Board of Directors' Guide

Condominium Insurance – Including Fidelity Bonds

March 1996

Caveat

The condominium statute is based on self-governance, owner enforcement, mandatory arbitration and majority rule. There is only minimal governmental involvement in the enforcement of Chapter 514A, Hawaii Revised Statutes, as detailed in Sections 514A-46, -47 and -48. This limited authority of the Real Estate Commission to receive or investigate complaints has been delegated to the Regulated Industries Complaints Office. As a result, the Real Estate Commission or its staff do not receive or investigate complaints

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This publication is an informal interpretation in accordance with Chapter 16-201, Hawaii Administrative Rules. This publication is not an official opinion or decision, nor should it be viewed as binding on the Real Estate Commission, the Professional and Vocational Licensing Division or the Department of Commerce and Consumer Affairs.

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I. INTRODUCTION

Generally, the responsibility for insuring the buildings, common elements and other common property of the condominium property regime from perils and calamities (such as fires, floods, hurricanes, and earthquakes) rests with the board of directors. Concomitantly, the responsibility for purchasing insurance to protect the association from financial loss for personal injury, bodily injury, and property damage also remains with the board of directors. A board may employ various measures to meet these responsibilities. These measures may include an insurance program, a risk management program and self-insurance. Usually, all three measures are used.

Interestingly enough, in some situations, there may not be any insurance coverage for losses caused by a board's failure to obtain and maintain adequate insurance. For these reasons, board members should familiarize themselves with the subject of insurance including fidelity insurance (bonding).

The information set forth in this booklet illustrates for board members and owners that insurance coverage is neither comprehensive, nor one-hundred percent. [2]

Some board of directors and unit owners innocently hold some **mistaken beliefs** about insurance. Examples of some of the more common mistaken beliefs include believing that:

- any and all property and liability damages and losses[1] are automatically covered by insurance; and
- insurance proceeds will provide 100% protection and provide payment to cover the entire loss.

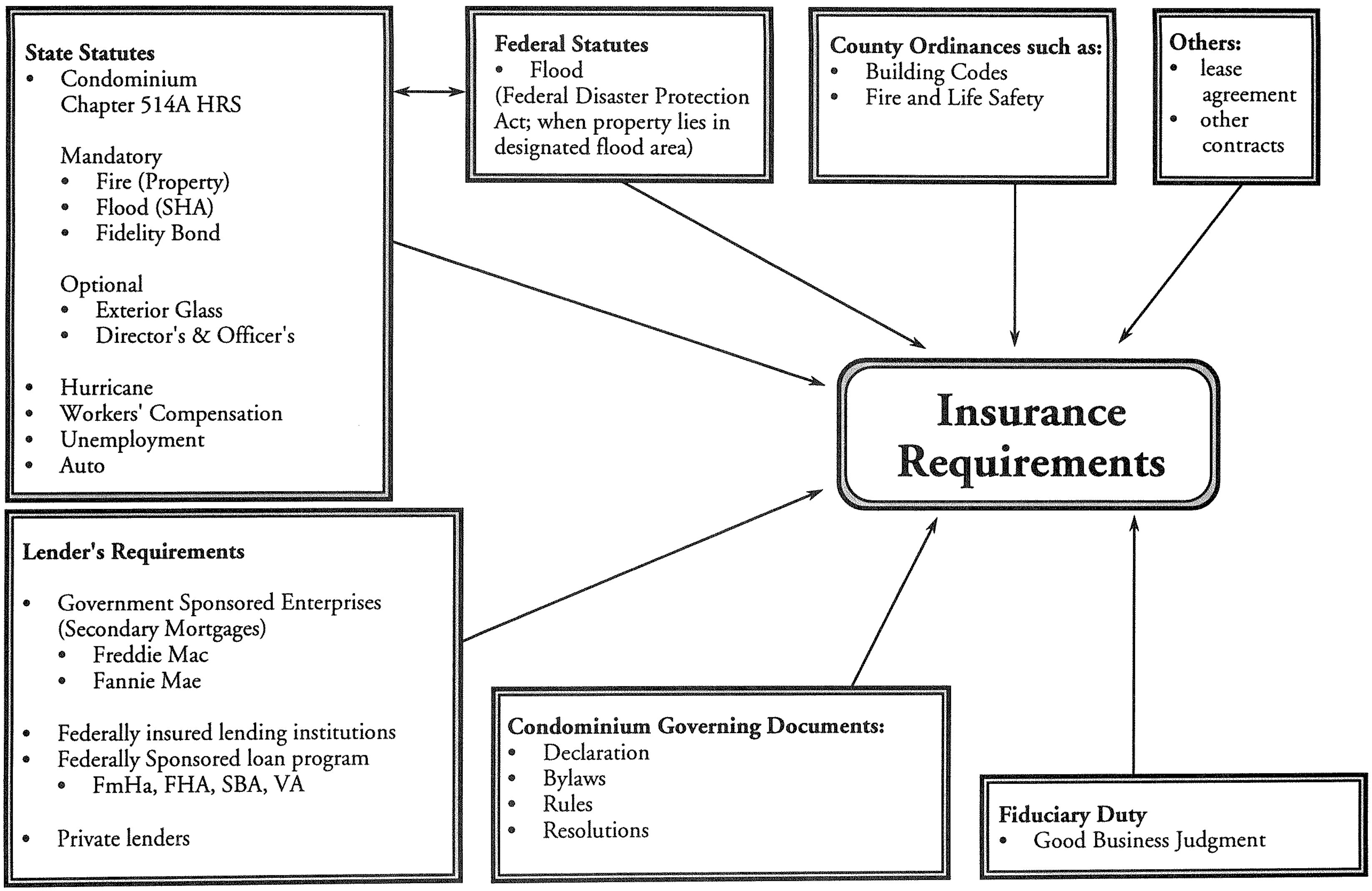
Insurance may provide a significant portion of the protection but not one-hundred percent. In most instances, insurance policies, by themselves, do not restore a condominium community to the same position as it was before the disaster or lawsuit. However, a risk management program and self-insurance (planned savings), together with an insurance program may reduce the financial impact losses have on an association. Risk management is a preventive process whereby advanced planning and decision making minimizes the adverse effects of accidental losses on condominium associations. This process is briefly described near the end of this booklet.

In Hawaii, the condominium law requires that the association obtain and maintain insurance coverage for fire, flood, and fidelity bonding. Flood insurance is required only for condominiums located in identified flood hazard areas as designated by the Federal Emergency Management Agency (FEMA)[3] and the Flood Insurance Rate Maps (FIRM). Exterior glass and directors' and officers' liability insurance are optional coverages. The condominium law does not require any other specific types of insurance; however, the condominium's governing documents may do so. In addition, other federal and state laws, county ordinances and lending institutions may impose other requirements. And in other situations, "Under appropriate circumstances, an ordinarily prudent person maintains insurance, and therefore, so must the board of directors of a community [condominium] association."[4] *See Figure 1 and Checklist 1 in Appendix "Non-Exhaustive Checklist for Determining Property and Liability Loss Exposure."*

As a practical matter then, each condominium association, and more specifically, its board of directors may consider the following suggestions for establishing, maintaining, and evaluating an association's insurance program:

1. Gain a working knowledge of basic insurance provisions and the protection it provides and acquire an understanding of the

Figure 1
A Condominium Association's Insurance Requirements Arise From Many Sources — Some of Are Mandatory — Some Make Good Business Sense To Obtain



terms and conditions of the specific insurance policy the board may be considering relevant to the association's loss protection;

2. Acquire a working knowledge of the specific insurance coverages mandated by the condominium law, Chapter 514A, Hawaii Revised Statutes, other state and federal statutes, and county ordinances;

3. Determine any additional insurance coverages that may be mandated by the condominium project's governing documents, and in doing such;
   a. determine or inventory the property which should or might be covered by insurance;
   b. determine the insurable replacement value of the association's real and personal property; and
   c. evaluate the association's exposure to liability;

4. Acquire a working knowledge of the insurance coverages required by lenders;

5. Determine what additional insurance coverages should be purchased because it makes good business judgement to do so;

6. Negotiate an insurance policy that addresses the individualized insurance needs of the association (endorsements, additional insurance, excess insurance); and

7. Formulate a plan of action to minimize the association's exposure to property, liability, net income and personnel loss; set up a risk reduction program; and where feasible, self-insure the association against loss.

Some of the condominium governing documents may be silent on the insurance subject; others may be so detailed as to include specifics on the amount and type of insurance.

A. History of the Commercial Insurance Policy Form

Historically, each insurance company drafted its own coverage forms. However, in 1955, the National Bureau of Casualty Underwriters, currently known as the Insurance Services Office or "ISO," introduced a comprehensive general liability insurance form or "CGL." The form combined, in a single policy, liability coverage for bodily injury and property damage. This form has been the foundation of liability protection for approximately more than 40 years. In 1985, the ISO replaced this form with a "Commercial General Liability" form with a few additions. This form is currently being used. Citations in this booklet to "property" and "liability" insurance refer to these forms. Nevertheless, the reader is advised that there are some insurance companies which do not subscribe to these uniform insurance forms and have crafted their own insurance policies with similar terms and provisions.

This booklet does not attempt to provide comprehensive guidelines for customizing an insurance program for a particular association. The information contained in this booklet is not legal or insurance advice. It is intended to provide general information about insurance for condominium associations. In formulating an insurance program for a particular condominium association, associations and their boards are advised to seek the professional services of competent licensed professionals, e.g., insurance agents and attorneys versed in condominium insurance law. In the process of providing insurance advice, a competent licensed professional will generally request that the association provide the professional with applicable information and documentation. The professional should have a complete working knowledge of insurance requirements for condominium associations.

II. Suggestions for Establishing and Updating A Condominium Association Insurance Program

A. Gain a working knowledge of basic insurance provisions and the protection provided and acquire an understanding of the terms and conditions of the specific insurance policy the board may be considering relevant to the association's loss protection.

Viewed simply, an insurance policy is a contract between the insurance carrier (insurer) and the association (insured). The policy provides an association some measure of financial protection against loss of association assets.

The coverage provided by a homeowner's insurance policy issued to a condominium unit owner differs from the coverage provided by a policy issued to the condominium association. The association's policy protects the assets of the association from loss. Whereas, a homeowner's policy protects the owner's personal assets from property and liability loss. The homeowner's policy is personal insurance; the condominium policy is commercial insurance.

In recent years, there have been efforts to make insurance contracts easier to read by providing some uniformity to the contract. In general, an insurance contract, like a house, is built on a foundation, the basic policy (see box below: Basic Policy Provisions).

To the foundation, the association, can add customized insurance provisions. The customizing is done through the purchase of endorsements, excess insurance, or additional insurance ***(See Figure 2).***

A board gains insight into the adequacy of its insurance program coverage when it carefully reads and notes the interplay and interrelatedness that exists between the insurance policy definitions, policy limits, deductibles, exclusions, endorsements and conditions ***(See Figure 2)***. For example, exterior plate glass breakage may not be covered as a loss in the basic part of the policy, but a further reading of an amendment to the insurance contract adds the coverage back into the contract. Amendments to the insurance contract are generally made by the purchase of endorsements. In another example, the policy provides for the replacement value of the building, while in the exclusion section of the policy, increased costs relating to the repair or reconstruction of a building in ac-

Basic Insurance Policy Provisions

1. Common declarations, e.g., name of the insured, address of insured property;
2. Common policy conditions: specifies conditions applicable to all coverages, e.g., cancellation, changes, examination of books and records, inspections and survey, premiums, transfer of rights and duties under the policy;
3. General definitions of the terms used in the contract;
4. A description of what losses are covered by the contract, and where applicable modified by the policy limits, definitions, exclusions and conditions;
5. A description of what losses are excluded from coverage, and where applicable modified by the policy limits, definitions, exclusions and condition;
6. A description of coverage, any additional coverage and where applicable coverage modified by endorsements, policy limits, definitions, exclusions and condition; and
7. A description of any additional individual insured by the contract for which an additional premium may be paid.

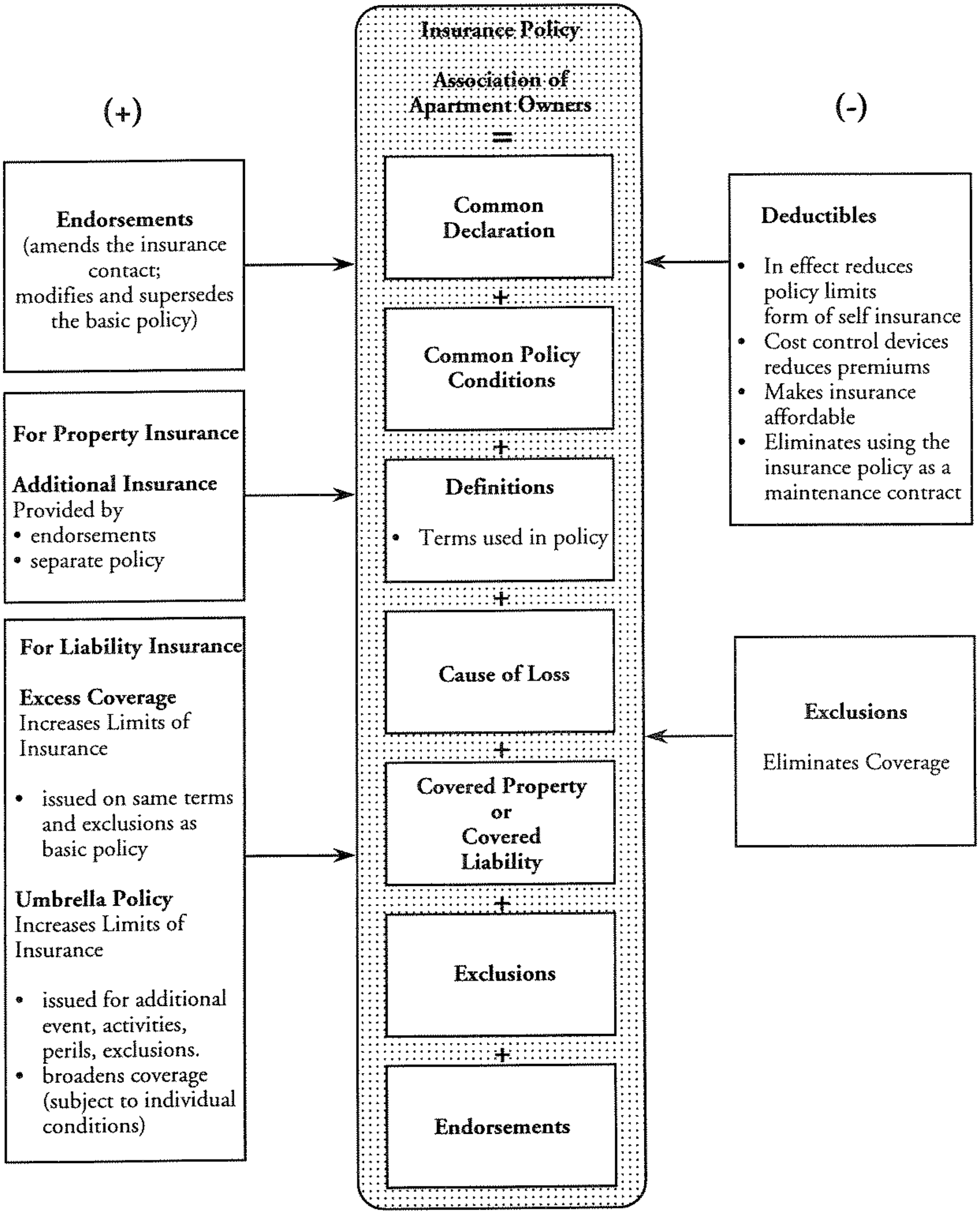


Figure 2

A typical blueprint of an insurance agreement

The basic insurance policy includes a number of standard provisions (see middle of figure 2). These provisions can be modified by amendments to the contract. The box provisions on the left side (+) can be used to increase insurance coverage. The box provisions on the right (-) side may be used to reduce insurance coverage.

cordance with the current county building codes are excluded.

1. Some Common Insurance Terms:

What follows is a general discussion of terms and conditions that may be contained in any insurance policy. The terms and conditions can limit or expand coverage. An understanding of the following principles may help a board decipher the scope of the association's insurance coverage:

a. **Dollar limit on recovery** specifies how much of the loss will be paid by insurance.

b. **Definitions** include terms and conditions clarifying and limiting the scope of insurance coverage and recovery.

c. **Exclusions** spell out the terms and conditions limiting the scope of insurance coverage and recovery.

d. **Specified conditions and procedures** limit the scope of or eliminates insurance coverage. Such conditions and procedures may include the:
   1) commission of fraud during the formation (voids coverage); and
   2) failure to report a claim or file a proof of loss in a timely matter (policy specifies what is timely).

> **Helpful Notes**:
> a) immediately notify insurer in writing of all claims including potential claims; failure to do so may result in not filing a proof of claim in a timely manner;
> b) keep a record of the claims filed;
> c) make sure insurer (insurance company) acknowledges receipt of the claim in writing; silence is not acceptance or receipt;
> d) allow insurance company to handle defense; to do otherwise may result in loss of coverage.

e. **Deductibles** include the threshold amount of loss the association must absorb (form of self-insurance). Generally, an association's property insurance has a deductible, liability does not (exception: directors' and officers' liability insurance). A recurring question arises in connection with this subject, namely, "Who pays the deductible?"

Statutes and the governing documents usually specify whether the association, apartment owner or both is responsible for payment of the deductible. If the association is responsible, the board must make sure money is available to pay the deductible. The deductible is a common expense.

> **Note:**
> Good business judgment and the Fannie Mae guidelines require the association to place the deductible monies in its "operating reserve account."

f. **Subrogation clause** gives the insurer the right to seek reimbursement against the individual who caused the damage.

> **Note:**
> Fannie Mae guidelines require that the condominium policy contain a waiver of subrogation rights.

g. **Contribution clause** allows the association's insurer to request contribution from other insurers to cover a particular loss. However, when more than one insurer bears the loss, the association may lose control in settling the claim unless the association is named the primary policy holder and retains all rights to full recovery according to its policy.

Helpful Notes: An association should, by endorsement, designate its policy as the primary insurance in order to control the settlement of the claim and the right to full recovery by the association. With respect to the unit homeowner's policy, the condominum association needs to be primary.

Note: Fannie Mae guidelines provide that the association should consider obtaining an endorsement making the association the primary policy holder.

h. **Cancellation clause** ("No control clause") allows the insurer to cancel an insurance policy in accordance with the terms, conditions, and within a time frame specified in the cancellation provision. A problem arises when the cancellation provision allows for the insurer to cancel the policy because of a unit owner's wrongdoing. To prevent these premature cancellations an association should consider the addition of a "severability of interest" clause. This clause may separate the association from the acts of owners acting outside the control of the association. The clause may not impute the owners's wrongful conduct to other members of the association.

i. **Endorsements and additional insurance** provisions may be purchased to cover losses otherwise excluded from the basic policy. Endorsements may alter the definition of valuation or eliminate coinsurance[5] or subrogation provisions.

2. Special Policy Conditions for Condominiums

Condominium living gives rise to a number of unique insurance issues. Typically, a condominium endorsement addresses these issues by special policy conditions.

Special policy conditions may include

a. A provision naming the association and the unit owner (excluding the portion of the property each owns or controls) as the insureds.

b. A waiver of subrogation provision whereby the insurance company waives its rights to recover against the unit owner for causing damages to common areas when the company pays the association for the damage.

c. A provision recognizing the developer as a unit owner.

d. A provision, where the governing document requires, naming an insurance trustee to receive any insurance proceeds due the association.

e. A severability of interest clause technically treats each insured as a separate insured.

f. A no control clause which preserves coverage when an insured acts outside the control of the association.

g. Cross liability condition allowing one insured to bring a claim against another insured.

h. A provision treating the association's commercial package policy as primary in the event there is other insurance coverage for the same property, particularly a unit owner's.

i. Replacing the standard mortgage clause with a mortgage interest insurance certificate.[6]

B. Acquire a working knowledge of the specific insurance coverages mandated by the condominium law, Chapter 514A, Hawaii Revised Statutes, other state, county and federal laws.

1. Hawaii Condominium Law — Chapter 514A, Hawaii Revised Statutes

As a first step in this process, a board should read and understand the insurance requirements set forth in the Hawaii condominium law (Chapter 514A, HRS). The board then should obtain the required insurance coverage with the association as the named insured (premiums for certain insurance coverage are common expenses to be paid by the owners). Specifically, the Hawaii condominium law requires the association to obtain specific types of property and employee theft insurance (namely, fidelity bonding). Other statutory coverages have been made optional.

Specifically, the board of directors is required to provide each owner, in layperson's terms, information about the association's insurance including:

- type of policy;
- description of the coverage and the limits thereof;
- amount of annual premium; and
- and renewal dates. (§514A-86(b), HRS)

The law requires the insurance carrier to agree to provide the board with a written summary of the policy in layman's term. The summary must contain the information just mentioned. Additionally, the summary must be provided at the inception of, and at the anniversary date, of the policy.

The mandatory specific Hawaii insurance requirements include:

a. Fire Insurance.

Fire insurance coverage is generally provided by the association's purchase of Commercial Property Insurance coverage.

Section 514A-86(a), HRS, requires that the association, more specifically the board of directors, to purchase and maintain insurance coverage against loss or damage from **fire** for the common elements; all exterior and interior walls (whether or not part of the common elements); floors; ceilings; in accordance with the as-built condominium plans and specifications, in amounts sufficient to provide for the repair or replacement thereof.

Unless the condominium project's declaration provides another definition of "common element," "common element" is defined by statute (§514A-3, HRS) to mean the:

1) land included in the condominium property regime, whether leased or in fee simple;

2) foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building or buildings;

3) basements, flat roofs, yards, gardens, recreational facilities, parking areas, and storage spaces;

4) premises for the lodging or use of janitors and other persons employed for the operation of the property;

5) central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerators;

6) elevators, escalators, tanks, pumps, motors, fans, compressors, ducts, and in general, all appratus and installations existing for common use;

7) such facilities as may be designated as common elements in the declaration; and

8) all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

In practice, certain of these items are uninsurable, e.g., land.

Note:

The statute requires associations to obtain insurance coverage for the repair or replacement of the specified property. However, "repair or replacement" has many different meanings including:

- insurance in amounts to construct, at current prices, a building (without deduction for depreciation), with equivalent utility in accordance with its appraisal (replacement cost);
- in amounts necessary to replace the property after depreciation (actual cash value); or
- amounts without limitations to the policy limits (guaranteed replacement costs).

Associations should review their insurance policies and ascertain the policy's definition of "replacement" and "repair" costs. At the time of this publication, the reasoning of the Hawaii Supreme Court in the case of Dawes v. First Insurance, 77 Haw. 117, 883 P.2d. 38 (1994) gives associations an indication that the court may lean towards inclusion of changes in construction codes as part of replacement and repair costs.[7]

Examples of changes in construction codes include: post-Hurricane Iniki roof-wind shear requirements, accessibility compliance with the Americans with Disabilities Act (ADA) for condominium projects offering services to the public, e.g., a convenience store or hotel operation.

