



## **Nuts and Bolts of Major Construction and Repair Projects**



**Thursday, January 29, 2026  
Noon to 1:30 p.m.**



## **The Nuts and Bolts of Major Construction & Repair Projects**

**Thursday, January 29, 2026**

### **AGENDA**

**Melanie Oyama, Esq.**

**Welcome & Introductions**

**Dana Bergeman**

**Basic Phases of a Construction Project**

**Randy Kowalkowski**

**Role of the Construction Manager**

**Christopher Goodwin, Esq.**

**Contract Essentials for Major Construction and Repair Projects**

**Melanie Oyama, Esq.**

**Q&A and Closing**



### Real Estate Branch

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

# Program Coordinators

Anne Anderson



Surita Savio



Richard Ma





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

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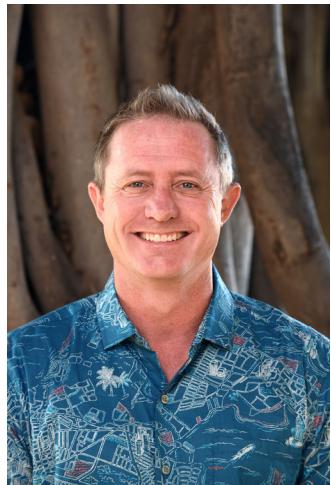








## OUR SPEAKERS



**Dana Bergman**



**Randy Kowalkowski**



**Christopher Goodwin**

# Our Speakers



**Dana Bergeman** is the founder and C.E.O. of Bergeman Group and brings nearly 30 years of experience in the architecture, engineering, and construction industry (AEC) to the company. He has actively participated in or managed hundreds of projects ranging in value from \$100,000 to over \$300 million in construction costs. Dana also assists clients with litigation support, including cost estimating, mediation, and expert witness testimony.

## PROFESSIONAL AFFILIATIONS

- » Construction Management Association of America
- » American Institute of Constructors (AIC)
- » International Institute of Building Enclosure Consultants (IIBEC)
- » Society for Protective Coatings (SSPC)
- » International Concrete Repair Institute (ICRI)
- » American Concrete Institute (ACI)
- » Building Owners and Managers Association (BOMA)
- » Association for Conflict Resolution

# Our Speakers



**Randy Kowalkowski** is currently the General Manager the Waikiki Sunset condotel. He has been in property management for over 30-years. He has experience in Residential Management, Site Management, Portfolio Management and currently General Management. Prior to property management, he was a construction/project management for multi-million-dollar projects, such as the infrastructure at Ko Olina Resort.

During his tenure in property management, many of his properties underwent extensive capital improvements such as drain waste vent (DWV), elevator modernization, electrical upgrades, total high rise windows' replacement, hot water plant upgrades and lobby and recreation deck renovations, among others, many of which were in the tens of millions of dollars.

He has worked with and has a good relationship with project management firms, engineering firms, construction general construction companies, insurance agents and architectural firms.

His relationship with vendors that provide service agreements for the physical plant of buildings is recognized in the industry is unsurpassed.

# Our Speakers



**Christopher Shea Goodwin** – Mr. Goodwin attended Indiana University, where he received a Bachelor of Arts degree in International Political Science in 1982, and South Texas College of Law in Houston, Texas, where he obtained a law degree in 1986, and practiced law in Houston from 1986 until late 1992, when he moved to Hawaii following Hurricane Iniki.

Chris has represented condominium and community associations in Hawaii since 1993, and since founding his own law firm more than 20 years ago, he now represents more than 100 associations throughout the state.

Chris is a frequent speaker at seminars and in-house training seminars on various topics of interest to association board members, owners, managing agents, and their respective employees and staff.

