowing what is going on around you is *essential*. We all see people with earbuds on and focused on their phones while walking around. I witnessed a few near misses of these individuals walking around, almost getting hit by vehicles or walking into objects or people, all due to not paying attention to their environment. Keep your eyes and ears open, especially in isolated areas and crowded areas where much of the active threat incidents occur.

When something bad happens. Notice that I did not say *if*, but *when*. Preparation includes accepting that something like this could happen and you are taking the necessary steps to *prepare*. By using the word *if*, you do not believe that this could happen and will be in denial when it happens, which leads to being unprepared. Having the proper mindset will truly prepare you to act in that moment. *Denial* is the first and most dangerous hurdle to overcome.

Run-Hide-Fight or *Avoid-Deny-Defend* must be part of a pre-planned practiced response.

Run or *Avoid* is the first line of defense. If you recognize what is going on before



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The Hawaii Community Associations newsletter is published for association leaders and other related professionals of CAI. Authors are encouraged to submit articles for publishing consideration.

This publication is designed to provide accurate and authoritative information regarding the subject matter covered. It is issued with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services.

CAI Hawaii Community Associations newsletter provides an opportunity for information and/or comment.

Articles do not necessarily reflect the viewpoint of the Chapter. The reader should not act on information contained herein without seeking more specific professional advice.



President's Message



Welcome to our June 2023 edition of the CAI Hawaii newsletter.

Our newsletter and behind the scenes support is largely attributed to not only our dedicated staff, Lindsay Green (Chapter Executive Director) and Noah Woodwell (Assistant to the CED), but also our business partners who support CAI Hawaii. They not only advertise in our newsletters, but also provide informational content in our quest to ensure information-rich articles. Mahalo to our current business partners, listed in no specific order:

- Anderson & Fujisaki
- Armstrong – Submeter
- Associa Hawaii
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- Hawaiian Properties, Ltd.
- Hawaiiiana Management
- Insurance Associates
- Kasdan Turner Booth
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- Touchstone Properties

The theme of our newsletter surrounds aging buildings/condos and budgeting for their repairs and replacement, while gaining a better understanding of the related costs. The demographic of board members continues to be represented primarily by those 60 years and older, which was the basis for our inclusion of the *AARP HomeFit Guide*. Elaine Panlilio, from Atlas Insurance, provides us with an article regarding the *Challenges and Considerations in Insuring Older Condominiums*. Wes Bruhm, from Insurance Associates, writes about *Coastal Erosion – A Growing Risk*, a good read especially for our neighbor island members. Kasdan Turner Booth provides information about *Construction Defects – Top 6 high-Rise Plumbing Issues*. Dennis Olmstead is a certified architect and pens an article about *Dangerous and Defective Condo Buildings in Hawaii*, which is part 1 of a 2-part series on this subject. Ramzi Mansour, a Licensed Professional Engineer and Chief of the Division of Wastewater Treatment and Disposal for the County of Hawaii, writes about *Law and Odor*, regarding cesspool regulation in

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HAWAII BUILDINGS, FACILITIES & PROPERTY MANAGEMENT EXPO

HP participated in the Hawaii Buildings, Facilities & Property Management Expo on March 7 and 8 at the Blaisdell. Thank you to all who stopped by our booth!

Pictured (left to right): Russell Doane, Dass Ramadass, Renee Quintoa, Glen Suzuki, Daniel Kent



ACTIVE THREAT continued from page 1

it happens, you can avoid the situation. The question is where are you going to run to? You want to avoid running towards a bad situation or a dead end with no escape. Run/Avoid must be executed with a plan in place. Know where your nearest exits are located, or where to run, hide and take cover.

Hide/Deny is a great option, but again, there needs to be a plan in place. An example includes barricading yourself in an area to stay safer until police respond. In most of the incidents that took place nationally, when the Active Threat person encountered a locked door, they moved on and did not attempt to break into a secured area. Repair and maintain doors that are meant to secure people and property. Budget for this work to take place sooner than later.

Finally, there is *Fight/Defend*. This is a last resort option and not

something I recommend lightly. There is a time and place for this course of action. There are no laws in any state that say you must place yourself in danger or allow yourself to get hurt. You are allowed to defend yourself. It is your right to defend yourself. Make sure you have a plan in place. Your response must be effective as you might not get another chance.

Like a fire drill, plans must be practiced. There are numerous resources available to you, including online resources. Organizations and companies that can provide specialized training customized to you and your situation are available. There is also local law enforcement that will provide information to you. The goal is to be safer when such an event occurs. This is not a pleasant topic to write about, but a reality in which we live. The goal is to be prepared and be aware of potential Active Threat situations. Have a plan in place and practice

it similar to the way we practice any type of drill – consistently and making adjustments based on the environment around you.

About the Author:

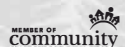
Raymond Craig has over 33 years of combined military and civilian law enforcement experience. Retired from the Honolulu Police Department with over 25 years of service, he is currently certified as a Master Taser Instructor. Raymond is also a trainer who specializes in Firearms, Tactics, Hand to Hand techniques, OC pepper spray and Active Threat response. Raymond helped train the police department in active shooter/active threat response. He also teaches at national and international conferences. Raymond currently is the owner of SmarTrainingHI a company that provides training on tasers, de-escalation techniques and providing safety training for organizations and groups. You may email Raymond at support@smartraininghi.com.

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President's Message

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Hawaii, an important read for our neighbor island members where cesspool infrastructure is prevalent. Christopher Goodwin provides a Q&A style article about gun laws and gun registration. Daira Carrillo from FirstOnSite, talks about *The Three Categories of Water in a Water Loss*. Mahalo to the Real Estate Commission for their article *Wouldn't You Like To Know* – read it and find out!

We are pleased to showcase another local nonprofit in our “Community Corner,” with an article from social worker Lisa Farias called *Ohana Means Family*. She introduces readers to Ho’omalū O Na Kamali’i, a shelter for families and teens. Please read for information on how to volunteer or donate to this special organization. You are encouraged to provide us with recommendations for other nonprofit organizations serving families, children, and communities throughout Hawaii. Please email caihawaii@hawaiiantel.net.

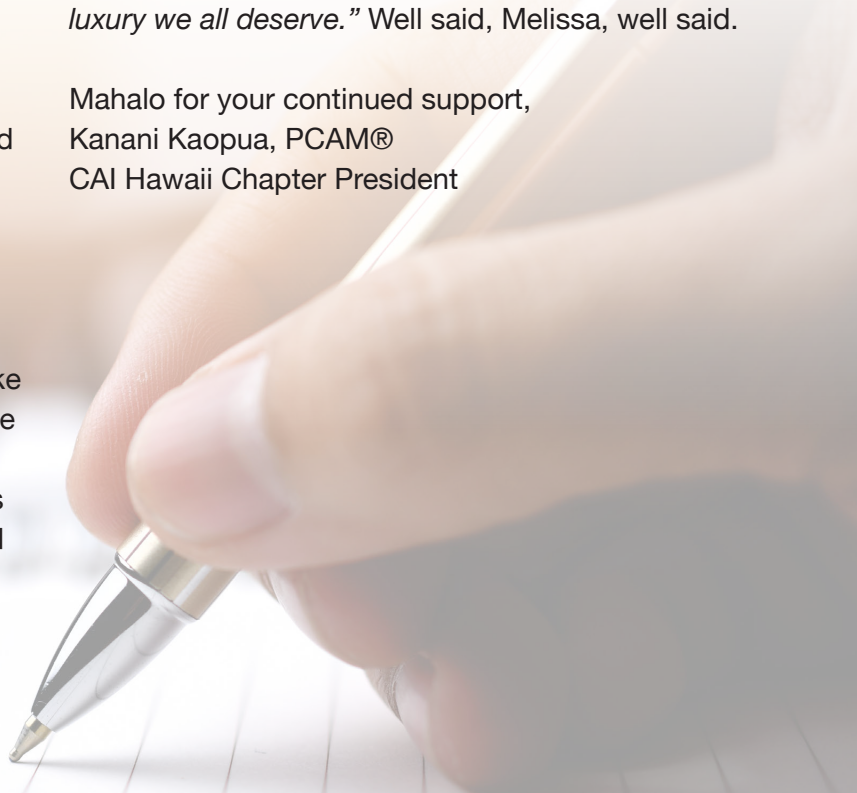
The Condorama held on April 29, 2023 included a record number of registrants, over 1,600! Thank you to Milton Motooka and Krystyn Weeks for chairing this event and to Joshua German, Lance Fujisaki, and Melanie Oyama for serving as panel speakers.