Suggestion: Boards may consider purchasing a "Building Ordinance" endorsement. This endorsement provides insurance coverage for, among other things, the removal of the undamaged building or portions thereof, the reconstruction of the building according to the changes in the construction codes and other applicable laws, e.g., where applicable, the ADA. **The basic insurance policy usually excludes such coverage.** Victims of Hurricane Andrew and Iniki understand full well the realities of trying to rebuild their damaged buildings with insurance proceeds limited to replacement costs coverage (with like kind and quality). The added costs of reconstructing in accordance with current building codes are generally excluded from the replacement cost coverage.

Also Note:

The statute does not specifically state who should be responsible for any fire insurance deductible. The statute does say that the association of apartment owners shall purchase and maintain insurance "... against loss or damage by fire sufficient to provide for the repair or replacement thereof in the event of such loss or damages." Such language reasonably can be interpreted to mean that the association is responsible for obtaining insurance to cover all repair and replacement costs including self-insuring the deductible amount. The deductible insurance amounts are common expenses to be paid by all owners. "Good business judgement and the Fannie Mae guidelines provide the association should place the deductible monies in its "operating reserve account."

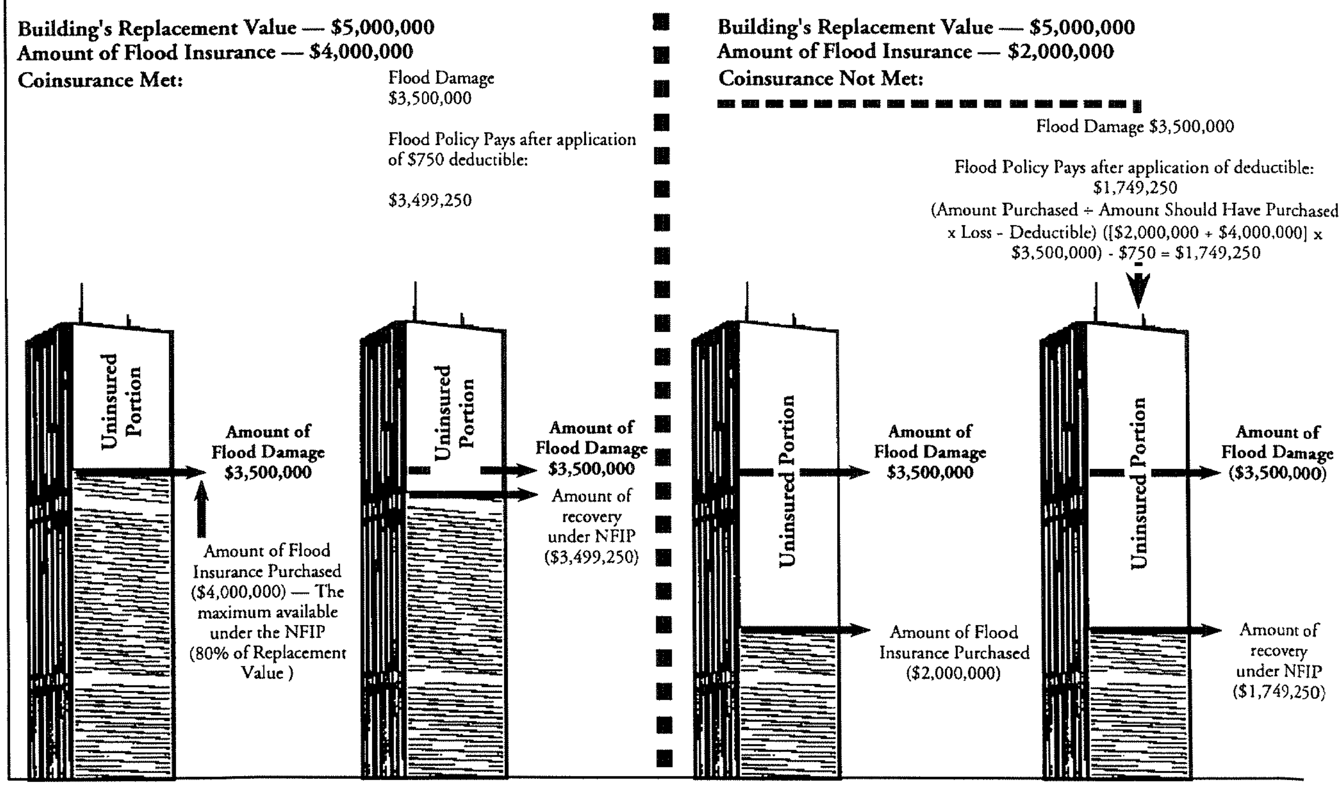
Chapter 514A, HRS, appears silent about other insurance deductibles and the responsibility for such. Thus, boards must look to their governing documents for guidance in this area. Some documents may apportion the deductible according to who has the responsibility to insure the common property and the condominium apartment.[8] For some loss situations, the governing documents are silent and do not specifically mandate insurance coverage. In these situations, the association must decide to purchase their own insurance or leave the situation uninsured. All losses then are not automatically covered by insurance — such is a myth. Some losses remain uninsured unless an owner or board decides to obtain insurance coverage.

b. Flood Insurance

Section 514A-86(a), HRS, requires the association of apartment owners obtain and maintain flood insurance when the condominium project is located in an identified flood hazard area designated today by the Federal Emergency Management Agency (FEMA). In addition, federally insured lending institutions and sponsored programs such as "Fannie Mae" and "Freddie Mac" require many condominiums to carry the maximum amount of National Flood Insurance coverage as a condition of the loan.

As of October 1, 1994, the National Flood Insurance Program requires condominium associations purchasing flood insurance or renewing flood insurance to obtain flood insurance in amounts of 80% of the replacement value of the eligible property *(See **Figure 3**)*. Failure to do

Figure 3
The Impact of NFIP Coinsurance on Amount of Insurance Recovered
Insurance loss claim payment decreases when coinsurance requirement is not met.*



*Association should investigate other sources to cover the damages not covered by NFIP i.e., purchases of additional insurance where available, self insurance (plan saving) so results in the association payment of a coinsurance penalty. Specifically, condominium projects where 75% or more of the floor space is residential may purchase flood insurance under the new Condo Master Policy (CMP) on the *Residential Condominium Building Association Policy (RCBAP)* form. The maximum amount of *building* coverage is **$250,000 times the number of units in the building not to exceed the buildings's replacement cost.** (44 CFR § 61.6 1/23/95) Commonly owned contents are covered to a maximum of $100,000 per building. This coverage is available to residential condominiums in the Regular Flood Program.

All new CMPs and Dwelling Policies meeting the eligibility requirements provide replacement cost coverage on the buildings subject to a co-insurance penalty.[9] The penalty works like this. As long as the association purchases flood insurance in an amount equal to the "lesser of 80 percent or more of the full replacement cost of the building at the time of loss or the maximum amount of insurance under the NFIP, the insured will be reimbursed fully for a loss, up to the policy limit (subject to a deductible)."[10] In all other cases the NFIP will pay a claim less than the full amount of the loss as follows:

Insurance Carried / Insurance Required x Amount of Loss = Limit of Recovery

The loss standard flood deductible is generally $750 for residential buildings located in a regular program community in a Special Flood Hazard Area. Others have a $500.00 deductible.

Condominium projects which do not meet the 75% residential floor requirement must purchase either a Condominium Association Policy (CAP) or a Non Residential Building and Contents Policy. Both policies are issued on the General Property Form. These polices do not provide replacement cost coverage and the coverage limits are considerably lower than provided by the Residential Condominium Building Association Policy as follows:

Policy Type	Coverage Limits [11]	
CAP	**EMERGENCY PROGRAM:**	
	BUILDING:	Actual cash value to a maximum of $100,000
	CONTENTS:	Actual cash value to a maximum of $10,000
Non Residential	**EMERGENCY PROGRAM:**	
	BUILDING:	Actual cash value to a maximum of $100,000
	CONTENTS:	Actual cash value to a maximum of $10,000
	REGULAR PROGRAM:	
	BUILDING:	Actual cash value to a maximum of $500,000
	CONTENTS:	Actual cash value to a maximum of $500,000

In general, the law[12] requires lenders (federally regulated, supervised, or insured institutions, or those selling loans to, e.g., Fannie Mae and Freddie Mac [government related enterprises] and servicers of mortgage loans), to notify the purchaser that the property lies within a special flood zone area and to assure that flood insurance is maintained throughout the loan. The law allows the lending institutions to purchase the required flood insurance for the owner if the owner fails to purchase the required flood insurance (force-placed insurance)[13] and mandate the escrowing of the premiums. Force placed insurance may be very expensive and may not represent the value of the home. Although the responsibility of notifying the condominium owners remains with the lenders and servicers of the mortgages, the purchase and payment of flood insurance remains with each owner. As a practical matter, if the condominium building is not insured, the unit owners cannot obtain, extend, maintain or refinance their mortgage loans.

See Appendix A for a more complete explanation of the CMP insurance policy.

c. Fidelity Bond

Evidence of having a fidelity bond is required annually for condominium projects having six or more apartment units and for condominium managing agents. Basically, fidelity bonding is an employee dishonesty insurance policy and protects the insured against misappropriation of the association's funds and property by its employees. Generally, fidelity bond coverage provides loss protection only in situations where there is an employer—employee relationship. Typically, fidelity coverage does not extend to non-employees such as the association's non-salaried directors, committee members, the principals or owners of the condominium (property) managing agent company and its employees. The condominium (property) managing agent company's **own** fidelity bond generally provides coverage for any losses caused by the dishonesty or fraud of its own employees.

However, in Hawaii, the condominium law requires that the fidelity bond provide an association with protection from the fraudulent and dishonest acts **by persons** handling the association funds including any (registered) managing agent. The bond must cover the officers, directors, employees and managing agents of the association who handle the funds (§ 514A-95.1, HRS).

Specifically, Hawaii Revised Statutes require among other requirements that:

1) Each condominium project with six or more apartment units register annually with the Real Estate Commission and *[See Appendix B (p. B-1) for registration instructions and sample registration form]*:

   a) secure annually, through its association of apartment owners, a fidelity bond in an amount equal to $500.00 multiplied by the number of units in the project, to cover all officers, directors, employees, and managing agents of the association handling association funds (the bond must not be less than $20,000 nor greater than $100,000);

   b) secure a bond that protects the association against the fraudulent or dishonest acts by persons handling association funds, including dishonest acts or fraud by any managing agent registered with the commission, (for very limited circumstances, an association which is unable to obtain a fidelity bond may seek an **annual** exemption from the Hawaii Real Estate Commission). § 514A-95.1, HRS. *[See Appendix B (p. B-8) for conditions of exemption]*;

2) Every managing agent:

   a) be licensed as a real estate broker;

   b) register annually with the commission;

   c) provide, annually, and at time of initial registration, evidence of a fidelity bond in amount equal to $500.00 multiplied by the aggregate number of units covered by all of the managing agent's contract. The bond must protect the managing agent against the loss of any association money, securities or other property caused by the fraudulent or dishonest acts of the managing agent's employees (the bond must not be less than $20,000 nor greater than $100,00) *[See Appendix B (p. B-10 thru 14) for sample and discussion of evidence of fidelity bonding]*;

   d) act promptly to recover from the

bond and apply the bond proceeds, if any, to reduce the loss sustained by the association because of the managing agent's employees' dishonesty or fraud.

Note:
The required bond amount specifies a **minimum and a maximum** amount. In light of associations keeping high amounts as mandatory reserves, it may be prudent for associations to maintain the fidelity bond coverage closer to the maximum coverage.

Bond Coverage:
The Hawaii condominium law requires that a condominium association's fidelity bond **protect the association against fraudulent or dishonest acts by persons handling the association funds, including any registered managing agent.** It appears that some issued fidelity bonds have endorsements which impair the protection specified by statute. The following are examples of such fidelity bonds and endorsments. A fidelity bond is deficient if it:

- names the wrong, or unregistered condominium managing agent;
- requires a "criminal conviction" as a condition to payment of the insurance proceeds;
- names an employee benefit plan as an additional insured;
- expands the bonding coverage to condominium hotel operation by the association (e.g., "hotel-type rental pool");
- expands the bonding coverage to permitted time share operations.

It has been reported that the Real Estate Commission will not register a condominium association submitting a fidelity bond or endorsement that is similar to any of the examples cited above.

Trend to watch:
Legislation was introduced in 1996 proposing to change the current annual association registration to a biennial registration.

The fidelity bond requirement for condominium associations and managing agents is not a recent development. The bond requirement for managing agents was first introduced in 1977. Added registration and licensing requirements became effective in January 1985 and December 1985. The impetus for these requirements arose out of the misappropriation by two managing agents; one for $468,000 from about 17 associations; another appropriated $400,000 from 25-30 associations.[14]

The bond requirement for associations was first introduced in 1989 as Act 297.[15] Cases like the 1985 case of *Association of Apartment Owners of Lokelani v. Ho'oli Hale Real Estate Corporation et. al.*, Civil No. 85-0588, Second Circuit Court, State of Hawaii, apparently impacted legislation requiring the associations to obtain its own fidelity bond. The Hawaii Supreme Court dismissed this case without a hearing (Case No. 1221) and let stand the lower court's decision in favor of the bonding company. The standing decision affirmed the bonding company's decision denying the association coverage under the condominium managing agent's fidelity bond.

In this case, the association alleged that the condominium managing agent company's president and secretary stole association funds. The association sought recovery on the condominium managing agent's fidelity bond. The bond company claimed that the bond protected only employers from the dishonest acts of its employees and did not protect a third party like the association. The bonding company also claimed that even though the condominium managing agent had assigned the recovery rights of the bond recovery fund to the association, the company did not consent to it. The bond company also denied coverage because the dishonest and fraudulent acts were committed by the principals of the company and not by covered employees. As principals they were excluded from coverage.

The importance of an association maintaining the required fidelity bond is well illustrated in the settled case of *Association of Apartment Owners of Kanoe Resort v. Estate of Bob L. Brock Deceased et. al.* District Court of the Second Circuit, Civil No. W94-2131. The association alleged in their district court complaint that its former condominium managing agent and its deceased principal converted the association's monies by transferring monies to the deceased defendant's account. The Association alleged that the conversion was done through fraud, misrepresentation or deceit. The insurance company denied coverage stating that the bond covered only losses caused by the dishonest acts of the association employees not those of its principal. However, it was reported that the association reached a financial settlement on their loss **under the association's required fidelity bond policy**. Normally, in Hawaii, the association's fidelity bond covers the losses caused by the dishonest acts by the principals of a condominium managing agent. The association thereafter dismissed its complaint without prejudice.[16]

Note:
The secondary mortgage market (e.g.,"Freddie Mac" and "Fannie Mae") also places great importance on the maintenance of a fidelity bond. These entities require that associations maintain "Fidelity Bonding" in situations where unit owner's mortgages are being resold to them. Thus, the failure to obtain and maintain the appropriate level of fidelity insurance jeopardizes the reselling and financing of the condominium units.

Fidelity insurance policies may be issued as a blanket or scheduled policy. A blanket policy covers the dishonesty of anyone handling association funds. In contrast, a name scheduled policy only covers the misappropriation of named individuals.

Although the statute requires a fidelity bond, in reality, the policy that is issued is a fidelity insurance policy. (A bond usually involves a surety which guarantees the performance of an act.)

Note:
"In order to limit exposure to misappropriation of funds, the association should hire competent and trustworthy people who are supervised with clear lines of authority."[17]

The association should have in place, procedures for:

1) authorization and maintenance of adequate documents and records;

2) physical control over assets and records;

3) independent checks on employees performance;

4) lock box deposits where appropriate;

5) the requirement of multiple signatures on the operating account; and

6) limiting access to reserve accounts.

At a minimum, the association, more specifically, the board of directors should ensure that the handling and disbursement of association funds comply with the requirements of §514A-97, HRS. **Among other requirements, § 514A-97, HRS, mandates that the board supervise the disbursement of any association funds made by its employees and managing agents.** Funds collected by an association's managing agent or the managing agent's employees must be deposited in the managing agent's client trust account and be disbursed by the agent or its employees only under the supervision of the board of directors. The Real

Estate Commission has plans to draft rules governing the handling and disbursement of condominium association funds.

Board supervision includes, but is not limited to:

1) separate operating and reserve accounts with restricted access to the reserve account;
2) countersignature (two required signature) requirements for checks drawn on association accounts;
3) regular board review and reconciliation of association disbursement and accounts balance (includes review of managing agents statement of expenditures), regular audit etc.

2. Optional Statutory Insurance

a. Directors' and Officers' Liability Insurance (D&O)

Section 514A-86 (b), HRS, gives the association the option of obtaining D&O liability insurance in amounts as determined by the board of directors. This insurance generally provides the association, directors, and officers some loss coverage for claims resulting from the directors' and officers' failure to adequately perform their fiduciary duties and duty of ordinary care. Such coverage may be purchased as an endorsement to the basic policy or it may be purchased separately.

However, damages in connection with claims resulting from incorrect or omitted insurance decisions, non-monetary claims (e.g., suits to enjoin the board or make the board enforce a rule), discrimination and civil rights, and breach of contract are generally excluded from the D&O policy. In some instances, the association may attempt to negotiate the purchase of an endorsement to cover these exclusions and broaden coverage.

Damages caused by the directors' and officers' bad faith actions, mismanagement , failure to maintain adequate reserves, books and records resulting in bodily injury, property damage, or personal injury are generally covered by the association's basic liability policy (commercial general liability policy). On the other hand, when these same behaviors cause damages other than bodily injury, property, or personal injury, such damages may be covered under the D&O policy.

In general, D&O policies are issued as claims made policies and the costs of defense are included as part of the policy limit. For example, where there has been a judgment for $150,000 with a $100,000 policy limit, with attorney's fees of $20,000; $20,000 of the insurance proceeds will be used to pay the defense cost and the remaining portion of $80,000 may be applied to the judgment for *$150,000*. $70,000 of the judgment then remains uncovered by the insurance policy.

The named insured on a D&O policy are the directors and officers. The association is covered only if the association is named in the suit with the directors or officers; and the association has obligated itself to indemnify the directors and officers.

Typically, D&O policies narrowly define the named insured as the association's officers and directors. Some policies may extend coverage to the association itself, committee members, other volunteers, or employees.

b. Exterior Glass

The Hawaii condominium law, namely §514A-86 (a), HRS, gives the association of apartment owners the option of obtaining and maintaining exterior glass insurance. Generally, the association's property insurance policy provides protection for glass breakage. However, coverage is normally limited (e.g., $100.00 per pane and subject to a $500.00 per occurrence for vandalism). Associations may consider extending any limited coverage by the purchase of additional insurance.[18] Other laws and county codes may impose other requirements for repairing or replacing the exterior glass.

3. Other Hawaii Laws Impacting Insurance

A number of other Hawaii laws impact an association's insurance decisions.

a. Hurricane Insurance (Chapter 431P, HRS). *(See Appendix C)*

The law relating to the Hawaii Hurricane Relief Fund (HHRF) characterizes and insures condominium associations as "habitational" commercial property. The policy covers loss to the building and its contents **only if the policy holder has a companion property insurance policy. Such policy, includes and is <u>subject to</u>, specified limits, exclusions, terms and conditions. The property insurance policy must be equivalent to a standard fire policy providing loss coverage for the peril of fire and windstorm[19] (excluding hurricane).**

The Fund provides condominium associations a maximum aggregate coverage of $500,000 per risk against damage or loss to eligible real property. There is a minimum deductible: the greater of $5,000 or five per cent of total coverage at a given insured location, or one percent of the building value at the insured location.

The HHRF policy gives association a choice of different optional coverages including:

Coverage A-1	Building and Structures,
Coverage A-2	Property Association,
Coverage A-3	Builder's Risk,
Coverage C-1	Business Personal Property,
Coverage C-2	Business Personal Property-Tenant,
Coverage C-3	Business Personal Property-Associations Unit Owner,

and several additional coverages including debris removal, reasonable repairs, collapse, preservation of property. ***See Appendix C for specific definitions of these coverage options and what may be generally covered and excluded from the policy.***

After Hurricane Iniki, hurricane coverage became difficult to obtain. Thus, in 1993, the Legislature created the Hawaii Hurricane Relief Fund ("HHRF") to provide hurricane coverage for property located in Hawaii. If a condominium owner has a mortgage, the mortgage company will generally require hurricane insurance even though coverage is not mandated by any specific Hawaii law. Apparently, this is due to the secondary mortgage lenders (e.g., Freddie Mac, Fannie Mae) requiring condominium associations to maintain hurricane coverage as part of their insurance program. Obtaining hurricane insurance is just the **prudent action to take** in the aftermath of Hurricanes Iniki and Andrew.

However, the policy provides coverage only during a declared hurricane "watch" or "warning." Hurricanes are defined to mean a storm or storm system defined by the Central Pacific Hurricane Center of the National Weather Service.

Hurricane insurance is issued by the HHRF for residential and commercial property. Policies are also available, in the non-government market, through certain private licensed insurance companies. Generally, the residential policy provides coverage which, historically, has been covered by homeowners or dwelling fire policies. However, the HHRF characterizes and insures condominium associations as "habitational" commercial property.

1) ***Policy coverage.*** The policy provides coverage for direct physical loss to covered property only for the peril of wind during a hurricane and the resulting collapse or loss caused by rain, snow, sleet, and/or dust. Other losses to the interior of a covered building or to property caused by rain, snow, sleet, sand or dust are covered only if the direct force of the wind during a hurricane has first damaged the building and caused an opening in a roof or wall, and the rain, snow, sleet, sand or dust enters through the opening.

Besides providing coverage for direct damage to covered property such as building and contents, the HHRF policy provides coverage for debris removal, reasonable repairs, collapse and property removal. It does not cover perils insured by the companion property policy for fire, explosion riot or civil commotion, vandalism or malicious mischief and theft. Even losses resulting from such perils are excluded from coverage whether the hurricane wind concurrently or sequentially contributed to the loss.

The HHRF policy **excludes** loss or damage by:

ordinance or law;[20]
earth movement;
water damage;
sudden and accidental damage from
  artificially generated electrical current;
wear;
tear;
marring;
deterioration;
inherent vice;
latent defect and mechanical breakdown;
pollutants;
neglect;
war;
nuclear hazard;
intentional loss;
excavation;
pipe; and
foundation expense.

There are additional conditions and exclusions which may be found in each policy.

2) ***Insured Location.*** The HHRF provides insurance coverage for the association buildings and contents. If the association consists of multiple buildings, the multiple buildings are defined as a single insured location.

3) ***Policy Limits.*** There is no minimum dollar amount of coverage, and the policy limits apply to each insured location. The maximum coverage for HHRF is $500,000 per association. The HHRF cannot exceed the companion policy limit. For example, if the companion fire policy has a limit of $400,000 the HHRF coverage cannot be for $401,000. The policy limit however, can be less than the companion policy. Thus, the total coverage possible with an HHRF policy and a companion policy in this situation is $900,000. This amount, in some cases, falls far short of the amounts required to rebuild the condominium.

4) ***Policy Deductibles.*** HHRF coverage attaches after the association has met its deductible. The deductible cannot be lower than the deductible provided in the companion policy for peril of windstorm, *whichever is greater. In a commercial* policy, the deductible applies to all coverage on a per insured location and applies separately to each hurricane. There are different mandatory deductibles for the residential policy and the commercial policy. In addition, there are optional higher deductibles for both types of policies. The deductible applies to each hurricane. Adjustments to the companion policy deductible may require adjustment to the HHRF deductible.