# ***NUTS & BOLTS OF MAJOR CONSTRUCTION & REPAIR***

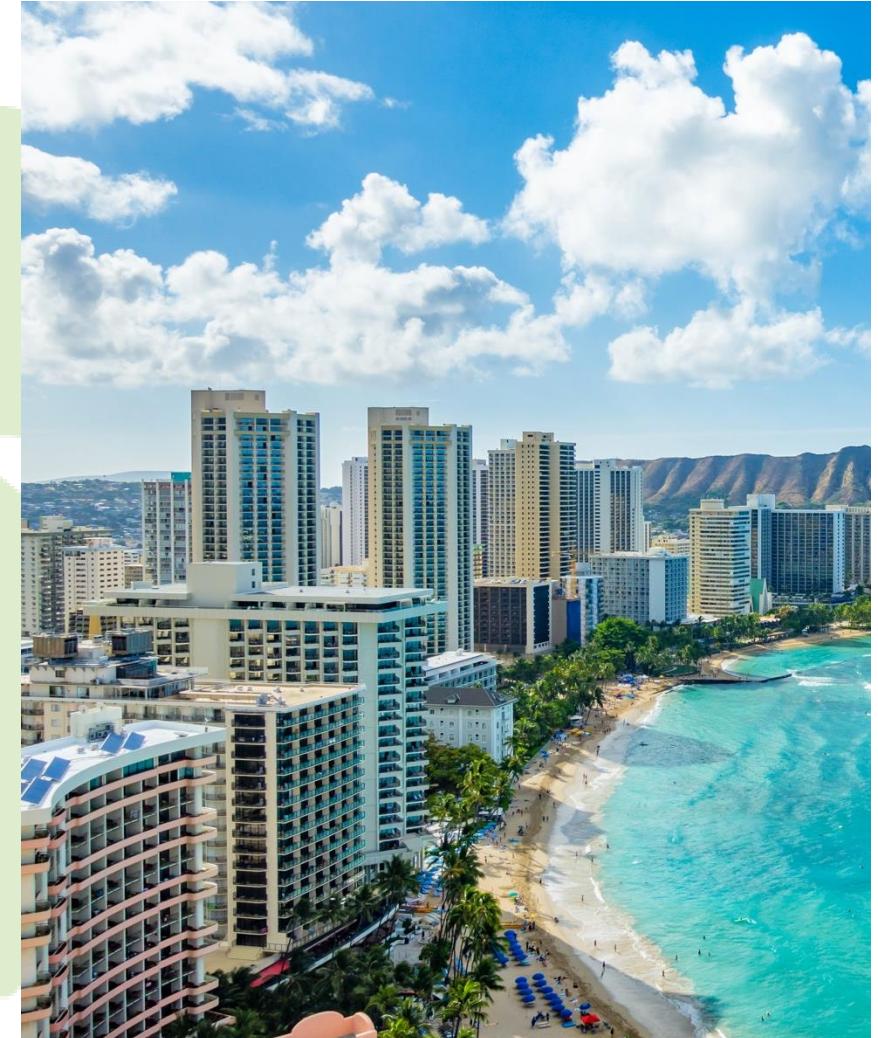
Dana Bergeman

(808) 465-3555

[dana@bergemangroup.com](mailto:dana@bergemangroup.com)



Managing Construction | Building Peace of Mind



# Understand the Basic Phases of a Construction Project

Pre-Design

Design

Bidding & Procurement

Contracting

Construction

Post Construction



# What we will cover today:

Pre-Design

Design

Bidding & Procurement

Contracting

Construction

Post Construction



# PRE-DESIGN: Evaluation & Due Diligence

<p><b><u>DO</u></b> <b>Evaluation &amp; Due Diligence</b></p>	<p>Investigate Problematic Conditions Quantify Extent of Repair Needed Identify Hazardous Materials Validate the Need for Repair to Owners</p>
<p><b><u>DO</u></b> <b>Get Help with Methodology</b></p>	<p>Destructive vs. Non-Destructive Use Science Driven Methods &amp; Techniques Third-Party Professionals Usually Required Contractor Needed for Destructive Testing</p>
<p><b><u>DON'T</u></b> <b>Have Conflicts of Interest</b></p>	<p>Worry About it Later (no up-front validation) Select Designer &amp; Contractor First Optional (Probably Still a Good Idea) - Do it In House</p>



# PRE-DESIGN: EVALUATION & DUE DILIGENCE **FREE TIP!**

If in doubt, conduct a **Condition Assessment** before proceeding with additional phases in the construction process.

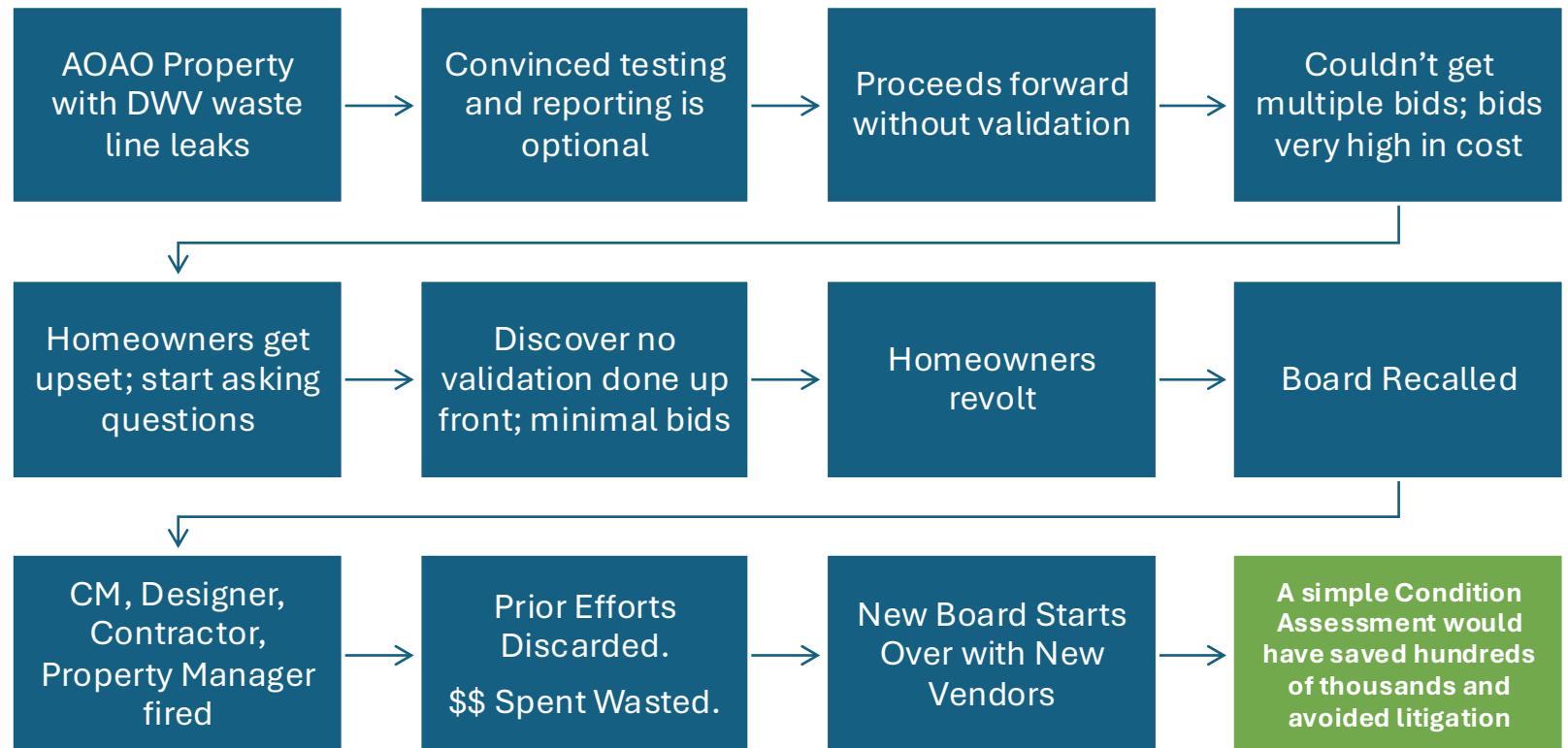
**Condition Assessments** are an affordable, low-risk way to investigate problems, identify solutions, and quantify the extent of repair needed.

