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CAI Hawaii will be celebrating its 40th anniversary in 2025. We would like to introduce a new look for all our materials and need your help. We would welcome suggestions for a logo design. The top three entries will be featured in our first 2025 newsletter and will be awarded an annual pass for 2025 programs. Submit your entries no later than 10/15/24 via email to caihawaii@hawaiiantel.net.

Corporate Transparency Act Likely Affects Most Associations

By *Melanie K. Oyama, Esq. and Anya M. Perez, Esq.*

The word is starting to get out that Congress enacted the Corporate Transparency Act (CTA) as an amendment to the Bank Secrecy Act. Unfortunately, it appears that the prevailing consensus is that most associations will need to comply with the CTA requirements. The purpose of this law is to make it more difficult for small business entities to engage in money laundering by requiring these entities to provide information about the persons who directly or indirectly own or operate the entity.

The CTA¹ required the United States Department of Treasury's Financial Crimes Enforcement Network (FinCEN) to adopt regulations to implement the provision of the CTA, to create the forms required to be filed, and the procedures for filing them. Those regulations have now been adopted and are effective as of January 1, 2024.

The regulations require many types of legal entities to file a 'beneficial ownership information' (BOI) report² with FinCEN. Beneficial ownership information is about an entity, its beneficial owners, and in some cases, its company applicants.³ Not all entities, or companies, are required to file a BOI report with FinCEN under the reporting rule.⁴ An entity is required to report only if it meets the Reporting Rule's definition of a "reporting company" and does *not* qualify for an exemption. Any entity⁵ that is a corporation, a limited liability company, or any entity created through a filing with a secretary of state or any similar office⁶ under the law of any state is required to file a BOI report with FinCEN. The entity is referred to as a "reporting company."⁷ A determination should be made by the association's legal counsel as to whether your association is considered an entity that is required to file a BOI report with FinCEN.

There is a list of twenty-three (23) exemptions⁸ for the reporting company. One such exemption is if the association is an organization described in Section 501(c) of the Internal Revenue Code (the Code) and is exempt under Section 501(a) of the Code.⁹ Based on the list, it is likely that most associations are *not* exempt because most associations are classified as a nonexempt membership organization likely taxed as corporation under Section 277 of the Code. However, a determination should be made by the association's legal counsel as

continued on page 4

¹ The CTA applies to both existing entities and new entities.

² See [Beneficial Ownership Information Reporting | FinCEN.gov](https://www.fincen.gov/beneficial-ownership-information-reporting)

³ The 'company applicant' is *not* applicable to associations that were created *before* January 1, 2024. See, Title 31 of the Code of Federal Regulations (CFR) § 1010.380(b)(2)(iv).

⁴ See, 31 CFR § 1010.380

⁵ See, 31 CFR § 1010.380(c)(1)(i).

⁶ 'Similar office' would likely include the Office of the Assistant Registrar of the Land Court of the State of Hawaii or the Bureau of Conveyances of the State of Hawaii.

⁷ See, 31 CFR § 1010.380(c)(1)(i)(C).

⁸ See, 31 CFR § 1010.380(c)(2).

⁹ See, 31 CFR § 1010.380(c)(2)(xix)(A).



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The Hawaii Community Associations Institute 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 Institute 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



As my term as President comes to a close in a couple months, this newsletter issue also marks my a hui hou message for 2024. In my first President's Message in December 2023, I noted that I had the privilege of working with dedicated past presidents (Jonathan Billings, Terry Schulze, Kanani Kaopua, Pauli Wong). I would like to add that they all continue to support CAI in various capacities. I also noted that in 2023, the Hawaii Chapter membership reached an all-time high of 521 members, effectively moving us from the medium size category to the large size category of chapters worldwide. I am very pleased to announce that membership grew to 542 during 2024.

This past year I am grateful for the dedication and support of my fellow board members – Mike Ayson (President Elect), Terry Schulze (Secretary), Randy Au (Treasurer), John Baleix, Roy Dela Cruz, Chris Goodwin, and Keven Whalen. We also welcomed Kathy Cooley, who joined our Board when Pauli resigned.

While we say aloha and mahalo to both Roy and Randy in November, who will have completed their second term this year, we expect they will both continue to serve on various committees. It is our strong volunteer base that assures we fulfill CAI Hawaii's vision to consistently be the premier organization in the State of Hawaii for the community association industry. Our focus is on providing the education resources for homeowners in associations, board members, and professionals serving associations, including insurance, legal, and financial that support the continued success of CAI Hawaii.

I would also like to welcome the new board members who were elected for the 2025 – 2027 term: Dela Lafleur is a Community Manager at Ewa by Gentry and Ronn Lepage is a Community Association Volunteer. I was also honored to be re-elected to serve a second term.

While there is not enough space to thank the many committee chairs and members that support our chapter, I know that members and volunteers, including our business partners who provide extra support, all embody the Aloha Spirit and actively spread their aloha. I recall Sue Savio sharing a "small kid time" memory of her grandfather saying "many hands make light work." That has certainly always been true during my years at CAI. Mike Ayson, as our 2025 President, will continue to benefit from that tradition as he leads our 40th anniversary celebration in 2025.

Aloha and a hui hou. Stay safe and be well.

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Corporate Transparency

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to whether your association is a reporting company that is exempt from the requirement to file a BOI report with FinCEN. In addition, the association should obtain a finding from the association's Certified Public Accountant as to the type of organization the association is under the Code. If the association does *not* fall under an exemption, then the association, as a reporting company, will need to file a BOI report with FinCEN.

If the association is a reporting company that is required to file a BOI report with FinCEN, then a determination needs to be made as to who (i.e. a natural person) does the filing. In this regard, the natural person would be considered a beneficial owner. A beneficial owner is "any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such report company."¹⁰ The term "exercises substantial control" is the standard under which directors and officers will be required to register with FinCEN as beneficial owners.¹¹ The question becomes, who on the board of directors is considered a beneficial owner who "directly or indirectly...exercises substantial control" over the association and who is required to file a BOI report with FinCEN. An individual that "serves as a senior officer of the reporting company" is unlikely considered a beneficial owner.¹² The definition for senior officer¹³ is not entirely helpful but it is likely that directors and officers are beneficial owners who are required to file a BOI report with FinCEN.