The basic deductible and higher optional deductibles are:

Commercial Policy		Residential Policy	
Mandatory Minimum Deductible:	**Optional Higher Deductibles:**	**Mandatory Minimum Deductible**	**Higher Optional Deductible**
$5,000 or 5% of total coverage at a given insured location or 1% of the total building value at the insured location, whichever is greater.	$6,000, 6% of total coverage, or 2% of the total building valued at the insured location, whichever is greater. $8,000, 8% of total coverage, or 4%of the total building valued at the insured location, whichever is greater. $10,000, 10% of total coverage, or 6% of the total building valued at the insured location, whichever is greater. $15,000, 15% of total coverage, or 11% of the total building valued at the insured location, whichever is greater.	$1,000, or 1% of total coverage whichever is greater.	$2,000 or 2% of total coverage, whichever is greater. $3,000 or 3% of total coverage, whichever is greater. $4,000 or 4% of total coverage, whichever is greater. $5,000 or 5% of total coverage, whichever is greater.

5) ***Replacement Cost.*** Typically, for buildings and structures loss coverage only, the companion policy provides for settlement of losses based on **actual cash value (ACV)** of the property (replacement value less depreciation and a deductible). In these situations, the HHRF policy cannot provide for a different method of settling losses. However, if the companion policy provides for a settlement of any loss based on the replacement value of the property (minus a deductible but without depreciation), the HHRF policy can provide loss coverage based on replacement cost value. The companion policy must also provide for actual cash value coverage on personal property.

The HHRF policy provides for the replacement cost coverage by an **endorsement** (Hawaii Property Insurance Association change endorsement). Thus, at the time of loss, if coverage A is 80% or more of the full replacement cost of the building immediately before the loss, the HHRF policy will pay the **full** cost to repair or replace the damage, subject to the following amount (after applying the deductible and without deduction for depreciation). That amount is not more than the least of the following:

a) policy limit for the structure under the policy;

b) the replacement cost of the damage portion of the structure for like construction and use on the same location; or

c) the necessary amount spent to repair or replace.

Under the policy, the purchase of the maximum amount of insurance available under HHRF ($500,000) is equivalent to meeting the 80% requirement.

But when the amount of insurance coverage maintained is less than 80% of the full replacement cost, the amount HHRF will pay is the greater of the following amounts but not more than the policy limit:

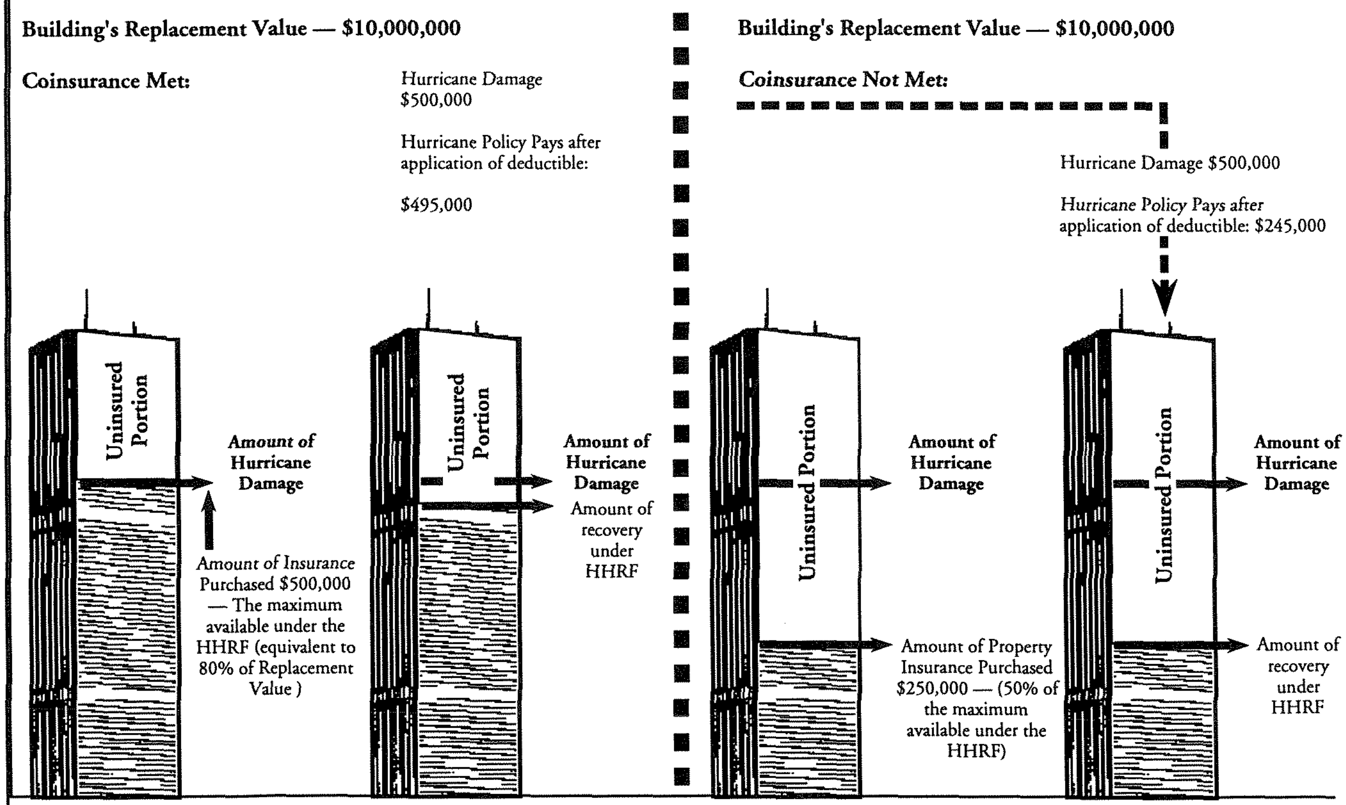
a) actual cash value of the damage part of the structure less the deductible; or

b) proportion of the cost to repair or replace (after the deductible and without deduction for depreciation), that part of the damage structure, which the total amount of insurance under Coverage A of the policy on the damaged building bears to 80% of the replacement cost of the covered buildings and structures before the loss.

For example, if the insurance purchased is only 1/2 of 80% then the recovered loss amount is 50% of 80% of the total replacement cost. In contrast, if the association maintains insurance at least 80% of the replacement cost of the building, the association will recover 100% of its insurable losses up to the policy limit. ***See Figure 4.***

6) ***Glass Replacement.*** The HHRF policy provides replacement cost coverage for glass with safety glazing materials when required by ordinance or law.

Figure 4
The Impact of HHRF Coinsurance on Amount of Insurance Recovered
Insurance loss claim payment decreases when coinsurance requirement is not met.*



*Association should investigate other sources to cover the damages not covered by HHRF i.e., purchases of additional insurance where available, self insurance (plan saving)

7) *Waiting Period.* The HHRF policy does not provide any coverage for a period of time after the effective date shown in the declaration for new policies. If the property has been previously covered and the property changed hands, or if the policy is renewed, the polices are not "new." This waiting period lasts a minimum of 5 days from the time the application is signed and accepted by the producer. The waiting period is extended after the cancellation of a hurricane watch or warning. In other words, the waiting period is suspended when there is a hurricane watch or warning, and restarts seventy-two (72) hours after the cancellation.

8) ***Other Sources of Hurricane Insurance.*** Owners may choose to purchase hurricane insurance from HHRF, and where available, from licensed Hawaii insurance companies. A certain number of private insurance companies in Hawaii have accepted the risks of hurricanes and provide policies to cover the hurricane risks. Hawaii law does not make it mandatory to obtain hurricane insurance. However, mortgage lenders make it mandatory. In this case, if the association or owner fails to purchase the required hurricane insurance, the mortgage lender may purchase the insurance for the owner (force-placed) In these circumstances, the insurance may be very expensive and may not represent the value of the home.

b. Worker's Compensation Insurance (Chapter 386, HRS)

1) ***Associations' Volunteers.*** Even when it appears that an association has no paid employees, only volunteers, the association may consider obtaining, for such volunteers, Worker's Compensation Insurance. Such prudent action covers the association's potential liability for the possibility that a volunteer's assignment leading to injuries may be classified as an employee job related injury. Under such circumstances, the association becomes liable for the workers compensation insurance premiums plus penalty and interest. The finding of an unpaid volunteer as an "employee" is dependent on, among other things, the "control" exerted by the board in directing the volunteer's performance of his or her duties. An association may elect to cover volunteers, unpaid directors and officers under the Hawaii Worker's Compensation statute.[21] If the coverage is elected annually, the charge for the coverage may be based on an imputed salary.[22] If the coverage is not elected, the association should examine whether volunteers' assignment related injuries may be covered under the association's other insurance policies or purchase additional insurance coverage.

2) ***Associations' Employees.*** Associations with employees must obtain Worker's Compensation Insurance. Hawaii employers are required to compensate their employees for personal injuries caused either by accident arising out of, and in the course of employment, or by disease caused by, or resulting from being employed. Such compensation includes medical and rehabilitation benefits, income and indemnity benefits in cases of disability or death, and allowance for funeral and burial expenses.

The Worker's Compensation Law is the employee's exclusive recourse against the employer for a work related injury. The benefits under this law are available regardless of fault. Historically, common law allowed broad recovery against the employer. Worker's compensation laws eliminated this option and replaced the law with specified benefits.

3) ***Employees of independent contractors.***[23] In situations where the association has retained an independent contractor to perform repair work, the issue may arise whether an injured employee of an independent contractor is an employee of an association. To minimize the chances of the association being held liable for any worker's compensation benefits in such situations, the association may consider the following *preventive courses of action:*

   a) Request the independent contractor produce a certificate of insurance currently evidencing that the contractor maintains worker's compensation insurance; and

   b) Request the independent contractor to name the association as an alternate employer on the independent contractor's worker's compensation insurance policy. This may allow the claim to be handled under the contractor's worker's compensation policy.[24]

c. Unemployment Insurance

Pursuant to Chapter 383, HRS, Hawaii Employment Security Law, associations with employees must contribute to the state unemployment compensation fund. The fund provides benefits for unemployed individuals.

Payments into the fund are based on amount of wages paid. The statute defines "wages" as:

> . . . all renuneration for services from whatever source, including commissions and bonuses, tips or gratuities paid directly to an individual . . ., and the cash value of remuneration in any medium other than cash . . . §383-10, HRS.

The statute defines "employment" as:

> . . . service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied. §383-2, HRS.

The *State Department of Labor* assesses associations for back contributions, costs, and penalties when it fails to make the appropriate fund payments. In addition, such conduct may be a breach of the directors' fiduciary duties.

d. Automobile Insurance

Automobile insurance coverage protects the association against the liability exposure for the operation of association owned automobiles. In addition, the association should make provisions to cover its liability exposure when volunteers or staff operate their own personal automobiles, or the association hires a vehicle.

Hawaii's Motor Vehicle Insurance Law, Article 10C of Chapter 431, HRS requires that each person operating or using a motor vehicle upon any public street in this State, be insured at all times under a no-fault policy (§431:10C-104, HRS). Subject to certain conditions, the law permits an owner to self-insure in lieu of maintaining a no-fault policy (§431:10C-105, HRS).

The Hawaii Motor Vehicle Insurance Law also mandates uninsured and underinsured motorist coverage. However, it may be specifically rejected. *§431: 10C 301 (b) (3), HRS.*

Associations are included in the definition of "person" and "owner." For these reasons, the board should acquire a working knowledge of the insurance requirements for association owned and non-owned automobiles. A good place to begin is with the Motor Vehicle Insurance Law as set forth in Article 10C of Chapter

431, HRS. A competent licensed insurance agent should be consulted for the specifics of any purchased automobile insurance coverage.

C. Determine any additional insurance coverages that may be mandated by the condominium project's governing documents.

This section discusses other insurance provisions that might be mandated by the condominium's governing documents. Earlier, this booklet discussed some of these same types of insurance mandated by the Hawaii condominium law. The condominium's governing documents include, but are not limited to:

1) the declaration,
2) articles of incorporation (where applicable),
3) bylaws, and
4) house rules.

In most cases, the governing documents require the association to obtain and maintain property, liability, and employee dishonesty insurance. Some governing documents may specify a particular type of property, liability or other types of insurance. Depending on the documents, there may be a requirement that the required dollar amount of insurance be based on actual cash, replacement, or guaranteed replacement value. In some instances, the basic insurance policy excludes certain coverages. However, the excluded coverage may be required by law or the governing documents. Under these circumstances, the association must purchase the required insurance coverage by means of an endorsement (amendment to the basic policy) or additional insurance.

1. Compiling the List of Property to be Insured

Once the board determines what insurance it is obligated to obtain and maintain, the board then must determine which specific property (real and personal) should be covered by insurance. Basically, it is the responsibility of the board of directors, not the insurer (insurance company), to identify any real or personal property that the association owns or has an obligation to maintain, replace, or repair and to protect against loss or damage. Other personnel like the managing agent, resident manager, etc. may help with this identification process. However, the ultimate responsibility remains with the board.

In identifying the property a number of documents should be reviewed including:

a. The condominium's governing documents (declaration, articles of incorporation (if any) master lease (if any), bylaws, house rules;

b. Relevant statutes, including Chapter 514A, HRS;

c. Floor plans of the condominium project as built (typically filed at the Bureau of Conveyances);

d. Reserve Study results;

e. Acquisition records, inventories, or financial statements and records, invoices, maintenance records, purchase orders;

f. Association board minutes, correspondence, resolution book;

g. Other applicable documents, records, and writings. Record keeping and documentation is unique to each association and there may be other documents, records, and writings that may also be relevant.

A visual inspection of the property should also be conducted to ascertain any additional real or personal property for probable insurance coverage. The visual inspection includes a walk through and around the property. In identifying the property, the association should also consider underground and above-ground structures and improvements. Personal property should also be identified. ***See Checklist 2 in Appendix.*** This checklist may be used to begin the identification process. It is not a complete list and every condominium association is unique, with unique assets.

2. Valuing the Insurable Tangible and Intangible Property

After determining what real and personal property must be covered by insurance, it then becomes important to correctly valuate the properties' potential exposure to loss. Over and under evaluation will result either in obtaining inadequate insurance coverage or in paying for insurance coverage an association does not need.

Generally, insurance carriers pay no more than the insurable replacement cost of the building. For the most part, insurable replacement costs is far less than the fair market value because fair market value includes land values and market conditions. An association and its board should take steps to ensure that the base value figure used for determining how much property insurance to purchase is correct. An original incorrect value base may mean incorrect insurance premium payments compounded each year.[25]

> "Valuation of real and personal property is critical if exposures to loss are to be properly quantified, insurance-to-value is to be obtained, and coinsurance penalties are to be avoided."[26]

"It is the responsibility of the board of directors, not the insurer, to value the property. [Others may help facilitate the process but the ultimate responsibility remains with the board.] The best method of determining insurable replacement is to purchase an insurable replacement cost appraisal from a company specializing in this type of valuation."[27] The appraisal should be updated annually to guard against inflation.

The board may consult other sources of cost estimates (non-exhaustive listing):

1. original cost with the addition of an appropriate amount accounting for inflation;
2. estimate of any Hawaii licensed contractor or an authorized supplier of the asset;
3. any publication such as *Repair & Remodel Quarterly"* (Marshall and Swift, Los Angles), and *Life Cycle Cost Data* (McGraw-Hill, New York);
4. association's past experience with the cost of the asset;
5. purchase receipts;
6. vendors;
7. the cost of any item similar or comparable to the asset; and
8. maintenance records.

3. Caveat—Overlooked Property Items

Boards of directors, tend to overlook the following in the process of identifying and valuing the association's property loss exposure:

1. intangible property, i.e., accounts receivable from owners, goodwill, copyrights, patents, trademark names, leases, easements, licenses, trade secrets, prepaid expenses, and accounts receivable (if any);

2. leased property real or personal (which property could be gleaned from reading the leases);

3. off-site property;

4. underground and above ground structures and improvements. For example, the association may have an obligation to take care and maintain an underground sprinkler system, and above ground – fences, swimming pools, water supply, sewage or drainage lines;

5. electronic data processing hardware and software (in contrast to potential exposure to loss of valuable papers and records coverage);

6. difference between valuing mechanical equipment and insuring the exposure;

7. property which is in the care, custody and control of the association but is not owned by the association; and

8. security and communication systems.

From this point of the booklet, any discussion about "property insurance" refers to the standard "Commercial Property and General Liability" insurance policy. Generally, this policy and policies of similar nature are issued to most residential condominiums. However, reference to a commercially named insurance may confuse some boards of directors. But the insurance industry has, for some time, treated residential condominiums as commercial property. This is in contrast to the manner in which individual homeowners are insured which is called personal insurance.

The discussion which follows focuses first on the necessity of commercial property insurance, and second, on the necessity of commercial liability insurance.

4. Property Insurance

"Even if the association does not own the common area, as is the case in a condominium, the governing documents generally state that the association is obligated to maintain it."[28]

The governing documents generally describe the real and personal property which the association is obligated to maintain and protect from damage and loss. Over a span of time, the association may acquire additional real and personal property for which they are also obligated to maintain and protect.

Generally, property insurance provides coverages for buildings, structures, and equipment pursuant to three forms: Basic, Broad, and Special. Each form insures for different "causes of loss" (events that produce a loss). (See chart following).

Typical Coverages Under the Three Forms of Property Insurance

Cause of Loss:	Basic Form *Named Peril:*	Broad Form *Named Peril*	Special Form *All Perils*
Fire	X	X	X
Lightning	X	X	X
Windstorm & Hail	X	X	X
Smoke	X	X	X
Explosion	X	X	X
Civil commotion, riot and riot attending a strike	X	X	X
Aircraft and vehicle damage	X	X	X
Sprinkler leakage	X	X	X
Sinkhole collapse	X	X	X
Volcanic Action	X	X	X
		All of the Basic Form plus these:	
Breakage of glass		X	X
Falling objects		X	X
Weight of snow, ice		X	X
Water damage		X	X
Also added; collapse of structure		X	X
			And, additionally covers direct *physical loss except that which* is excluded.
Also added; coverage extension for property in transit.[29]			X

Note:
Issued policies of Property Insurance may not provide coverage exactly as outlined above. Much depends on what coverages the insurance company is willing to provide and the particular risks a particular association is exposed to. Other amenities offered by the association may also create unique or extensive risks of property loss not covered by the three forms. These may include swimming pools, lakes, dams, sea walls, extensive exterior glass, or elevators.

a. Property Insurance Exclusions

Examples of damages and losses that might be specifically excluded (non-insured) from the Commercial Property Insurance Policy are discussed in this section. However, an association may modify its basic coverage and make an exclusion a normal part of the insurance contract. This is usually done through the purchase of an endorsement or amendment to the insurance contract. Typically excluded causes of losses are listed in the following chart.

Typically excluded causes of losses include:

1) Building codes and other laws relating to reconstruction; including increased costs;

2) Earth movement, including earthquake, landslide or earth sinking, rising or shifting, unless fire or explosion results (however, sinkhole collapse is covered);

3) Power failure, damage by off-premises power failure;

4) Leakage and seepage, backup of sewers and drains, surface water, water breaking out of natural boundaries or floods, and some wind-driven rain, (but water damage due to leaking plumbing and appliances is covered);

5) Special glass coverage (the basic policy may provide for a limited coverage such as $100.00 per pane; for certain causes of loss purchase of additional insurance coverage may increase the protection);

6) Maintenance type exclusions (e.g., ordinary wear and tear);

7) Mechanical breakdown and electrical arcing;

8) Government action (seizure or destruction of property by order of the government) and catastrophic events (e.g., war and military action, nuclear hazard);

9) Water damage, e.g., flood, surface water, waves, tides, tidal waves, overflow of any body of water;

10) Rupture or bursting of water pipes other than the sprinkler (this is excluded in the basic only);[30]

b. Endorsements to Basic Property Insurance Coverage:

A written amendment to an insurance contract is usually called an endorsement. The endorsement usually modifies coverage and supersedes relevant provisions of the printed insurance contract or policy. An endorsement can be used, for example, to provide coverage for excluded losses. It can be used to modify the definition of valuation or eliminate the provisions concerning coinsurance or subrogation.

The specific endorsement or additional insurance selected depends on the needs of the condominium association, its governing documents, statutes, county ordinances, lender's requirements and ordinary business judgment. An example where a statute dictates the purchase of an endorsement is illustrated by the requirement that the association obtain a fidelity bond to cover its managing agent (§514A-95.1 (a) (1), HRS). In some instances, an insurance company will not cover the association's managing agent under the association's bond. For these reasons, the association must purchase, where available, an endorsement to the bond protecting the association's funds from the dishonest and fraudulent acts of its managing agent.

Usually, decisions regarding adequate insurance coverage rests with the board and are arrived at in consultation with competent professionals such as qualified insurance experts and attorney's versed in insurance law. **Selected examples of specific endorsements and the function of the endorsement include:**

1) ***Inflation protection.*** Adjusts the amount of property insurance by a specified percentage to keep property policy limits current with construction inflation (does not cover increased expenses due to changes in building codes). Fannie Mae requires it when it can be obtained.

2) ***Replacement cost and guaranteed replacement cost.*** Provides sufficient funds to repair or replace damaged or destroyed property. Fannie Mae and Freddie Mac requires association to insure for full insurable replacement cost (excludes the fair market value of land). Guaranteed replacement costs eliminates the policy limits subject to certain reporting conditions.

3) ***Agreed amount.*** Eliminates the coinsurance requirements and the problems associated with it. For example, if the owners make the improvements without informing the board, the policy limits cannot be adjusted. As a result, the improvements are not insured and the association may incur a coinsurance penalty. One possible solution for this type of situation is the agreed amount endorsement which eliminates the coinsurance requirement.

4) ***Covered cause of loss.*** Adds back an excluded cause of loss (e.g., adds back the water damage exclusions).

5) ***Building Ordinance /Construction Code.*** Provides coverage for loss resulting from code provisions which require demolition of the undamaged portion of the building and changes in building ordinance and construction codes which increase reconstruction costs. See previous related discussion at page 9 for examples.

6) ***Glass.*** Provides protection for breakage subject to dollar limitations for certain cause of loss. This includes debris removal, temporary plats, framing and removal of obstructions.

7) ***Boiler and machinery insurance.*** Usually, mechanical breakdown, electric arcing, and consequential damages from a steam boiler explosion are excluded from a covered cause of loss in commercial property insurance. An endorsement can eliminate these exclusions. This endorsement usually includes high policy limits.

8) ***Flood insurance.*** The National Flood Insurance Program (NFIP) employs five different methods to insure condominiums. The requirements for each method is dependent on the type of condominium. A detailed discussion of this insurance appeared on page 10 of this booklet.

9) ***Earthquake insurance.*** Some jurisdictions, such as California, require insurers to offer earthquake insurance. May be relevant to the Big Island where earthquakes have been noted. Usually, this coverage includes a high deductible and excludes damage to brick veneer.

10) ***Difference in conditions insurance. (DIG)*** Broadens property coverage, in particular, areas of flood and earthquake or for other perils which are excluded. Often insures foundations and excavations. The underlying policy may be used as deductible and difference in conditions policy provides excess coverage.

11) ***Inland marine insurance.*** Provides increased protection for property which the association is a bailee and for valuable papers, accounts receivable, electronic data processing equipment. Where the commercial insurance package policy does not provide sufficient protection, additional inland marine insurance may be purchased.