Use **Condition Assessment** data to validate the need for repairs to your owners and constituents and to prepare an Owner's Repair Program.

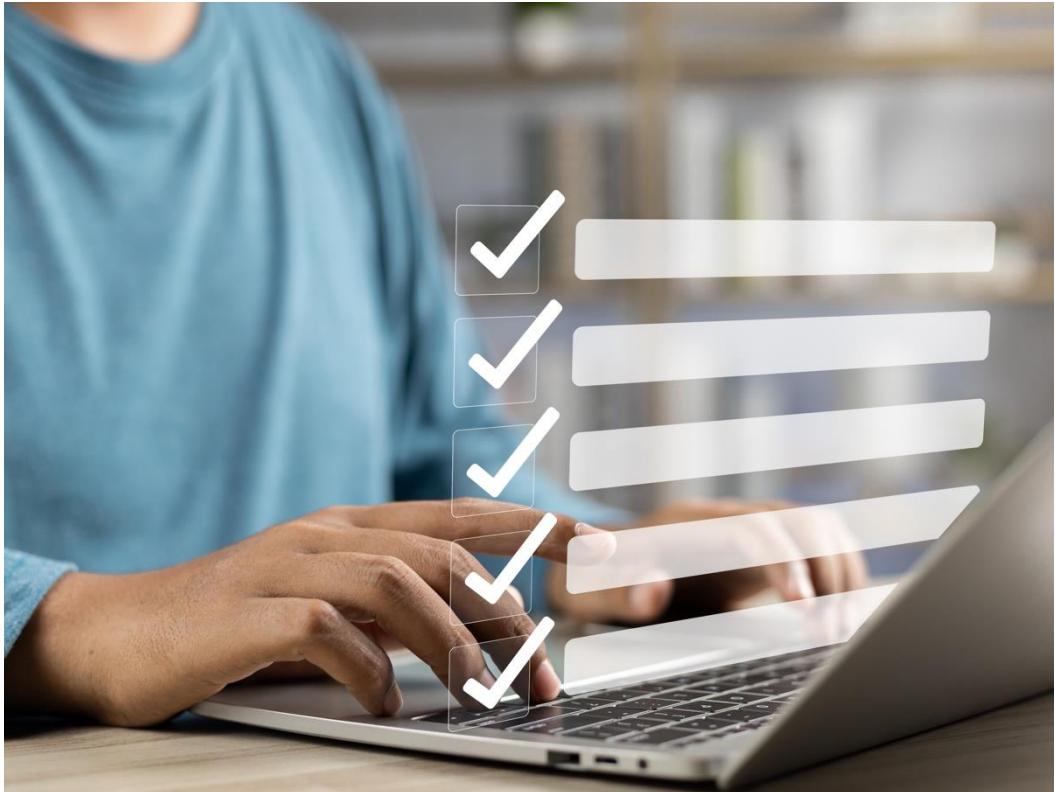


# PRE-DESIGN: Cautionary Tales

## Don't Skip the Due Diligence!



# PRE-DESIGN: Finalize Your Scope of Work



## Your CM-A should:

- finalize project scope with inclusions and exclusions
- identify design professionals needed for design
- establish realistic expectations
- present the refined scope for Board approval
- tie the scope to long-term building health & community needs
- assist the association with determining the contracting method



# PRE-DESIGN:

## Determine Project Delivery Method

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- The "project delivery method" refers to **the process used to organize and execute a construction project**.
- **Outlines the roles, responsibilities, and relationships between all parties** involved like the owner, architect, CM, contractor, and subcontractors.

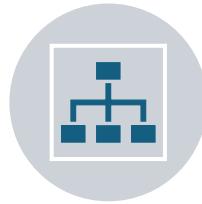
# PRE-DESIGN: Design-Build vs. Design-Bid-Build

## DESIGN-BID-BUILD

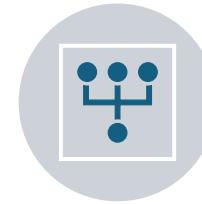
*Traditionally the Workhorse Format Industry-Wide*



MOST COMMON PROJECT DELIVERY METHOD.