Keven Whalen and Melanie Oyama chaired another successful Board Leadership Development Workshop, which is held annually, and is formerly known as the ABC’s Seminar. Similar to a new board member orientation, this seminar provides a crash course into what it means to be a board member, and the various tasks and responsibilities placed on you. An important takeaway is that you are only a board member when you are in a board meeting. Once the meeting is adjourned, you are an owner like everyone else. Do your best to remember this advice and continue to be open to learning and evolving as a board member and as a board. The goal of this seminar is to have you leave feeling like you learned more than you knew coming into the seminar. We saw a large turnout for this virtual event with almost 200 registrants. We encourage board members to

participate in these programs, and to gain as much knowledge as you can from professionals who have been in your shoes and serve the association industry in various areas of expertise. The session took place over two separate weekends since many of you provided feedback for weekend programs and we delivered. Mahalo to our industry neighbors at the Community Council of Maui (CCM) for promoting this program to their group of board members, managers, and homeowners.

Let me send you off with this excerpt from our 2023 Chair of the Community Association Managers Council, Melissa Guyott’s recent *Letter from the Chair*. The theme of her message centers around how lifestyle management is not a luxury: “...I was so busy with all the stuff that had to happen, I made no time for the stuff that should happen...Creating social experiences within a community reduces crime, increases covenant compliance, and contributes to association living happiness...I challenge you to find one simple, low-cost initiative that lends itself to a more positive lifestyle in your communities... Creating personal connections through shared social experiences improves the lifestyle of the association and has a positive impact on how you and the board are viewed by members. Happy homeowners are a luxury we all deserve.” Well said, Melissa, well said.

Mahalo for your continued support,
Kananī Kaopua, PCAM®
CAI Hawaii Chapter President



AARP HomeFit Guide: Free and Available in 5 Languages

Most houses and apartments in the United States are designed for young, able-bodied adults and don't meet the needs of older residents or people with disabilities. In fact, in much of the nation, most housing was built more than a generation ago to serve a population of family households, generally consisting of two parents and at least two children. That's a problem, because in America today, the dominant household type, accounting for nearly 30 percent of all households, consists of single adults living alone. By 2034, the U.S. population will be comprised of more people over 65 than under 18 – for the first time in history. (Source: <https://www.aarp.org/livable-communities/livable-in-action/info2019/us-census-and-aging.html>) AARP surveys

consistently find that older adults want to remain in their current homes and communities for as long as possible, but that many require modifications to make them fit for a lifetime. How do we move forward to create safe living spaces for all, and especially for the United States' rapidly aging population? How do we ensure that all homes better respond to the needs of people of all abilities – whether due to age, injury, or condition? What are the techniques that everyone can use – whether they own or rent – to make their home more visitable and accessible?

The illustrated 36-page AARP HomeFit Guide provides some practical answers to these questions and more. Featuring more than 150 tips and solutions, the AARP HomeFit Guide provides

a room-by-room tour of the enhancements and modifications that make a home safe, flexible, and suitable for all residents, no matter a person's age, ability, or life stage. The Guide also includes suggested uses for smart home technology that can further enhance the safety and comfort of homes for all residents. The AARP HomeFit Guide is available in English, Spanish, Chinese, Vietnamese, and Korean at [AARP.org/HomeFit](https://www.aarp.org/HomeFit). Also available are downloadable worksheets and the HomeFit AR (Augmented Reality) app, which can “see” design elements in a home and provide suggestions to make the space more “home fit.” Links to include: <https://www.aarp.org/livable-communities/housing/info-2020/homefit-guide.html>.



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PHOTO BY HILLARY BENSON, DIAMOND HEAD CONDOS @ PUALEI



Bottom row, left to right: Branch President Pauli Wong extends a warm aloha;

Yvette Soares, director of communications and client services and Laurie Tomihama, executive assistant expertly handle event planning and execution;

"Mahalo and more Power to Associa Hawaii! My fellow directors and I are walking away with valuable info to make us better board members!" - Gen Malihan, *Board President of Plantation Town Apartments*

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Challenges and Considerations in Insuring Older Condominiums

By Elaine Panlilio, CRM, CIC, CISR

There is a local joke that the Hawaii State Bird is the construction crane. When you look at the Honolulu skyline, you will see numerous construction cranes along the Kakaʻako, Ward, and Ala Moana areas. However, the urbanization and development of Honolulu began way back in the 1960s. On an island where land is such a valuable asset, Honolulu will continue to be the city of condominiums. The condominium construction boom between 1960 to 1980 accounts for almost half of the condominium buildings in Honolulu. Despite the growing percentage of newly constructed condominium buildings, as a community we are faced with a significant number of aging condominium buildings that will require continuous maintenance for structural safety, loss prevention, and aesthetic upkeep.

During the last few years, we have been seeing significant insurance premium increases, especially for older buildings. These increases are even more pronounced when the building has a history of claims. The insurance marketplace continues to harden with fewer insurance companies willing to write older condominium buildings, resulting in less competitive insurance premiums.

To understand how your insurance premiums are calculated, let us look at some important factors

that underwriters consider when writing insurance for condominium buildings.

Know your loss ratio.

Your loss ratio is a simple calculation. You take your Total Loss Dollars (settlement + loss adjusting expense) and divide it by the Total Annual Policy Premium. Most insurance companies have a lookback period of 5 years when assessing the loss ratio and each insurance company formulates its own target loss ratio.

A loss ratio of 0 – 30% is the ideal number that underwriters like to see. This is a green light for underwriters where they start sharpening their pencil on your premium and your association has the most negotiating power.

A loss ratio of 30 – 60% is about average to slightly above average. Most insurance companies will renew your policy, but getting a quote or a policy from another insurance company may pose some challenges if your association cannot show a pattern of regular and up-to-date maintenance and inspections.

A loss ratio of 60% and above is bad. This is when your association is losing money for an insurance company since your premiums also pay for expenses such as filing fees, taxes, overhead, agent commissions, claims handling fees and attorney fees.

For older condominiums having a low loss ratio and a history of timely and regular maintenance of the building components, the underwriter will feel more comfortable about insuring your association.

We recommend high risk components inspections to be done on common areas and inside every single unit every 3 to 5 years. The aim of these inspections is to evaluate the current conditions of the common areas and the condominium unit's major components (such as plumbing, electrical, HVAC, major appliances, smoke detectors) and point out deficiencies that will need to be addressed before they turn into losses or claims.

It is also recommended that you review your association's loss ratio to spot loss trends and allocate the necessary resources to prevent and manage losses.

Underwriters use the acronym "COPE" when reviewing risks.

C is for Construction. Refers to the primary materials used to construct the building. The Insurance Services Office (ISO) uses the 1-6 standardized construction classes namely:

1. Frame/Wood Frame (combustible walls and/or roof, primarily habitational with maximum of 3-4 stories)

2. Joisted Masonry (noncombustible masonry walls with wood frame roof, primarily habitational with maximum of 3-4 stories)
3. Noncombustible (typical steel frame walls with masonry in-fill. This type of construction is primarily seen in warehouses and manufacturing facilities)
4. Masonry Noncombustible (concrete block, reinforced masonry, tilt-up concrete load bearing walls – may be combined with some heavy steel framing, walls have a minimum 1-hour fire rating. This type of construction is primarily seen in shopping centers, office buildings, warehouses, and schools).
5. Modified or Semi-Fire Resistive (protected steel and/or concrete or heavy masonry walls and floors, fire rating of less than 2 hours but greater than 1 hour; primarily seen in high and mid-rise office buildings and condominiums).
6. Fire Resistive (reinforced concrete construction building frame and floors and/or very well protected steel and concrete. Fire rating not less than 2 hours for walls, floors, and roofs; primarily seen in high-rise office buildings and condominiums as well as parking garages).

O is for Occupancy. This refers to how the building is used whether residential, owner occupied, tenant occupied, commercial or mixed use.