12) ***Contractor's equipment floaters insurance.*** Provides protection for a range of equipment including hand tools, tractors, portable officers, scaffolding.

13) ***Electronic data processing (EDP) insurance.*** Provides coverage for hardware and software; accounts receivable, extra ex-

pense and business interruption associated with EDP insurance.

14) ***Valuable papers and records insurance.*** Provides coverage for the labor expense in trying to reproduce destroyed records and information (includes data).[31]

15) ***Fine arts floaters.*** Provides protection for unique items of value such as paintings and other art work.

16) ***Commercial automobile insurance.*** Provides coverage for property damage to association vehicles. State statute or the governing documents usually require an association to maintain liability and property insurance.

17) ***Subrogation, contribution, and cancellation endorsements.*** These have been discussed in other sections of this booklet (see page 6).

5. Liability Insurance

Liability insurance provides the association with:

a. money the association is legally obligated to pay (generally per a court judgement) for bodily injury, personal injury, property damage and advertising injury arising out of acts on the association's premises or are related to the operation and maintenance of common property and services of the association; and
b. investigation and defense of any suit;
c. settlement of claim or suit.

Liability exposure to loss includes the possibility that a person or entity could bring, or threaten to file, legal claims against the association in connection with:

- personal or bodily injury;
- contract;
- statute; or
- the negligent acts or omissions of the association's directors and agents.

> **Note:**
> Fannie Mae and Freddie Mac require associations to maintain commercial general liability coverage.

a. Determine and Evaluate the Association's Exposure to Liability.

It is far easier to value and identify potential property losses than potential general liability losses. Larger condominium projects might consider hiring a risk management specialist to identify potential liability losses.

It is not unusual for associations to overlook some everyday situations that could expose the association and its members to liability. Examples of such everyday situations include:

- welcoming the help of volunteers, including committee members, who use their own automobiles for association business;
- allowing guest parking;
- serving liquor at association events where the governing documents and liquor laws permit such;
- holding events open to the public where food is sold, such as bake sales; or
- promising to assume the liability of an independent contractor, e.g., the roofer for monies the roofer may be liable to pay for injuries to others.

These everyday occurrences can expose the association to liability and specific endorsements or other insurances can provide the association with the needed financial protection for such potential liabilities:

1) The association might be liable for any injuries caused by a volunteer committee member using his or her own car, for example, while en route to a vendor to pick up a written estimate for a reserve study sustains bodily injuries. In this situation, separate automobile insurance for vehicles not owned by the association might provide the financial protection for any finding of liability. Generally, the liability in connection with association owned automobiles are also excluded from the basic commercial general liability policy. The purchase of separate commercial auto insurance will provide the financial protection the association needs.

2) The association might be found liable for the damage to an automobile left in its care and custody. In this case, a bailee's insurance policy or endorsement may provide the financial protection for any finding of liability.

3) The association might find itself liable for bodily injuries caused by an intoxicated guest at an association affair where liquor had been served. The liability, if any, may be covered under the association's basic commercial general liability policy. If the basic policy does not provide such coverage, the association should consider the purchase of an endorsement.

4) The association might find itself liable for bodily injuries caused by bake products purchased at an association family fun day. In this situation, the CGL's liability and completed operations provisions provide the insurance protection.

5) An owner sustains injuries from participating in an association-sponsored golf tournament. Generally, any liability for off-premise association activities is covered in the CGL basic policy. Nevertheless, associations should check for coverage. If not covered, the association should consider purchasing an endorsement.

6) The association agrees, as part of a standard contract, to assume the liability for its contractor, as part of the contract for repairs (hold harmless agreement). A contractual liability endorsement provides the financial protection for the losses an association may incur when it becomes necessary for the association to assume the liability for someone else such as the contractor.

b. Commercial General Liability Coverage

The insurance coverage provided by the Commercial General Liability (CGL) insurance is divided into three sections:

Coverage A	includes coverage for bodily injury (BI) and property damage (PD);
Coverage B	includes protection for personal injury (PI) and advertising injury (AI) caused by the association, (e.g., libel, slander, false arrest, malicious prosecution and certain advertising activities).
Coverage C	provides for medical payments for one injured on the common areas even if the association is not at fault.

The CGL insurance also provides coverage for products and completed operations, e.g., when the association sells products.

However, claims and coverage may be limited or affected by the following:

1) ***Claims made vs. occurrence triggers.*** Associations may purchase a Commercial General Liability policy as an "occurrence" or "claims made" policy. An "occurrence" policy will provide insurance protection for injuries or damages arising during the policy period in which the policy was in effect. Whereas, a "claims made" policy provides coverage when the claim is made. A claims made policy may be prematurely canceled. When using a claims made policy, associations may consider purchasing, where available, an "extended reporting period endorsement." This endorsement extends the insurance coverage for a period of time following the effective cancellation date. This endorsement may also cover any gap in coverage when changing forms or insurance companies.

   Most CGL policies have an occurrence trigger; most D&O policies have a claims made trigger.

2) ***Limitations on coverage.*** Insurance coverage does not exceed the policy limits. There are two types of policy limits: occurrence and aggregate. With an occurrence limitation, the insurance policy provides an amount for each occurrence. In addition, a policy may have an aggregate limit. Such a limit allows the carrier to deny coverage for claims in excess of a specified amount irrespective of the number of occurrences. Deductibles may apply. Because of policy limits, associations might consider obtaining umbrella or excess coverage insurance.

3) ***Defense costs.*** In a CGL policy, defense costs are supplemental or outside the policy limits. In a D&O policy, defense costs are inside the policy limits.

4) ***Exclusions.*** The commercial general liability policy, like the property insurance policy, also contains exclusions and its limits are affected by the policy's definitions. Some **exclusions include:**

   a) ***intentional injury:*** intended or expected damage for bodily injury or property damage is excluded;

   b) ***contractual liability:*** precludes coverage for any contractual liability the association assumes, unless the contract is an insured contract specified in the policy. Breach of contract, however, is not insured.

> **Note:**
> "FREDDIE MAC" and "FANNIE MAE" require planned communities and condominium association to purchase such coverage where available.

   c) ***host liquor liability:*** host liquor liability for serving liquor is usually included in the commercial general liability policy, provided the serving and sale of alcohol is not against the law and the association is not in the business of selling, manufacturing or delivering liquor. Should this coverage be excluded from the basic policy, associations might consider purchasing an endorsement. Freddie Mac requires this coverage where available and applicable.

   d) ***pollution:*** this exclusion includes swimming pool chemicals, lawn care chemicals, asbestos and hazardous waste among others. Commercial property insurance provides $10,000 for pollutant cleanup on insured property but there is no coverage for liability in the package policy.

e) ***aircraft, autos and watercraft:*** eliminates possible overlap with coverage provided by other commercial insurance policies. Precludes coverage for bodily and property damage claims arising from ownership, use, entrustment or loading or unloading of equipment when the auto, aircraft, or watercraft is owned, rented or loaned to an insured.

f) ***general property damage:*** eliminates duplicate coverage for damage to property that should have been insured in the commercial, property coverage portion of the policy.

g) ***fire legal liability*:** limits liability of the insurer for fire damage to property leased to the association.

h) ***workers' compensation and employers' liability and similar statutes.*** When the association is liable for someone's bodily injury under the applicable worker's compensation statute, there is no coverage under the commercial general liability policy. In addition, there is no coverage for:

(1) third party over action where an injured employee recovers against a negligent third party who sues the association based on contributory or comparative negligence,

(2) care and loss of services,

(3) consequential injuries (e.g., where a family member contracts a disease from an employee), and

(4) dual capacity claims which involves the insured both as an employer and in some other capacity.

All of these are covered by the employer's lability policy part of the worker's compensation policy.

c. Other Liability Generating Areas and Related Insurance Policies.

1) ***Worker's compensation.*** Worker's compensation benefits compensate an employee for the employee's injuries sustained during the course of employment. The benefits and compensation replaces the damages which might have been recovered pursuant to general tort law. It covers employees who are injured while engaged in association business. All state statutes require it.

> **Note:**
> Freddie Mac requires condominiums to maintain worker's compensation and employer's liability policies. This insurance has been previously discussed at page 20.

2) ***Employer's Liability.*** Employer's Liability provides employer's protection from liability that is separate and apart from worker's compensation. It protects the employer (e.g., the association) from suits brought by injured employees against employers for:

(1) third party over action where an injured employee seeks to recover against a negligent third party who, in turn, sues the association (employer) based on contributory or comparative negligence;
(2) care and loss of services;
(3) consequential injuries where, for example, a family member contracts a disease from an employee; and
(4) dual capacity claims which involve the insured both as an employer and in some other capacity. These claims are usually excluded from the commercial general liability policy.

> **Note:**
> Although most tort claims are pre-empted by Worker's Compensation Insurance, Hawaii's worker's compensation law does <u>not</u> prohibit an injured employee from suing the employer for:
>
> (1) sexual harassment or assault;
> (2) sexual assault;
> (3) infliction of emotional distress; or
> (4) invasion of privacy. (§386-5, HRS.)

3) ***Directors' and Officers' (D&O) Liability Insurance.*** D&O Liability Insurance provides the association protection from the damages and losses arising out of the director's and officer's breach of their fiduciary duty or the duty of ordinary care. It covers errors in judgements. **A fuller explanation of this insurance appears on page 15.**

4) ***Fidelity Insurance—Misappropriation of Funds.*** Fidelity insurance or employee dishonesty insurance provides coverage for losses caused by employees. The insurance can be written as a separate policy or endorsement. Generally, fidelity insurance covers losses caused by the dishonesty of its **employees**. With a specific negotiated endorsement, it may cover the dishonest acts of its non-salaried board, committee members and condominium managing agent as "employees." In this manner, the misappropriation by a principal of the condominium managing agent might be covered. **A fuller explanation of this insurance appears on page 12.**

d. Additional Liability Coverage

For some situations where the exposure to liability justifies additional liability coverage beyond the basic policy, an association might consider the purchase of additional insurance.

A sampling of additional liability insurances includes:

1) ***Automobile liability coverage.*** Provides coverage (liability, physical damage, collision, towing and rental) for association-owned automobiles. Non-owned or hired autos (e.g., those of board members, volunteer or management) used for the conduct of association business can be covered through the use of hired and non-owned automobile liability policies. Non-owned liability coverage pays for damage only to an injured third party and not to the association person operating the vehicle. Freddie Mac requires this coverage where applicable and available.

2) ***Bailee's insurance.*** Provides protection against potential liability for loss to property in the care, custody or control of the association. Freddie Mac requires this policy where available and applicable.

3) ***Garage keeper's legal liability insurance.*** A typical policy covers loss to vehicles left in the association's care for repair, service, storage, or parking as well as loss to vehicles parked in specified parking areas. Provides collision, comprehensive coverage and certain specified cause of loss such as fire, lighting, or explosion, theft, mischief or vandalism. The policy covers damages to the vehicle and cost of legal defense. The policy does not cover association owned vehicles. Depending on the terms and conditions of the specific policy, vandalized vehicles belonging to condominium owners' and guests' may be covered. The policy is required by Freddie Mac if applicable and available.

4) ***Dram shop liability.*** Applies if the association is in the business of selling liquor. This applies to condominium units financed by Freddie Mac.

5) ***Umbrella policy and commercial liability excess coverage.*** These are methods to raise insurance limits and increase liability coverage. However, they raise the insurance limits in different ways. Excess coverage in a certain amount is provided on the same terms and exclusions as the underlying commercial general liability policy. The umbrella policy provides additional coverage, but not on the same terms or exclusions. Thus, an umbrella policy may provide coverage for different activities, events, perils or exclusions and it increases the limits of other scheduled liability policies.

Fannie Mae and Freddie Mac require that associations maintain a minimum of $1,000,000 commercial general liability policy for liability for bodily injury and property damage arising in the common areas, public ways and other areas under the association's supervision.

D. Acquire a working knowledge of the insurance coverages required by lenders.

Federally insured lending institutions, federally sponsored loan programs, and private financial lending institutions require the maintenance of specific types of insurance as a condition of a mortgage or refinancing. These entities concerned with protecting their investment typically require the association to maintain, among other types of insurances, property, liability, fidelity, flood (for some designated areas), and earthquake (for some designated areas).

The specific insurance requirements of two common government-sponsored enterprises, "Freddie Mac" and "Fannie Mae" is explored in Appendix D.

"Freddie Mac" is the nickname for a secondary mortgage market source, the Federal Home Loan Mortgage Corporation. It buys FHA, VA, and conventional mortgages from the original lenders.[32]

"Fannie Mae" is the nickname given to the secondary mortgage market source, Federal National Mortgage Association. It buys among other things, FHA's, adjustable rate mortgages, fixed rate, conventional and VA mortgages.

The secondary purchases of such mortgages allow the original lender to use its monies received from, e.g., "Freddie Mac" and "Fannie Mae" to make more loans for the purchase of condominium units.[33]

E. Determine what other insurance coverage should be purchased because it makes good business sense to do so.

Boards of directors have a fiduciary duty to the association of apartment owners in the performance of their duties and responsibilities (§514A-82.4, HRS). In some cases, it just makes good business sense to obtain certain types of insurance because the situation warrants it. In these instances, the obligation to obtain and maintain certain types of insurance arise apart from any statute or governing document. In these circumstances, the purchase of certain insurance is deemed by the board as a prudent course of action.

F. Negotiate an insurance policy that addresses the individualized insurance needs of the association (endorsements, additional insurance, umbrella and excess coverage).

1. Caveats and Reminders

In negotiating the insurance contract, the board might find the following caveats and reminders helpful:

a. ***Named Insured.*** The law[34] requires the association to maintain insurance coverage for the common elements and, whether or not part of the common elements, all exterior walls, floors, and ceilings against loss or damage by fire. Governing documents may require the association to use the insurance proceeds to replace or repair damaged property. For these reasons, the association must make sure that the insurance contract provides that the insurance proceeds be given to the association or its designate for distribution. In practice, this means the association should ensure that the entity covered by insurance is the association as the named insured.

b. ***Proper valuation of association property.*** To obtain and properly maintain sufficient insurance, an association must properly appraise its property. The association must decide whether the governing documents, statutes, lender or case law require the association to obtain insurance for the replacement or actual cash value of the loss property.

None of these values, however, include the increased costs of reconstruction or repair in accordance with current building codes or ordinances, value of the land, underground piping, piers and other specified terms. A replacement cost policy does include the cost of replacement or repair of the structure, improvements and personal property.[35]

See Appendix D for specified insurance requirements if the mortgages on the condominium apartments are financed by Fannie Mae or Freddie Mac.

c. ***Caveats about deductibles:*** Deductibles can make insurance affordable. However, they affect the amount of insurance available for replacement or repair of damages. Deductibles may be applied *per building, per location, or on a blanket basis.*

Deductibles may also create problems between the owners and the association when the association and governing documents do not allocate responsibility for payment of the deductible prior to the loss. For example, if the loss suffered is caused by the actions of a particular owner, the governing documents or the association's procedures may require that the owner pay the deductible. The governing documents or the association's procedure can also allocate that the deductible be paid in accordance with who receives the insurance proceeds. However the allocation is made, it should be determined prior to the loss. Should the association be responsible for the deductible amount, it has the duty to ensure that the amounts are available, placed in, and earmarked as such in the appropriate account.

Boards must look to their governing documents for guidance in this area. For example, some documents may allocate the deductible according to who receives the insurance proceeds or to who has the responsibility to insure the common property and the condominium apartment.[36] In some loss situations, the governing documents are silent and do not mandate insurance coverage. In these situations, owners must decide to obtain their own insurance or leave the situation uninsured. Thus, all losses are not automatically covered by insurance — such is a myth. Some losses remain uninsured until the owner or board decides to obtain insurance coverage.

The Fannie Mae and Freddie Mac guidelines provide that the association place the money to cover the deductible in its "operating reserve account."

2. The Rule of Coverage

"Coverage is only provided for those losses due to a specified cause and those losses that are not excluded or otherwise subject to limitations."[37]

3. The Rule of Coinsurance

Coinsurance requires the association to carry a specified amount of insurance, e.g., 80% of the replacement value of the association property. In exchange, the insurance company agrees to pay 100% of all partial losses up to the limit of the policy minus any deductible. Some advocate the elimination of the coinsurance provision by negotiation or endorsement.

Agreed amount insurance eliminates the coinsurance penalty. This becomes a blessing where the insurance coverage also provides protection to improvements made by the owners and the owners fail to inform the association of the value of the addition. As such, the owner's failure to report the increase cost may cause the association to underinsure the property and suffer the coinsurance penalty.

4. Inflation Caveat

Where the statutes or governing documents require the association to maintain insurance in certain amounts and the association does not purchase an inflation guard endorsement, the board may be breaching its fiduciary duty. There may not be sufficient funds at some future time to cover the inflated cost of replacing the property.

5. The Amount of Insurance Coverage Rule

The association should have sufficient insurance to compensate for damage to, or loss of, any real and personal property it owns and any property it is obligated to maintain. It is the responsibility of the board to identify the property not that of the insurance carrier.[38]

Most insurance is issued on an actual cash value basis. Actual cash value provides coverage for the replacement cost of the property less depreciation. Since depreciation reduces the amount of funds available for the repair or replacement of the damage or loss property, associations should seriously consider purchasing a replacement cost endorsement. The condominium law requires associations to purchase insurance in amounts to repair or replace the damage or loss property. Generally, the repairs and replacements are made of like kind and quality.[39]

G. Formulate a plan of action to minimize the association's exposure to loss and liability; set up a risk reduction program and where feasible self-insure the association against loss.

The best insurance against property, net income, personnel loss, and liability is a risk management program. Risk management programs minimize the adverse effects of such losses on a community association. Insurance is just one part of the program which transfers the financial risk of loss to a commercial insurer.

The risk management program typically includes a five-step decision-making process and involves:

1. Identifying exposure to loss in four areas: property, liability, net income, and personnel;

2. Examining alternative techniques for risk control;

3. Selecting the best techniques;

4. Implementing the chosen techniques;

5. Monitoring and improving the risk management program.[40]

III. Concluding Observations

Generally, insurance protects the association's property and assets from and against risks or loss. Whether an association needs to protect itself against some or all of the risks discussed in this booklet depends on the requirements specified in the condominium project's governing documents (declaration, master deed, by laws, rules, resolutions), articles of incorporation if any, state and federal statues and rules, county ordinances, private and secondary lenders, and good business practices.

Without insurance coverage, the association may find it necessary to use other set-aside funds to meet the financial loss related to the risks or loss. Normally, these set-aside funds include the association's cash on hand, reserve funds, maintenance fund and any related investments. In a number of situations, these funds may not be enough to cover the loss. In some liability circumstances, where the loss cannot be covered by the association assets, individual owners, including board members, may be potentially liable for uninsured or unfunded judgments, usually in proportion to their percentage ownership in the common areas.

p.1: I. Introduction

[1] Examples of such damages and losses include: vandalism of an owner's car in the condominium's parking garage; incorrect reporting that an owner is delinquent in the payment of assessments; water damage to a prized downstairs art collection from the broken dishwasher upstairs.

[2] Insurance is not automatic. Much depends on such factors including: whether the damaged property is association property covered by insurance; whether the negligent acts or inactions of the association caused the damages, or whether the specific loss is defined as a specific loss for which the insurance company and the association has agreed should be covered.

[3] Originally, the U.S. Department of Housing and Urban Development designated an area as flood prone.

[4] Clifford J. Treese. Katharine Rosenberry. "Purchasing Insurance for the Common Interest Community," *Wake Forest Law Review,* Vol. 27, Number 2, p. 436 (1992).

p.7: II.A.1.i. Endorsements and addmitional insurance

[5] Coinsurance requires the association to carry a specified amount of insurance, e.g., 80% of the replacement value of the association property. In exchange, the insurance company agrees to pay 100% of all partial losses up to the limit of the policy minus any deductible.

p.7: II.A.2. Special Policy Conditions for Condominiums

[6] Clifford J. Treese, Katharine Rosenberry, *Community Association Insurance.* A Guide for Condominium, Cooperatives and Planned Communities, Third Edition, Community Association Institute Guide for Association Practitioners, p. 12 (1994).

p.9: II.B.1.a. Fire Insurance

[7] An uninsured motor insurance benefits coverage case. The facts of the case are as follows. Jeanette Dawes' daughter, after leaving a stalled car, was struck by a Honda and died at the site of the accident. The driver was uninsured. The owner of car carried uninsured motorist insurance. Since the fatal accident occurred about a mile from the stalled car, the issue on appeal, involved whether Dawes' daughter was a covered person under the auto insurance uninsured motorist coverage. Although, the case is not directly related to the definition of repair and replacement costs, the Court's reasoning appears instructive on the issue of inclusion of increased costs (due to changes in construction code) as part of repair and replacement costs.

The relevant portions of the Court's reasoning stated, in part: (1) insurance policies are contracts of adhesion which must be construed liberally in favor of the insured, with any ambiguities resolved against the insurer; (2) policies are to be construed according to the reasonable expectation of the lay person. Dawes , 77 Haw. 117,121, 883 P.2d 38 (1994) cited in Insurance Coverage Law in Hawaii, pg. 23 (Hiraoka and Etten 1995).

On a similar issue, the Alaska Supreme Court in Bering Straights School District v. RLI Ins. Co. , 873 O.2d 1292 (Alaska Sup. 1994)[cited in Hiraoka supra] decided in favor of the insured, holding that even though the policy provided for limitation to code upgrades, the policy was a replacement policy, and because a reasonable lay person would have understood the policy to provide the full replacement coverage.

p.10: II.B.1.a. Fire Insurance

[8] Seth Emmer, "Handling Deductibles and Uninsured Losses," *Understanding Association Insurance,* Community Associations Institute, Alexandria Virginia, p. 3-5, (1989).

p.11: II.B.1.b. Flood Insurance

[9] A co-insurance provision is not unique to flood insurance. The provision may be a feature in other types of insurance policies.

[10] National Flood Insurance Program, *Flood Insurance Manual,* p. CONDO 7 (March 1995 Revisions).

[11] *Ibid.,* p. CONDO 3.

[12] The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994. The 1994 Reform Act made it mandatory to purchase flood insurance and to escrow the premiums. Leonard Bernstein, Philip Myers, and Daniel Steen, "Insurance Reform Engulfs Lenders," *Legal Times,* March 27, 1995 v. 17 n.45 p. S42 col 1 (53 col in).

[13] Applies to all loans outstanding on or after September 23, 1994, the date of enactment of the Reform Act.

p.13: II.B.1.c. Fidelity Bond

[14] *Report to the Legislature, Relating To Condominium Regime I. Report on the Condominium Specialist Act 278 (1988), Report on the Condominium Management Education Fund, § 514A-133 (d) Hawaii Revised Statutes*, Hawaii Real Estate Commission p. 76 (1990).

[15] *Ibid.*, p. 79.

p.14: II.B.1.c. Fidelity Bond

[16] Hawaii Real Estate Commission, "Associations's Fidelity Bond Looks To Settlement of Claim," *Hawaii Condominium Bulletin*, vol. 4 no. 1, p.1,6 (Fall 1995).