SEPARATE ROLES AND RESPONSIBILITIES.



ONCE REPAIR PLANS ARE COMPLETE, THE CM-A SENDS BID PACKAGES TO OUR CONTRACTORS TO PROVIDE A BID.



CM-A AND OWNER EVALUATE THE PROPOSALS; CM-A WRITES THE CONTRACT



OWNER SELECTS GENERAL CONTRACTOR AND CONSTRUCTION COMMENCES.



PROCEED TO CONSTRUCTION

## DESIGN-BUILD

*Traditionally Used for Large/Specialized New Construction*

- Historically, not commonly used for AOAO projects
- Entire project is led by the contractor from start to finish, including design, drawing a stark contrast to design-bid-build
- In theory, when the design team and build team are rolled into one operation, the project becomes more efficient
- Purported to be less expensive
- New push for Design-Build by some Hawaii CMs and Contractors



# **DO NOT Let the Fox Guard the Hen House!**

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- Get professional help to decide what **PROJECT DELIVERY FORMAT** and **CONTRACTING FORMAT** is best for you!
  - CM-ADVISOR
  - ATTORNEY
  - PROPERTY MANAGER
  - INSURANCE AGENT

# DESIGN:

## Construction Specs

- **Clarity & Risk Reduction:**
  - Establishes clear procedures for submittals, RFIs, change management, and inspections
  - Reduces ambiguity that can lead to disputes, claims, or delays
  - Aligns all parties on how the project will be administered before construction starts
- **Improved Cost Control:**
  - Defines how changes, allowances, contingencies, and alternates are handled
  - Minimizes scope gaps that often turn into costly change orders
  - Sets expectations for pricing documentation and approvals
- **Schedule Protection**
  - Standardizes review timelines for submittals and RFIs
  - Prevents administrative bottlenecks that can delay construction
  - Supports proactive coordination between trades and consultants



# DESIGN: Construction Specs

- **Higher Quality & Consistency**
  - Ensures consistent standards for inspections, mockups, testing, and closeout
  - Aligns contractor execution with design intent and owner expectations
  - Reduces rework by clearly defining quality control processes
- **Better Coordination with Consultants**
  - Integrates architectural, structural, MEP, and specialty consultant requirements
  - Resolves overlaps or conflicts in administrative responsibilities
  - Streamlines communication channels across the project team

## Protection of the Owner's Interests

- Establishes clear documentation requirements for pay applications and changes
- Ensures compliance with warranty, commissioning, and turnover requirements
- Supports defensible decision-making if disputes arise



# DESIGN: Bid & Permit Documents

## Construction Drawings:

- SDs: 0% – 25% Complete
- DDs: 25% to 75% Complete
- CDs: 75% to 100% Complete

## Specifications:

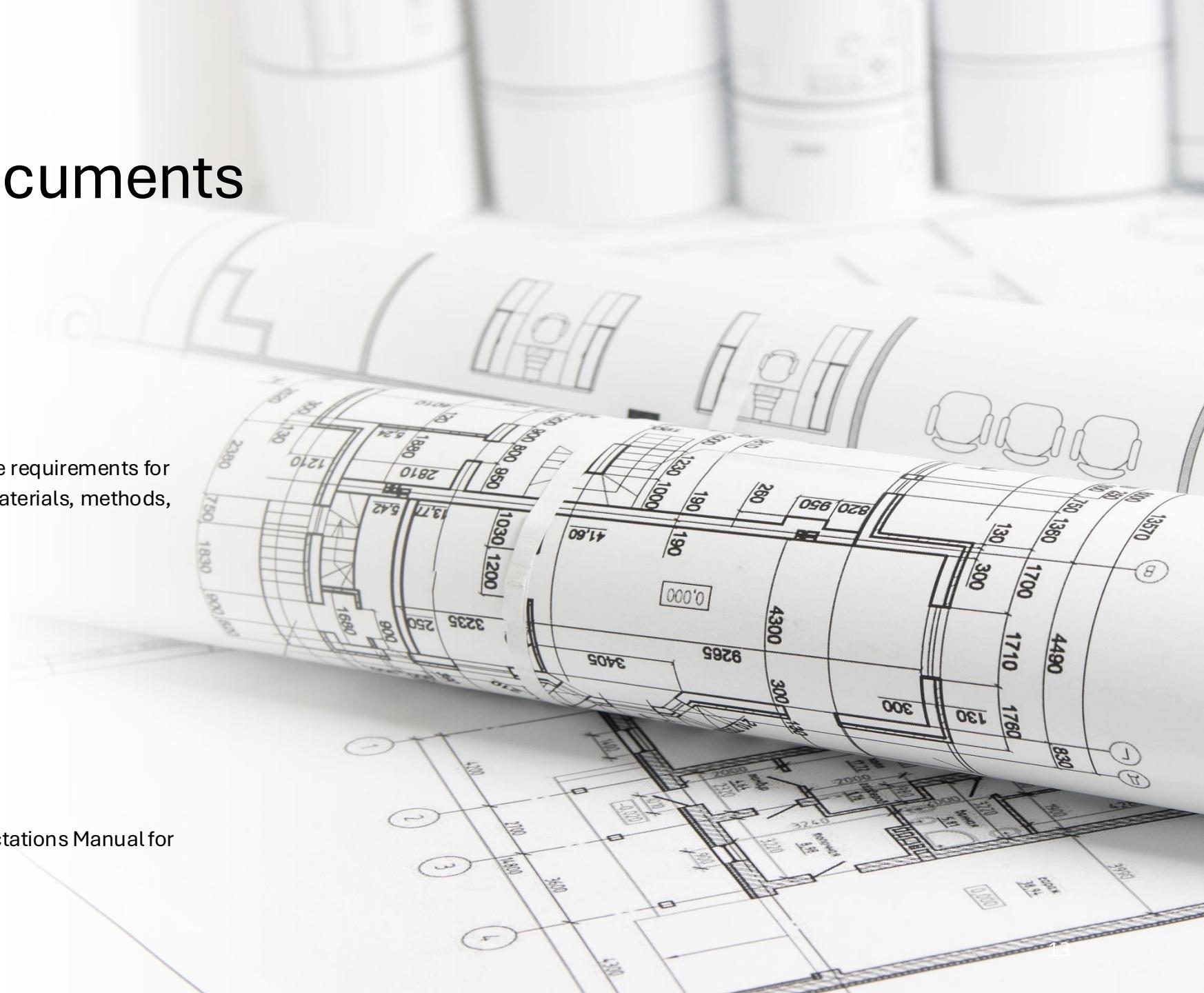
- Written documents that outline the requirements for a construction project including materials, methods, timelines, and quality.