P is for Protection. This refers to the level of fire protection features

that a property has such as the distance to the closest responding fire department, the adequacy of water pressure and water supply in the community, and the distance of the property to the nearest fire hydrant. Buildings that have functioning fire sprinkler systems and third party monitored central fire alarms may be eligible for some policy discounts; but more importantly this will determine whether a building will qualify to be written with certain insurers and reinsurers.

E is for Exposure. This evaluates the risks of loss posed by neighboring properties or the surrounding area.

Tell your story to the underwriters.

Insurance underwriters are conservative by nature because they are tasked with being the gatekeepers of the insurance company's profitability. The more information you can give your insurance agent, with how profitable you have been over the years by preventing losses, the more competitive they can get with their premiums.

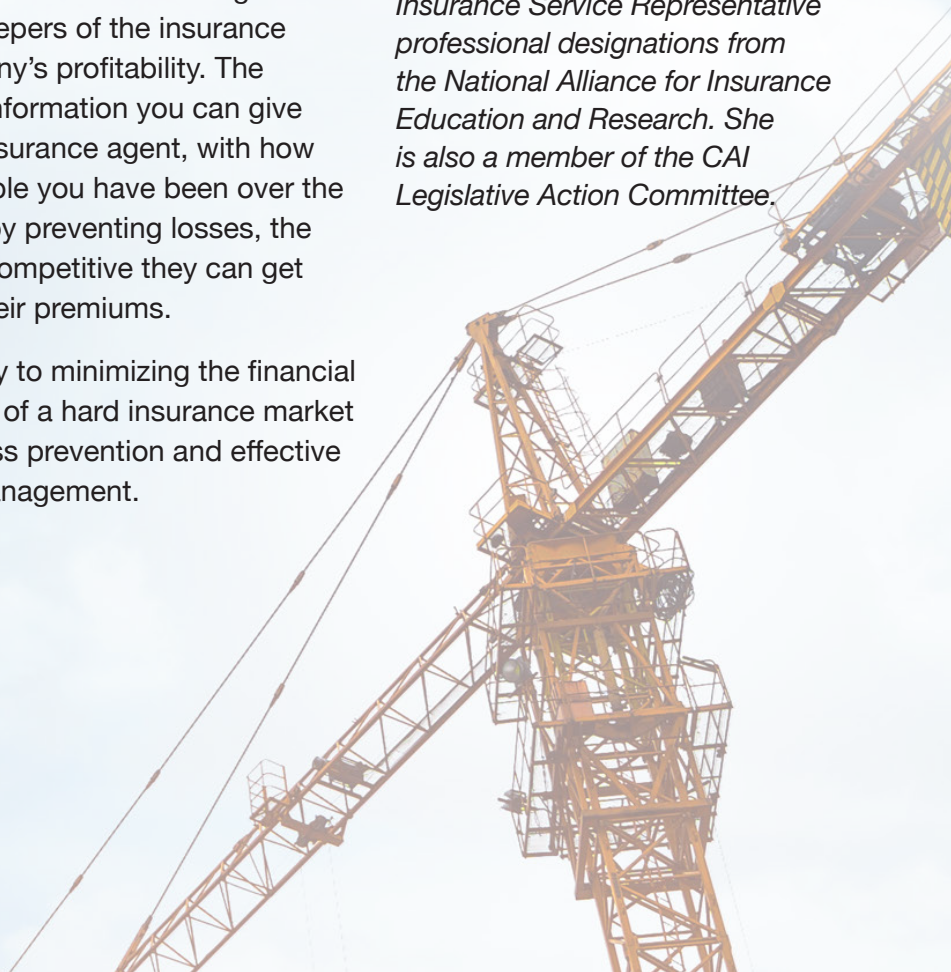
The key to minimizing the financial impact of a hard insurance market is in loss prevention and effective risk management.

In the liability arena, the key is in identifying the risks a community association faces, implementing procedures and safety measures to minimize these risks and hazards, and adhering to the community association bylaws and governing documents when it comes to managing the association.

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Elaine Panlilio, CRM, CIC, CISR is the AOA Unit Manager at Atlas Insurance Agency, the largest locally owned insurance agency in Hawaii. Elaine has 17 years of insurance experience and holds the Certified Risk Manager, Certified Insurance Counselor and Certified Insurance Service Representative professional designations from the National Alliance for Insurance Education and Research. She is also a member of the CAI Legislative Action Committee.



Coastal Erosion — A Growing Risk

By Wes Brum, ANFI, AIS

Many people are drawn to the coast as coastlines are some of the most dynamic areas in the world and Hawaii's shorelines and beaches are surely no exception. While our beaches are majestic and beautiful, there is an issue that is threatening the longevity of our beautiful coastlines known as coastal erosion. What is coastal erosion? Simply explained, tides create fluctuations in the level of the sea moving the shore in and out, sometimes hundreds of meters/feet over the course of a day or week. But it is not just the level of the ocean that influences the shape and topography of the shore. Land, soil, sand, and rock are constantly moving and shifting irregularly, largely in part to the power of the ocean washing in and out over time. Currents can at times deposit more sand onto shorelines than there was previously already there. However, usually things work the other way around where rock, sand, and sediment are carried out to sea and not returned to the shoreline. This process is referred to as erosion. The difference between coastal and inland erosion is that the sea steals away land from the shoreline at a much quicker rate than inland because of the force, power, and weight of the ocean. Coastal erosion only intensifies and is accelerated by storm events such as hurricanes, typhoons and tropical cyclones as the high winds brought to shore by these events typically also bring along with it, high surf, extreme high tides, and even storm surge.

Another significant issue impacting our oceans and shorelines which compounds the effects of coastal erosion is sea level rise, attributed to global warming. NASA simply explains global warming as the "long-term heating of earth's surface due to human activities, primarily fossil fuel burning, which increases heat, trapping greenhouse gas levels in earth's atmosphere." The World Meteorological Organization (WMO) recently noted that the earth is on track to breach critical warming thresholds within the next five years as earth's temperature is expected to increase by 1.5 degrees Celsius and the arrival of an El Niño year is expected. While an increase of 1.5 degrees may not seem like much,

this change will accelerate sea level rise and cause the development of more intense, extreme weather systems. Rising sea levels is and should be an alarming issue for shorelines across the State and beyond, especially for low lying areas. Sea level rise is an unfortunate and inevitable reality of global warming that will continue for centuries. However, the future rate in which sea levels will rise will greatly depend on how aggressively we as society are able to reduce carbon emissions and move away from burning oil, coal, and gas, and move toward cleaner energy solutions. In addition to sea-level rise, other factors that impact coastal erosion are past mining of sand from beaches for construction, agriculture, and approved beach rehabilitation projects where sand is taken from one beach and moved to fill another.

Long term impacts of sea-level rise and coastal erosion are anticipated to impact homes, businesses, hotels, and condominium associations across the coastal U.S., including those along Hawaii's coastal shoreline areas. These owners over time will sadly see some of their pristine land eroded into the ocean, shifting property lines. And some of these areas may, in time, become submerged by inches or feet of water, especially during extreme high tides and seasonal high waves, thus adding pressure on development of inland areas. Perhaps more importantly, coastal structures will be extremely susceptible to repetitive and chronic flood damage and even collapse. In a 2017 report prepared by the Hawai'i Climate Change Mitigation and Adaptation Commission, over 6,500 structures are located on Hawaii shorelines. The land on which these structures are located may be lost in the future due to a combination of coastal erosion and sea-level rise which may displace thousands. A study completed by the University of Hawai'i Sea Grant College Program noted that Hawaii is expected to see a 1-foot rise in sea levels by the year 2050 and 3 feet rise in sea levels by the end of the century. Such increases in sea levels would have serious economic, social, and environmental impacts. As

this adverse trend continues, owners of coastal structures may be exposed to and faced with difficult mitigation efforts and challenges, especially for the Island of Oahu due to its population size and extensive number of structures which are located on vulnerable coastal areas.