Associations that were created *before* January 1, 2024, will have until January 1, 2025 to file the initial registration of beneficial owners.¹⁴ After the initial registration, associations will have thirty (30) days from the date a person becomes a beneficial owner for that person's information to be filed with FinCEN.¹⁵ In other words, every time there is a beneficial ownership change, such as a change in the board of directors, then the association has thirty (30) days to report that change to FinCEN.

For associations created *before* 2024, there is a list of information items that must be provided in the initial report as well as in each subsequent filing.¹⁶ The required information includes Personal Identifying Information (PII) such as date of birth, current address, and "unique identifying number" that comes from documents such as passports or driver's license.¹⁷ However, a beneficial owner may opt to provide a FinCEN identifier instead of the unique identifying number for an acceptable identification document and issuing jurisdiction (i.e. a passport, driver's license, etc.)¹⁸ A FinCEN identifier means the unique identifying number assigned by FinCEN to an individual or reporting company.¹⁹ A FinCEN identifier is obtained by submitting an application with the aforementioned information directly to FinCEN to receive a code.²⁰ This code can then be included in the reporting

company's BOI report instead of including the individual's personal information. A FinCEN identifier may be helpful to those who do not want to provide their personal information to a reporting company for inclusion in a FinCEN filing.

Given the confidential information that will need to be provided, it will be imperative for associations to protect any PII received from a beneficial owner, as such information can be used to fraudulently access a person's personal accounts and to assume a person's identity.

There is an ongoing disclosure obligation for an association's beneficial owners. Associations will be obligated to disclose any change in any of the information previously submitted within thirty (30) days of the change through an amendment to the initial annual filing. Also, if an association becomes aware that any information included on a BOI report filed with FinCEN is inaccurate, it will have thirty (30) days from the date the association became aware of the inaccuracy to file a report correcting the inaccuracy.

This means that associations will have thirty (30) days to file an update when any officer or director is removed, resigns, and/or replaced.²¹ Similarly, if there is a change in the board following an annual (or special) meeting, the association will have thirty (30) days to file an update. As a result, it will be imperative for associations to maintain accurate and up to date records to ensure that BOI reports and updates are filed in a timely manner to avoid the risk of penalties being imposed.

Some people may not wish to be directors because they will need to provide their PII to FinCEN. The association's board of directors may wish to include in the call for candidates a disclosure that any person elected to the board may have to provide the required PII to the association for reporting to FinCEN. Unfortunately, there is an expectation that this new

¹⁰ See, 31 CFR § 1010.380(d).

¹¹ See, 31 CFR § 1010.380(d)(1).

¹² See, 31 CFR § 1010.380(d)(1)(A).

¹³ See, 31 CFR § 1010.380(f)(8) states, "the term "senior officer" means any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function."

¹⁴ See, 31 CFR § 1010.380(a)(1)(iii) which states that "Any domestic reporting company created **before** January 1, 2024...shall file a report not later than January 1, 2025." However, associations created on or **after** January 1, 2024, must file their initial report "within 90 calendar days of the earlier of the date on which it receives actual notice that its creation has become effective or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created." See, 31 C.F.R. § 1010.380(a)(1)(i)(A).

¹⁵ See, 31 CFR § 1010.380(a)(2)(i).

¹⁶ See, 31 CFR § 1010.380(b)(1) and 31 CFR § 1010.380(b)(2).

¹⁷ See, 31 CFR § 1010.380(b)(1)(ii).

¹⁸ See, 31 CFR § 1010.380(b)(4).

¹⁹ See, 31 CFR § 1010.380(f)(2).

²⁰ See, 31 CFR § 1010.380(b)(4).

²¹ See, 31 CFR § 1010.380(a)(2)

requirement will have a chilling effect on volunteerism, as owners may be hesitant to provide such sensitive confidential information. The association’s board of directors may wish to inform owners that they can use a FinCEN identifier, instead of providing their personal information, as a way to possibly help overcome their reluctance to run for a director position.

If an association fails to comply with the reporting requirements, there are consequences of noncompliance. Any person who violates the reporting requirements “shall be liable to the United States for a civil penalty of not more than \$500 for each day that the violation continues or has not been remedied and may be fined not more than \$10,000, imprisoned for not more than 2 years, or both.”²²

Senior officers of a reporting company that fail to file a required BOI report may be held accountable for that failure. Additionally, a person may be subject to civil and/or criminal penalties for willfully causing a company not to file a required BOI report or to report incomplete or false beneficial ownership information with FinCEN.

As an aside, there is a recent court case out of the United States District Court Northern District of Alabama, Northeastern Division,²³ that held that the CTA is unconstitutional, as Congress lacked the power to regulate companies and their beneficial owners when they obtain formal corporate status from a state entity. It is not known, however, how this ruling will affect the current requirements, which are still in effect. **As such, an association that qualifies as a reporting company must still comply with the CTA requirements to file a BOI report with FinCEN.**

Finally, according to a recent communication from CAI National, “in June 2024, the CAI Board of Trustees approved filing a lawsuit to exempt and protect community associations from burdensome requirements outlined in the Corporate Transparency Act. The suit challenging the U.S. Department of Treasury’s restrictive obligations underscores CAI’s unwavering commitment to protecting the community association housing model and its members’ interests.” For updates on CAI efforts or to get involved in advocacy efforts, please visit: www.caionline.org/CTA

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²² See, 31 U.S.C.A. § 5336(h).

²³ National Small Business United, d/b/a The National Small Business Association et al. v. Janet Yellen, in her official capacity as Secretary of the Treasury, et al.; filed in the United States District Court Northern District of Alabama, Northeastern Division; Case No. 5:22-cv-01448-LCB; Memorandum Opinion filed March 1, 2024.