## Bid Packages

- Bidder Expectations
- Timelines
- Contract Expectations
- Warranty

## If Design-Build

- Comprehensive Criteria and Expectations Manual for Design-Build Contractors



# DESIGN: Building Permits

- Yes! You probably need a Permit!
- Required by DPP when:
  - Structural Project
  - Concrete Spalling Project
  - Plumbing or Mechanical Project
  - Electrical Project
  - Life-Safety Project
  - Fire Alarm / Fire Sprinkler Project
  - Anytime cost exceeds \$10,000 within a 12-month period





# BIDDING: Obtaining Contractor Bids

1. Pre-Qualify Interested Contractors
  - a. Applicable Licensing
  - b. Insurance Coverage
  - c. Bonding Capacity
2. Conduct an On-Site Job Walk
3. Coordinate & Issue Bid RFI Addenda Responses to **All Bidders**
4. CM-A Should Provide a Detailed Comparative Bid Analysis
5. Hold Contractor Interviews
6. Select a Contractor

# BIDDING: Contractor Selection FREE TIPS!

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- **Don't be bullied into sole source (no bid contract) or selecting a specific contractor without a reasonable basis for doing so.**
- **Don't take the bait on "get them under contract now or lose them" threats.**
- Your CM-A and others can recommend contractors, but **YOU control and approve the list of proposed bidders.**
- Your CM-A should be able to get you a **minimum of three (3) bids** for most types of projects.
- Your CM-A can tell you pros and cons, provide experience insights, and provide a recommendation if desired; however, **YOU get to choose the contractor.**



# BIDDING:

## Bid Evaluation

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### **Your CM-A should:**

- analyze bids for cost accuracy, scope coverage, and risk
- compare alternates, unit prices, and value-engineering options
- identify exclusions, qualifications, and potential change drivers
- provide clear bid comparisons and recommendations to ownership



## BIDDING: Cautionary Tales

### Artificially Low Concrete Spall Repair Bid Quantities

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- Owners Solicited Bids Directly
- No Quantities Specified
- Owner Selects Lowest Cost Bid
- Lowest Cost Because  
Artificially Low Bid Quantities
- MASSIVE CHANGE ORDERS  
FOLLOWED!!!





# CONTRACTING: Engaging a Contractor

## Your CM-A should:

- Evaluate contractor experience, team strength, and past performance
- Assess financial stability, safety record, and capacity
- Participate in interviews and clarification meetings
- Recommend best-value contractor—not just lowest price



# CONTRACTING: Engaging a Contractor

- Select the Correct Form of Agreement
- AIA Agreements Usually Recommended
- DO NOT sign the Contractors Agreement
- DO NOT let the Contractor draft the Agreement
- Your CM-A should draft the Agreement with assistance from your Attorney and Insurance Agent
- Verify Warranty, Bonding and Insurance Requirements
- Attorney MUST approve the Agreement
- Board of Directors MUST Approve the Agreement
- Recommend Multiple Board Members Sign Agreement

# These are Complex Projects

- There are thousands of variables, and hundreds of players and participants. You need to have a cohesive team to have a successful project.
- Ask a lot of questions.
- Communicate, Communicate, Communicate.
- **WHETHER YOU ENGAGE US OR ANOTHER FIRM, USE OF A CONSTRUCTION MANANGER IS RECOMMENDED.**