On a State level, all states (with the exception of Alaska) work jointly with the federal government under the Coastal Zone Management Act which provides special protection for coastal areas. However, this generally refers to permits that limit how a property owner may develop and mitigate their property. Some solutions that have been used to mitigate coastal erosion are seawalls, bulkheads, revetments, and breakwaters, which are manmade structures that are designed to withstand the impacts of waves which protect and reduce coastal erosion. But these mitigation efforts do come with unintended consequences. Installing one of these protection options can potentially worsen coastal erosion further down the coastline for other property owners and affect the quality of habitat in the sea, creating environmental challenges. Mangroves, on the other hand, are natural coastline stabilization options which have been used for many years in different areas all over the world. They reduce erosion from tides, waves, and storm surge as they absorb the energy from the ocean before they are able to wash away rocks, soil, and sand. The question remains, what option is acceptable and allowed as easements and permits are used to prevent private owners from fortifying the coastline, which could destroy coastal habitats, and block or prohibit public beach access which would also pose dangers to beachgoers who do enter the area? Where does this leave us? There is no single answer to what will happen to structures that are abandoned or threatened due to rising sea levels because of the nature of local government policy which regulates coastal buildings. As it stands, it is not necessarily clear who is financially responsible if a structure or part of a structure falls into the ocean and who is responsible for mitigation efforts to protect these highly valued and sought after properties. In many instances, it is the sole responsibility of the property owner to pay. Sometimes the government pays,

and sometimes it's simply unclear who pays. What is known, is that it will take many different people, departments, and various levels of government to produce a well thought out government intervention and plan. Local state strategies may not be sufficient and will likely come at an enormous cost to all parties involved.

Over the years, many questions have been asked if insurance policies will cover the cost of damage to a structure caused by erosion. The answer to this is no. Insurance policies are not developed, designed, or issued to cover damage caused to a structure due to erosion. The National Flood Insurance Program (NFIP) defines a Flood as: [1] a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from an overflow of inland or tidal waters; unusual and rapid accumulation or runoff of surface waters from any source; mudflow. [2] Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above. Simply explained, if the extreme erosion can be pinpointed to a specific event such as a hurricane, tidal surge, etc. then coverage may potentially be available under the NFIP's flood insurance policy. However, it is critically important to note that gradual erosion which causes damage to a structure over a period of time is not covered under the flood insurance policy. An added coverage feature of the flood insurance policy is debris removal. If the definition of flood is met under the NFIP's flood policy, then coverage for debris removal is also afforded under Coverage C – Other Coverages, in which the NFIP's policy states the following. [a.] We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere. [b.] If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage. [c.] This coverage does not increase the Coverage A or Coverage B limit of liability of the flood insurance policy.

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Coastal Erosion — A Growing Risk

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Flooding does not only affect property owners in high-risk areas. In fact, more than 20% of flood claims are filed for properties outside of FEMA's high-risk flood zone areas. Even if you are not necessarily worried about a BIG flood event, it only takes a few inches of water to cause costly damage to a structure and maybe most critically, the structure's foundation. The following provides a summary and general guidance on items covered and not covered by a flood insurance policy per the FEMA Flood Insurance Manual. The insured building and its foundation (footings, foundations, posts, pilings, or other foundation walls and anchorages systems required to support a building); debris Removal (the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere); the electrical systems, electrical outlets, switches, circuit breaker boxes, electrical junction, light fixtures, etc.; elevators, and related equipment; fire sprinkler systems,

ventilating equipment; central air-conditioning equipment, furnaces, and water heaters, solar energy systems; permanently installed carpeting over an unfinished floor; permanently installed paneling, wallboard, bookcases, and cabinets; foundation walls, anchorage systems, and staircases attached to the building; fuel tanks and the fuel in them, solar energy equipment, and well water tanks and pumps; furnaces, water heaters, heat pumps, and sump pumps. In the units within the building, covered items are installed built-in dishwashers; built-in microwave ovens; garbage disposal units; hot water heaters, including solar water heaters; kitchen cabinets; plumbing fixtures; radiators; ranges; refrigerators; stoves. Uncovered or excluded items under the flood insurance policy would include damage caused by moisture, mildew, or mold that could have been avoided by the property owner; additional living expenses such as temporary housing; most self-propelled vehicles such as

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While the risk of property damage and flooding evolves over time, especially for coastal communities, let us all continue to do our part in taking care of the land and sea so the generations to come can continue to enjoy and prosper in our beautiful home, Hawai'i. If you have questions about flood insurance, reach out to your local insurance agent or representative.



About the Author:

Wes is an Account Executive at Insurance Associates, Inc. and holds the Associates in National Flood Insurance (ANFI) and Associate in Insurance Services (AIS) designations. Prior to joining Insurance Associates, Wes was the WYP Principal Coordinator at Hawaii's largest Wright Your Own Company, First Insurance Company of Hawaii for 10 years in addition to being a Manager of their Excess & Surplus Lines Department. Wes has previously served as the Vice President and President of the Underwriters Association of Hawaii and has hosted multiple flood insurance continuing education course across the State of Hawaii. He is an active member of the Community Associations Institute and has participated as a member of the Wholesale and Specialty Insurance Association and the Honolulu Association of Insurance Professionals.

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Construction Defects — Top 6 High-Rise Plumbing Issues

By Ken Kasdan and Ritchie Lipson, Kasdan Turner Thomson Booth LLLC and Scott Friesen, Crown Point Engineering

Hawaii's high-rise buildings offer stunning views and modern living spaces for owners. However, often they are also prone to construction defects that can pose significant risks of water damage; and significant threats to occupants' safety and well-being. Plumbing defects are among the most common issues that arise in high-rise construction, and they can have serious consequences if not addressed promptly. Below are the top 6 plumbing related defect issues we are seeing in newer high rises on the Island.

1. WATER LINE LEAKS:

- **PEX Pipe leaks:** Many builders have chosen to abandon the traditional copper water lines; and instead have elected to use a PEX, plastic water line pipe. While the PEX is a National Sanitation Foundation (NSF) approved potable water line material, leaking problems are now evident throughout the Islands. The PEX had been promoted by the manufacturer as having a failure free track record, that is quite far from reality, and significant PEX failures are now reported in mid-rise and high-rise buildings, often causing significant damage.
- **Improper installation of pipes:** If pipes are not installed correctly, they may not be able to withstand the stress of the

bends and pressure of the water flowing through them, leading to leaks.

- **Poor quality materials and corrosion:** The use of low-quality materials, such as substandard pipes, fittings, and valves can cause pipe leaks and premature corrosion.
- **Thermal expansion and contraction:** Changes in temperature can cause pipes to expand and contract, resulting in leaks if the piping system is not properly designed, and the omission of an appropriate thermal expansion tank to accommodate these stresses further causes problems.

2. SLOW HOT WATER DELIVERY

- **Distance:** The distance between the hot water heater and the faucet or shower in a high rise building can be significant, and this can result in a delay in the time it takes for hot water to reach the fixture, wasting significant amounts of water.
- **Pressure:** In high rise buildings, there are water pressure zones within the building to maintain appropriate pressures. When the building provides the hot water from a central boiler, and the building is not properly zoned, different pressures make it difficult to balance the systems and maintain even flow to each zone. Poor design and

installation further exacerbates the problem.

- **Volume:** In buildings with a central hot water supply, the hot water storage may not be large enough to meet the demands of all of the residents. This can result in slower and inadequate hot water delivery, particularly during peak usage times. In units which have their own hot water tank, under sizing of the tank for the demand or inferior equipment with a slow recovery rate further causes inadequate hot water delivery.
- **Sediment and scale buildup:** Over time, sediment and scale can build up in the pipes and inside the hot water tank itself, reducing water flow and causing slow hot water delivery. In some circumstances, poor design of the installation makes it difficult if not virtually impossible to properly service the tank. How is it appropriate to put a hot water tank with a six year life into a high end unit?

3. SEWER MAIN LINE BACKUPS:

- **Improperly designed or installed plumbing systems:** If the plumbing system in a high-rise building is not designed or installed correctly, it can cause backups in the sewer main lines. For example, if the plumbing pipes are undersized or not properly sloped, it can lead to blockages and backups

in the drain lines. Undersized and inadequately sloped drainage pipes are often found.

- **Inadequate or insufficient venting:** The plumbing system in any building, and particularly in a high-rise building, needs adequate venting to allow air to enter the system and prevent sewer gases from backing up into the building and to provide for adequate flow. If the venting is inadequate, blockages and backups in the main lines will result.

4. CONDENSATE DRAIN PIPING BACKUPS:

- **Improper slope or pitch:** Condensate drain lines must be installed with the correct slope or pitch to allow water to flow freely toward the drain. If the slope is inadequate, water can pool and accumulate, leading to backups and flooding. This is particularly important as condensate can contain dirt from the coils, which if not drained away properly, will cause flow stoppages.