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October Event Concludes 2024 Webinar Series

By M. Anne Anderson and Richard Ekimoto,
Co-Chairs



Mark your calendar for noon on Thursday, October 24 for an important webinar on “Covenant Enforcement, Case Law Update, and the Corporate Transparency Act.” The presentation will include a discussion of the common steps in the covenant enforcement process, the remedies available to associations, the types of documentation needed to prove your case in court or arbitration, and a discussion of the pros and cons of litigation, arbitration, and mediation. It will also include a discussion of Hawaii court cases related to covenant enforcement.

In addition, this seminar will include a review of the Corporate Transparency Act which took effect on January 1, 2024. Registrants will also hear a discussion of the application of the Act to different types of community associations and the filing requirements that must be met before the end of the year to avoid fines and criminal penalties. Association board members, property managers, and decision makers who have not yet complied with the Act should consider this a “must attend” educational webinar.

It follows our September 26 noon webinar on “Common Issues in Employment & Labor Law: Hiring, Supervising & Termination” which includes panelists John Knorek, Kristine Kratschmer, and Jessica and Sam Sneed. For more information or to register, go to CAI Hawaii's website at caihawaii.org.

The 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.

Ordinance 22-17 Reporting Date is Deferred

By Adrian Hong, Owner of Hong Consulting, LLC.

The City and County of Honolulu (C&C) has officially extended this year's Better Buildings Benchmarking (Ordinance 22-17) reporting deadline from June 30, 2024, to September 30, 2024. This is a result of multiple delays to the auto upload process for electricity usage that prevented a significant number of buildings from reporting in a timely manner. The auto upload process finally went live in August 2024.

For those who are unfamiliar with the Better Buildings Benchmarking Ordinance, it requires Oahu building owners to submit a benchmarking report to the C&C on an annual basis. The report contains metrics regarding the building's energy usage, water usage, and greenhouse gas (GHG) emissions. The metrics for buildings that reported last year can be found at the following link: <https://maps.touchstoneiq.com/honolulu/>. It will take you to the C&C's transparency map which allows you to view buildings by compliance status, EnergyStar Score, site energy use intensity, water use intensity, property size, and year built.

Buildings with a gross floor area of 100,000 square feet or more already started submitting their benchmarking reports in 2023. Buildings with a gross floor area of 50,000 square feet or more will have to start submitting their benchmarking reports by September 30, 2024, and buildings over 25,000 square feet will have to start reporting by June 30, 2025. The following is a list of tips and tricks for complying with the ordinance based on Hong Consulting's experience assisting properties in submitting their benchmarking reports:

Do not wait till the month before the report

is due to start the benchmarking process. It can take over a month for the utilities to provide you with the usage you need to submit your benchmarking report if you don't already have your usage information.

Use this website to create a document with a list of the data you need to collect to file: <https://portfoliomanager.energystar.gov/pm/dataCollectionWorksheet>.

The website also has links to definitions of important terms such as "gross floor area." Condominium associations should select multifamily housing as their property type.

Do not have any gaps in your monthly electricity, water, or gas usage. The system the C&C uses to collect the data and issue the reports, the EnergyStar Portfolio Manager, does not allow for any gaps in usage. If you can't find one of your monthly utility bills, then your association will have to request the annual usage from the utilities themselves.

Your electricity, water, and gas usage must cover from January 1 to December 31. If your utility bills start after the beginning of the year or cuts off before the end of the year, then you will need the previous month's bill or next month's bill to get all the required usage. The EnergyStar Portfolio Manager will show an error if the usage for a particular meter does not cover every day of the calendar year being reported. It is okay if the previous month's bill or the next month's bill covers periods outside of the calendar year as long as every day in the calendar year is covered.

The benchmarking report covers the whole property, not just the condominium association. If you have businesses such

as gyms, restaurants, and salons on your property, you must include their usage in the benchmarking report. You will also need to allocate the gross floor area of your property to the different property types which exist on your property (e.g. multifamily housing and restaurant/bar).

The gross floor area for your property can usually be found in the association's documents, blueprints, or insurance documents. If you can't find that information anywhere then you can estimate gross floor area using Google Earth's Measure function. The measure function can help you determine from satellite imagery the distance and area between selected points. It is a useful and a free tool to use.

For more information about the Better Buildings Benchmarking Ordinance, please click: <https://www.resilientoahu.org/benchmarking>. It will take you to OCCSR's website about the ordinance and its benchmarking program.



About the Author:
Adrian Hong is owner of Hong Consulting, LLC., a consulting firm that helps clients measure and report on their sustainability. He is hosting the following webinars on Better Buildings Benchmarking compliance: 25 February 2025 at 9-10 a.m., 18 March 2025 at 10-11 a.m., and 24 April 2025 at 2-3 p.m. If you are interested in attending one of these webinars, please contact him by email at adrianhong@hongconsultingllc.com.

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ASSOCIA HAWAII PROMOTES TIFFANY RIETA TO VICE PRESIDENT OF MANAGEMENT SERVICES

Associa Hawaii recently announced the promotion of Tiffany Rieta to Vice President of Management Services. Pauli Wong, Associa Hawaii Branch President said, "Tiffany has been instrumental in helping our management team serve our valued clients and preserving, protecting and enhancing property values."

Tiffany Rieta, who most recently held the position of Senior Director of Management Services/ Operations for the Island of Oahu said, "I'm eager to take on the responsibility of optimizing operations and driving strategic initiatives that will make a real impact on the company's success as well as to contribute to the long-term success of the company and help build a foundation for sustainable growth."

Ms. Rieta joined Associa Hawaii-acquired Certified Management Inc in 2011 and has successfully served premier real estate developers, condominiums and homeowner associations from inception to developer-to-homeowner transition and beyond.

Associa Hawaii continues to enjoy tremendous business growth on all six major Hawaiian islands. For the seventh year in a row, Associa has been voted as national Great Place to Work.