[17] Treese, "Purchasing," p. 449.

p.16: II.B.2.b. Exterior Glass

[18] *Ibid.*, p. 418.

p. 16: II.B.3.a. Hurricane Insurance

[19] Act 17 H.B. No 13-S (SLH 1995) amending Chapter 431P, Hawaii Revised Statutes.

p. 17: II.B.3.a. Hurricane Insurance

[20] "Meaning enforcement of any ordinance or law governing the construction, repair, or demolition of a building or structure unless provided," Hawaii Hurricane Relief Fund specimen policy p. 8 7/14/94.

p. 20: II.B.3.b. Worker's Compensation Insurance

[21] §386-4, HRS allows the association to annually elect coverage by following certain procedures.

[22] Clifford J. Treese, Katharine Rosenberry, *Community Association Insurance*, 3rd edition CAI—Gap Report 4 p. 28 (1994).

p. 21: II.B.3.b. Worker's Compensation Insurance

[23] The Hawaii worker's compensation law is an exclusive law, cuts of common law tort actions against employer including wrongful death action... It *does not* exclude recovery for a third party's tortious conduct, "Hawaii preserves a right against that tortfeasor, since the compensation system was not designed to extend immunity to strangers." David M. Louie, "Tort Issues In Work Site Accident Litigation," *Hawaii Insurance and Tort Law Update,* Professional Education Systems, Inc., Eau Claire, Wisconsin p.II-14-15 (1992).

But co-employees are not included as a third party, § 386-8, HRS. Third parties include for example, physicians whose actions aggravate the injury, the insurance carrier who conduct a negligent safety inspection, governmental instrumentalities, manufacture, subcontractors and supplies. supra. P. II-15.

But employees must reimburse their employer for the compensation outlay, employees get the excess.

Claims for contribution against the employer. Well settled law, §386-5, HRS, precludes a defendant in tort action from bringing a claim for contribution (directly or indirectly) against an employer on the theory that the employer was a joint tortfeasor.

Contracts of Indemnity are to be strictly construed. The Hawaii Supreme Court has held that a third-party may recover from an employer based on a claim for indemnity, since the claim arose by contract and not on account of the employee's injury. *Kamaili v. Hawaiian Electric Co. Inc.* 54 Hawaii 153, 504, P.2d 861 (1972) cited supra. p. II-18.

However, indemnity contracts must be clear and equivocal that the employer is intentionally assuming liability for the third party when the third party is negligent.

The "dual capacity doctrine" does not exist in Hawaii. *Coates v. Pacific Engineering,* 71 Haw. 358., No. 13848 (Sup.Ct. May 2, 1990). Thus, the workers' compensation exclusivity of remedy cannot be circumvented by suing the employer in another capacity as manufacturer, distributor or supplier of equipment. supra. p. II-35.

Hawaii allows a co-employee to bring an action against another employee when the employee has engaged in "wanton" and "willful" misconduct in total disregard of the duty of safety and properties of others. Such amounts to an intentional tort. This is another avenue around the exclusivity of the worker's compensation statutes.

Employer's liability insurance may not be as valid in Hawaii because of the exclusivity of the workmen's compensation laws for employers. Suits by co-employees based on intentional tort may be an end around the exclusivity condition of the state worker's compensation. supra. p. II-53.

"As a practical matter, the coverage afforded by the employer's liability insurance policies may be illusory to a plaintiff seeking to make an end around the exclusivity provision of the worker's compensation law."

Consequently, the insurer may simply be looking at a duty to defend the alleged tortfeasor, but not to indemnify." supra .p. 53.

[24] Clifford Treese, Katharine Rosenberry, 1995 CAI Law Seminar *Community Association Insurance and Risk Management (1995).*

p. 23: II.C.2. Valuing the Insurable Tangible and Intangible Property

[25] Arthur G. Methvin, "Over Insurance Doesn't Pay—Why Replacement Values are not Fair Market Values," CAOnline 84252cdo.txt.

[26] Treese, "Purchasing," p. 432.

[27] *Ibid.,* p. 422.

p. 24: II.C.4. Property Insurance

[28] *Ibid.,* p. 421.

p. 25: II.C.4. Property Insurance

[29] Clifford J. Treese, Katharine Rosenberry, *1995 CAI Law Seminar Community Association Insurance and Risk Management*, Appendix A (1995).

p. 26: II.C.4.a. Property Insurance Exclusions

[30] Some risk of property loss to Association property which are generally excluded from the property insurance coverage may be added to the policy by the purchase of specific endorsements, additional insurance or excess coverage.

p. 28: II.C.4.b.14) Valuable papers and records insurance

[31] In preparing for Hurricane Iniki, a property management company took preventive measures to back up computer copies of its client's data and stored them off-site.

p. 33: II.D. Acquire a working knowledge of the insurance coverages required by lenders

[32] Paige Bovee Vitousek, John W. Reilly, Robert G. Rediske, *Principles & Practice of Hawaiian Real Estate,* 11th Edition, Trade Publishing Company, Hawaii (1988-1990) p.154.

[33] *Ibid.*

p. 34: II.F.1.a. Named insured

[34] § 514A-86, Hawaii Revised Statutes.

p. 34: II.F.1.b. Proper valuation of association property

[35] In attached units, situations where the common areas and separately owned areas are so integrally related , three methods are used to deal with proper valuation of loss:

In a "single entity" policy where the unit and common element are treated as one; the policy generally includes paint, cabinets, appliances, mirrors and similar items; personal property is excluded.

In a "bare wall" policy all portions of the building, such as sheetrock, studs, and other structural portion of the building are included; wall paper, paint, and other finished surfaces, cabinets and fixture in the unit are excluded. The unit owner must pay for these exclusions.

In an "all in" policy, the unit and common elements are treated as one, and include all improvements made by the owners.

Thus, if an association intends to replace the building as of the date of damage, an "all in" policy is the best. Clifford J. Treese, Katharine Rosenberry, *Purchasing Insurance for the Common Interest Community, Wake Forest Law Review,* Vol.27, Number 2, p. 413 (1992).

p. 35: II.F.1.b. Proper valuation of association property

[36] Seth Emmer, "Handling Deductibles and Uninsured Losses," *Understanding Association Insurance,* Community Associations Institute, Alexandria Virginia, p. 3-5, (1989).

p. 35: II.F.2. The Rule of Coverage

[37] Treese, "*Purchasing* ," p. 415.

p. 35: II.F.5. The Amount of Insurance Coverage Rule

[38] *Ibid.*, p. 421.

[39] The condominium law is silent on what kind and quality of materials the association must replace or repair the damage or loss property with. However, the most widely used standard is replacement and repair with like kind and quality.

p. 36: II.G. Formulate a plan of action to minimize the association's exposure. . .

[40] Clifford J. Treese, *Community Association Risk Management*, Community Associations Institute, GAP Report 25 p. 1, 2, (1994).

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Checklist 1

Non-Exhaustive Checklist for Determining Property and Liability Loss Exposure

Identify Which Properties /Liability Exposures Require Insurance Coverage By Examining:

- ❑ State Statutes
  - ❑ Condominium Chapter 514A, HRS
  - ❑ Mandatory
  - ❑ Fire (Property)
  - ❑ Flood (SHA)
  - ❑ Fidelity Bond
  - ❑ Optional
    - ❑ Exterior Glass
    - ❑ Director's & Officer's
  - ❑ Hurricane §431 P, HRS
  - ❑ Workers' Compensation §386, HRS
  - ❑ Unemployment §383, HRS
  - ❑ Automobile §431:1 0C
- ❑ Federal Statutes
  - ❑ Flood (Federal Disaster Protection Act; when property lies in designated flood area)
- ❑ County Ordinances
- ❑ Condominium Governing Documents:
  - ❑ Declaration
  - ❑ Bylaws
  - ❑ Rules
  - ❑ Resolutions
- ❑ Lender's Requirements
  - ❑ Government Sponsored Enterprises (secondary mortgage lenders) such as:
    - ❑ Freddie Mac
    - ❑ Fannie Mae
  - ❑ Federally insured lending institutions
  - ❑ Federally sponsored loan program e.g. Farmers Home Administration, Small Business Administration, Veterans Affairs, FHA
  - ❑ Private lenders
- ❑ Physical Inspection—A walk around and through the project
  - ❑ Improvements above ground
  - ❑ Improvements under ground
  - ❑ Objects in use in common areas
- ❑ Association's Books and Records:
  - ❑ board minutes
  - ❑ acquistion records
  - ❑ inventories
  - ❑ financial statements and records
  - ❑ accounts receivables
  - ❑ reserve study
  - ❑ as built floor plans
  - ❑ invoices/purchase orders
  - ❑ others
- ❑ Association contracts, lease agreements
- ❑ Others:

Checklist 2

CHECKLIST OF ASSOCIATION ASSETS
Appendix: D

A. Association Assets
   1. Real Property
      a. Physical Structures (complete or under construction)
         1) Residential buildings
         2) Offices
         3) Storehouses
         4) Garages and Hangars
         5) Tanks, Towers and Stacks
         6) Wharfs and Docks
         7) Pipes and Wires (above ground)
         8) Bridges
         9) Swimming Pools, Saunas, other recreational amenities
      b. Underground Property (owned)
         1) Cables and Wires
         2) Tanks
         3) Wells, Ground Water
         4) Piping and Pipelines
      c. Land-Unimproved
   2. Personal Property (on and off premises and in transit) and Contents
      a. Aircraft
      b. Animals: Farm Stock Security
      c. Antennae, including Towers
      d. Crops, Gardens, Lawn Shrubbery, Standing Timber
      e. Electronic Data Processing Equipment and other Information Devices
      f. Equipment and Machinery.
         1) Machines and Tools
         2) Boiler and Pressure Vessels
            a) Fired Vessels-Steam and Hot Water Boilers
            b) Unfired Vessels-Condensate tanks, storage tanks
         3) Mechanical Electrical Equipment (transformers, generators, motors, fans, pumps, compressors)
         4) Engines - diesel, gasoline, steam, electric
         5) Meters and Gauges
         6) Turbines - steam, gas, water
         7) Conveyors and lifts, Trams, Elevators, Escalators, Overhead Cranes
         8) Furnaces, Ovens, Kilns, Non-residential heating devices, furnace
         9) Electronic Controls for Machinery - thermostatic indoor/outdoor resets
      g. Fences
      h. Fine Arts - antiques, painting, jewelry, libraries
      i. Furniture and Fixtures
      j. Improvements and Betterments
      k. Recreational Facilities - parks, gyms, lakes, cafeterias, other
      l. Security Protection and Detection Devices
      m. Valuable Records (include value of bank records, cost of having them inscribed and functional availability of data)
         1) Blueprints
         2) Accounts Receivable
         3) Titles and Deeds
         4) Tapes, Cards, Discs, Programs
         5) Own Securities - negotiable and non-negotiable
         6) Other Securities - in own custody or in custody of others
         7) Cash (including bank deposits
         8) Plates
         9) Mortgages, bond Indentures, Leases
         10) Insurance Policies
      n. Vehicles (including contents)
      o. Watercraft (including contents)

B. Non-Physical Association Assets
   1. Financial
      a. Rents
      b. Leasehold Interests
      c. Extra expense
   2. Employee Benefit Plans
      a. Death Benefits
      b. Disability Income (Short-Term and Long-Term)
      c. Medical Plan: Health Maintenance Organizations
      d. Pensions
      e. Income Plans: Profit Sharing, Stock Purchase, Thrift
      f. Time off with Pay: Holidays, Vacations, Sabbaticals
      g. Payroll Deduction Insurance: Life-Accident, Property/Casualty

CHECKLIST OF ASSOCIATION ASSETS
Appendix: D

h. Special Facilities; Dining, Expenses, Company Cars, Credit
i. Key Man

3. Automobile Liability
   a. Operation of Vehicles - owned and non-owned
   b. Loading and Unloading
   c. Dangerous Contents - flammables, explosives
   d. Garagekeeper's Liability
   e. Garage Liability
   4. Aviation Liability
   a. Owned and Leased Aircraft
   b. Non-owned-officers and employees licensed
   c. Grounding and Sistership Liability
   d. Hangar Owner's Legal Liability
   e. Non-Owned Aircraft
5. Bailee Liability
6. Care, Custody and Control of Property to Others
7. Contractual Liability
   a. Purchase Agreements
   b. Sales Agreements
   c. Lease Agreements - *real or personal property*
   d. Performance or Service
   e. Loans, Notes
   f. Hold Harmless Clauses
   g. Surety Agreements
   h. Construction
8. Directors' and Officers' Liability
9. Employer's Liability
   a. Worker's Compensation or Similar Laws
   b. Federal Employees Liability Act
   c. Common Law
   d. U.S. Longshoremen's and Harbor Worker's Act
   e. Jones Act
   f. Unemployment Compensation
10. Fringe Benefit Plans Liability
    a. Pensions, Trusts, Profit Sharing Plans, Investments
    b. Insured - Life, Accident, Health, etc.
11. Liquor Law or Dram Shop Act Liability, Host Liquor
12. Non-Ownership Liability
    a. Lease Real or Personal Property
    b. *Bailee's Liability*
    c. Employee's Use of Vehicle, Aircraft, Watercraft and Unit Owner's
13. Ordinary Negligence
    a. Of Employees
    b. Of Agents
    c. Of Invited or Uninvited Guests
    d. Of Contractor or Subcontractor
    e. Failure to Provide Safety Equipment, Warning, etc.
    f. Inadequate Enforcement or Regulations
    g. *Improper preparation of food*
14. Personal Injury
    a. Libel
    b. Slander
    c. Defamation of Character
    d. False Arrest
    e. Misuse of Legal Process
    f. Imprisonment
    g. Mental Anguish
    h. Shock
    i. Fright
    j. *Detention*
    k. Eviction
    l. Malicious Prosecution
    m. Invasion of Privacy
    n. Wrongful Entry
    o. Humiliation
    p. Loss of Reputation
15. Product Liability
    a. Implied Warranty
    b. Express Warranty
    16. Protective Liability
    a. *Contractors Hired*
    b. Construction or Demolition
17. Railroad Liability
    a. Sidetrack Agreements
    b. Right-of-Way
    c. Grade Crossings
    d. Federal Employer's Liability Act
18. Watercraft Liability
    a. Ownership, Lease, Operation
    b. Types- boats, yachts, ships, submersibles

CHECKLIST OF ASSOCIATION LOSS EXPOSURES
Appendix: E

A. Direct Exposures

1. Breakage of glass - other fragile items
2. Breakdown - malfunction of part, lubricant, etc.
3. Collision - on and off premises, watercraft, aircraft, vehicle
4. Contamination - liquid, solid, gaseous, radioactive, pollution
5. Corrosion - wear, tear, abuse, poor maintenance
6. Electrical Disturbance - lightning, burnout, sun spots, power surge
7. Employee Dishonesty - forgery, embezzlement, larceny, theft
8. Employee Negligence
9. Explosion and Implosion
10. Failure of Environmental control - temperature, humidity, pressure
11. Falling Objects - aircraft meteors, missiles, trees
12. Fauna - animals, rodents, insects, pests
13. Fire
14. Fraud, Forgery, Theft, Burglary, Robbery
15. Installation and construction hazards
16. Inventory Shortage - mysterious disappearance, lost or mislaid property
17. Land Movement - earthquake, volcano, landslide, avalanche
18. Obsolescence
19. Order of Civil Authority -expropriation, demolition, nationalization, seizure, exercise of eminent domain, confiscation, escheat laws, garnishment of payroll
20. Physical Change - shrinkage, evaporation , color, mildew, rot expansion, contraction, deterioration
21. Riots, Civil Disorder, Strikes, Boycotts, Curfews
22. Rupture, Puncture of tank, vessel
23. Smoke damage, smudge
24. Sound and Shock Waves - sonic boom vibration, water hammer
25. Spillage, Leakage, Pain Spray
26. Structural Defects
27. Subsidence - collapse, settlement, erosion
28. Transportation - overturn, collision
29. Unintentional Error - employee, computer, counsel, director, officer
30. Vandalism, Malicious Mischief, Defacing of Property
31. War, Insurrection, rebellion, Armed Revolt, Sabotage
32. Water Damage - flood, rising waters, flash flood, mudslide, tidal wave, geyser, ground water, sprinkler leakage, sewer back-up, surface water, leakage and seepage
33. Weight of Ice, Snow
34. Windstorm - typhoon, hurricane, cyclone, tornado, hailstorm, rain, dust

Third Party Liabilities (compensatory and punitive damage - if applicable)

1. Advertiser's and Publisher's Liability
   a. As agents
   b. Libel, Slander, Defamation of Character
   c. Media Used - radio, newspaper, newsletter

Insurance policies are legally binding contracts. Thus, policies are specifically applicable and binding only between the individual insurance company and the specific purchaser of the policy—the insured, i.e., the association.

What follows is a general discussion about selected portions of the reference insurance policy. The discussion is not intended as legal advice or insurance advice. Readers are advised to read carefully, any insurance policy and understand the policy's terms, provisions, conditions, and scope of coverage.

The information provided here is intended to give the reader a general overview of the more salient provisions of the referenced policy. The Association's and owner's specific insurance policy may include "similar type" terms and conditions discussed here but not the exact terms and conditions.

Readers are also advised that insurance and other related laws, rules, regulations and procedures are in constant change. For these reasons, such changes should be researched and updated prior to any decision to purchase an insurance policy and during a review of any policy.

Finally, when the reader is in doubt and have questions about the applicability of any insurance requirements, the reader should consult the professional services of experts, i.e., insurance agents, attorneys with competent knowledge of insurance law, managing agents with competent knowledge of insurance law etc.

National Flood Insurance Policy

The National Flood Insurance Program provides 5 ways to insure condominiums. There are different requirements for each of the method depending on the type of condominium.

Condominium buildings are divided into two different types; low and high rise. The division indicates the difference in the exposures to the risk that typically exists. Low-rise buildings generally have a greater percentage of the value of the building at risk than high rise buildings. Premiums are thus higher for the first dollars of coverage. However, optional higher deductibles for the low rise buildings, allow the association to buy back some of the risk reducing the cost of coverage.

I. Residential Condominium: New Condo Master Policy (CMP) Association Coverage Building & Contents.

Condominium associations where 75% or more of the floor space is residential may purchase flood insurance under the new Condo Master Policy(CMP) on the *Residential Condominium Building Association Policy (RCBAP)* form. The new policy covers the entire building including both the common as well as the individually owned building elements within the units, the improvement within the units and contents owned in common. Specifically, the policy provides full reimbursement for the **loss, damage, or repairs to the condominium building.** The maximum building coverage that can be purchased is the total number of units times $250,000[1] but not more than the replacement cost of the building. Commonly owned contents are covered to a maximum of $100,000[2] per building or the actual cash value. This coverage is available to residential condominiums in the Regular Program.

Full reimbursement for any loss, damage, or repairs to the building is dependent or conditioned on the association's purchase of insurance coverage for at least 80% of the full replacement cost of the building or the maximum amount of insurance available under the National Flood Insurance Program.
All new CMPs and Dwelling Policies meeting the eligibility requirements provide replacement cost coverage for the building(s) subject to a coinsurance penalty. As long as the association purchases flood insurance in an amount equal to the "lesser of 80 percent or more of the full replacement cost of the building at the time of loss or the maximum amount of insurance under the NFIP, the insured will be reimbursed fully for a loss," at page CONDO 7 NFIP Manual (March 1995). In all other cases the NFIP will pay less than the full amount of the loss, subject to the policy limits, and determined as follows:

$$\frac{\textbf{Insurance Carried}}{\textbf{Insurance Required}} \times \textbf{Amount of Loss} = \textbf{Limit of Recovery}$$

Claim payments are subject to a specified deductible. The loss standard deductible amounts are generally $750 for residential buildings located in a regular program community in a Special Flood Hazard Area. Others have a $500.00 deductible.

Existing policy holders whose condominium buildings have at least 75% or more total floor area as residential must convert to the new Condominium Master Policy (CMP).

The basic building limit amount of insurance under the CMP are :

- $50,000 for a detached building housing a single-family unit owned by the association;
- $ 50,000 multiplied by the number of units in the building for a residential townhouse; rowhouse and low-rise condominium;
- $135,000 for high-rise condominiums;

The contents basic limit amount of insurance is $15,000.

1 Federal Emergency Management Agency, *Flood Insurance Manual,* (1994) Manual Revisions, March 1995, p. CONDO 7.

2 Supra., p. CONDO 7.

II. Other Residential Condominium: Condominium Association Policy (CAP) Coverage Building & Contents

In contrast, when 26% or more of the condominium floor space is non residential, the association may purchase flood insurance under the general property form under the **Condominium Association Policy (CAP) Coverage Building & Contents.** In this situation, the policy covers the actual cash value of the building up to $100,000 and the commonly own contents up to the actual cash value of $10,000. CAP provides specific coverage for the building's common elements and building elements (additions and alterations) within all units of the building.

Note: When a loss occurs under the insurance programs discussed above, the policy amounts are first applied to rebuilding the common elements damage, then to damages of the individually — owned building elements .

III. Residential Condominium: Unit owners' Building & Contents Coverage

A condominium unit is considered a single-family residence whether it is in a townhouse, rowhouse, high rise or low rise. Single-family residence may be insured in one of three ways:

- An owner purchases in the name of the unit owner a"Dwelling Form" policy covering the individual unit and its contents up to the limits of insurance for a "Single-family" dwelling;
- An association purchases the "Dwelling Form" policy in the name of the "owner of record and in the name of the Association covering the unit with limits for a "Single family;"
- Association separately insures an association owned unit.

Coverage is applied first to the individually owned building elements and improvements to the unit then to the damage of the building's common elements which are the unit owner's responsibility.

IV. Non-Residential (Commercial) Condominium: Building & Contents.

Commercial condominium buildings and their commonly owned contents may be insured in the name of the Association under General Property Form subject to the 'Non- Resident' limits.

V. Non-Residential (commercial) Condominium: Unit owner's Coverage (Contents)

Coverage may be purchase for contents only.