5. SUDSING AND BACKUPS AT LAUNDRY BOXES:

- **Improper Ventilation:** A lack of proper venting of the plumbing system can allow air to cause excessive agitation and siphonage in the lines, leading to sudsing in the laundry box. This can occur if the plumbing system was not properly designed or installed undersized, or if there is a blockage in the venting system.
- **Clogged Drain:** A clogged drain

can cause water to back up into the laundry box and create suds. This can happen if the drain is not properly installed or if there is a blockage in the drain. A failure by the contractor to install clean-outs in the system makes periodic maintenance difficult.

- **Damaged or Defective Drain Hose:** A damaged or defective drain hose can cause water to leak out of the washing machine and into the laundry box, which can cause sudsing.

6. SHORTCUTS/COST SAVINGS/USE OF A CAST IRON SINGLE STACK SYSTEMS

- Traditional high-rise plumbing utilizes in each stack both a drain line and a vent line. There are certain manufacturers who have designed and are promoting a proprietary system using only one pipe, rather than two, for the drainage, waste, and venting system. Obviously, one pipe running up a 45 story high-rise at each stack rather than two reduces pipe expense, reduces the number of slab penetrations, and reduces the labor to install the materials. This can work if and only if the manufacturer's tested and approved systems are installed

in strict accordance. This mandates that all required aerators and fittings be used, and that the correct size of pipe is used. The systems fail, and fail miserably, if either value engineering or poor design and workmanship in the field occurs, which can often result in inadequate performance, excessive and premature corrosion, backups, and damage. Among the symptoms are poor or slow drainage, frequent backups, sudsing in the toilets and gurgling sounds in the toilets, with toilets sometimes running dry as the system tries, in vain, to pull from the toilet to allow for the required venting. Unfortunately, this happens often.

If there are indications that issues such as those identified above exist, a qualified expert should be promptly engaged to investigate and determine both the nature and extent of the problem. If there is an indication that the problem is building-wide, consideration should be given to engage forensic experts and legal counsel to determine how to further proceed so that the cost of a proper repair can be asserted against those responsible for shoddy work.

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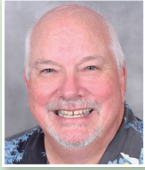
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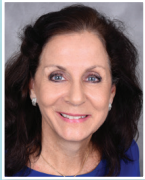
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Construction Defects

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Ken Kasdan is considered one of the nation's leading Construction Defect authorities who has achieved more than a billion dollars in settlements for his clients in the Western United States. Mr. Kasdan has practiced law for over forty years and is admitted to practice in Hawaii, Arizona,

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Dangerous and Defective Condominium Buildings in Hawaii

By Dennis Olmstead

In building terms, the words *dangerous* and *defective* could be thought of as one and the same; however, there is a difference. Because condominium buildings are built differently and vary in age, dangerous and defective will mean something different for each building.

In this three-part article series, we will take a look at a number of ways that a building can be dangerous, concerns surrounding defects, and discuss corrective strategies for associations to explore.

Condominiums make up an important part of the residential infrastructure in Honolulu and the vast majority of condos in Hawaii are now considered to be *aged* buildings. In fact, a 50-year-old building in Hawaii is now considered to be historic. Many of the dangerous situations we will be discussing occur in aged buildings, and defective conditions can be found in buildings of all ages.

Part 1 – Dangerous Buildings

What does dangerous mean? In our opinion, it is a condition that is first and foremost related to the health and safety of people. It is understood that a defect can become dangerous but for the sake of this article, we will address *dangerous* as it relates to people and *defective* as it relates to buildings.

Something dangerous to one person may not be dangerous to another. In deciding what is dangerous, we must start with the people that need the most help, and keep our first responders safe in the process. Working from this baseline, ensures that everybody else will also be covered.

For example, let's take a look at a fire in a high-rise building. Setting aside fire alarm and fire sprinkler systems, having a plan for getting the elderly or disabled out of the building is crucial, especially for residents on higher floors in a building. Exiting a building during a fire requires residents to use fire protected stairwells and some are not physically able to maneuver up or down a set of stairs. These residents will require assistance and having a plan in place for those individuals is essential.

We often talk about how to make it safer for the residents of a condominium. At the same time, associations have a responsibility to keep first responders safe, as well. More often than not, first responders are dealing with dangerous situations that could have been avoided. If we are asking our firefighters to run into a burning building and climb thirty flights of stairs to help us, then we have to do our part to keep first responders as safe as possible.

The 2018 Honolulu Fire Life Safety Evaluation (FLSE) ordinance was established to make a certain

group of aged buildings safer for everybody. Other cities also recognized the need to make safety improvements to their aging buildings and took similar measures. When a building is first developed, there is a set of building code standards that must be followed. Over time, buildings codes change to keep up with advancements in building technologies and processes. As new buildings are being built with improved modern safety standards, aged buildings are falling further behind the norm. Antiquated fire alarm systems, lack of fire sprinklers, inadequate fire barrier protection, egress issues, old underperforming pumping equipment, and more, can make for precarious living conditions. In many cases, owners, renters and buyers might not be aware of these issues.

Buildings have lifespans much like people. Buildings will not last forever and most are made to last 60-100 years. In fact, if left alone in the environment without human intervention, a building will naturally fall apart over time. For an aged building, one that is 45 years old or older, structural integrity may become an issue. Structural integrity is often imagined in the worst case scenario - a building collapse. While it is possible, a collapse is an extremely rare event at the end of the integrity spectrum. Similar to people who might need a new hip

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Dangerous and Defective Condominium Buildings in Hawaii

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or knee, there are more common structural issues to deal with in aged buildings.

In Hawaii, most aged condo buildings were built using reinforced concrete. Many of these buildings have concrete lanais with their concrete floor slabs exposed to the elements. If the floor is not properly sloped and waterproofed, water will penetrate the concrete slab and cause the steel rebars inside the concrete to rust. As steel rusts, expansion occurs and pieces of concrete will pop off the main body. This occurrence is also known as concrete *spalling*. Not all spalling is dangerous; however, pieces of concrete can fall off the leading edge of a lanai causing damages and injuries to people below.

Concrete cracks: There are many types of cracking and not all cracks are a cause for alarm. The most common crack is one that is caused by *shrinkage* as concrete cures. These types of cracks are typically about 1/8" in size, with both sides of the crack level to each other. If a crack is larger and or growing with one side higher than the other, that would be considered an active crack. Depending on where the crack is located, a structural engineer may be needed to evaluate the conditions.

Most aged condo buildings are still operating with the original windows. After four decades or more of weathering, all metal window frames will have reached the end of their useful lifespan. Many of these

buildings were built using jalousie windows to provide ventilation. The frames for these windows have many moving parts and after 40 or more years of weathering, metal frames will have deteriorated to a point where a piece of glass can easily separate from the frame. Again, this creates a hazard for property and people below.

There are other types of windows besides jalousies with failed metal frames. These windows tend to be larger in size and have fewer moving parts. While these windows were code compliant at the time of installation, today's wind resistant codes are more stringent. Wind speeds increase with height and for some aged high-rise buildings with old windows, an extreme event like a hurricane could prove to be disastrous.

Modern technologies have advanced the performance of glass. There are now an abundance of energy efficient and glass strength options to choose from. As temperatures increase in Hawaii, the demand for air conditioning will increase. If an association is considering a window replacement project, choosing reasonably good energy efficient windows now, even if air conditioning is not being considered, would be a prudent long-term decision.

However, before an association selects a new window, a mechanical engineer should be consulted. An aged building will

have established some sort of ventilation equilibrium over time. Adding new air tight windows will reduce air infiltration and that could impact the air quality inside a building. A mechanical engineer would be able to determine the proper balance of air coming into the building and air going out. Otherwise, new air tight windows could create unanticipated air quality problems.

It is commonly known that hazardous materials such as asbestos in buildings can become a health problem. Asbestos was banned by the EPA in 1989 but if it does exist in a building, it only becomes a health concern if it is disturbed. All condominiums built before 1990 should, as a matter of policy, have a conclusive testing report on hand. Many of the condo units in aged buildings have been and will continue to be remodeled. If demolition work is involved, that is when asbestos could be disturbed and owners will need to know if asbestos is present before work starts in the unit. Given the legal precedent surrounding asbestos, associations who have asbestos in their buildings need to be attentive about how demolition work is managed in their buildings.