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Board Development Workshop Earns Positive Feedback

By Anne Forshey, AOUC Board Member

I recently attended my first CAI Hawaii Board Leadership Development Workshop and it was an outstanding experience! Numerous experts presented a broad range of topics from governing and statutory documents to effective communications, hiring professional support and managing reserve funds, to understanding all the factors impacting the current insurance crisis and dealing with difficult people. We even had a former Honolulu Police Department hostage negotiator provide useful strategies and insights!

Association management is a broad, multifaceted field and this workshop provided a wealth of valuable information and experts in the field who were able to cite real world experiences, resources, and viable solutions. The content, in four and a half hour sessions, was comprehensive and highly relevant to the current environment and responsibilities of board members. In addition to the session, we were sent a comprehensive "Tool Kit" – a set of books that fully complemented the briefings. Both the presentations and the

study materials reinforced importance of staying informed and engaged in global, national, state and community affairs.

I am very grateful for the support that made my attendance possible. Some of my take-aways are to seek greater community involvement and communications. I will promote and encourage more active committees within our association. Additionally, I believe we have community members with the experience and interest to organize a few events each year, foster a stronger, more connected community. Thank you again for supporting my participation in this educational and informative workshop.



About the Author:

Anne Forshey has served as the Vice President of the Board of Directors at Lei Pauku at Hoakalei in Ewa Beach since 2023.

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- PBN Best Workplace 2024
- Honolulu Star Advertiser "Top Workplace"

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and a solution to a question or problem. SD

I'm very impressed with our Hawaiiana management executive, and appreciate his sensible, professional service. HT

Although we are probably one of her smallest association clients, our management executive treats us like we are her only priority and like family. CB

I am very pleased with the whole group of professionals assigned to our property. All are excellent in customer service and follow-through! KK

At Hawaiiana, success is measured by the value we are able to provide to those we serve. We are grateful for the opportunity to serve over 750 associations in Hawaii, translating to approximately 120,000 residences with a stellar client retention rate above 96%.

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Questions and Answers on Navigating the Hawaii Insurance Crisis

By Elaine Panlilio, CIC, CRM, CISR and Michael Ayson, CIC & CIRMS

As Hawaii struggles with its current insurance crisis, CAI Hawaii sought insights from two seasoned insurance agents who specialize in community associations to better understand the complexities and challenges facing the community association industry. Their collective answers shed light on the root causes of the crisis, its impact on residents and community associations, and the potential pathways to resolution. In this overview, we present their perspectives, offering a glimpse into the nuanced issues at play, and how these issues might shape the future of insurance in the Aloha State.

Q1: What is going on with the insurance market?

A: Historically, Hawaii has benefitted from low rates compared to other parts of the country that have similar exposures to catastrophes. Because of the low insurance rates in Hawaii, this has limited the number of insurance companies willing to do business in our state and regulated by the Hawaii Insurance Division. At the present, there are only four Admitted Insurance Companies in Hawaii willing to cover condominium associations: First Insurance Company of Hawaii, DB Insurance, Fireman's Fund Insurance, and State Farm Insurance.

Of the four, State Farm has not written any new community association business for several years and is only renewing insurance associations that have been grandfathered in. Fireman's Fund Insurance has also paused on writing any new community association business for the last two years and are only renewing existing associations. They are also providing partial Hurricane Coverage Limits at a maximum of \$10 million per association.

For community associations not insured with these four Admitted Insurance Companies, they are insured with Excess and Surplus (E&S) Insurance Companies not under the regulation of the Hawaii Insurance Division. They charge considerably higher premiums.

Q2: Did the Maui wildfires change everything for community associations?

A: There hasn't been a significant natural disaster in Hawaii since Hurricane Iniki. Then, the 2023 Maui wildfires happened and caused insurance company underwriters to reevaluate their exposures here. As a

result, insurance companies in Hawaii are tightening their underwriting guidelines, making it more difficult for community associations and their residents to qualify for coverage.

This heightened scrutiny is a response to increased risks and financial losses associated with natural disasters and other local challenges. As a result, insurers are more selective about the policies they issue, often imposing stricter criteria for eligibility, resulting in some associations being non-renewed and most associations seeing higher premiums. This cautious approach reflects a broader insurance industry trend aimed at mitigating potential losses, but it also leaves many in Hawaii struggling to find the insurance they need at an affordable cost.

From an overall perspective, global insured losses from natural catastrophes in 2023 exceeded US \$100 billion for the fourth consecutive year. With record high global insured losses, this caused reinsurance premiums (insurance for insurance companies) to increase dramatically. Insurance companies purchase reinsurance for catastrophic protection, to spread their risk, and to expand their capacity to write coverage. The Swiss Reinsurance Institute estimates insured losses could double within the next ten years as temperatures rise and extreme weather events become more frequent and intense due to climate change.

Q3: What factors impact an association's renewal and premiums?

A: They are five main factors: 1) type of construction, 2) percentage of owner occupancy, 3) existence of fire sprinklers, 4) updates to the building's major components such as roofing, plumbing and electrical, and 5) claims history.

Q4: What can associations do to appear more favorably to insurers?

A: Here are four tips: 1) do not defer regular maintenance, especially on structural integrity and spall repairs as well as updating roofing, plumbing and electrical systems, 2) conduct high-risk component inspections, 3) install water leak sensors, and 4) install fire sprinklers.

Q5: How long will these kind of insurance increases last?

A: Realistically, associations should expect the hard market to last for another two to three years.

Q6: What is your advice to a board considering underinsuring their coverage to minimize the financial impact on maintenance fees?

A: This is not recommended. Most Directors' and Officers' (D&O) Liability policies have an exclusion for failing to maintain adequate insurance coverage. With this exclusion on the D&O policies, associations may face coverage gaps for legal defense and claim settlement.

About the Authors:



Elaine Panlilio, CRM, CIC, CISR is the AOA Unit Manager at Atlas Insurance Agency. Elaine has 19 years of insurance experience and holds the Certified Risk Manager, Certified Insurance Counselor, and Certified Insurance Service Representative designations.