CONDOMINIUM UNDERWRITING GUIDELINES

POLICY TYPE	POLICY FORM	INSURED	PROPERTY COVERED	ELIGIBILITY REQUIREMENTS	REPLACEMENT COVERAGE	COVERAGE LIMITS	ASSESSMENT COVERAGE	EXPENSE COVERAGE	FEDERAL POLICY FEES
NEW CMP RESIDENTIAL CONDO-MINIUM BUILDING ASSOCIATION POLICY (RCBAP)	RCBAP	CONDOMINIUM ASSOCIATION AND INDIVIDUAL UNIT OWNERS	CONDOMINIUM BUILDING INDIVIDUALLY OWNED BUILDING UNITS WITHIN THE BUILDING IMPROVEMENTS WITHIN UNIT ADDITIONS AND EXTENSIONS ATTACHED OR CONNECTED BY A COMMON WALL FIXTURES, MACHINERY AND EQUIPMENT WITHIN BUILDING MATERIALS AND SUPPLIES USED IN REPAIRING OR ALTERING THE BUILDING CONTENTS OWNED BY THE ASSOCIATION	COMMUNITY MUST BE IN REGULAR PROGRAM RESIDENTIAL CONDO BUILDINGS WITH ONE OR MORE RESIDENTIAL UNITS AT LEAST 75% OF FLOOR AREA MUST BE RESIDENTIAL BUILDINGS INCLUDE TOWNHOUSES, ROW HOUSES, LOW-RISE, HIGH-RISE, AND SINGLE-FAMILY CONDOMINIUM BUILDINGS	YES	REGULAR PROGRAM: <u>BUILDING:</u> REPLACEMENT COST, OR THE TOTAL NUMBER OF UNITS X $250,000, WHICHEVER IS LESS <u>CONTENTS:</u> ACTUAL CASH VALUE OF COMMONLY OWNED CONTENTS TO A MAXIMUM OF $100,000 PER BUILDING	NO	DETERMINED BY NUMBER OF UNITS IN CONDO-MINIUM	DETERMINED BY NUMBER OF UNITS IN CONDO-MINIUM
CONDO-MINIUM ASSOCIATION POLICY (CAP)	GENERAL PROPERTY FORM	CONDOMINIUM ASSOCIATION AND INDIVIDUAL UNIT OWNERS	SAME AS ABOVE	RESIDENTIAL CONDOMINIUM BUILDINGS THAT ARE UNINSURABLE UNDER A RCBAP EMERGENCY PROGRAM IS ELIGIBLE	NO	EMERGENCY PROGRAM: <u>BUILDING:</u> ACTUAL CASH VALUE TO A MAXIMUM OF $100,000 <u>CONTENTS:</u> ACTUAL CASH VALUE TO A MAXIMUM OF $10,000	NO	$45.00	$30.00
RESIDENTIAL UNIT OWNERS	DWELLING FORM	CONDOMINIUM ASSOCIATION AND/OR INDIVIDUAL UNIT OWNERS	INDIVIDUALLY OWNED BUILDING ELEMENTS IN UNIT COMMON BUILDING ELEMENTS INDIVIDUALLY OWNED CONTENTS	ALL RESIDENTIAL CONDOMINIUM UNITS EMERGENCY AND REGULAR PROGRAMS ARE ELIGIBLE	YES[2]	<u>EMERGENCY PROGRAM: (MAXIMUM LIMITS)</u> BUILDING: $35,000 CONTENTS: $10,000 <u>REGULAR PROGRAM (MAXIMUM LIMITS)</u> BUILDING: $250,000 CONTENTS : $100,000	YES	$45.00	$30.00
NON-RESIDENTIAL BUILDING & CONTENTS	GENERAL PROPERTY FORM	CONDOMINIUM ASSOCIATION AND INDIVIDUAL UNIT OWNERS	NON-RESIDENTAL COMMON BUILDING ELEMENTS AND THEIR CONTENTS CONTENTS OWNED BY ASSOCIATION NON-RESIDENTIAL CONDO UNITS	BUILDING MUST BE NON-RESIDENTIAL (COMMERCIAL) EMERGENCY AND REGULAR PROGRAMS ARE ELIGIBLE	NO	EMERGENCY PROGRAM: <u>BUILDING</u>: ACTUAL CASH VALUE TO A MAXIMUM OF $100,000 <u>CONTENTS</u>: ACTUAL CASH VALUE TO A MAXIMUM OF $100,000 REGULAR PROGRAM: <u>BUILDING</u>: ACTUAL CASH VALUE TO A MAXIMUM OF $500,000 <u>CONTENTS</u>: ACTUAL CASH VALUE TO A MAXIMUM OF $500,000	NO	$45.00	$30.00
NON-RESIDENTIAL UNIT OWNERS	GENERAL PROPERTY FORM	INDIVIDUAL UNIT OWNERS	NON-RESIDENTIAL CONDO-UNITS (ONLY CONTENTS ARE AVAILABLE)	COMMERCIAL CONTENTS ONLY EMERGENCY & REGULAR PROGRAMS ARE ELIGIBLE	NO	EMERGENCY PROGRAM: $100,000 MAXIMUM REGULAR PROGRAM: $500,000 MAXIMUM	NO	$45.00	$30.00

FOOTNOTE: These are basic guidelines for condominium associations and unit owners. Please refer to the Flood Insurance Manual for specific details.
[1]Policies written in the state of Texas add $1.00 for each Expense Constant Fee applied. [2]Subject to replacement cost provisions in policy.

Source: **Flood Insurance Manual**. 1994 Edition, March 1995 Revisions, pages CONDO 3, 4, and 5. Federal Emergency Management Agency (FEMA)

CONDOMINIUM RATING CHART – Effective October 1, 1994

LOW-RISE RESIDENTIAL CONDOMINIUMS

SINGLE UNIT BUILDING OR TOWNHOSE/ROWHOUSE TYPE–BUILDING WITH SEPARATE ENTRANCE FOR EACH UNIT

PURCHASER OF POLICY	Building Occupancy[1] AAP Section 10A	Building Indicator[1] AAP Section 10E	Contents Indicator[2] AAP Section 11	Limits of Coverage	Type of Coverage	Rate Table[3]	Policy Form[4]
UNIT OWNER	SINGLE FAMILY	SINGLE UNIT	HOUSEHOLD	BUILDING – $250,000 CONTENTS – $100,000	RC[5]	SINGLE FAMILY	DWELLING
ASSOCIATION (SINGLE UNIT ONLY)	SINGLE FAMILY	SINGLE UNIT	HOUSEHOLD	BUILDING – $250,000 CONTENTS – $100,000	RC[5]	SINGLE FAMILY	DWELLING
ASSOCIATION (ENTIRE BUILDING)	DETERMINED BY THE NUMBER OF UNITS, I.E., SINGLE FAMILY, 2-4 FAMILY, OTHER RESIDENTIAL	LOW-RISE	HOUSEHOLD	BUILDING – THE TOTAL NUMBER OF UNITS X $250,000 CONTENTS – $100,000	RC	CMP LOW-RISE	RCBAP

MULTI-UNIT BUILDING–2 TO 4 UNITS PER BUILDING– REGARDLESS OF NUMBER OF FLOORS (NON-TOWNHOUSE)

PURCHASER OF POLICY	Building Occupancy[1] AAP Section 10A	Building Indicator[1] AAP Section 10E	Contents Indicator[2] AAP Section 11	Limits of Coverage	Type of Coverage	Rate Table[3]	Policy Form[4]
UNIT OWNER	2-4	SINGLE UNIT	HOUSEHOLD	BUILDING – $250,000 CONTENTS – $100,000	RC[5]	SINGLE FAMILY FOR BUILDING, 2-4 FAMILY FOR CONTENTS	DWELLING
ASSOCIATION (SINGLE UNIT ONLY)	2-4	SINGLE UNIT	HOUSEHOLD	BUILDING – $250,000 CONTENTS – $100,000	RC[5]	SINGLE FAMILY FOR BUILDING, 2-4 FAMILY FOR CONTENTS	DWELLING
ASSOCIATION (ENTIRE BUILDING)	2-4	LOW-RISE	HOUSEHOLD	BUILDING – THE TOTAL NUMBER OF UNITS X $250,000 CONTENTS – $100,000	RC	CMP LOW-RISE	RCBAP

MULTI-UNIT BUILDING–5 OR MORE UNITS PER BUILDING– LESS THAN THREE FLOORS

PURCHASER OF POLICY	Building Occupancy[1] AAP Section 10A	Building Indicator[1] AAP Section 10E	Contents Indicator[2] AAP Section 11	Limits of Coverage	Type of Coverage	Rate Table[3]	Policy Form[4]
UNIT OWNER	OTHER RESIDENTIAL	SINGLE UNIT	HOUSEHOLD	BUILDING – $250,000 CONTENTS – $100,000	RC[5]	SINGLE FAMILY FOR BUILDING, OTHER RESIDENTIAL FOR CONTENTS	DWELLING
ASSOCIATION (SINGLE UNIT ONLY)	OTHER RESIDENTIAL	SINGLE UNIT	HOUSEHOLD	BUILDING – $250,000 CONTENTS – $100,000	RC[5]	SINGLE FAMILY FOR BUILDING, OTHER RESIDENTIAL FOR CONTENTS	DWELLING
ASSOCIATION (ENTIRE BUILDING)	OTHER RESIDENTIAL	LOW-RISE	HOUSEHOLD	BUILDING – THE TOTAL NUMBER OF UNITS X $250,000 CONTENTS – $100,000	RC	CMP LOW-RISE	RCBAP

[1] When there is a mixture of residential and commerical usage within a single building, please refer to the GR Section of the Flood Insurance Manual.
[2] In determining the contents indicator for "other than household contents," please refer to the RATE Section of the Flood Insurance Manual.
[3] All building rates are established based on the lowest floor of the building.
[4] RCBAP must be used to insure residential condominium buildings owned by the association that are in a Regular Program community and at least 75% of the total floor area within the building is residential. Use General Property form if ineligible under RCBAP.
[5] Replacement cost if the RC eligibility requirements are met (building only).

CONDOMINIUM RATING CHART – Effective October 1, 1994

HIGH-RISE RESIDENTIAL CONDOMINIUMS

MULTI-UNIT BUILDING - 5 OR MORE UNITS PER BUILDING – THREE OR MORE FLOORS[6]

PURCHASER OF POLICY	Building Occupancy[1] AAP Section 10A	Building Indicator[1] AAP Section 10E	Contents Indicator[2] AAP Section 11	Limits of Coverage	Type of Coverage	Rate Table[3]	Policy Form[4]
UNIT OWNER	OTHER RESIDENTIAL	SINGLE UNIT	HOUSEHOLD	BUILDING – $250,000 CONTENTS – $100,000	RC[5]	SINGLE FAMILY FOR BUILDING, OTHER RESIDENTIAL FOR CONTENTS	DWELLING
ASSOCIATION (SINGLE UNIT ONLY)	OTHER RESIDENTIAL	SINGLE UNIT	HOUSEHOLD	BUILDING – $250,000 CONTENTS – $100,000	RC[5]	SINGLE FAMILY FOR BUILDING, OTHER RESIDENTIAL FOR CONTENTS	DWELLING
ASSOCIATION (ENTIRE BUILDING)	OTHER RESIDENTIAL	HIGH-RISE	HOUSEHOLD	BUILDING – THE TOTAL NUMBER OF UNITS X $250,000 CONTENTS – $100,000	RC	CMP HIGH-RISE	RCBAP

NON-RESIDENTIAL CONDOMINIUMS

PURCHASER OF POLICY	Building Occupancy[1] AAP Section 10A	Building Indicator[1] AAP Section 10E	Contents Indicator[2] AAP Section 11	Limits of Coverage	Type of Coverage	Rate Table[3]	Policy Form[4]
UNIT OWNER	NON-RESIDENTIAL	SINGLE UNIT (BUILDING COVERAGE NOT AVAILABLE)	BUSINESS	EMERGENCY – $250,000 REGULAR – $500,000 CONTENTS ONLY	ACV	NON-RESIDENTIAL	GENERAL PROPERTY
ASSOCIATION (SINGLE UNIT ONLY)	NON-RESIDENTIAL	ENTIRE BUILDING	BUSINESS	BUILDING – EMERGENCY – $100,000 REGULAR – $500,000 CONTENTS EMERGENCY – $100,000 REGULAR – $500,000	ACV	NON-RESIDENTIAL	GENERAL PROPERTY

[1] When there is a mixture of residential and commerical usage within a single building, please refer to the GR Section of the Flood Insurance Manual.
[2] In determining the contents indicator for "other than household contents," please refer to the RATE Section of the Flood Insurance Manual.
[3] All building rates are established based on the lowest floor of the building.
[4] RCBAP must be used to insure residential condominium buildings owned by the association that are in a Regular Program community and at least 75% of the total floor area within the building is residential. Use General Property form if ineligible under RCBAP.
[5] Replacement cost if the RC eligibility requirements are met (building only).
[6] Enclosure, even if is the reference level for rating, cannot be counted as a floor for the purpose of classifying the building as a high rise.

Highlights and Excerpts from the Residential Condominium Building Association Policy Jacket (RCBA)

Issued only to condominium associations containing one or more residential units and in which at lest 75% o f the floor space within the building is residential

What follows is a general discussion about selected provisions of the Residential Condominium Building Association Policy (RCBA). It is not intended to be a complete or exhaustive discussion of the policy. Readers are reminded to read and examine the actual issued flood insurance policy for the specific terms and conditions applicable to the reader's insurance contract.

What is the association insured for?

Answer: All direct physical loss by or from flood to the insured property (real and personal) **subject to** the terms, conditions, and exclusions specified in the policy.

Can all condominium associations be insured under the National Flood Insurance Program with a "Residential Condominium Building Association Policy Jacket?"

Answer: Only associations which are defined as a"**Residential Condominium Building;" which means** a building owned by the members of the condominium association containing one or more residential units and in which at lest 75% o f the floor space within the building is residential.

Other non-residential associations must elect other policy coverages, i.e., commercial, general property form.

How much insurance is being provided?

Answer: The maximum building coverage that can be purchased is the replacement cost value of the building or the total number of units times $250,000 whichever is less. Commonly owned contents are covered to a maximum of $100,000 per building. This coverage is available to residential condominiums in the Regular Program.

Who is insured? Who is protected under the insurance policy ?

Answer: The Condominium association, the unit owners, any mortgagee and trustee named in the application and declaration page and at the time of loss any other mortgagee and loss payee.

What Losses are not covered under the policy?

Answer: The policy only provides coverage for the direct physical loss by or from flood. ***Some examples* of the excluded losses include:**

A. **Compensation, reimbursement or allowance for:**

- loss of use, loss of access to the insured property or premises
- additional living expenses incurred while the insured premises is being repaired
- ***any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction for any reason. (This presented some real problems for hurricane Andrew victims. A number of reported situations indicated that insurance companies denied payment of claim amounts attributable to the increase cost of reconstruction due to CODE changes.)***

B. **Losses from other casualties, including loss caused by:**
Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, landslide, destabiliation or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, land subsistence, sewer backup or seepage of water unless subjected to additional deductibles; rains, snow, sleet, water, moisture, mildew, mold or mudslide

C. **Losses of the following nature:**

- a loss covered by the insured's modification to the insured property which ma-

Source: **Seminar Forms Kit**, National Flood Insurance Program, Federal Emergency Management Management Agency, Federal Insurance Administration, Appendix C (September 1994).

terially increases the risk of flooding;

- a loss caused intentionally by the insured.

What are some examples of the properties that are covered under the residential condominium building association policy?

Answer: Specified building property and personal property are covered under the policy. Some examples of both types of properties covered under the policy include:

Coverage A—Building Property
The entire residential condominium building, its real property elements, including all units within the building and the improvements within the units.

Additions and extensions attached to and in contact with the building by means of a common wall **but excluding** portions of walks, walkways, decks, driveways, patios and other surfaces, all whether covered or not and located outside the perimeter, exterior walls of the insured building

Fixtures, machinery and equipment, including the following property, while within the building, including its units which is not being covered under "personal property:"
furnaces,
wall mirror permanently installed,
permanently installed corner cupboards, bookcases, paneling and wall paper,
ventilating equipment,
fire extinguishing apparatus,
venetian blinds,
central air conditioners,
awnings and canopies,
elevator equipment,
fire sprinkler systems,
outdoor antennas and aerials,
pumps and machinery for operating them,
carpet permanently installed over unfinished flooring in the units within the building installed:

built-in dishwashers, garbage disposal, hot water heaters, kitchen cabinets, built-in *microwave ovens,* plumbing fixtures, radiator, ranges, refrigerators, stoves

materials and supplies to be used in constructing, altering, or repairing the building while stored inside a fully enclosed building

a building in the course of construction before it is walled and roofed subject to certain conditions.

Coverage B—Personal Property
Policy covers personal property which is in or on the insured, fully enclosed building and is:

owned by the unit owners of the condominium, in common, or
owned by solely by the condominium association and used in the business affairs of the condominium.

Coverage is provided for the following personal property whether owned by the association or unit owner for which coverage is not provided under **Coverage A above —Building Coverage**

clothes washers, clothes dryers, food freezers, air condition units installed in the building, portable dishwashers, carpet, including wall-to wall carpet, whether it is or is not permanently installed over finished flooring ; carpet not permanently installed over unfinished *flooring; outdoor equipment and furniture* stored inside the dwelling or another fully enclosed building at the property; portable microwave ovens and "cook out" grills, ovens and the like.

Personal property coverage subject to the **limitation that loss of one or more of the following unique or rare items cannot exceed $250.00 individually or in total:**

art work, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows including their frames, statuary, marbles and bronzes;

rare books;

necklaces,bracelets, gems, precious or semi precious stone, watches, articles of gold, silver, or platinum; or

furs or any article containing fur which represents the principal value.

Coverage C—Debris removal
Covers the expenses related to removal of debris of, or on, or front the building or personal

property and extends to non-owned debris from other properties and parts of the insured property located anywhere but does not exceed the total liability under the policy for both loss to property and debris removal expense but cannot exceed the amount of insurance for property covered.

Is there coverage for items bought to prevent flooding?

Answer: Reasonable expenses for preventing flooding or greater damage are provided under the policy up to $750.00 for:

sandbags including the sand to fill them and plastic sheeting and lumber; fill for temporary levees; pumps; and wood for the purpose of saving the building due to imminent danger of flood loss, including the association's own labor.

What properties are not covered under the flood insurance policy?

Answer: Examples of the properties not covered under the policy include:

Valuables and commercial property, like: accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in business.

Personal property used in connection with any incidental commercial occupancy or use of the building.

Property over water or in the open, like a building and personal property in the building located entirely in, on, or over water or seaward of mean hightide.

Personal property in the open.

Structure other than buildings like: fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges and docks.

Indoor and outdoor swimming pools.

Underground structure including loading wells, septic tanks and system.

Other real property including:

land, land values, lawns trees, shrubs, plants,

portions of walks, walkways, decks, driveways, patios, located outside the perimeter, exterior walls of the insured building.

Other personal property, like
animals, livestock birds, and fish, aircraft, trailers on wheels and recreational vehicles

Basements, building enclosures lower than the elevated floors of elevated building, and personal property as follows:

In a special hazard areas at an elevation lower than the lowest elevated floor of an elevated Post-FIRM building:

building enclosures, equipment, machinery fixtures and components, except for the required utility connections and the footings, foundation, posts, pilings, piers or other foundation walls and anchorage system;

personal property.

In a basement as defined in article 2;

personal property;

building equipment, machinery, fixtures and component including finished walls, floors, ceiling and other improvement, except for the required utility connections, fiberglass insulation, drywalls, and sheetrock walls, and ceiling, but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner like nailed to framing but not taped, painted or covered; or

some specific personal property items connected to a powers source and installed in their functioning location where building and personal property coverage were purchased.

Can the policy be declared void and have no legal force and effect?

Answer: When any one of the following conditions occur, the policy shall be void and of no legal force and effect:

property listed on the application is not eligible for coverage; void from inception.

community in which the property is located was not participating in the **National Flood Insurance Program on** the policy's beginning date and did not qualify any at time during the policy's term and before loss.

when, during the policy period, the participation in the National Flood Insurance program ceases, the policy shall be deemed void effective at the end of the last day of the policy year in which such cessation occurred and shall not be renewed.

in the event any insured or its agent has:

sworn falsely; or

fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this policy in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy shall be void as of the date the wrongful act

NOTE: The flood insurance policy appears to provide coverage for the bare replacement of the building. All other items to restore the building to a "community" atmosphere are excluded. Associations should carefully review the policy exclusions and limits and decide if it may be prudent to purchase additional insurance, excess coverage, and even self insurance for those extras to rebuild the association to what it truly was before the disaster.

Source: Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program, *Seminar Forms Kit,* Appendix C Residential Condominium Building Association Policy Jacket. p. 1-17 (September 1994).

CONDOMINIUM ASSOCIATION REGISTRATION, BONDING, AND EDUCATION FUND

DEADLINE - JANUARY 1, 1996
Information and Instructions

WHO MUST REGISTER: Section 514A-95.1, Hawaii Revised Statues, requires registration by all condominium associations of apartment owners (AOAO) comprised of **six or more apartments** (regardless of the use of the apartment - residential, hotel/resort, commercial, time share, agricultural, parking, industrial, etc.) This includes AOAOs retaining a condominium managing agent or self-managed.

WARNING: In addition to penalty fees, failure to pay the required fees and/or failure to submit a completed application form by the due date will result in the AOAO being denied standing in any State court and preclude the AOAO from filing any action to collect delinquent maintenance fees or foreclose any lien for common expenses.

All application form deficiencies shall be corrected by the **DUE DATE** or may incur **PENALTY FEES.**

REGISTRATION: Registration consists of a COMPLETED application form, required fidelity bond documents or exemption documents, payment of registration fee, payment of condominium management education fund fee, and payment of any penalty fees.

DUE DATE: JANUARY 1, 1996 - File a completed registration by the due date consisting of a completed application form, required fidelity bond documents or exemption documents, registration fee, and condominium management education fund fee.

ADVISORY - submit a completed registration as early as possible so that any deficiency can be corrected before the due date. Historically, those who file at the last minute have the highest incidence of deficiencies and incur PENALTY FEES.

FEES: Attach payment for registration fee and condominium management education fund fee.

Registration Fee - $25.00 per AOAO. An additional $25 penalty fee will be assessed for late payment or late registration.

Condominium Management Education Fund Fee - $2.00 per apartment. Two dollars multiplied by the number of apartments in the AOAO. A penalty for 10% of the amount due will be assessed for late payment.

Check should be payable to: Commerce and Consumer Affairs.

Note: Your fee payment will be deposited immediately upon receipt. The depositing of the payment is not to be considered an approval of the license, registration or certification. If for any reason the application is not approved, or the processing of the application is terminated, any refunds due will be processed. Refunds take approximately six to eight weeks to process. Application fees are non-refundable.

One of the numerous legal requirements that you must meet in order for your registration to issue is the payment of fees as set forth in this application. You may be sent a certificate before the check you sent us for your required fees clears your bank. If you check is returned to us unpaid, you will have failed to pay the required registration fee and your registration will not be valid. Also, a $15.00 service fee will be charged for checks which are returned by the bank.

BOND: The correct fidelity bond documents or fidelity bond exemption shall be submitted with the association registration application form or the application will be considered an INCOMPLETE REGISTRATION.

See the attached CONDOMINIUM ASSOCIATION FIDELITY BOND REQUIREMENTS for specific information.

MAIL OR DELIVER REQUIREMENTS TO: **Real Estate Branch**
Association Registration
250 South King Street, Room 702
Honolulu, HI 96813

PHONE NUMBER: (808) 586-2644

Effect of Failure to Submit Information Required by Statute or Rules:

The Commission may reject or terminate any registration for failure to submit written confirmation of any of the information required by statute or Commission rules.

Instruction for Completing the Application Form by Section Number:

1. The project registration number is the number given the project when it is first registered with the Commission prior to sale (leave space blank if you do not know this number.)

2. **Street Address** refers to the physical location of the project.

3. **All information in the condominium association registration application is considered public information.**

4. **The name and address of the contact person will become public information.**

5. **Self-managed** refers to associations which manage their projects with the help of volunteers or association employees, but which do not retain the services of an independent condominium managing agent. Any person paid to help manage the project who is not a direct employee of the association may be considered an independent condominium managing agent (see Section 514A-3, Hawaii revised statutes.

   Fiscal management refers to accounting, budgeting, collecting, depositing, and disbursing funds for the association. Any person, including an accountant or bookkeeper, who is not an employee and who collects, deposits, or disburses funds for the association is considered a fiscal managing agent. **Fiscal and physical** refers to fiscal management and the management of the physical property and any personnel of the association.