Very few of the buildings built before the 1990 Americans with Disability Act (ADA) took into consideration how people with disabilities negotiated buildings, streets, workplace, etc. There are now buildings in Honolulu

where the residents aged along with their building and created what city planners are now calling Natural Occurring Retirement Communities (NORC). These older buildings were built without the improvements put into law by the ADA and now some residents find themselves in buildings without modern accommodations for their disabilities. Naturally, the lack of ADA accommodations increases the risk of injury for those with disabilities and, in cases of emergency, it can have life-threatening consequences.

Removing the “danger factor” from these and other circumstances will take planning, time and funding.

The aged condominium housing stock in Honolulu is too important and too old for current owners to assume that somebody else will solve the problems. That day has come and gone! Aged condominiums have reached that point in their lifespan where actions today will preserve property values and provide long-term benefits. Doing nothing will put associations in uncharted waters.

Call it what you will...rehabbing, retrofitting, remodeling, re-branding, modernization, etc. To extend an aged building's lifespan for another 30-40 years, it will take a concerted effort from

Property Managers, Board of Directors, Resident Managers, condo owners, construction professionals, insurance agents and lenders.

About the Author:

Dennis Olmstead is a licensed architect with over 40 years of experience in design, construction and project management. At Laulima Asset Management, he assists associations with their building improvement projects and provides long-term building asset strategies for managing operations and budgets. For assistance contact: shawna@laulimaam.com



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Law and Odor

A brief history of cesspool regulation in Hawai'i

By Ramzi Mansour

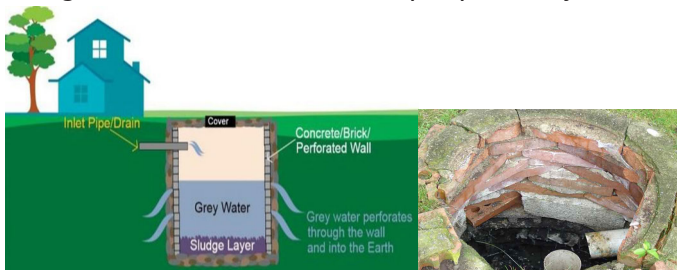
Fifty million gallons of raw, untreated sewage – the effluent from more than 80,000 homes – spilled into Hawai'i's groundwater today – and yesterday, and tomorrow. That is the monumental environmental challenge facing policymakers confronting the challenge of closing out cesspools in Hawai'i.

A majority of them are on the Island of Hawai'i. A decades-long legacy of lax connection requirements, underinvestment in wastewater collection systems and treatment plants, rural subdivisions with substandard infrastructure, and a mentality of “out of sight, out of mind” have all contributed to the continuing proliferation of cesspools.

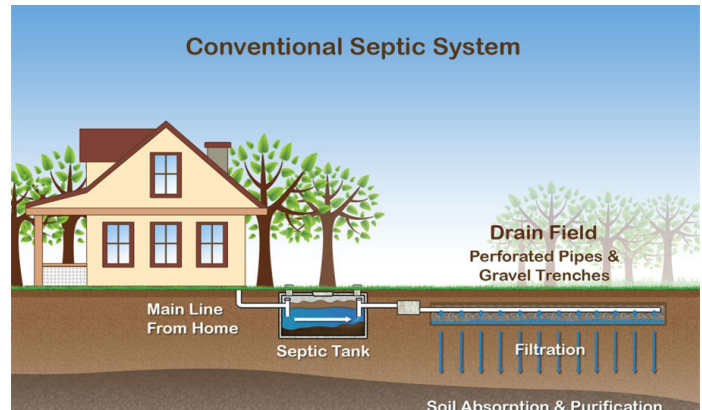
What is a cesspool and how does it differ from a septic system? Because they are used in place of a connection to a centralized wastewater treatment facility, both are known in the industry as Individual Wastewater Systems (IWS), but they differ in the level of treatment. While different technologies exist, the basic septic system is composed of a tank, which allows for settling and clarification of solids, and a drain field that allows for gradual filtration through the soil before it reaches the groundwater.

A cesspool, on the other hand, has none of those features. It is a perforated underground tank that allows untreated wastewater from a home to enter the ground. Yuck!

Cesspools may be grouped into residential and nonresidential categories, depending on their capacity. This article is largely concerned with regulations regarding residential cesspools that are designed to serve less than 20 people a day.



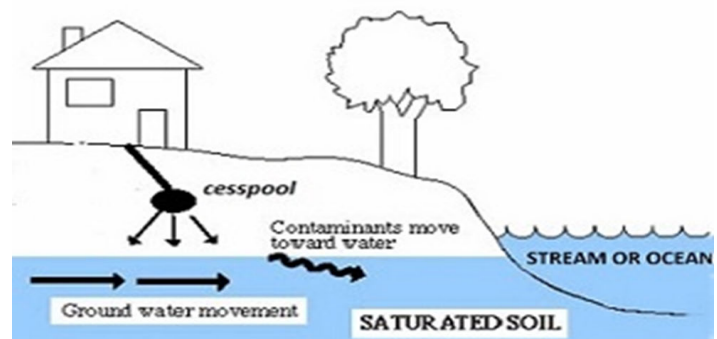
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Cesspools contaminate our groundwater, streams and oceans



The government, recognizing the harm that cesspools pose, has been taking steps in recent years to address the problem. It started with the

U.S. Environmental Protection Agency (EPA), which banned new large capacity and nonresidential (“gang”) cesspools in 2000, and in 2005 began enforcing closures of existing large capacity cesspools.

Just last year, EPA fined the owners of a Hilo office building \$43,000 for operating two illegal gang cesspools near the Wailuku River. Those enforcement efforts are ongoing, but the federal rules did not address small capacity residential cesspools, instead leaving that to the states.

In Hawai‘i, the Wastewater Branch of the Department of Health regulates IWS, and issues permits to allow the counties to operate wastewater treatment plants and the network of sewer mains, force mains, and pumping stations – collectively known as the wastewater collection system, that conveys wastewater to the treatment plants. People whose homes are close to a sewer line are required to connect to it and pay fees, which cover operations of the plant, and allow for expansion of the sewer lines and closure of cesspools, which leads to a healthy environment for all.

But the equation breaks down on the largest Hawaiian island, with 4,028 square miles, widely separated communities, vast private subdivisions, hard lava rock that makes excavating for lines difficult, and the risk of hot and flowing lava rock that discourages expensive infrastructure investments. Due in part to these factors, cesspools have proliferated by the tens of thousands. It is up to the State and counties to put the genie back in the bottle and eventually phase them out.

It started in 2016, when the State finally adopted new wastewater rules banning all new construction of cesspools. Then, in 2017, the Legislature approved what would become Act 125. The new law stated that by 2050, unless granted an exemption from the Department of Health due to a small lot size, steep topography, poor soils, or accessibility issues, “every cesspool in the State ... shall be upgraded or converted to a septic system or aerobic treatment unit system; or connected to a sewerage system.” (In 2022, Act 87 simplified the statute so that it read “shall be upgraded or converted to a *director-*

approved wastewater system.”)

In 2018, the Legislature passed what would become Act 132, establishing the Cesspool Conversion Working Group, a diverse panel of technical, political, financial, and environmental experts, along with representation from each County, including my predecessor at the County of Hawai‘i Department of Environmental Management (DEM). Act 170, passed in 2019, extended the mandate of the working group by two years, through 2023, which is how I got involved when I became the DEM Director in December 2020.

For the next two years, members of the working group met regularly to investigate reams of geotechnical data and financial feasibility papers, cesspool alternatives, and novel technologies. Working with the Department of Health, we presented our findings to a joint House and Senate committee of the Legislature on January 4, 2023, and made 26 recommendations.

Legislators then took our recommendations and introduced numerous bills to implement them. There was legislation, for example, to move up deadlines for high-priority cesspools, to establish an income tax credit for conversion, to beef up staffing in the Department of Health to manage the expected surge of conversion applications in the coming years, and to require sellers of residential real property to disclose the existence of cesspools on the property to be sold.

Unfortunately, none of these bills survived the legislative process to reach the Governor’s desk this year and will need to wait until the 2024 session. Whatever the reason was that the Legislature did not address the working group’s recommendations, the challenges are not going away, and the 2050 deadline is approaching.