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Memorandum Regarding Meetings of Hawaii Condominium and Planned Community Associations (Collectively called "Associations")

By Steve Glanstein, Professional Registered Parliamentarian and Melanie Oyama, Esq.

This Memorandum provides some procedural alternatives for Associations to consider as a mechanism for accomplishing various Association-related tasks and is for informational purposes only.

Several attorneys, community managers, and board members have requested information regarding issues associated with different types of Association meetings that could be conducted due to 2021 Act 83 and 2022 Act 64²⁴. In 2024, Act 42, effective July 1, 2024, further clarified the ability of condominium associations to have electronic meetings, electronic voting, and mail voting.²⁵

Recently, there have been executive orders on a state and local level regarding COVID-19 and housing on the island of Maui that have affected Association meetings. The orders were constantly changing and differed depending upon the specific County. Additionally, some property management companies previously placed restrictions on attendance by staff (during COVID-19) both in compliance with various orders and due to the risk of attending in-person meetings.

The applicability of the law²⁶ and the Association's governing documents must be reviewed with legal counsel to ensure that the Association and its members comply with any applicable requirements. Nothing in this Memorandum is intended to nor shall constitute legal or tax advice. Please consult with your association attorney for legal advice or your association CPA for tax advice.

ASSOCIATION REQUIREMENTS

Associations generally need to complete certain business items each year. They usually consist of one or more of the following (depending on their governing documents):

1. Report of President (and/or other Officers) on status and activities of the Association;
2. Election of Directors;
3. Approval of a Management Contract;
4. Appointment of an Auditor;
5. Approval of a Tax Rollover Resolution; and
6. Approval of Board Expenses.

²⁴ 2021 Act 83, Sections 1 and 2 amended Hawaii Revised Statutes §§ 514B-121 and 421J-3.5 respectively (<https://tinyurl.com/2021Act83>). 2022 Act 62, Section 4 amended Hawaii Revised Statutes § 514B-121 (<http://tinyurl.com/2022Act62>).

²⁵ 2024 Act 42 further amended Hawaii Revised Statutes § 514B-121 (<https://tinyurl.com/2024Act42>).

²⁶ The law may include Executive Orders issued by the Governor or the respective Mayor.

ROBERT’S RULES OF ORDER NEWLY REVISED (12TH ed.)

Hawaii law requires *Robert’s Rules of Order Newly Revised* (12th ed.) (“*Robert’s Rules*”) for the conduct of Condominium and Planned Community Association meetings. *Robert’s Rules* is very strict regarding the proper conduct of business meetings.

The following are two important points with respect to requirements in *Robert’s Rules* relative to conduct of business:

- 1. **Meeting Requirements:** *Robert’s Rules* requires that meetings must be in one room or area (on-site meeting). Exceptions to this requirement must be authorized by law or the governing documents.

Robert’s Rules 8:2 states in part:

8:2 In parliamentary law and as understood in this book, the terms defined below have distinct meanings:
 1) A *meeting* of an assembly is a single official gathering of its members in **one room or area** to transact business for a length of time during which there is no cessation of proceedings and the members do not separate, unless for a short recess, as defined below. (For modification of the “one-room-or-area” requirement when the bylaws^[27] authorize electronic meetings, see 9:30-36.) Depending on the business to be transacted, a meeting may last from a few minutes to several hours. [...]

[*Emphasis and external footnote added.*]

- 2. **Ballot Requirements:** When the governing documents require a ballot, it must be implemented properly. *Robert’s Rules* 45:18 and 45:20-22 state:

45:18 Voting by Ballot. Voting by ballot (also known as secret ballot) is used when secrecy of the members’ votes is desired. **A ballot vote is a vote taken by instruments, such as slips of paper or electronic devices, by which members can indicate their choices without revealing how individual members have voted.** On a ballot vote in an election or other vote involving multiple possible choices, **members are able to write in or fill in a vote for any eligible person or choice** and are not confined to voting for or against candidates that appear on the ballot.

45:20 When the bylaws require a vote to be taken by ballot, this requirement cannot be suspended—even by a unanimous vote—so as to take the vote by a non-secret method. A vote ordering a ballot vote on a particular question (see **30**) can, however, be reconsidered as long as the balloting has not yet begun.

45:21 When a vote is to be taken, or has been taken, by ballot, whether or not the bylaws require that form of voting, no action is in order that would force the disclosure

of a member’s vote or views on the matter. Applications of this rule arise with regard to voting on motions to *Postpone Indefinitely* (30:5) and the reconsideration of motions that have been previously voted on by ballot (30:7). Likewise, a motion to make unanimous a ballot vote that was not unanimous must itself be voted on by ballot; even a single negative vote in such a case defeats the motion.

45:22 Whenever a vote is to be taken by ballot, it is not in order to move that one person—the secretary, for example—cast the ballot of the assembly.

[*Emphasis added.*]

The above requirements identify three important ballot principles. They are:

1. The use of the unqualified term “ballot” equates to a secret ballot.
2. Members must be able to indicate their choices without revealing how individual members have voted.
3. Members must be able to write in candidates in an election or vote involving multiple possible choices.

Many governing documents have a secret ballot requirement for elections. A secret ballot is commonly used for other voting, especially due to the use of proxy voting. If a secret ballot is used in a vote, then the above requirements must be implemented as part of the voting process.

ANNUAL REQUIREMENT ALTERNATIVES

Associations may have a legal requirement to conduct a meeting at least once a year. Check with legal counsel to identify the issues associated with omitting a meeting in a particular year.

Some Associations have been unable to comply with the time requirements in their bylaws for scheduling and conducting their annual meeting. Some associations have conducted their annual meeting on a date or time **not authorized** in the bylaws. We recommend compliance with the governing documents to the extent possible, consistent with applicable law. An alternative to the annual meeting has been to schedule a special meeting (if permitted in the bylaws) to fulfill the same requirements that would normally occur at an annual meeting.