6. Note: **BOND EXEMPTION** application must be filed yearly and should be filed early as it requires a longer review process. See attached CONDOMINIUM ASSOCIATION FIDELITY BOND REQUIREMENTS.

7. **Commercial** refers to any commercial use of an apartment for stores, offices, and businesses, except **industrial** which should be included in the **Other** category.

   Residential refers to any use of an apartment as a dwelling, except that apartments known to be used for short-term rentals of less than 30 days should be included in the **Other** category as **hotel**. Units known to be in a timeshare plan also should be included in the **Other** category.

8. **Owner occupied** refers to an apartment occupied by the owner and not rented or leased. Please indicate if figures are estimates.

9. Indicate if there is a hotel operation, rental pool, or transient rentals in the project.

11. The amount of maintenance fees assessed owners on a regular basis - if you attach a financial statement, it should clearly show the amount being collected from owners for the month or quarter prior to the date you complete this form. You may attach any statement clearly indicating that information, if a financial statement is not available. Please indicate if the statement does not represent an accurate view of association maintenance fees.

12. Any special assessments levied against the owners apart from normal maintenance fee assessments for a particular purpose, such as replacement of elevator, re-roofing, equipment, legal fees, etc.?

13. As condominium projects in Hawaii age, long-term planning for future capital improvements, repairs, and unexpected expenses become more important.

    If the statement attached for the section on assessments clearly shows the amount of association reserves <u>and</u> with whom they are invested or deposited, you need not attach another statement. Otherwise, please attach a statement indicating that information about association reserves, if it exists. Again, please indicate if the statement does not represent an accurate view of association reserves.

14. Some associations vote not to have audits. If the date of the association's last audit is unknown, please indicate. The name of the public accountant performing the audit, not the individual, is sufficient. However, if the association has twenty or more **owners**, an annual audit is required.

15. Accurate information on the ownership of the land beneath condominium projects is needed. If the lessor has sold the fee interests for some or all of the apartments in a condominium project which was originally leasehold, the project may be characterized in one of two ways. If the association purchased all of the fee interest of the land beneath your project which was not purchased by the apartment owners, your project is considered **fee simple**. If each owner did not purchase the percentage fee interest attributed to his or her apartment and that percentage fee interest was not purchased by the association, your project is considered **partially converted**. If the project is partially converted, please indicate, to the best of your knowledge, the number of apartments not converted to fee simple and the time of registration. For the purposes of this question, **not converted to fee simple** means that the owner has not closed a sales transaction for the purchase of the percentage fee interest.

    For the first 20 to 30 years, most condominium project leases have their ground lease rent fixed at a certain amount, although that amount may increase in two other steps. After the period of fixed lease rent, many ground leases provide that for the reminder of the lease, the rent amount shall be negotiated between the owners of the apartments or the association (lessees) and the owner of the land (lessor). Please indicate the previous renegotiation date (if any), the next renegotiation date, the present amount of ground lease rent, and the amount of ground lease rent paid prior to the previous renegotiation (if there has been a renegotiation). If ground lease terms vary from apartment to apartment, please include ground lease information for an apartment that is representative of the majority of apartments in the project. Please also indicate the type of apartment used as a representative apartment (e.g., studio, one bedroom, etc.).

Liability for Misstatements:

The Commission expects and requires every board president, vice president, secretary, or treasurer to make a good faith effort to provide accurate information. That obligation should not be taken lightly and penalties can be imposed for false statement. Nevertheless, if after a good faith effort you are unable to answer a question correctly or accurately, please indicate and explain, if necessary.

FOR OFFICE USE

1996

CONDOMINIUM ASSOCIATION REGISTRATION APPLICATION

DEADLINE: JANUARY 1, 1996

1. Name of Condominium Project: ______________________

   Project Reg. No. ______________ Total No. of Apartments: ______________

2. Street Address: ______________________

3. President of the Board of Directors: ______________________

   Business Address: ______________________

   Telephone No.: ______________

4. Contact Person for Association and Title (if other than president): ______________

   Title: ______________________

   Business Address: ______________________

   Telephone No.: ______________

5. Management Status:

   [ ] Self-managed by Association of Apartment Owners (See information sheet for instructions.)

   Name of Manager: ______________________

   Telephone No.: ______________

   [ ] Managed by Condominium Managing Agent (See information sheet for instructions.)

   Name: ______________________

   CMA Reg No. ______________
   Management Type: [ ] Fiscal Only [ ] Fiscal and Physical

6. Fidelity Bond: (See information sheet for bond requirements.)

   [ ] Original policy of insurance/bonding is attached (for associations registering for the first time this year or previously registered associations which did not properly complete registration last year).

   [ ] Original certificate of insurance/bonding is currently on file with the Commission and complies with all bond requirements.

   [ ] Bond Exemption Application is attached. File early as it takes a longer review process.

7. Use: Indicate **number** of apartments in each type of use. (See information sheet for instructions.)

   _______ Commercial _______ Agricultural
   _______ Residential _______ Time share
   _______ Other (e.g., Hotel, etc., please specify. Indicate if figures given for "other" are estimates.):

   ____

Reg .... 593 .... $25
CMEF .... 918 $2 x ___ = $ _____

8. Percentage of residential apartments in the project which are owner-occupied: ________________%

9. Are there apartments being offered for lodgings of less than 30 days, (e.g. hotel, rental pool, time share, etc.)? [ ] Yes [ ] No

   If so, are these apartments being offered by agents of the apartment owners? [ ] Yes [ ] No

   If available, please provide a list of agents and the apartment numbers.

10. Annual Operating Budget:

    Did the board of directors prepare and adopt an annual operating budget? [ ] Yes [ ] No

    Is it distributed to each apartment owner? [ ] Yes [ ] No

11. Maintenance Fees _(see information sheet for instructions)_:

    State the total monthly amount of maintenance fees assessed, $ ____________________, or attach the most recent financial statement if it indicates monthly or yearly amount.

    Has there been an increase in maintenance fees assessment in the past year? [ ] Yes [ ] No
    If so, by how many percent over the previous years? ________%

    What is the total amount of delinquent maintenance fees? $ ________________

    Has the AOAO deducted and applied portions of maintenance fee received from an apartment owner to unpaid late fees without prior written notice during the past year? [ ] Yes [ ] No
    (514A-15.1)

12. Special Assessments:

    Was there a special assessment levied against the owners during the past year? [ ] Yes [ ] No

    If so, how much per apartment owners? $ ________________

    The purpose of the special assessment was ____
    ____

    Has there been any discussion, plan, pending action, or decision to have a special assessment in the near future? If so, how much per apartment and/or for what purpose: ________________________________
    ____
    ____

13. Has the AOAO conducted a reserve study? [ ] Yes [ ] No

    Has the AOAO adopted a long term budget for reserves (e.g., funds not required for immediate common expenses, or funds for future capital improvements, major repairs and maintenance, or unexpected common expenses)? Yes [ ] No [ ]

    If yes, state the amount of reserves as of this date $_________, or attach the association's schedule or statement of reserves for the month or quarter prior to the date you complete this form. (See information sheet for instructions.)

    Has the association established separate reserve accounts or investments to provide funding for the types of expenses described in the previous section? [ ] Yes [ ] No

    Has the AOAO decided to fund 100% of the estimated replacement reserves through special assessments? [ ] Yes [ ] No If no, what percent? __% (If no special assessment, specify 0%).

(Association of Apartment Owners of ______________________________)

14. Audit:

Date of Association's most recent audit: ______________________

Date of unannounced verification of association's cash balance: ______________________
(If unknown, please indicate.)

Name of public accountant who conducted audit: ______________________

Name of public accountant who conducted cash verification: ______________________

15. Land Ownership Information: The following three (3) sections refer to the ownership of the **LAND** underlying the building(s)/project. Complete **ONLY ONE** of the sections.

(i) [ ] Fee Simple

a. [ ] Originally fee (e.g., from date of original sale)

b. [ ] Originally leasehold but converted to fee (if any part of fee is owned by other than the apartment owners or association, complete "Partially Converted", section (iii). See information sheet).

(ii) [ ] Leasehold

a. [ ] During the past year, the lessor has NOT offered leasehold to fee conversion?

b. [ ] During the past year, the lessor has offered leasehold to fee conversion and the offer is still open for consideration.

c. [ ] During the past year, the lessor has offered leasehold to fee conversion, the offer is closed, and those who accepted are being processed.

(iii) [ ] Partially Converted (e.g., Originally leasehold but now some apartments owned in fee by apartment owners or association, but not all). Number of apartments not converted: __________

16. Ground lease information for apartments in project which are still in leasehold:

Total lease term (e.g., 30, 55, 65 years): ______________________

Termination/Expiration Date: ______________________

Previous renegotiation date (if any): ______________________

17. Declaration/Bylaws:

Has the AOAO amended its Declaration during the past year? [ ] Yes [ ] No

Has the AOAO amended its Bylaws during the past year? [ ] Yes [ ] No

Have those amendments been duly recorded with the Bureau of Conveyances or Land Court?
[ ] Yes [ ] No

18. Association and Board Meetings:

How many association meetings occurred during the past year and the months the meeting occurred?

Regular __________ Special __________

How many board of directors meetings occurred during the past year? __________

Is the board of directors meetings open to all apartment owners? [ ] Yes [ ] No

How many persons sit on the association's board of directors? ______________

19. Membership List:

Does the AOAO keep a current list of all the apartment owners by name and addresses? [ ] Yes [ ] No

20. Does the AOAO prohibit pets? [ ] Yes [ ] No

If yes, is the prohibition in the [ ] Declaration [ ] Bylaws [ ] House Rules?

Does the AOAO allow apartment owners to keep pets? [ ] Yes [ ] No

The right to have pets and its regulations, if any, are in the [ ] Declaration [ ] Bylaws [ ] House Rules

21. Does your AOAO have a reference binder as suggested in the Hawaii Condominium Bulletin, in which is contained the Hawaii Condominium Bulletin, Real Estate Commission Issued Brochures, copy of Chapter 514A (HRS), Chapter 107 (HAR), copy of declaration, copy of bylaws, copy of house rules, etc.? [ ] Yes [ ] No

If so, are apartment owners informed of the existence and availability for review of this binder during reasonable hours? [ ] Yes [ ] No

22. Does your AOAO have a newsletter or some other form of communication with the apartment owners on a periodic basis? [ ] Yes [ ] No

Are copies of all newsletters or communications kept in a binder and available for review by apartment owners during reasonable hours? [ ] Yes [ ] No

23. Does your AOAO keep minutes of all board of directors and association meetings in a binder, and are they made available for review by apartment owners during reasonable hours? [ ] Yes [ ] No

If so, has the existence of this binder and its availability for review been made known to all apartment owners? [ ] Yes [ ] No

CERTIFICATION OF ASSOCIATION OFFICER:

I HAVE READ AND UNDERSTAND THE INSTRUCTIONS AND INFORMATION THOROUGHLY. IF NOT, I SECURED ADVICE FROM THE REAL ESTATE BRANCH.

I HEREBY CERTIFY THAT THIS APPLICATION IS COMPLETE AS REQUIRED INCLUDING ATTACHING THE REQUIRED DOCUMENTS AND FEES.

I HEREBY CERTIFY THAT I AM AUTHORIZED TO SIGN THIS CERTIFICATION AND THAT THE INFORMATION ON THIS APPLICATION AND THE ATTACHMENTS ARE TRUE AND CORRECT.
Signed and dated this _ day of ____________________ 199____.

____
Signature

____
(Please print name)

[ ] President [ ] Vice-President [ ]Secretary [ ] Treasurer

____
(Please print name of association)

BENJAMIN J. CAYETANO
GOVERNOR

KATHRYN S. MATAYOSHI
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

STATE OF HAWAII
REAL ESTATE BRANCH
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
250 SOUTH KING STREET, ROOM 702
HONOLULU, HAWAII 96813

TO: ALL CONDOMINIUM MANAGING AGENTS AND ASSOCIATIONS OF APARTMENT OWNERS

FROM: REAL ESTATE COMMISSION

RE: ASSOCIATION FIDELITY BOND EXEMPTIONS

Please be advised that as of December 21, 1994, after a review of the issue at its monthly Real Estate Commission ("Commission") meeting, fidelity bond exemptions for condominium associations shall be available only to those condominium associations unable to obtain fidelity bond coverage.

This decision is based upon a review of the statutory mandate pursuant to §514A-95.1, Hawaii Revised Statutes (HRS) and consultation with and advisement by the deputy attorney general. Section 514A-95.1, HRS reads in relevant part "[a]n association which is **unable** to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission" (emphasis added).

Over the years, the Commission has attempted to accommodate those associations requesting a fidelity bond exemption. If requesting associations satisfied certain size requirements and financial criteria, then that association would be granted an exemption to the fidelity bond requirement for that year. Once granted an exemption, associations were required to apply for such at every registration period.

In its effort to accommodate associations, the Commission granted exemptions without proof of inability to obtain a bond. Therefore, effective December 21, 1994 an association requesting a fidelity bond exemption shall comply with the following requirements:

1. The condominium project consists of twenty (20) or fewer apartments; and

2. The association of apartment owners ("AOAO"), through its board of directors shall submit to the Commission letters from three (3) separate insurance carriers confirming that the AOAO is unable to obtain fidelity bond coverage.

In addition, the following financial factors will be considered:

1. The average monthly amount of maintenance fees collected by the association or its managing agent, if any, and the association's annual budget;

2. Whether the association has separate operating and reserve accounts;

3. The average monthly balance of the operating account and average monthly expenditures from it;

4. The balance of the reserve account and the procedures by which funds may be transferred into and out of it;

5. Whether checks written on the operating or reserve accounts require a countersignature;

6. Whether the board or apartment owners receive monthly bank statements for operating and reserve accounts directly from the association's financial institution or trust company;

7. Whether the board or apartment owners receive monthly statements of association expenditures from the managing agent;

8. Whether the association conducts an annual audit, review, or compilation of association funds;

9. Whether the association pays utility and regularly recurring expenses by automatic payment through its financial institution;

10. Whether the association is totally commercial or industrial with no residential units; and

11. Whether all the apartments in the project are owned by a single entity.

Should an AOAO experience difficulty in obtaining fidelity bond coverage sufficient to satisfy the registration requirements of §514A-95.1, HRS, please feel free to call this office at 586-2644 to discuss the situation with a condominium specialist.

CONDOMINIUM ASSOCIATION FIDELITY BOND REQUIREMENTS

Each condominium project having six or more apartments must secure annually through its association of apartment owners a fidelity bond or obtain a yearly bond exemption, as provided below.

Amount of Bond and Deductible: The amount of the fidelity bond shall be $500 multiplied by the aggregate of number of condominium apartments in the association, provided that the minimum bond amount shall not be less than $20,000 and the maximum need not exceed $100,000. The fidelity bond deductible shall not exceed $2,000 or 5% of the face amount of the bond, whichever is greater.

Coverage Required by Association of Apartment Owners Bond: The association of apartment owners fidelity bond shall:

(1) Cover all officers, employees, and managing agents of the association who have the authority to collect, deposit, transfer, or disburse association funds;

(2) Name as the insured only the association registered with the Commission and no other person or entity.

The association's board shall adopt a written resolution limiting persons who may handle association funds to those covered by the association's bond. Copies of these resolutions shall be available for review by any association member and provided to the Commission at its request.

Evidence of Fidelity Bond to be Provided to the Commission: Each association of apartment owners required to have a fidelity bond and registering for the first time in 1996 or any previously registered association of apartment owners which failed to register or submit proper evidence of bonding as required in 1995, shall submit a copy of the fidelity bond policy and an original certificate of insurance to the Commission containing the requirements described below. Associations of apartment owners that have an original certificate of insurance and a copy of the fidelity bond policy containing all of the requirements described below and whose bond is fully valid and in effect through 1996 need only notify the Commission of changes to the bond, in the manner described below.

A copy of the policy and the original certificate of insurance currently on file for each association of apartment owners required to have a fidelity bond shall:

(1) Name the Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division, Real Estate Commission, P.O. Box 3469, Honolulu, Hawaii 96801, as "certificate holder";

(2) Include a cancellation notification provision that the insurer shall notify the "certificate holder" in writing, 30 or more calendar days prior to the cancellation/termination of the bond;

(3) State that the bond is a fidelity or employee dishonesty bond;

(4) State the amount of any deductible or that no deductible applies to the bond;

(5) Name only the association of apartment owners as the insured and no other person or entity;

(6) Include an expiration date or a statement that the bond is continuous;

(7) State whether the bond is a blanket or name schedule/position type;

(8) Indicate that the bond covers officers, directors, employees and managing agent who have authority to collect, deposit, transfer or disburse association funds; and

(9) Not require criminal conviction before payment of loss.

Special Rules for Schedule/Position Bonds: If the fidelity bond provided is a "name schedule" or "position" bond, the schedule shall be attached to the certificate of insurance submitted to the Commission. The association of apartment owners also shall submit to the Commission a board resolution limiting the persons handling funds for the association to those persons covered by the schedule.

Notification to Commission of Changes to Fidelity Bond: The association shall notify the Real Estate commission in writing of any amendments to the fidelity bond within 10 days of the amendments. If the amendments affect the information shown on the certificate of insurance or any bond schedule, the Commission shall also be provided with an amended certificate of insurance.

Bond Exemptions for Associations of Apartment Owners: The Commission may grant complete or partial bond exemption to the associations of apartment owners having twenty or less apartments. Please contact the Commission regarding the exemption or to request a copy of the exemption form.

Note: **BOND EXEMPTION** application must be filed yearly and should be filed early as it requires a longer review process.

CONDOMINIUM ASSOCIATION FIDELITY BOND EXEMPTION APPLICATION

Information and Instructions

Who may apply for an exemption: Any association of apartment owners comprised of twenty or less apartment units, and any association consisting of one entity (projects entirely owned by one individual, corporation or partnership).

Standards for granting bond exemption: The law imposes a fidelity bond requirement to: **(1) protect association funds;** and **(2) ensure that associations adopt sound financial controls for handling those funds.** In determining whether to grant a bond exemption, the Real Estate commission looks primarily at the amount of association funds at risk and the adequacy of association financial controls.

Most associations collect some money from their members to pay association common expenses. The risk of loss may increase if members lose direct control over their money, particularly if the money is aggregated into a large common fund.

Small associations with few common expenses may collect very little from their members and have only a small common fund. Members of small associations also may have more direct control over associations funds. Both circumstances may reduce the risk of loss for small associations.

Sound financial controls for collecting, depositing, transferring, and disbursing association funds also reduce the risk of loss. Those controls should prevent any one individual (or entity) from having sole control over association funds and records without the supervision of at least an (other) association owner, director, or officer. Typical financial controls include: separate operating and reserve accounts, with restricted access to the reserve account; countersignature requirements for checks drawn on association accounts; regular board review and reconciliation of association disbursements and accounts balances; regular audits; etc.

Fidelity Bond Exemption Application Form

Please complete the following questions in black ink:

1. Name of condominium project: ______________________________
   No. of apts.______ [ ] Residential [ ] Industrial or Commercial [ ] Entirely owned by one entity

2. [ ] Self-managed [ ] Agent-managed--name of managing agent ______________________________

   ____

3. Budget for most recent fiscal year (19___): $______________

4. Actual expenses for most recent fiscal year: $______________

5. Average monthly amount collected by association or managing agent during most recent fiscal year: $______________

6. Does association have separate operating and reserve accounts? [ ] yes [ ] no

7. Maximum $_________ and minimum $___________ in reserve account during most recent fiscal year.

8. Average monthly balance of the operating account during most recent fiscal year $______________

9. Who of the following must sign checks to disburse money from the association's operating account:
   [ ] one association board member only
   [ ] managing agent only
   [ ] at least two board members
   [ ] both managing agent and at least one board member
   [ ] other (please specify):______________________________

10. If two signatures are required for checks exceeding a certain amount, please state the amount ______
    (If two signatures are required for all checks, indicate amount is zero.)

11. Who of the following must sign to disburse money from the association's reserve account:
    [ ] one association board member only
    [ ] managing agent only
    [ ] at least two board members
    [ ] both managing agent and at least one board member
    [ ] other (please specify):______________________________

12. If two signatures are required for checks exceeding a certain amount, please state the amount ______
    (If two signatures are required for all checks, indicate amount is zero.)

13. If the association has a managing agent, does the board receive and review statements of expenditures from the managing agent? [ ] yes [ ] no. If yes, how often? [ ] monthly [ ] quarterly

14. Does the association receive statements directly from its bank, savings and loan, etc. [ ] yes [ ] no? If yes, does the board review the statements [ ] monthly [ ] quarterly?

15. Does the association have a financial audit by a CPA or PA annually? [ ] yes [ ] no
    If no audit, does CPA/PA do a review or compilation? [ ] yes [ ] no

16. Does the association have any arrangement with its bank, savings and loan, etc. for automatic payment of recurring association expenses [ ] yes [ ] no?

AFFIDAVIT OF ASSOCIATION PRESIDENT OR VICE PRESIDENT:

I certify that I am authorized to sign this affidavit and that the information provided on this form is true and correct. I understand that knowing or intentional misrepresentation may result in legal liability (Sections 514A-98 and 710-1017, Hawaii Revised Statutes).

____
Signature

____
Title

Subscribed and sworn to me before this
_____day of ______________, 19___
Notary Public, State of Hawaii
My commission expires:____________

CERTIFICATE OF INSURANCE

ISSUE DATE

PRODUCER	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW
	COMPANIES AFFORDING COVERAGE
	COMPANY LETTER **A**
CODE 0007A SUB-CODE	COMPANY LETTER **B**
INSURED AOAO	COMPANY LETTER **C** Notes For
	COMPANY LETTER **D**
	COMPANY LETTER **E**

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAME 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.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS
	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE OCCUR. OWNER'S & CONTRACTOR'S PROT.				GENERAL AGGREGATE $ PRODUCTS COMP/OPS AGGREGATE $ PERSONAL & ADVERTISING INJURY $ EACH OCCURRENCE $ FIRE DAMAGE (Any one fire) $ MEDICAL EXPENSE (Any one person) $
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE LIMIT $ BODILY INJURY (Per person) $ BODILY INJURY (Per accident) $ PROPERTY DAMAGE $
	EXCESS LIABILITY OTHER THAN UMBRELLA FORM				EACH OCCURRENCE $ AGGREGATE $
	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY				$ $ $
	OTHER Blanket Fidelity	000 000 000	01/01/96	01/01/96	$20,000 Bond

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / RESTRICTIONS / SPECIAL ITEMS

THIS POLICY COVERS THE NAMED INSURED AGAINST ANY FRAUDULENT OR DISHONEST ACTS OF OFFICERS, DIRECTORS, EMPLOYEES, AND MANAGING AGENTS OF THE ASSOCIATION WHO HAVE THE AUTHORITY TO COLLECT, DEPOSIT, TRANSFER OR DISBURSE ASSOCIATION FUNDS

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES
	AUTHORIZED REPRESENTATIVE

Appendix C
Hawaii Hurricane Insurance Specimen Policy

The following is a sampling of the insurance provisions that may be included in an issued Hawaii Hurricane Insurance policy. The sampling has been extrapolated from a "Specimen Commercial Windstorm - Hurricane Insurance Policy" dated 7/14/94. The sample is included here for discussion and educational purposes. Any specific issued policy may contain some, any, or all of the provisions discussed here. The provisions of a policy depend on the terms and conditions ultimately agreed upon between the Hawaii Hurricane Relief Fund and the particular association (the insured).