One item that did pass was a resolution, HCR 208, requesting each county to develop a comprehensive wastewater management plan and financial strategy. The resolution asks each county’s plan to study future connections to public and private treatment systems, locations where individual wastewater

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Law and Odor

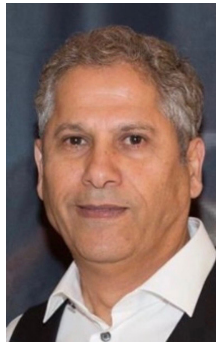
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treatment systems will be needed, locations where smaller scale “cluster” treatment systems may be used, the capacity of infrastructure to meet the 2050 deadline, and financial needs, funding mechanisms, and financing strategies to assist with cesspool upgrades and sewer connections. Hawai‘i County is in the process of developing such a master plan.

The working group spent a lot of time addressing the financial implications of the cesspool conversion mandate. It’s not lost on us that the island with relatively few financial resources is going to bear the highest burden of the cesspool upgrade deadline, which is fast approaching. The year 2050 sounds like a long time away, until you look at how many cesspools are still open and how many contractors are available to

do the work of closing them. Then there are the loans that you might have to take out to pay the upfront costs, the disruptions of digging up your homes and yards, and the area.

On the other hand, if we truly believe in doing our part to protect the land and sea, the choice is clear. How much are we willing to pay to keep Hawai‘i beautiful? It is our Kuleana!



About the Author:

Ramzi Mansour graduated from California State University-Fresno with a Bachelor of Science degree in civil engineering in 1985. He is a licensed Professional Engineer in the State of California and Hawai‘i

and has Grade III wastewater treatment plant operator certification in California. Ramzi has worked in both the private and public sectors and has experience in all aspects of civil engineering, including subdivisions, parcel maps, tract maps, hydrology, hydraulics, water and sewer systems, wastewater treatment facilities; solid waste sanitary facilities, including sanitary landfills and transfer stations; roads, highways, bridges, structures, technical reports, research and development. In early 2020 he became Chief of the Division of Wastewater Treatment and Disposal under the Department of Environmental Services for the City and County of Honolulu. Later that same year, he was appointed Director of the Department of Environmental Management for the County of Hawai‘i.



"Ohana Means Family and Family Means No One Gets Left Behind or Forgotten" Lilo & Stitch

By Lisa Farias

Yet every day in Hawaii a handful of Keiki is left behind or forgotten after being victims of abuse, abandonment, or neglect by the "Ohana" legally responsible for taking care of them.

In April of 2009, Ho'omalū O Na Kamali'i shelter opened its doors on the west side of Oahu for youth in foster care between the ages of 4 - 17 years old. Ho'omalū O Na Kamali'i is the only shelter in Hawaii whose primary focus is to keep sibling groups together after being removed by Child Welfare Services (aka CPS) due to alleged abuse or neglect. Where other shelters separate children in foster care by their age and genders, Ho'omalū O Na Kamali'i allows both genders to live in the same home under the same roof to help support youth and their siblings during their most difficult time.

The dedicated staff at Ho'omalū O Na Kamali'i has supervised and protected nearly 2000 youth in foster care over the past 14 years and every youth require staffing 24/7 every day of the year. Up to 15 children who have been victims of alleged abuse (physical, sexual, mental, and emotional), abandoned and/or neglected by their caretakers, can reside at Ho'omalū O Na Kamali'i shelter on any given day including all holidays and every day during the COVID pandemic.

First and foremost, the greatest need for many of Hawaii's youth in foster care is not materialistic or monetary. The greatest need for Hawaii's youth in foster care are families willing and able to take care of them short term or long-term depending on their current situation. Every year, there are children in foster care who spend their birthdays and/or holidays (Thanksgiving, Christmas, New Year's, Easter, etc.) in shelter without any family to call their own.

If you or someone you know would like more information on foster parenting, please visit <https://rcg.hawaii.gov/>

If you or someone you know would like to support youth in foster care while they are at Ho'omalū O Na Kamali'i shelter, please visit <https://familyprogramshawaii.org/in-kind-donations/> for a list of items needed throughout the year. All donations to Ho'omalū O Na Kamali'i shelter are tax deductible.

If you would like more information on Ho'omalū O Na Kamali'i shelter or become a volunteer, please visit <https://familyprogramshawaii.org/program/hoomalu-o-na-kamalii/>

Contact Person for Donations & Volunteer Opportunities:

Alana Alissa Yoshiko Anderson, CMP
Director of Development

801 South King Street
Honolulu, HI 96813

D: (808) 540-2534
C: (917) 623-5913
O: (808) 521-9531
F: (808) 548-4000
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About the Author:

Lisa Farias has worked with Hawaii's Youth in Foster Care since 1995. Lisa has her master's degree in counseling psychology and works with youth and families who receive mental health services via their Quest insurance or Individual Education Plan (IEP). Lisa also works as a Youth Care Worker at Ho'omalū O Na Kamali'i since the shelter opened its doors in April 2009.



Q&A CORNER

Answered by Christopher Shea Goodwin, Esq.

Q. Can a condominium association require gun registration?

A. As many readers may be aware, in a highly publicized case, on June 23, 2022, the U.S. Supreme Court ruled in the case of *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ____ (2022) that a New York state law which prohibited possession of a firearm without a license, whether inside or outside the home, was unconstitutional. The New York law at issue was similar to those in effect in many other states, including Hawaii. The New York law at issue allowed gun owners to obtain a permit to possess a firearm for self-defense if they could prove, “proper cause exists” for doing so. In its decision striking down the New York law, the Court held *New York’s proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms in public.*

First, it is important to keep in mind the Supreme Court’s decision applies only to laws, ordinances and regulations adopted by federal, state, and local **governments** and/or **government agencies**. This ruling **does not apply** to private property owners nor facilities which are not open to the public, such as private residential condominium associations.

Second, as a basic premise, most condominium associations in Hawaii are permitted to adopt rules regulating conduct while present on and/or regarding use of the **common elements**:

(b) Unless otherwise permitted by the declaration, bylaws, or this chapter, **an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:**

(1) **Prevent any use of a unit which**

violates the declaration or bylaws;

(2) Regulate any behavior in or occupancy of a unit which violates the declaration or bylaws or **unreasonably interferes with the use and enjoyment of other units or the common elements** by other unit owners; or

(3) **Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders** who regularly lend money secured by first mortgages on units in condominiums or regularly purchase those mortgages.

Otherwise, the **association may not regulate any use of or behavior in units by means of the rules and regulations.**

See, Hawaii Revised Statutes, Section §514B-105(b), emphasis added.

In light of the above language, while it appears probable that a Hawaii court would uphold a house rule or regulation properly adopted in accordance with an association’s governing documents, requiring the registration of and/or prohibiting guns on the **common elements**, this same conclusion would **not apply** to registration and/or possession of guns wholly **within individual units**.

Specifically, in 2008, the U.S. Supreme Court decided the case of *District of Columbia v. Heller*, 554 U.S. 570 (2008), where the Court held the Second Amendment protects an **individual’s right to possess a firearm** unconnected with service in a militia, and to use that firearm for traditionally lawful purposes, **such as self-defense within the home**. Although this case was filed as a challenge to a District of Columbia gun control ordinance, the Court’s decision was a clear affirmation of the Second Amendment’s **right of individuals to possess firearms for self-defense within their**

home.

When reading both of the above cited Supreme Court decisions together, it appears **unlikely that the Supreme Court would uphold** a residential condominium association's requirement that residents register firearms kept solely within their unit, as this could be determined to be an impermissible restriction on an individual's right to possess firearms for self-defense within their home.

Finally, and although not currently applicable in Hawaii, local or state governments may adopt laws prohibiting condominium associations from imposing restrictions on the possession of guns on the common elements.

In summary, while it is unlikely that the Supreme Court would uphold a residential condominium association covenant requiring the registration of

guns **within individual units**, properly adopted restrictions prohibiting possession and/or requiring registration of firearms on the **common elements** appear likely to be upheld in response to a legal challenge.

Christopher Shea Goodwin, Esq., is the Member Manager of Christopher Shea Goodwin, Attorney at Law, LLC, and has represented condominium and community associations in Hawaii for more than 25 years. The assistance of Robert S. Alcorn, Esq., and Ann E. McIntire, Esq., in preparation of the above article is gratefully acknowledged by the author.