Currently, there are 6 methods that have either been used, or are planned for, in conducting the required business of various Associations. They are:

Meeting Methodology	Characteristics
A. 100% mail ballot	Takes place outside a meeting
B. 100% online voting using a voting vendor	Takes place outside a meeting
C. 100% online meeting	All meeting activities online

²⁷ When *Robert’s Rules* uses the term “bylaws,” it refers to a single, combination-type instrument—by whatever name the particular organization may describe it—which effectively control how an organization functions and contains its most important rules (*Robert’s Rules* 2:8).

<p>D. Online meeting with online or on-site check-in and all parties can vote online regardless of location</p>	<p>Complex hybrid</p>
<p>E. In-person meeting with on-site check-in and voting, including online observation; owners may observe online but must physically return on-site to vote</p>	<p>Simple hybrid (in-person)</p>
<p>F. In-person meeting with check-in and voting conducted on-site.</p> <ul style="list-style-type: none"> • Paper ballots • Electronic voting with a smart phone and/or a computer 	<p>Totally in-person</p>

In each case, we recommend consulting with the Association’s legal counsel regarding applicable law and the Association’s governing documents as they apply to the following:

1. Which of the 6 options can be performed by the Association, consistent with the current legal environment, to get their business completed?
2. Which of the 6 options satisfy the requirement for an association meeting each year?
3. How does the Association comply with the records retention requirements?

A. 100% mail ballot (no meeting)

Synopsis: A mail ballot is sent to all owners in an envelope containing:

1. instructions,
2. a ballot,
3. a secret ballot envelope, and
4. a return mail envelope.

The ballot must comply with all statutory and bylaws requirements. When not in conflict, the ballot must also comply with Robert’s Rules 45:24-61.

Procedure: Owners are instructed to do the following:

1. complete the ballot in accordance with the instructions and any applicable deadlines,
2. place the ballot in the secret ballot envelope,
3. seal the secret ballot envelope and sign the secret ballot envelope,

4. place the secret ballot envelope in the return mail envelope, and
5. send the return mail envelope (containing the secret ballot envelope and the ballot) to the management company (or designee if self-managed).

Management must consider at least the following processes as well as the importance of retaining several items with the official association records:

1. Date stamp all return mail envelopes when they are received.
2. Make sure that owners are only voting once per unit.
3. Make sure that the percentage of common interest on the secret ballot matches the percentage of common interest on the secret ballot envelope.
4. Make sure that the secret ballot envelope does not contain multiple ballots unless clearly permitted by wording on the secret ballot envelope.
5. Log exceptions in writing.
6. Make sure owners who do not receive their ballot package or receive a damaged or unusable one have a method for sending in their vote.

After the deadline, the ballots are opened and counted in accordance with management’s instructions. This process may be performed by the management company in the presence of disinterested owners, a third-party vendor (such as a CPA firm or the League of Women Voters), inspectors, or election committee.

The results of the count need to be in a Teller’s Report. The report should, at a minimum, include any statutory or bylaws requirements as well as the items in *Robert’s Rules* 45:37.

For example, the Tellers’ Report needs to include any invalid votes and the vote required for an election or adoption of a motion.

An effective date for decisions and/or elections through mail ballot is not specifically addressed in *Robert’s Rules*. Unless the bylaws provide an effective date, it is recommended that the results be officially acknowledged by the Association’s board of directors at a properly called board meeting and take effect at that time.

Comments:

1. A fair nominating process is needed to identify candidates who are running for election.
2. Owners need clear instructions for marking and returning their ballots.
3. A write-in option on multiple choice ballots (e.g., additional candidates in an election) needs to be available.
4. There needs to be a protective mechanism to ensure individuals are not voting twice and they are voting their proper percentage of common interest, if applicable.
5. The mail ballots may take an extended time to arrive at

and return from foreign countries.

6. There are legal requirements that apply to this type of procedure. Association counsel must be able to review the process for compliance with applicable law.
7. The quorum requirements for a meeting may also apply to mail ballots. Therefore, management may want to implement procedures to urge owners to return their ballot.
8. This type of voting is done by some large Planned Community Associations.
9. This type of voting is inconsistent with the traditional proxy voting used in Hawaii's Association meetings.
10. The official date of election or adoption of a specific motion needs to be determined.

B. 100% online voting using a voting vendor (no meeting)

Synopsis: Either the management company or the Association may contract with a voting vendor and the voting is done entirely online through the internet. Owners receive a voting web address, access keys, and passwords from management or the voting vendor. They vote online using instructions and any applicable deadlines provided.

Procedure: This will depend on the management company or voting vendor.

An effective date for decisions and elections through online voting without a meeting are not specifically addressed in *Robert's Rules*.

Unless the bylaws provide an effective date, it is recommended that the results be officially acknowledged by the Association's board of directors at a properly called board meeting and take effect at that time.

Comments:

1. A fair nominating process is needed to identify candidates who are running for election.
2. Owners need clear instructions for signing in and casting any electronic ballots because some owners may be hesitant to vote electronically due to minimal internet technology experience or resistance to change.
3. A write-in option on multiple choice ballots (e.g. additional candidates in an election) needs to be available.
4. Internet access may be available by home or office connections, public facilities, libraries, or through the use of smart phones.
5. There needs to be a clearly defined set of responsibilities between the voting vendor and the management company for maintaining ballot secrecy and security, contacting owners, reminding owners to vote, tallying the vote, reporting the vote, and maintaining an adequate audit trail.
6. The voting vendor may not know whether an election or

motion outcome was successful. (For example, some elections require a majority of the voting group, some motions require 67%, etc.) The voting results are declared by the presiding officer (*Robert's Rules* 45:39). Although the counting is outside of a meeting, the voting results would be declared in a similar manner.

