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Damon Key Marks 60th Anniversary with Continuing Tradition of Community Service

When Frank Damon and Henry Shigekane opened our law firm 60 years ago, it was clear that their commitment to Hawaii and its people extended beyond the walls of their Honolulu office. Damon Key Leong Kupchak Hastert's founders were actively involved with an array of non-profit organizations. That commitment to the community continues today through the firm's 28 attorneys and their staff members in more than 30 local community organizations in wide-ranging capacities, including as members and leaders on various boards including the Hawaii State Bar Association (HSBA).

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Damon Key Leong Kupchak Hastert



Celebrating our 60th anniversary, more than 70 Damon Key employees, family and friends gathered at the Honolulu Zoo to lend a hand with multiple projects. For the month of November, Damon Key volunteered at the Access to Justice Rooms at Honolulu District Court to provide free legal services to clients in need. These activities represent a small fraction of the volunteerism undertaken by Damon Key year-round.



Matthew T. Evans Elected to Prestigious Meritas Board of Directors

Damon Key is pleased to announce that Director Matthew T. Evans has been

elected to serve on the Board of Directors of Meritas, the premier global alliance of independent law firms. The prestigious organization is a vast, worldwide network of law firms that facilitates the legal needs of businesses operating on a local, regional, national, and international scale. Matt has been involved with Meritas for more than 10 years, during which time he has held several different roles and served in multiple capacities. He was elected to serve on the Board from the nearly 9,000 attorneys in the Meritas member network.



During his three-year term on the Board, Matt will play a key leadership role in ensuring members have the tools and programs they need to serve the cross-regional needs of their clients. He will participate in strategic planning, member recruitment and development, and the administration of Meritas' rigorous quality standards.

Meritas has a mission to provide exceptional legal services through its global network of firms with a shared commitment to efficiency, responsiveness, and unmatched dedication to client service. Membership into Meritas is by invitation only, and member firms are carefully vetted through a highly competitive and selective process, including frequent recertifications and a peer-review, quality assurance program.

Currently, Meritas is comprised of 184 law firms in 254 different markets worldwide. Damon Key is the sole law firm in Hawaii within the Meritas alliance and is one of the few whose membership spans more than 30 years.

Matt's involvement with Meritas began when he served as the firm's designated Young Lawyer Liaison and then later as a member of the Meritas Young Lawyer Advisory Board. Today, in addition to serving on the Meritas Board of Directors, Matt is one of the firm's Member Contacts and serves on the network's Real Estate Group Steering Committee, the Finance Committee, and is an active participant in the Meritas Global Firm Management Forum.

"We're proud that Matt's exemplary legal expertise and leadership skills have resulted in his election to the Meritas Board of Directors," said Damon Key President Christine Kubota. "As a founding member of Meritas, we understand the importance of this premier legal network organization and how it benefits our clients who do business beyond Hawaii's shores. Having Matt in this role underscores the strength of our firm's relationship with Meritas."

When Damon Key clients require legal expertise outside of Hawaii, our attorneys are able to meet their needs through close connections with Meritas affiliates that have already undergone evaluation. In other words, our firm can reach out to trusted, prequalified law firms around the world to help deliver legal solutions on a national and international scale.

Matt is a graduate of the University of Hawaii, William S. Richardson School of Law (J.D.), and practices in the firm's Business and Commercial Law, Real Estate, Construction Law, Creditor's Rights, Litigation & Dispute Resolution, and Appeals practice groups.

He has also been selected by his peers for inclusion in the 2024 Edition of *The Best Lawyers in America*® for his work in Construction Law, Litigation-Construction, Litigation-Insurance, Litigation-Real Estate and Real Estate Law. He is recognized by Super Lawyers in the practice of Business Litigation.

"I'm honored to have been elected to serve on the Meritas Board of Directors," said Matt. "Damon Key's membership with Meritas has long been an integral and vital part of how we operate and serve our clients every day, and our continuing affiliation with the Meritas network is a significant benefit to our clients. As a new Board member, I am committed to actively participating and contributing toward Meritas' mission and supporting the goals and interests of all of the network's member firms around the world."

New Hawaii Laws Impacting Business and Property Owners

By Na Lan



Pay Transparency Law and Broadened Equal Pay Law

Act 203 (SB1057), effective January 1, 2024, requires job listings to include an hourly rate or salary range, except for positions that are internal transfers or promotions, positions with employers having fewer than 50 employees, and public employee positions subject to collective bargaining. It prohibits an employer from discriminating between employees because of any protected category established under state law (Previously, HRS 378-2.3 only provided for sex discrimination), by paying different rates of wages to employees who do substantially similar work.