*Readers are reminded the above article is intended solely to provide general information regarding topics of interest to condominium and community associations and is **not intended as a substitute for legal advice** which should be obtained from a qualified licensed attorney.*



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The Three Categories of Water in a Water Loss

By Daira "Dee" Carrillo

Not all water damage is created equal. Understanding the three different categories of water damage can help you understand the best way to handle repairs and recovery.

Category one: Clean Water

If the water in your building is coming from an overflowing sink, a broken water or steam line, or even rainwater, you are most likely dealing with a Category 1 water damage situation. While the health risks associated with this category start out low, it is essential to respond within 24-48 hours to beware of microbial growth. Contact with building materials can turn Category 1 water into Category 2 water. Some characteristics of clean water include: originates from a sanitary

source, or appears mostly clear and lacks a strong odor.

Category two: Gray Water

Category 2 covers a broad spectrum of water sources. It can have slight to severe contamination due to its source, microbial growth, or from exposure to contamination after initial release. CAT 2 water usually comes from storm drain backups, treated cooling water, or discharge from equipment. It may appear cloudy and may carry an odor. Personal contents and other materials may not be salvageable when exposed to this category.

Category Three: Black Water

When water from sewers, rivers, and the sea flow into a building, it is often highly contaminated

with infectious viruses, bacteria, parasites, and toxic and allergenic materials. This is the most dangerous category of water damage, with high risk of disease, infection, and irreparable damage. Most materials may need to be replaced following Category 3 damage since it usually comes from sewers, drain backups or seawater, may be cloudy, and could contain debris. This category of water also may likely have a strong odor.

With a better understanding of the three (3) categories of water, you will be asked the following questions by the mitigation/remediation company. These questions are to better help the contractor determine the category type of water and prepare our techs for the right equipment,



response, and protective equipment.

SOURCE: Where is the water coming from? Is it from a pipe, drain line, sewer, etc.?

APPEARANCE: Is the water cloudy or clear? Is there debris in it?

ODOR: Does the water have a smell?

AFFECTED AREAS: How big/small is the affected area? Is there standing water?

NOTIFICATIONS: Have you notified your insurance company? Have you notified the AOA or management?

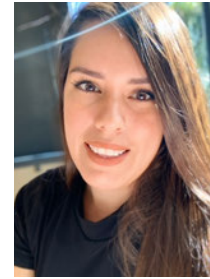
Salvaging Materials based on Category Type

Materials with limited damage and high value may be salvaged. However, materials that came into contact with Categories 2 or 3 water will most likely require extensive drying, cleaning, and sanitization. You also may need

to test for asbestos-containing material (ACM) and the presence of lead before you can judge salvageability.

In Summary

Simple Category 1 situations may be relatively easy to clean up in-house, if you can respond within 24-48 hours. However, there are times when water damage is not so simple to address. In the case of a Category 2 or 3 flood, you will want to call in an emergency mitigation and restoration contractor, even if you have the in-house resources to tackle the job. Most mitigation firms are 24/7, 365 days per year for emergency response, and have an advanced understanding of health and safety regulations, and the experience to handle any water damage situation, to assist you in getting back to normal as quickly, safely, and cost-effectively as possible.



About the Author:

Daira "Dee" Carrillo is a regional account manager at First Onsite.

Her primary focus is mostly AOA condos and multi-family associations on Oahu and the neighbor Islands. Daira has attended many classes of water, fire and biohazard classes as well as taking CAI courses such as M100 to better serve her clients and be used as a resource for any questions regarding restoration. Being around construction almost her whole life is a benefit with First Onsite's Reconstruction team. She is experienced on bidding upcoming building projects or simply going over small repairs after a small water loss. For more information, please contact Daira at (808)460-5010 or email: daira.carrillo@firstonsite.com.



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- Other general legal counsel



Wouldn't You Like to Know?

A Guide to Condominium Resources

We get many calls from condo owners, property managers and residents wanting information about governance matters. What is a board's responsibility? What are my rights as an owner? The house rules are unreasonable! What are my rights as a tenant? Am I responsible to pay for common area usage if I never use the common area? How do I get copies of documents? What is the cost of mediation?

The Real Estate Branch (REB) website is full of useful information for condominium owners that address most of your questions. From FAQs to brochures, videos from past educational events to current short videos on topics from developing a CPR to governance of an association, you'll find a wealth of information at the REB website.

The list below contains 15 short videos (each around 5 minutes) on condominium living – from purchasing to the facts of everyday living.

We've listed them below for you. Here's the link to any one of them any time.

<https://cca.hawaii.gov/reb/hawaii-condo-living-guide/>

Take a look!

Important Things to Know When Purchasing a Condo

Important Things to Know: New Condominium Owner in Hawaii

Owner's Rights and Responsibilities

About Boards of Directors

Common Governance Issues

Important Things to Know: About Dispute Resolution

Important Things to Know About Your Governing Documents

Meetings

Association Records

Budgeting and Reserve Funding

Maintenance Fees & Special Assessments

Leaks and Water Damage

Agents of the Association

Condominium Resources

The REB has over 50 brochures online spanning topics from developer creation of a condominium property, info for prospective purchasers, to life in a condo association. Access brochures at this link <https://cca.hawaii.gov/reb/resources-for-condominium-owners/>.

All Condoramas, from REBs first in 2017, to the recent April 2023 event is at our website for convenient viewing at your leisure. You can find them at, <https://cca.hawaii.gov/reb/educational-video-seminars/>.

Want to keep up with the latest in news and legislation affecting condos? Then subscribe to our quarterly newsletter at, <https://cca.hawaii.gov/reb/subscribe/>.

To read past issues of the Condominium Bulletin, go to the REB homepage at www.hawaii.gov/hirec and click on "Publications" at the top; click on to the Hawai'i Condominium Bulletin. This will allow you to view any of our past bulletins; the most current bulletin is posted there as well. You'll also find our "FAQs" link at the top.

If you're a tenant and want to inquire about your rights as a tenant in a condominium association regarding your landlord, go to the Landlord-Tenant website at this link, <https://cca.hawaii.gov/ocp/landlord-tenant/>. If a tenant is inquiring about his

or her rights within a condominium association, the tenant must communicate through the owner of the unit; tenants have no legal standing within an association.

The REB website has information on most of the issues that arise for condominiums. If not, or if you have additional questions, you can always give us a call at our office at 808-586-2644.

The REB is located at 335 Merchant Street in the downtown Post Office building, Room 333. We can be reached during business hours at 808.586.2644. If you're planning to visit our office, please call prior to your visit to confirm the current COVID protocols in place for entering the building. Our website address is www.hawaii.gov/hirec.

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2023 Calendar of Events

January 26*

**What's New in the World of
Condominiums and Planned
Community Associations**

**Anne Anderson, Bernie Briones,
Co-Chairs**

February 15*

**Owners' and Board Members'
Rights and Wrongs—Bringing
Peace to the Promised Land**

**Kanani Kaopua, Carol Rosenberg,
Co-Chairs**

March 9*

**Fortifying the Fortress—including
security, preparing for the elderly,
privacy—**

**Jennifer Landon and
Milton Motooka, Co-Chairs**

April 13

Managers' Forum

May 18*

**Finances—including budgets and
reserves, inflation, insurance**

**Deborah Balmilero, Josh German,
Co-Chairs**

June 17, 24*

Board Leadership Development Course

**Melanie Oyama, Keven Whalen,
Co-Chairs**

July 27

**Legislative Update 2023
presented by the Legislative
Action Committee**

August 10

Cyber Threats

**Richard Ekimoto, Steve Glanstein,
Co-Chairs**

September 7

Managers' Forum

September 20

Short Term Rentals

**Mike Ayson, John Morris,
Seminar Co-Chairs**

October 25

**Community Association Law for
Dummies**

**Lance Fujisaki, Melanie Oyama,
Co-Chairs**

November 3

Annual Membership Meeting

December 7

Managers' Forum

*This seminar or educational presentation is entirely or partly funded by funds from the Condominium Education Trust Fund (CETF), for condominium unit owners whose associations are registered with the Real Estate Commission. The CETF is administered by the Real Estate Commission which is attached to the Department of Commerce and Consumer Affairs, State of Hawaii, through the Professional and Vocational Licensing Division.