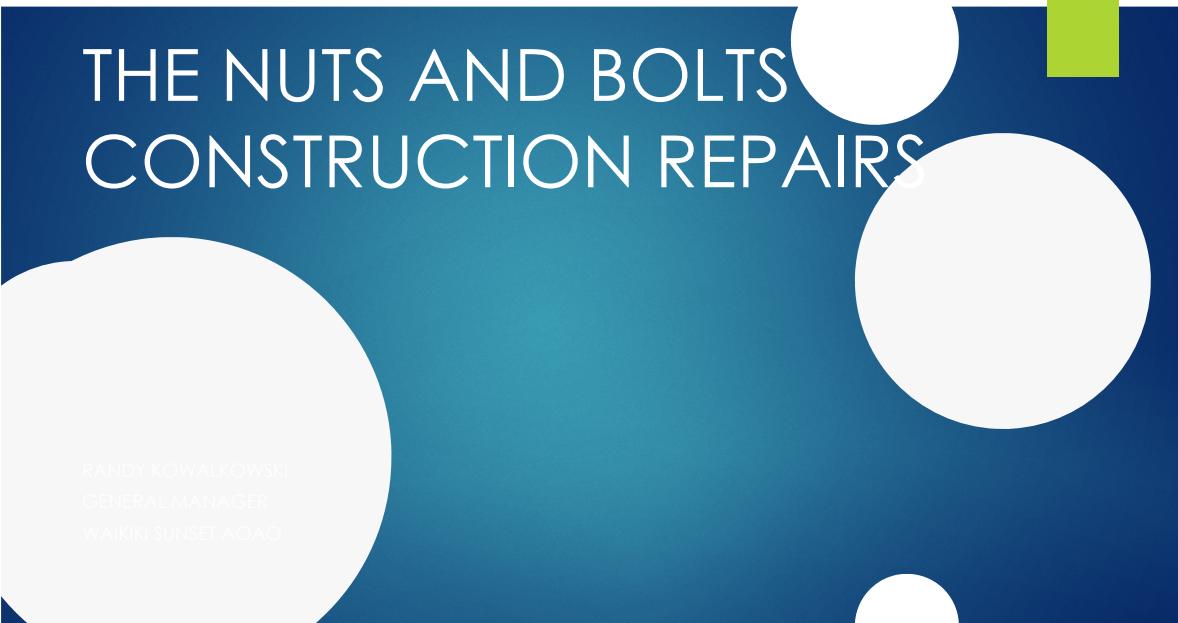


Mahalo!

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Management is, above all, a practice  
where art, science, and craft meet.  
- Henry Mintzberg

# THE NUTS AND BOLTS CONSTRUCTION REPAIRS



RANDY KOWALKOWSKI  
GENERAL MANAGER  
WAIKIKI SUNSET AQUAO

## TABLE OF CONTENTS

- ▶ 1. WORKING WITH PROJECT MANAGERS
- ▶ 2. SCHEDULING
- ▶ 3. ESTIMATED COST OF CAPITAL PROJECTS
- ▶ 4. COMMUNICATION WITH OWNERS,  
RESIDENTS, & LESSEES

## WORKING WITH PROJECT MANAGERS

- Select a reputable project management company, this is your support line between contractors and the Design Committee.
- A good working relationship is essential to well planned Capital Projects.
- Check their references.
- Ask about their outside resources and support, i.e. professional contract, architectural, electrical, and mechanical review and Project Manager availability.
- Can the project management company conduct multiple projects concurrently.
- Some Capital Projects will require you to be the conduit between the Project Manager and contractor, i.e. relocating electrical bus duct location, utilities etc.

3

## WORKING WITH PROJECT MANAGERS

4

- Your Project Manager should be well versed in communicating with not only the Project Committee, Board of Directors & General manager, but the association membership.
- Hold OAC (Owner, Architect and Contractors) meetings.

## SCHEDULING

5

- Request project phase schedules from contractors well in advance of commencing any work. This is to properly give the owners, residents and lessees time to schedule their activities around the contractor schedule. This is also very important, especially if there is more than 1 Capital Project being done concurrently.
- Prior to project commencement, your attorney should approve and draft the proper contracts, committee review of all schedules, pre-construction meetings and material staging.
- In the event of project schedule changes, discuss them with the Project Committee, the General Manager and the Project Manager. This can be very tricky if the association has leased commercial space, i.e. a hotel pool, and private owner vacation rentals.

## SCHEDULING

6

- All schedules and schedule changes should be announced to owners, residents and lessees, especially if there is to be unit or leased space intrusion by posting notices in visible area and email blasts.

## ESTIMATED COSTS OF CAPITAL PROJECTS

- Reserve Study capital components replacement projections may be insufficiently funded due to many variances.
- The cheapest contractor is not always the best option for a board to take.
- Work closely with the association attorney, Project Committee and Project Manager to get the best cost.
- The Project Manager should consider project value engineering if the Capital Project is well over budget.
- I highly recommend a contingency fund of not less than 10% be included in all contracts for unforeseen circumstances and change orders.

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## ESTIMATED COSTS OF CAPITAL PROJECTS

8

- Some Capital Projects if not properly funded or not in the reserve study will create a financial burden on the association membership.
- If a Capital Project is not sufficiently funded, the Board of directors may impose a Special Assessment to the association membership without a membership vote or they can opt to secure a loan with approval of 50% of the membership.
- If the Reserve Study components are accurately funded, a loan or special assessment may be avoided.

## ESTIMATED COSTS OF CAPITAL PROJECTS

- All Capital Projects proposals or estimates will require review by the General Manager, Project Manager and the Design Committee. If the board of directors approves a Capital Project proposal or estimate, it should be reviewed by the association attorney and a contract drafted with the proper insurance coverages can be executed by the board and the contractor. **I do not recommend approval of a Capital Project by executing the proposal or estimate only.**
- UNFORTUNATELY, NO ONE HAS A CRYSTAL BALL TO PREDICT ALL THE COSTS OF A CAPITAL PROJECT.