7. Many voting vendors cannot adequately manage percentages of common interest (which could be 11 digits to the right of the decimal point).
8. Legal warnings may be needed to ensure individuals signing in to vote are placed on notice that unauthorized voting may be a criminal or civil offense.
9. Any online ballot requirement (statutory as well as procedural) needs to be coordinated with legal counsel or the parliamentarian.
10. There are legal requirements that apply to this type of procedure. Association counsel must be able to review the process for compliance with applicable law.
11. The quorum requirements for a meeting may also apply to online voting. Therefore, management may want to implement procedures to encourage owners to vote online.
12. This type of voting is inconsistent with the traditional proxy voting used in Hawaii's Association meetings.
13. The official date of election or adoption of a specific motion needs to be determined.

C. 100% online meeting (all meeting activities conducted online)

Synopsis: Either the management company or the Association may contract with a voting vendor. The check-in and voting is all done online. Owners receive access keys and passwords from management or the voting vendor. Owners and proxyholders check in and the meeting is called to order. Owners and authorized proxyholders must receive the following:

1. Online voting website name and credentials (usually an access key and password); and
2. Online meeting platform sign in information (e.g. Goto Meeting, Webex, Zoom, etc.) using their online meeting key.

Procedure: Owners are instructed to do the following:

1. Sign into:
 - (a) the online meeting platform (e.g. Goto Meeting, Webex, Zoom, etc.) using their online meeting key, and
 - (b) the voting vendor website at the appropriate time using their access key and password,
2. make motions and debate (includes nominating speeches) online, and
3. vote online using the instructions from the voting vendor.

The meeting business is conducted similar to the in-person meeting (Section "F" below).

It should be conducted in a manner that allows owners and authorized proxyholders to simultaneously hear and participate in the proceedings.

The voting results of any election or motion are announced at the meeting.

Comments:

1. Internet access may be available by home or office connections, public facilities, libraries, or through the use of smart phones. Some owners may be hesitant to vote electronically due to minimal internet technology experience or resistance to change.
2. The check-in and voting must be efficient and accurate. Check-ins may require extensive time when individuals need to be separately identified by unit number, a spreadsheet updated, and proxy information updated. The online platform must be able to permit all owners and proxyholders to attend the online meeting.
3. Parliamentary procedure for online participation needs to be addressed. These issues are usually handled with a standardized set of adopted Special Rules of Order.
4. Administrative personnel need special training to ensure that they can quickly determine the presence of a quorum.
5. The quorum only proxies must be accounted for in determining whether an election is successful or a motion is adopted in accordance with the governing documents.
6. The voting vendor may not know whether an election or motion outcome was successful. (For example, some elections require a majority of the voting group, some motions require 67%, etc.) The voting results are declared by the presiding officer (*Robert's Rules 45:39*).
7. Many voting vendors cannot adequately handle percentage of common interest (which could be 11 digits to the right of the decimal point).
8. There needs to be a clearly defined set of responsibilities between the voting vendor and the management company regarding (a) contacting owners, (b) making owners comfortable with check-in, and (c) tallying the vote.
9. Any secret ballot requirement needs to be coordinated with legal counsel and/or the parliamentarian.
10. Online voting must consider traditional proxy voting used in Hawaii's Associations. Some voting vendors have their own proxy layout which differs from Hawaii's statutory requirements.
11. Owners or other individuals who have received proxies may have to sign in multiple times to the voting vendor in order to cast those votes.
12. Proxyholders need a methodology to cast any votes. This includes individual proxyholders (who don't have to be owners), and the board majority/equal proxy voting.

13. Assuming the voting vendor can handle proxies, the voting vendor will need to adjust the weight of any applicable proxyholder(s) vote (including the board majority and board equal) if an owner checks in and decides to vote.
14. There may also be voting changes if an owner checks in after the meeting starts and before voting starts. Revised check-in information and voting weights must be efficiently adjusted.
15. In extreme cases, the "chat" window can be used as a voting mechanism for administrative personnel to tally and report the results, but this should not be used as a matter of course.

D. Online meeting with online or on-site check-in and all parties can vote online regardless of location (complex hybrid)

Synopsis: This is the most complicated form of a meeting. It requires synchronization between online voting and in-person voting. Either the management company or the Association may contract with a voting vendor.

Procedure: The check-in and voting are both done online and in-person at a meeting site. Administrative personnel are needed at the meeting site to combine the online and in-person check-ins and voting. Owners receive security codes either from management or the voting vendor. Owners check in and the meeting is called to order. Owners and proxyholders vote online at the proper time using instructions provided. Owners vote in person either using paper ballots handed to tellers and combined with online results, or by smart phones or kiosk. Proxyholders may need to vote using paper ballots if they are physically present at the meeting.

The meeting business is conducted similar to the in-person meeting (Section "F" below) and should be conducted in a manner that allows owners and authorized proxyholders to simultaneously hear and participate in the proceedings.

The voting results of any election or motion are announced at the meeting.

Comments:

1. The check-in will be more complicated. Owners will sign-in both through the voting vendor and in-person. Check-ins may require extensive time when individuals need to be separately identified by unit number, a spreadsheet updated, and proxy information updated. Paper ballots may need to be issued to owners or proxyholders checking in. The online platform must be able to permit all owners and proxyholders to attend the meeting.
2. Controls are needed to ensure owners and proxyholders don't vote once online and once by paper ballot in person. For example, management must guard against an individual who casts a paper ballot, goes outside with a smart phone, and votes again.
3. Parliamentary procedure for online and on-site participation needs to be addressed. These issues include