New Condominium Budget and Reserve Requirements

Act 199 (SB855), effective July 3, 2023, requires a condominium association's budget to include a summary for the balance of the total replacement reserves fund, and the estimated costs of fire safety equipment or installations that meet the requirements of a life safety evaluation required by the City and County of Honolulu, if applicable, provided that the reserve study may forecast a loan or special assessment to fund life safety components or installation. It also mandates that a reserve study, if not prepared by an independent reserve study preparer, be reviewed by such professional not less than every 3 years, and clarifies that a managing agent with industry reserve study designation shall not be considered as having a conflict of interest for reserve study preparation.

It further requires the budget's section on general explanation of how the estimated replacement reserve assessments are computed to include (1) the identity, qualifications, and potential conflicts of interest of the reserve study preparer/reviewer; (2) disclosure of any component of association property omitted from reserve study and the basis for the omission; (3) planned increases in the estimated replacement reserve assessments over the 30-year plan; and (4) whether the actual estimated replacement reserves assessments for the prior year as defined in the study was less than the assessments provided for in the reserve study, and, if so, by how much, and explaining the impact of the lesser assessments on future assessments.

Condominium Construction Defect Action against Developers

Act 029 (SB921), effective May 4, 2023, clarifies that no statute of repose shall affect the association's right of action against a developer sooner than 2 years after the period of developer control terminates.

Drones

Act 058 (SB989) establishes the offense of trespass with a drone as a misdemeanor, which entails intentionally causing a drone to cross the property line of another and come within 50 feet of a dwelling to coerce, intimidate, or harass another person or, after having been given actual notice to desist, for any other reason; or take off or land in violation of applicable federal restrictions.

Firearms

Act 052 (SB1230), effective January 1, 2024, clarifies, revises and updates Hawaii's firearms laws. It provides, among other things, that a person carrying a firearm pursuant to a license shall not intentionally, knowingly, or recklessly enter or remain on private property of another person, while carrying a loaded or unloaded firearm, whether the firearm is operable or not, and whether the firearm is concealed or unconcealed, unless the person has been given express authorization by the owner, lessee, operator, or manager of the property, or in sensitive areas, e.g., any bar or restaurant serving alcohol for consumption on the premises or the premises of any bank or financial institution, including adjacent parking areas of such sensitive areas, or parking areas owned, leased, or used by the State or a county which share the parking area with non-governmental entities, or



beaches, parks and their adjacent parking areas. A violation of this section will be a misdemeanor. However, a federal court judge (in *Wolford v. Lopez*, CV 23-00265 LEK-WRP) granted a TRO on August 8, 2023 to enjoin the above specified provisions in this Act. This case is currently on appeal before the Ninth Circuit Court of Appeals.

Amendments to Residential Landlord-Tenant Code

Effective May 1, 2023, Act 310 (SB206) passed last year prohibits discrimination, including in rental ads or transactions based on participation in a section 8 housing choice program or any permanent supporting housing program.

Effective May 1, 2024, Act 200 (SB930) permits landlord to charge an application screening fee for personal reference checks, tenant reports, criminal background checks and credit reports. If requested by the applicant, the landlord must provide a receipt for payment of the application fee and the breakdown of costs covered by the fee. Any unused portion of the fee must be returned to the applicant within 30 days.

UCC Amendments on Digital Assets

Effective June 29, 2023, to address the transfer of ownership or use as collateral of digital assets, Act 132 (HB525) amends the Hawaii Uniform Commercial Code to add two new articles for Controllable Electronic Records, and the Transitional Provisions for Uniform Commercial Code Amendments. It also amends Article 9 to address electronic money, authoritative electronic copies of chattel paper, priority of security interests in controllable accounts, controllable electronic records, and the controllable payment intangibles.

Liquor

Effective June 6, 2023, Act 65 (HB0016) authorizes liquor licensees engaged in meal service to sell unopened beer, wine and prepackaged cocktails with food for pickup, delivery, take out, or other means to be consumed off-premises.

Restrictions on Agricultural Uses and Activities

Effective June 6, 2023, Act 219 (HB0615) clarifies that any provision in a private agreement contained in a conveyance of land recorded on or before July 8, 2003 that have since expired but have not been renewed and recorded in the Bureau of Conveyances are prohibited from restricting bona fide agricultural uses and activities on ag land.

Commercial Activities on Beaches

Effective July 6, 2023, Act 277 (SB67) prohibits commercial vendors from presetting commercial beach equipment on certain beaches under the jurisdiction of the DLNR, unless customer is physically present. It requires commercial vendors to expeditiously remove commercial beach equipment after the customer has finished using it and also establishes administrative fines for violations.

Real Property Disclosures within Shoreline Areas

Effective November 1, 2023, Act 231 (HB1091) requires disclosure of all existing permitted and unpermitted erosion control structures on the parcel in real estate transactions when residential real property lies adjacent to the shoreline.