I. Associations may elect the following coverages:

Type of Coverage	**Coverage Includes (subject to limits of liability shown in the Declarations)**:
Coverage A-1 **Building and Structures** as shown in the Declarations subject to the policy limits (excludes land, including land on which the building or structure is located)	1. *Completed additions;* 2. Permanently installed fixtures, machinery, and equipment; 3. Personal property used to maintain or service the building or structure, including: a. fire extinguishing equipment; b. floor coverings; and c. appliances used for refrigerating, ventilating cooking, dishwashing or laundering. 4. When not covered by other insurance: a. Additions under construction, alterations and repairs to the building or structure; b. Materials, equipment, supplies and temporary structures on the described insured location, used for making additions, alterations or repairs to the building or structure.
Coverage A-2 **Property Association** (excludes land, including land on which the building or structure is located):	1. Includes all the property covered in Coverage A-1 except fixtures, improvements, alterations and personal property owned by, used by, or in the care, custody or control of a unit-owner, or located within an individual unit 2. Within a unit, when the association agreement requires the owner to insure any of the following regardless of ownership: a. Fixtures, improvements and alterations that are a part of the building or structure; and b. Appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping. 3. Association Personal Property located within a building described in the Declarations consisting of the following: a. Personal property individually owned or owned indivisibly by all unit owners: and b. Leased personal property for which there is a contractual responsibility to insure. However, Association Personal Property does not include personal property owned only by a unit owner.

I. Associations may elect the following coverages(continued):	
COVERAGE A-3 - Builder's Risk Includes the buildings and structures while in the course of construction as shown in the declarations (excludes land, including land on which the building or structure is located).	1. The following, if intended to become a permanent part of the building or structure, and if located within 100 feet of the building or structure under construction: a. building material and supplies: and b. fixtures, machinery and equipment used to service the building. 2. If not covered by other insurance, temporary structures built or assembled on site, including cribbing, scaffolding or construction forms.
COVERAGE C-1 Business Personal Property.	1. Business Personal Property located within the building(s) or structure(s) described in the Declarations or in a vehicle within 100 feet of the insured location of the building or structure, consisting of the following: a. Furniture and fixtures; b. Machinery and equipment; c . Stock; d. All other personal property owned by you and used in your business; e. Labor, materials or services furnished or arranged by you on personal property of others; f. Leased personal property for which there is a contractual responsibility to insure.
COVERAGE C-2 - Business Personal Property Tenant	1. The property described under Coverage C- I above: and 2. The interest as tenant in improvements and bettertments. Improvements and betterments are fixtures, alterations, installations or additions: a. Made a part of the building or structure, occupied but not own: and b. Acquired or made at your expense bur cannot legally remove.
COVERAGE C-3 - Business Personal Property Association Unit Owner	If this coverage has been selected and is shown in the Declarations, HHRF covers subject to the limits or liability shown in the Declarations: 1. The property described under Coverage C-1 above; and 2. Any of the following types of property contained within a unit, regardless of ownership, if the Association Agreement requires the association to insure it: a. Fixtures, improvements and alterations that are a part of the building or structures: and b. Appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping. However, the policy does not cover: (1) Loss assessments charged against you, or a corporation or association of property, owners by a governmental body; and (2) The share of loss assessments charged against you by a corporation or association of property owners when the assessment is made as a result of direct loss to the property owned by all members collectively.

I. Associations may elect the following coverages (continued):

Additional coverages:	1. Debris Removal. Reasonable expense for the removal of debris of Covered Property if windstorm causes the loss. This coverage does not increase the limit of liability applying to the Covered Property. 2. Reasonable Repairs. Reasonable cost incurred for necessary repairs made solely to protect Covered Property from further damage if windstorm causes the loss. This coverage does not increase the limit of liability applying to the Covered Property. 3. Collapse. HHRF insures for direct physical loss to Covered Property involving collapse of a building or any part of a building caused by windstorm. Collapse does not include settling, cracking, shrinking; or bulging or expansion. This coverage does not increase the limit of liability applying to the Covered Property . 4. **Preservation of Property.** Covered Property is insured when necessarily and temporarily moved from the insured location to preserve it from loss or damage. Property must be contained within a fully enclosed building.

I. Associations may consider other insurance coverage for property loss not included in the hurricane relief coverage for:

A. Property not covered by HHRF policy.	Covered Property does not include any property not covered by the companion policy for the peril of fire. In addition, it does not include: 1. Any building or structure or property contained within, where the roof coverings or exterior walls are of screen, fabric, thatch, lattice, slats or similar material; 2. Fences, property lines and similar walls, including sea walls and retaining walls; 3. Slat houses, trellises, gazebos, tiki huts or similar structures, or any property contained within these structures; 4. Accounts, bank notes, bills, bullion, coins, currency , deeds, evidences of debt, gold, letters of credit, silver, tickets and stamps, manuscripts, medals, money, notes other than bank notes, passports, personal records, platinum, securities, silver or valuable papers or records;

I. Associations may consider other insurance coverage for property loss not included in the hurricane relief coverage for: (continued)

A. Property not covered by HHRF policy. (continued)

5. Books of accounts, drawings or other paper records, or electronic data processing tapes, wires, records, discs or other software media containing data;
6. Credit cards or fund transfer card;
7. The following items that are not stock;

   - Paintings, etchings, pictures, tapestries, art glass windows and other works of art (such as but not limited to statuary, marbles, bronzes, antique furniture, rare books, porcelains, and rare glass);
   - Jewelry watches, gems, precious and semi-precious stone;
   - Costume jewelry and other items of adornment;
   - Goldware, goldplated ware, silverware, silverplated ware, and pewter ware;
   - Furs and any article containing fur which represents its principal value;
   - Firearms and ammunition;
   - Grave markers;
   - Animals, birds or fish;
   - Trees, plants and shrub;
   - Motor vehicles or any other motorized land conveyances including:

     Equipment and accessories or any device or instrument for the transmitting, recording, receiving or reproduction of sound or pictures which is operated by power from the electrical system of motor vehicles or any other motorized land conveyances, including accessories, antennas, tapes, wires, records, discs or other media for use with any such device or instrument while in or upon the vehicle or conveyance.

     (But vehicles or conveyances not subject to motor vehicle registration used to service the insured location described in the declaration or designed for assisting the handicapped are covered)
   - Aircraft, including model and hobby aircraft and parts;
   - Watercraft including trailers, furnishings, equipment and outboard motors;

8. Structures including property contained within the structure or on the structure located in whole or in part over water;
9. The following property when not within a fully enclosed building:

   Awnings and canopies, signs that are not permanently affixed and utility poles light fixtures, radio or television antennas or aerials and satellite dishes. This includes all lead-in wiring, masts or towers and their supports;
10. Bridges, roadways, walks, patios or other paved surfaces;
11. Contraband or property in the course of illegal transportation or trade
12. The costs of excavations, grading backfilling or filling;
13. Foundations of building, structures, machinery or boilers if their foundations are below the lowest basement floor; or the surface of the ground if there is no basement;
14. Land, including land on which the property is located;
15. Any property while airborne or water-borne;

I. Associations may consider other insurance coverage for property loss not included in the hurricane relief coverage for:

A. Property not covered by HHRF policy. (continued)	16. Pilings, piers, wharves or docks; 17. Underground pipes, flues or drains.
B. EXCLUSIONS — HHRF Policy does not insure for loss or damage caused directly or indirectly by any of the following: **Note:** Policy does insure against the peril of windstorm as defined in the HHRF policy.	• Perils insured by the companion policy including fire, explosion riot or civil commotion, vandalism or malicious mischief and theft. Even losses resulting from such perils are excluded form coverage whether the hurricane wind concurrently or sequentially contributed to the loss. • Loss or damage caused directly or indirectly by: ordinance or law (including enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure, unless provided under the HHRF policy specifically) ; earth movement; water damage, sudden and accidental damage from artificially generated electrical current, wear, tear, marring, deterioration, inherent vice, latent defect and mechanical breakdown, pollutants, neglect, war, nuclear hazard, intentional loss, governmental action, off premises services, lightning, sinkhole collapse, consequential losses including rental value and business interruption.

II. Selected Provisions Relating To Conditions of Insurance Payments

The following provisions highlight some of the more important conditions governing HHRF claim payments:

Companion Policy. The HHRF policy applies only to property that is also covered by the servicing carrier's companion policy for the peril of fire. The companion policy must be in effect at the time of loss or damage to property.

Loss Settlement. HHRF settles losses usually based on the actual cash value of the property at the time of loss but not more than the amount required to repair or replace the property **subject to the limits of liability and the deductible amount.**

Replacement Cost Coverage. Only in those situations where **the companion policy provides replacement cost coverage,** HHRF will settle losses on that basis.

II. Selected Provisions Relating To Conditions of Insurance Payments (continued)

Replacement cost coverage apply only to buildings and structure Coverage A (Buildings & Structures, Property Association, Builder's Risk) as follows:

a. At the time of loss, if the amount of insurance under Coverage A is 80% or more, of the full replacement cost of all covered buildings and structures at the insured location immediately before the loss, the policy will pay the cost to repair or replace, after application of the deductible and without deduction for depreciation, but not more than the least of the following, amounts:
   1) The limit of liability under the policy that applies to the structure;
   2) The replacement cost of that part of the structure damaged for like construction and use on the same insured location; or
   3) The necessary amount actually spent to repair or replace the damaged structure.

b. At the time of loss, the amount of insurance under Coverage A of the policy is less than 80% of the full replacement cost of all covered buildings and structures immediately before the loss, HHRF will pay the greater of the following amounts but not more than the limit of liability under this policy that applies to the building:
   1) The actual cash value of that part of the structure damaged less the deductible; or
   2) That proportion of the cost to repair or replace, after application of deductible and without deduction for depreciation, that part of the structure damaged, which the total amount of insurance under Coverage A of this policy on the damaged building bears to 80% of the replacement cost of all covered buildings and structure immediately before the loss.

c. In determining the replacement cost of all covered buildings and structures immediately before the loss, HHRF does not include the value of the following:
   1) Excavations, foundations, piers or any supports which are below the undersurface of the lowest basement floor;
   2) Those supports in (1) above which are below the surface of the ground inside the foundation walls if there is no basement; and
   3) Underground flues, pipes, wiring and drains.

HHRF will pay no more than the actual cash value of the damage unless the actual repair or replacement is complete.

Insured may disregard the replacement cost loss settlement provisions and make claim under this policy for loss or damage to structures on an actual cash value basis. Insured may then make claim within 180 days after loss for any additional liability on a replacement cost basis.

Source: Hawaii Hurricane Relief Fund, "Commercial Windstorm-Hurricane Insurance Policy," (specimen copy), 7/14/94.

Selected Secondary Mortgage Lenders' Insurance Requirements* for "Freddie Mac" and "Fannie Mae"		
"FREDDIE MAC"	**"FANNIE MAE"**	*From Fannie Mae/Freddie Mac's Sellers Servicers guide 1993 and amendments 1994*
		Rating of Insurer (Must meet one of the following):
X		For an insurance company rated by A.M. Best, a minimum:
	X	Financial Performance Index of 6 in the Insurance Reports– Property/Casualty or Key
		Rating
	X: B or Better	B/III in Insurance Reports–Property/Casualty
	X	Rating of A/VIII in Insurance Reports–International
X	X	For an insrance company rated by DEMOTECH, Inc., a minimum rating of A in First Rate/P&C
		Financial Stability Ratings
X		For a company rated by Standard & Poor's Corporation:
	X	rating of BBq in Insurer Solvency Review–Property/Casualty Edition; or
	X	rating of BBB in Insurer Solvency Review–Property Casualty Edition; or
	X: BBB or Better	rating of AAisi in International Confidential Rating Service or International Solvency
		Report
X	X	Lloyd's of London
X	X for Properties in	Hawaiian Insurance and Guaranty Company (HIG) for 1-4 unit properties in Hawaii, in accordance
	Hawaii	
X	X: if only coverage av.	A State FAIR(Fair Access to Insurance Requirements) plan
	available	
	X: if only coverage av.	State insurance plans, such as Hawaii Property Insurance Associations (HPIA)
	available	
X	X windstorm/erosion	A State beach, hail or windstorm insurance pool plan
	if only coverage av.	
	X	Hurricane policy issued by the Hawaii Hurricane Relief Fund (HHRF) for Hawaii only (must have
		companion fire and extended policy coverage from insurer meeting one of the ratings)

*Not a complete listing of Requirements. Readers are advised to consult the latest and complete text of these requirements.

Selected Secondary Mortgage Lenders' Insurance Requirements* for "Freddie Mac" and "Fannie Mae"

"FREDDIE MAC"	"FANNIE MAE"	
X		A nonadminted insurance with a rating at least of at least one of the following:
		An A.M. Best rating of A, or
		A Standard & Poor's rating of AA
X		An insurance company whose coverage is backed by the National Flood Insurance Program
X		A reinsurer meeting all of the following:
	X one of gen. ratings	An A.M. Best company rating of B/III or (for non-US insurers) A/VIII or
	X one of paying rate	Standard & Poor's rating of BBB or AAisi.
	X	Agreement to assume by endorsement, the insurer's liability for any covered loss unpaid.
	X	Agreement to assume by endorsement to give policyholder, the seller/servicer and insured.
	X	Attachment of the above endorsements to each property insurance policy.
	X	Mortgage Impairment Coverage (but mortgagee must meet one of the ratings)
X	X	**GENERAL PROPERTY INSURANCE:**
		Name Insured:
X for use & benefit	X	Insurance policy should name the association as the insured.
of individual owner		
	X	Can specifly authorized representative of the owner's assn. including its trustee where condo
		documents permit.
	X	Loss payable clause should show the assn. or trustee for each unit owner and the holder of each
		unit's mortgage.
	X	Contain standard mortgage clause, naming either Fannie Mae or the servicers as mortgagee for the
		mortgages or share loans on the units.
All Risks/Blanket Form	Master/Blanket	**CAUSE OF LOSS (COVERED PERIL)**
X	X; not required for	*HAZARD INSURANCE*
	type c condos	

*Not a complete listing of Requirements. Readers are advised to consult the latest and complete text of these requirements.

Selected Secondary Mortgage Lenders' Insurance Requirements* for "Freddie Mac" and "Fannie Mae"

"FREDDIE MAC"	"FANNIE MAE"	
X	X	*FIRE:*
	X; by endorsement	Other Hazards in standard extended coverage endorsement
	all risk/broad form	
	X	Premiums are common expense.
		COVERED PROPERTY:
X	X	General and limited common elements including: fixtures; building service equipment; common
		personal property and supplies of the Association; and supplies belonging to the owner's Associa-
		tion.
		Condo master/ blanket policy must also cover fixtures, equipment, and other personal properties
		inside the units, whether part of the common elements. Applies if units will be financed by a mort-
		gage that FNMA purchases or securitizes.
X		All risks coverage for: general and limited common elements within the condominiums; fixtures,
		machinery, equipment and supplies maintained for the service of condominium; fixtures, improve-
		ments, alterations, and equipment within the units.
X		Additional coverage commonly required by private mortgage investors including the following where
		applicable and available: agreed amount, demolition cost, increased cost of construction, boiler and
		machinery.
		AMOUNT OF INSURANCE
		Coverage for:
X		• 100% OF INSURABLE VALUE of common elements or property described under covered property
		applicable to Freddie Mac, on a replacement cost basis and add. insurance (agreed amt., demoli-
		tion, increased cost of construction, boiler & machinery where applicable and available);
	X	• 100% of the current replacement cost of the project improvements, including individual units; does
		not need to include land, foundations, excavations, or other items usually excluded from insurance

*Not a complete listing of Requirements. Readers are advised to consult the latest and complete text of these requirements.

Selected Secondary Mortgage Lenders' Insurance Requirements* for "Freddie Mac" and "Fannie Mae"

"FREDDIE MAC"	"FANNIE MAE"	
		coverage with any of the following endorsements to assure full insurable value replacement cost coverage:
		• Guaranteed Replacement Cost Endorsement; if the policy includes a coinsurance clause, an Agreed Amount Endorsement waiving the requirement for coinsurance;
		Or
		• Replacement Cost Endorsement; and if the policy includes a coinsurance clause, an Agreed Amount Endorsement.
	X	*Mandatory special endorsements:*
	X	• Inflation Guard when it can be obtained.
X	X	• Building Ordinance or Law; providing for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction.
X	X	• Steam Boiler and Machinery Coverage if the project has central heating or cooling; providing for insurer's minimum liability per accident at least for $2 million or the insurable value of the building housing boiler or machinery; may obtain separate coverage.
	X	• Special Condominium Endorsements providing recognition of insurance Trust Agreement, waiver right of subrogation against owners; insurance not prejudiced by owners acts or ommission not under association's control; policy will be primary even if owner has other insurance that covers the same loss.
X where obtainable		*Additional coverage required where available and applicable:*
X		• agreed amount
X		• demolition cost
X		• increased cost of construction
X		• boiler and machinery equal to insurable amount of bldg or $2 million, whichever is less

*Not a complete listing of Requirements. Readers are advised to consult the latest and complete text of these requirements.

Selected Secondary Mortgage Lenders' Insurance Requirements* for "Freddie Mac" and "Fannie Mae"

"FREDDIE MAC"	"FANNIE MAE"	
		Deductible:
X	X	• Not >than the lower of $10,000 or 1% of the applicable amount of coverage (unless higher state
		requirement amount).
X	X	• Funds for deductible must be included in the associations' reserves and be designated.
		FLOOD INSURANCE for properties in Special Flood Hazard Area:
X		Not required for individual units within a high rise or vertical condo.
X	X	Servicer must ensure that flood insurance for the mortgage premises are at least that provided
		under the National Flood Insurance Program.
X	X	Premiums are common expense.
	X	Must obtain and manintain master or blanket flood policy.
X subject to NFIP	X	Policy coverage: common element buildings and other common property.
deductible		
X		Include coverage for detached common elements and property for 100% of insurable value.
100% insurable	X	Associations must maintain for 100% of insurable value of the building, *including any machinery,*
value of common		and equipment that are part of the building or maximum coverage under the National Flood
elements and		Insurance.
property		
X	X	• 100% of the insurable value of the contents, including machinery and equipment not part of the
		building that are owned in common by the *association members*; accept coverage equal to
		maximum amount that NFIP requires.
X (1% of the	X (for each bldg.)	• deductibles may not exceed the lower of $5000 or 1 percent of the policy's face amount; unless
applicable amount		state law amt is higher.
of coverage)		

*Not a complete listing of Requirements. Readers are advised to consult the latest and complete text of these requirements.

Selected Secondary Mortgage Lenders' Insurance Requirements* for "Freddie Mac" and "Fannie Mae"

"FREDDIE MAC"	"FANNIE MAE"	
X	X 3months reserves	• deductibles must be in and designated as such in the association's operating reserve account.
X separate	X	• separate insurance policy for each blgd housing units.
condominium assoc.		
endorsement		
		Highlights from Flood Insurance Regulations
		National Flood Insurance Program requires condo associations purchasing flood insurance or
		renewing flood insurance to obtain flood insurance in amount equal to the lesser of 80% percent or
		more of the full replacement cost of the building or the total number of units in the condominium
		times $250,000, whichever is less (Condominium Master Policy).
		$250,00 up from $185,000; policies obtained before March 1, 1995 must be adjusted to the cap of
		$250,000 by May 31, 1995 or on its first renewal date, or in the case of a 3-year policy, on the first
		policy date after March 1, 1995, whichever is later.
X	X	**LIABILITY INSURANCE:**
X	X	• Comprehensive General Liability insurance (CGL) covering:
X	X	all common areas, common elements, commercial spaces and public ways;
X	X	any other areas under the associations supervision;
X	X	with "severability of interest" endorsement precluding the insurer's denial of an owner's claim
		because of the association's negligence or other unit owner's negligence.
X	X	With additional additional coverage where applicable and available required by private mortgage
		investors for developments for like condominiums:
		comprehensive automobile liability
		bailee's liability
		elevator collision liability
		garage keeper's liability

*Not a complete listing of Requirements. Readers are advised to consult the latest and complete text of these requirements.

Selected Secondary Mortgage Lenders' Insurance Requirements* for "Freddie Mac" and "Fannie Mae"		
"FREDDIE MAC"	"FANNIE MAE"	
		host liquor liability
		worker's compensation and employer's liabilitoy
		contractural liability
X	X	**in amounts at least $1 million per occurence for injury, bodily injury or property damage**
X for all class I, II, &	For type B&C condo	*FIDELITY INSURANCE:*
III condo projets w/	20 units or less not	Blanket coverage for all who handle funds (volunteers & paid personnel) covering the
more than 20 units	required; will accept	association's directors, managers, trustees, employees, or volunteers who manage funds
will accept state's	state's fidelity	collected for the benefit of the unit owners from the losses resulting from their dishonest or
fidelity insurance	requirement for others	fraudulent acts.
requirement		
		With the following characteristics:
X	X	• coverage equaling the maximum amount of funds in the association's or management firm's
		custody at any one time (but not less than the sum of 3 months of assessment for lesser amount)
X	X	lesser amount than above if project requires association and any management company company
		to follow prescribed financial controls: separate bank accounts for working and reserve account
		with appropriate access controls with sending of bank statements directly to associations, or
		management company maintains separate records and bank accounts for each association and
		company has no authority to draw checks or transfer funds from reserve account, or 2 members of
		the board required to sign checks written on reserve account
X	X	• names the association as the insured; premiums common expense
X	X	• requires the professional management firm to be insured to the same extent as the association
		managing its own operation and submit evidence of such coverage

*Not a complete listing of Requirements. Readers are advised to consult the latest and complete text of these requirements.

CONDOMINIUM and REAL ESTATE PUBLICATIONS
Available through the Hawaii Real Estate Research and Education Center

M-1 Condominium Reserves Reference Manual (1992)
A reference source to assist in the development of a condominium association's reserves study. (1992) Available in 3-ring binder $30.00

M-1a Condominium Reserves Workbook (1992)
Includes exercises such as identifying components for the reserve study; determining "Estimated Cost of Replacement," etc. (Total of 9 exercises). (October 1992, 39 pgs) $7.00

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- M-3 **PROXIES** (June 1994, 43 pgs.) .... $4.00 ea
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Hawaii Condominium Bulletin

A quarterly newsletter for condominium owners, association board members and industry related businesses and organizations. Regular Features of the **Hawaii Condominium Bulletin** include: ***the Reference File***, *a 4-page section with discussions on topical issues such as Proxies; Insurance, the Condominium Reference Library, etc; the* ***Condominium Specialists'*** *column in a Question and Answer format;* ***Directory of Services*** *(annual feature);* ***Condominium Educational Events Calendar.***

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[RESIDENTIAL] LANDLORD-TENANT CODE A discussion of various aspects of the Residential Landlord Tenant Code Statute, focusing primarily on the reference needs of a Hawaii real estate licensee.

- M–6 **[Residential] Landlord Tenant Code** Booklet (October 1995) .... $3.00 ea
- M–6 **[Residential] Landlord Tenant Code** Booklet (October 1995 with a copy of the Hawaii Revised Statutes, Chapter 521 .... $5.00 ea

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