9

## COMMUNICATION WITH OWNERS, RESIDENTS, & LESSEES

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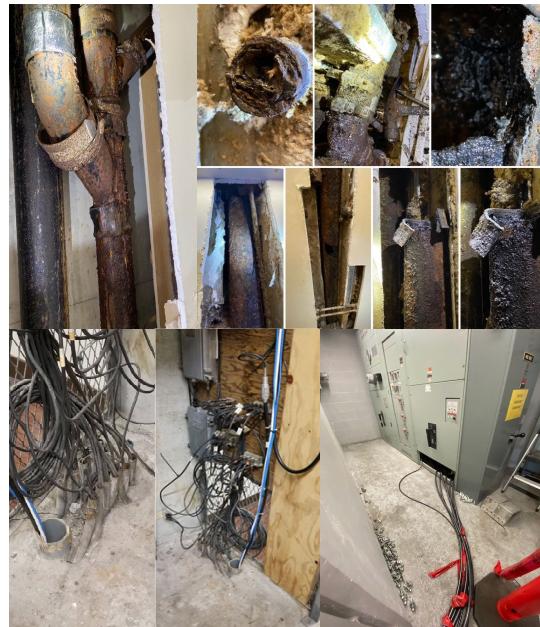
- This is the most important part of any Capital Project (communicate, communicate communicate).
- Communicate all phases of a Capital Project to those impacted .
- If the project is intrusive to units' common area or leased spaces, Town Hall meetings set up by the contractor with the assistance from the Project manager are essential.
- You won't be able to make all owners, residents or lessees happy therefore, be prepared for some negative feedback or refusal of entry to a unit. It is your and the Project Managers job to be polite, listen and inform the Design Committee of any issues.

## COMMUNICATION WITH OWNERS, RESIDENTS, & LESSEES

- Inform the owner, resident or lessee they can't refuse entry for a Capital Project.
- It is the Board of Directors responsibility per the State Statute, 514-B to maintain all common areas and Capital Projects, i.e. drain waste vent cleaning or replacement, hot water plant replacement common electrical, cable etc.

11

EXPECT THE  
UNEXPECTED



12



# THANK YOU!

# Contract Essentials for Major Construction & Repair Projects

Presented by:  
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# Pay the Attorney Now Instead of Later!

It is recommended the Board request the Association Attorney to review ALL capital improvement project contracts BEFORE signature by the Board including (but **not limited to**) contracts with the following parties:

- Contractor
- Construction Project Manager
- Architect
- Engineer
- Material Supplier (if purchased by Association)
- Lender (Loan Documents)

# CONTRACT REVIEW ISSUES

## TYPICAL AREAS OF CONCERN:

- **Party Identification**
- **Signatures**
- **Insurance**
- **Payment and Performance Bond**
- **Indemnification**
- **Payment**
- **Change orders**
- **Disputes**

# CONTRACT REVIEW ISSUES

## **Party Identification:**

- Complete legal name of and mailing address of the association and contractor.**
- Contact information (name, phone number and e-mail address) for the designated representatives of the association and contractor.**

# CONTRACT REVIEW ISSUES

## Signatures:

- Contractor signature is generally not an issue, as Proposals/Estimates/Quote/Agreements typically will already identify name, time and/or position of the authorized representative signing for contractor.
- Association signature(s) are generally more complicated. For most (BUT NOT ALL) associations formed prior to 2000 (or so), their bylaws will mandate that contracts be executed by two board officers, specifically, the President or Vice President and the Secretary or Treasurer, or pursuant to as specified in a general or special resolution adopted by the board. A **general** resolution will apply to **all association contracts** while a **special** resolution typically applies only to **one association contract**. Recommendation: If not prohibited by the bylaws, **adopt a general resolution** authorizing the President or any two Board Officers to execute contracts.

# CONTRACT REVIEW ISSUES

## INSURANCE :

### COMMERCIAL GENERAL LIABILITY

ADDITIONAL INSURED – **CHECK THE BOX**

WAIVER OF SUBROGATION – **CHECK THE BOX**

### AUTOMOBILE LIABILITY

ADDITIONAL INSURED – **CHECK THE BOX**

### UMBRELLA (OR EXCESS) LIABILITY

THIS POLICY MUST “FOLLOW FORM” THE CGL POLICY SO  
NEITHER ADDITIONAL INSURED OR WAIVER OF  
SUBROGATION BOX NEED BE CHECKED

### WORKERS COMPENSATION AND EMPLOYER'S LIABILITY

WAIVER OF SUBROGATION – **CHECK THE BOX**

**DESCRIPTION OF OPERATIONS:** IDENTIFY ADDITIONAL INSUREDS

**CERTIFICATE HOLDER:** NAME OF PARTY ISSUED CERTIFICATE (ASSOCIATION)

### POSSIBLE ADDITIONAL INSURANCE

POLUTION LIABILITY (ASBESTOS, PESTICIDES/HERBICIDES)

PROFESSIONAL LIABILITY (DESIGN/BUILD PROJECT)