Grant for Dam and Appurtenance Improvement or Removal

Effective July 1, 2023, Act 134 (SB1064) provides for “Dam and Appurtenance Improvement or Removal Grant Program”, which will provide funding to owners of private dams for plans, design, construction, and equipment to improve or removal deficient dams and appurtenances, and specifies eligibility requirements for such grants.

**For more information or questions, please call Na at (808) 531-8031,
email her at nl@hawaiilawyer.com or scan the code with your smartphone.**



Navigating Insurance Recovery After A Natural Disaster

By Tred R. Eyerly



When tragedy strikes, it is essential to be aware of the process required to navigate insurance recovery. As our Maui ohana discovered following the devastating wildfires, numerous timely actions must be taken to maximize recovery under homeowners' or commercial property insurance policies.

First, the insured should give notice of the loss to the insurance company as soon as possible. The policy will likely not state a time limit for giving notice of a claim other than to require "prompt" notice. What constitutes "prompt" notice is an open question, but there is no reason to delay giving notice.

It is recommended that the insured keeps a claim diary. While the insurance company typically keeps claim notes, some communications may not be entered. It may prove to be helpful for the policyholder to keep detailed notes of company spokespersons' names, the date of discussions, and what was said.

After notice of a claim, the insurance company will assign an adjuster. The insured has a duty to cooperate and provide information that is requested. Nevertheless, the insured should remember that the adjuster, representing the insurance company, wants to minimize your recovery as much as possible. If the adjuster determines there is no coverage, ask what portion of the policy is being relied upon. Request a certified copy of the entire policy with all endorsements.

You may want to hire a public adjuster who can help with construction cost estimates, provide forensic evidence of the loss, or help guide restoration or remediation of the property. Public adjusters are usually compensated by a percentage of the recovery from the insurance company. The policyholder should ask for references before hiring a public adjuster.

The insurance policy offers various buckets of coverage: dwelling; other structures; personal property; and additional living expenses ("ALE"). Recovery for dwelling or other structures will initially be paid based on actual cash value ("ACV"). ACV should be paid soon after the loss. ACV is the "as was" value of the dwelling. Another description of ACV is value minus depreciation (wear and tear) of the dwelling.

Replacement Cost Value ("RCV") is paid after repairs are made and proof of expenditures are provided. RCV will not be paid if the insured does not repair or replace the lost dwelling.

Another important bucket of coverage is Additional Living Expenses. ALE is reimbursement for expenses due to the loss of a home. It can include such things as rent for comparable housing, extra mileage expenses for travel to work or school, or any other costs incurred to maintain the insured's standard of living. Rent for comparable housing may be established by fair rental value, or a negotiated amount based on the fair rental value of the home that is lost.

Laws are in place to protect policyholders. Under Hawaii Law, the insurer must respond to inquiries within fifteen working days. The insurer must act in good faith and not make low-ball offers, or force the insured to file a lawsuit.

An attorney should be contacted for assistance if the insurance company is being unreasonable in adjusting the claim.



**For more information on this article or Insurance matters,
please call Tred at (808) 531-8031, email him at te@hawaiiilawyer.com
or scan the code with your smartphone.**





2023 Damon Key Ohana Picnic

Firm Celebrates Summer & 60-Year Milestone!

As we continue to celebrate the firm's 60th Anniversary, we were pleased to carry on the longstanding summer tradition of the annual Damon Key Ohana Picnic!

In August, employees and family members came together to celebrate the most important part of Damon Key Leong Kupchak Hastert — its people! The beach picnic included delicious food, engaging games, and time to simply relax and fellowship.

A top priority at Damon Key is to value our teammates! Our annual picnic gives us the chance to personally reconnect with work acquaintances and build new relationships with those who have recently joined the firm.

Here's to many more years of fun and fellowship at the annual Damon Key Ohana Picnic.

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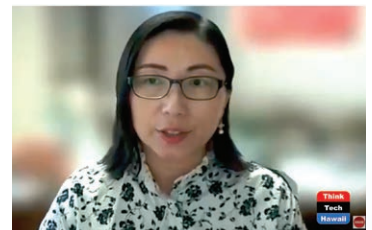
Attorneys in the News



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Gregory W. Kugle received the Honolulu Fire Department's Certificate of Commendation for saving a distressed swimmer near Spitting Caves. Greg performed CPR until the teenager regained consciousness.

Na Lan has been co-hosting Condo Insider on ThinkTech this year. Look for informative sessions with guests with varied expertise in the condominium industry.



Damon Key attorneys enjoyed a fun team building exercise at Scaventour outdoor escape game in Waikiki.

Damon Key attorneys
Toren Yamamoto, David Abitbol, and Casey Miyashiro attended the Teach for America dinner.