- how to (a) seek recognition from the chair, (b) assign the floor in debate, and (c) handle a motion. These issues are usually handled with a standardized set of adopted Special Rules of Order.
4. Administrative personnel need special training to ensure that they can quickly determine the presence of a quorum since it would include online and in-person voters.
 5. The quorum only proxies must be accounted for in determining whether an election is successful or a motion is adopted in accordance with the governing documents.
 6. The voting vendor will need to provide a mechanism for entering the paper ballots into their system if they are to provide results.
 7. The voting vendor may not know whether an election or motion outcome was successful. (For example, some elections require a majority of the voting group, some motions require 67%, etc.) The voting results are declared by the presiding officer (*Robert's Rules 45:39*).
 8. Many voting vendors cannot adequately handle percentage of common interest (which could be 11 digits to the right of the decimal point).
 9. There needs to be a clearly defined set of responsibilities between the voting vendor and the management company regarding contacting owners, making them comfortable with check-in, and tallying the vote.
 10. Any secret ballot requirement needs to be coordinated with legal counsel and/or the parliamentarian.
 11. Online voting must consider traditional proxy voting used in Hawaii's Associations. Some voting vendors have their own proxy layout which differs from Hawaii's statutory requirements.
 12. Owners or other individuals who have received proxies may have to sign in multiple times to the voting vendor in order to cast those votes.
 13. Proxyholders need a methodology to cast any votes. This includes individual proxyholders (who don't have to be owners), and the board majority/equal proxy voting.
 14. The board equal/majority proxies will become very complicated if some board members are present at the meeting and other board members are online. The board needs a method to caucus and decide the board majority votes.
 15. Proxyholders may be present both online and in person.
 16. Assuming the voting vendor can handle proxies, the voting vendor will need to adjust the weight of any applicable proxyholder(s) vote (including the board majority and board equal) if an owner checks in and decides to vote.
 17. There may be voting changes if an owner checks in after the meeting starts and before the voting starts. Revised check-in information and voting weights must be

efficiently adjusted.

18. The "chat" window cannot be used reliably for voting unless individuals present in person can also vote. It also should not be used as a matter of course because it may exclude individuals who are physically present at the meeting.

E. In-person meeting with on-site check-in and voting, including online observation; owners may observe online but must physically return on-site to vote (simple hybrid)

Synopsis: This is similar to the fully in-person meeting (Section "F" below).

Procedure: Owners check in to the meeting and leave the physical meeting area until they are ready to make a motion, debate, or vote. They must return to the meeting site to participate and vote.²⁸ They observe the proceedings through the online platform. There is no online voting.

Comments:

1. Flexibility is needed to ensure owners and proxyholders have ample opportunity to participate in the meeting onsite, while still following current governmental restrictions.
2. Even though the online platform is not technically a part of the official meeting, the platform should allow all owners and proxyholders to observe the meeting.
3. Parliamentary procedural issues need to be addressed regarding assigning the floor in debate for items such as candidate speeches.

F. In-person meeting with check-in and voting conducted on-site

Synopsis: This is the standard Association meeting.

Comments:

1. There may be different and conflicting governmental Orders that may prohibit or seriously limit this type of meeting.
2. The Orders may differ by County.
3. The Orders may prescribe requirements such as the maximum number of individuals, minimum distance, mask mandates, hand cleaners, vaccination status, mitigation plans, etc.
4. The Orders may change after the meeting notice has been sent and prior to the meeting. This can create uncertainty and has resulted in continued or cancelled meetings.
5. The meeting facility may not be available or may become unavailable as a result of one or more Orders.
6. The meeting facility may impose special requirements, unknown at the time of the booking. For example,

²⁸ *Robert's Rules 25:9* states in part that it is a fundamental principle of parliamentary law that the right to vote is limited to the members of an organization who are actually present at the time the vote is taken in a regular or properly called meeting. An extended voting period allows individuals to return to the meeting area and vote.

one facility requires the names of attendees a week in advance of the meeting.

Summary: These processes can become complicated and the comments are not all-inclusive. Management must carefully consider the current situation with respect to the pandemic emergency and determine how to take advantage of these available processes to assist their clients.

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**What's Happening with Association Annual Meetings?
(and...What's the Deal with Electronic Voting and
Electronic Meetings?)**

When: **November 14, 2024, 12:00 p.m. to 1:30 p.m. HST via Zoom**

Cost: **Free** (Registration required; see below)

This is a special presentation to the public by Christopher Shea Goodwin, Esq., and Rachel Glanstein, PRP. The event is sponsored by the Hawaii State Association of Parliamentarians.

Changes to Hawaii State Law opened the door for condominium and community associations to **vote electronically** and **participate in electronic meetings**. While these changes added flexibility, it is important to understand the timeline and procedures required for association meetings.

The seminar is free to the public but limited to the first 300 attendees and **registration is required** by either using the following link: <https://tinyurl.com/AnnualMeetingSeminar2024>. You will receive a single device meeting link by email which must be used to enter the seminar.



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2024 Calendar of Events

September 26*

Common Issues in Employment & Labor Law: Hiring, Supervising, & Termination

Paul Ireland Koffinow, Melanie Oyama, Co-Chairs

October 24*

Covenant Enforcement, Case Law Update, and the Corporate Transparency Act

M. Anne Anderson and Richard Ekimoto, Co-Chairs.

November 1

Annual CAI Membership Meeting

November 9*
Condorama XIII

2025 Calendar of Events

January 23*

“Meetings, Meetings, and More Meetings, Oh My”

- Electronic Annual Meetings
- Electronic Voting (Step-by-Step)
- Board Meetings (Quorum, Minutes, Conflicts of Interest)

March 6*

“Major Project Management”

- Project Manager (is it necessary)
- Contractors (licensed)
- Bidding (how many & what to look for)
- Contracts (how to read & what to look for)
- Responsibility for Unit vs. Common Element

May 15*

“Where’s the Money – Association Funding”

- Loans (C-PACER)
- Special Assessments
- Borrowing from Reserves
- Maintenance fee increases
- Collections

June 14, 21*

Board Leadership

July 17

LAC

August 21

“Mixed Plate”

- Governing documents (review & common amendments)
- House Rules (what may and may not be included)
- Restatement

September 25

“Owner Rights, Board Rights, and Association Rights”

- Owners’ bundle of sticks (rights and methods to address positive change)
- Rogue and Bullying Board members
- Owner and Board member harassment
- Tenant violations and remedies

October 23

“EV, Fires, and Sprinklers”

- Electric Vehicle Charging Stations
- Solar Panels
- Solar Bill
- Association rebate(s)
- E-Bike Fires/Sprinklers (HFD)

November 7

Annual Membership Meeting

*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.