# ESTIMATES, QUOTES AND/OR AGREEMENTS



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
2/23/2025

<p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.</p> <p>IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).</p>					
<p>PRODUCER Insurance Associates, Inc. 800 Bethel Street, Suite 200 Honolulu, HI 96813-4305</p>		<p>NAME PHONE (Area, Ext): E-MAIL ADDRESS:</p>		<p>FAX (Ac, No):</p>	
<p>INSURED XYZ Contracting 9876 King Street Honolulu, HI 96810</p>		<p>INSURER(S) AFFORDING COVERAGE</p>		<p>NAIC #</p>	
		INSURER A: First Insurance Company of Hawaii	41742		
		INSURER B: Crum & Forster Indemnity Co.	31348		
		INSURER C:			
		INSURER D:			
		INSURER E:			
		INSURER F:			
<p><b>COVERAGES</b>      <b>CERTIFICATE NUMBER:</b>      <b>REVISION NUMBER:</b></p> <p>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p>					
INSR LNR	TYPE OF INSURANCE	ADD'L SUBR INS'D WND	POLICY NUMBER	POLICY EFF IMMEDIATELY	POLICY EXP IMMEDIATELY
A	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/>		X X CPP1000203828-24	4/1/2024	4/1/2025
<p>GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PER <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER: <input type="checkbox"/></p>					
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> Hired AUTOS ONLY <input type="checkbox"/>	SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/>	X CPP1000203828-24	4/1/2024	4/1/2025
A	UMBRELLA LIAB EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/>		SLX1000229581-02	4/1/2024	4/1/2025
B	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY ANNUAL INCOME OF THE NON-EXECUTIVE OFFICER/EMPLOYEE EXCLUDED? <input type="checkbox"/> (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N <input type="checkbox"/>	N / A X 4087464228	4/1/2024	4/1/2025
<p>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Certificate Holder is named as additional insured but only as their interest may appear.</p> <p>BOD and Management Company are named as Additional Insured.</p>					

<p><b>CERTIFICATE HOLDER</b></p> <p>ABC, AOA 1234 Beretania Street Honolulu, HI 96810</p>		<p><b>CANCELLATION</b></p> <p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p>	
		<p>AUTHORIZED REPRESENTATIVE</p> <p></p>	

ACORD 25 (2016/03)

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# CONTRACT REVIEW ISSUES

## Payment and Performance Bond:

- Guarantees the project will be completed according to the contract specifications in the event of Contractor default, and any warranty obligations or liquidated damages specified in the contract will be honored.
- Guarantees all contractual providers of labor and materials for the project will be paid in the event of Owner default.
- Adds 2-4% to contract price and may be required by the Association's governing documents for projects exceeding a specified dollar amount or by the lender.
- Typically recommended for large projects even if not required in governing documents. **Why would a reasonable and prudent Board not purchase a bond for this project?**

# CONTRACT REVIEW ISSUES

## Indemnification:

- Imposes a contractual obligation on one party to defend (pay for an attorney) and indemnify (pay damages) for claims asserted against the indemnified party arising from the conduct of the indemnifying party. “Mutual” indemnification clauses are sometimes used both parties will agree to defend and indemnify the other party for claims arising from their respective conduct, however in most major construction contracts, indemnification clauses generally only require the Contractor to indemnify the Association.

# CONTRACT REVIEW ISSUES

## Payment:

- **Progressive payment terms are recommended with an initial down payment (to order materials) and milestone payments thereafter at specified intervals (i.e., pay as work is completed), with a “retainage” of typically 5-15% of total contract price being “retained” by association pending final completion and acceptance of all work (including punch list items).**

# CONTRACT REVIEW ISSUES

## Change Orders:

- Prior written approval by the parties as to any change in scope of work or contract price. Change order requirements and procedures should be specified in the agreement but are not typically found in contractor provided form agreements.

## Disputes:

- Mediation (non-binding) recommend it be required in virtually all construction agreements because it offers of **likelihood of settlement** without time and expense of full-scale litigation.
- Arbitration (binding) generally recommended in all but small contracts.

## HRS Chapter 672E – Contractor Repair Act:

### (Construction Contracts Only)

- Recommend waiver (if possible) due to lengthy claim investigation and evaluation process; however, courts have not yet ruled whether it can be waived by agreement of the parties.

# THE END





# Mahalo and Aloha

- Thank you to our speakers and to everyone who joined us today.
- Link to the Recording – will be emailed to everyone next week.
- Evaluation and feedback – we welcome your comments to help us continue to improve our programs.





## 2026 Calendar of Events

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

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

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

**June 13, June 20, 2026\***– **Board Leadership Development Workshop** – , Co-Chairs: Melanie Oyama, Keven Whalen

**July 16** – **Legislative Update** – presented by the Legislative Action Committee – Phillip Nerney, Chair

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

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

**October 22\*** – **Difficult Owners and Frivolous Lawsuits** - Co-Chairs: Richard Ekimoto & Paul Ireland Koftinow

**November 7** – **Annual CAI Membership Meeting**

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

*\*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.*



## 2025 Calendar of Events

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

**March 6\*:** “Major Project Management” – Sue Savio & Bernie Briones

**May 8\*:** “Where’s the Money – Association Funding” – Anne Anderson & Melanie Oyama

**June 14, 21\*:** “Board Leadership Development” – Keven Whalen & Melanie Oyama

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

**August 21\*:** “Mixed Plate” – Nikki Sen & Stephanie Poree

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

**October 23\*:** “EV, Fires, and Sprinklers” - Bernie Briones

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