Summer / Fall 2025

LEGAL ALERT

Providing clients worldwide access to sophisticated legal advice and exceptional service.

DAMON KEY LEONG KUPCHAK HASTERT ALC 2025 RECOGNIZED BY Best Lawyers

DAMON KEY LEONG KUPCHAK HASTERT
A LAW CORPORATION | hawaiilawyer.com®

Navigating Hawaii's Amended Contractor Repair Act: A Practical Guide

By David H. Abitbol

On July 9, 2025, Governor Josh Green signed HB420 into law, amending Hawaii Revised Statutes Chapter 672E, also known as the Contractor Repair Act ("CRA"). Enacted in 2004, the CRA established a streamlined, pre-litigation process to resolve residential construction defect claims. Under the CRA, a homeowner must provide notice to the contractor of the claim, allow an inspection, give the contractor opportunity to repair or settle the claim, and attempt good-faith mediation—all before filing a lawsuit. Rather than streamlining disputes, however, ambiguities in the CRA resulted in prolonged and expensive litigation, which has ultimately contributed to the rising costs of home construction in Hawaii. Now, HB420 attempts to curb unnecessary litigation and promote timely, cost-effective repairs by addressing those ambiguities through clearer notice requirements and firmer deadlines for resolving claims.

Continued on page 2

Inside this Issue:

Continued from cover

Taking a broad view of the changes, HB420 amends the CRA's claim process in four principal ways. First, it confirms the ten-year statute of repose (that is, the outer limit barring construction defect claims after substantial completion of a project) applies to any legal theory for construction defect claims, whether it is grounded in "contract, tort, statute, or otherwise." The statute of repose begins to run from the date of "substantial completion," defined as the earliest of either: the issuance of a certificate of occupancy or the filing of an affidavit of publication and notice of completion with the circuit court.

Second, HB420 expands the notice of claim requirements of the CRA. Now, an owner must specifically identify the alleged defects, provide evidence showing the nature and cause of each defect (e.g., photographs, videos, or test results), and describe the repairs needed. Vague, generalized allegations of defective work are no longer sufficient.

Third, HB420 imposes firmer timelines for the repair process. Within 30 days of receiving a notice of claim, the contractor must respond with an offer to settle—by payment, repairs, or both—or propose an inspection of the premises. If a contractor opts for the latter, the claimant has 30 days to accept this proposal, and the inspection must occur within 30 days of that acceptance (AOAOs have 45 days to complete the inspection). Also of note, a notice of claim does not trigger an insurer's duty to defend until the notice and inspection process is complete.

Fourth, HB420 sets a deadline for mediation. The CRA has always had a mandatory mediation provision. Now, however, if a claim is not resolved through an early offer of settlement, mediation must be completed within 12 months of bringing a notice of claim.

HB420 comes on the heels of a 2025 study published by the Economic Research Organization at the University of Hawaii ("UHERO"), which found a rise in construction defect litigation since the CRA was enacted. The study found that construction defect litigation impacts nearly 1,000 housing units per year out of an average of 5,000 homes built each year in Hawaii. This, in turn, has resulted in widespread construction delays in housing production, an increase–by up to 500%–in insurance premiums, and a 200% rise in construction litigation expenses in the past 20 years. Ultimately, the study found that the rise in construction defect litigation has made residential construction more difficult and, indeed, more expensive.

UHERO's findings help explain why, after prior failed attempts to amend the CRA, the Legislature finally pressed ahead with HB420. As Governor Green explained, "HB420 is a solution-based measure that tackles one of many contributing factors to our rising cost of living in the islands. It supports a broad range of stakeholders across the housing market, helping to move projects forward and bring real relief to our communities."

While the long-term effects of HB420 remain to be seen, contractors and homeowners alike should be aware of the implications of the new CRA. For contractors, now is a good time to re-evaluate their residential construction contracts and consult with an attorney on their rights and responsibilities under the CRA. This is especially important if you receive a notice of claim. Likewise for homeowners and AOAOs, they must be aware of the claims process under the CRA, including gathering and preserving evidence early, following the specific notice requirements, and making sure to not "jump the gun" by filing a premature lawsuit against a contractor.

If you have questions about the CRA, the attorneys at Damon Key are here to help. Our experienced construction law team is available to assist contractors and homeowners alike with navigating the new CRA.

For more information or questions on this article, please call David Abitbol at (808) 531-8031, email him at dha@hawaiilawyer.com or scan the code with your smartphone.

Honoring Robert H. Thomas

Transforming a Lifetime of Experience into Outstanding Legal Advocacy

Oliver Wendell Holmes Jr. once said,
"The life of the law has not been logic: it has been experience."
We happen to agree.

Four oral arguments at the Hawaii Supreme Court

Fourteen Cases decided, on briefs, at the Hawaii Supreme Court

Nine Petitions for Writ of Certiorari to the U.S. Supreme Court

Nineteen Amicus Curiae Briefs to the U.S. Supreme Court and other appellate courts

We congratulate Robert H. Thomas,
Director & Senior Attorney at Pacific Legal Foundation and
Director Emeritus at Damon Key Leong Kupchak Hastert,
on a lifetime filled with fruitful experiences and being this year's
deserving recipient of the Anita P. Miller Advocacy Award.

Honoring Robert H. Thomas

Congratulations to Robert H. Thomas, Director Emeritus, on being named the worthy recipient of the American Bar Association Section of State, Local, and Tribal Government Law's 2025 Anita P. Miller Advocacy Award in recognition of outstanding legal advocacy within the area of state and local government. We are proud to claim Robert as Director Emeritus, a former partner, an alumnus, and, most importantly, a friend.

New Laws Impacting Hawaii Businesses and Property Owners

By Leina-Mei S. Johnson (Sunny)

The 2025 Hawai'i State Legislature enacted several new laws affecting businesses, landlords, homeowners, and developers. Below is a summary of several notable changes.

Relating To Housing; Expedited Permitting for Housing Projects

Act 295 (SB66), effective July 1, 2026, establishes procedures and requirements for single-family and multi-family housing project applicants to apply for an expedited permit, including requirements for completeness of expedited permit applications, duties of licensed professionals and the counties during construction, and applications for owner-builder exemptions. The measure is intended to reduce permitting delays in the face of the State's housing shortage.

Housing Development and County Oversight

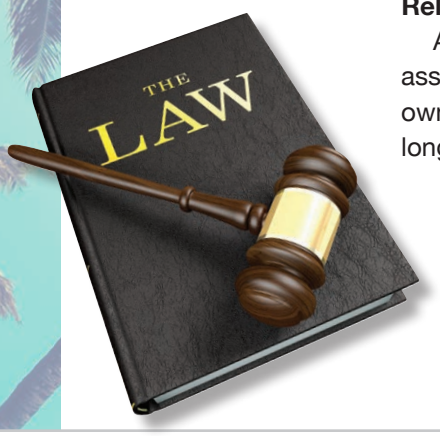
Act 294 (SB38), effective July 3, 2025, requires the Hawaii Housing Finance and Development Corporation to provide counties with an opportunity to comment on certain housing development projects. It also prohibits the legislative body of a county from imposing stricter conditions or median income requirements than those approved by the corporation or reduce fee waivers that would increase the cost of the project.

Relating To Shoreline Management Areas; Special Management Area (SMA) Permits

Act 125 (HB732), effective May 25, 2025, raises the valuation thresholds for development requiring a minor or use permit within a Special Management Area (SMA) to $750,000. This change reduces the number of coastal projects subject to stricter SMA oversight, impacting homeowners and developers of shoreline properties.

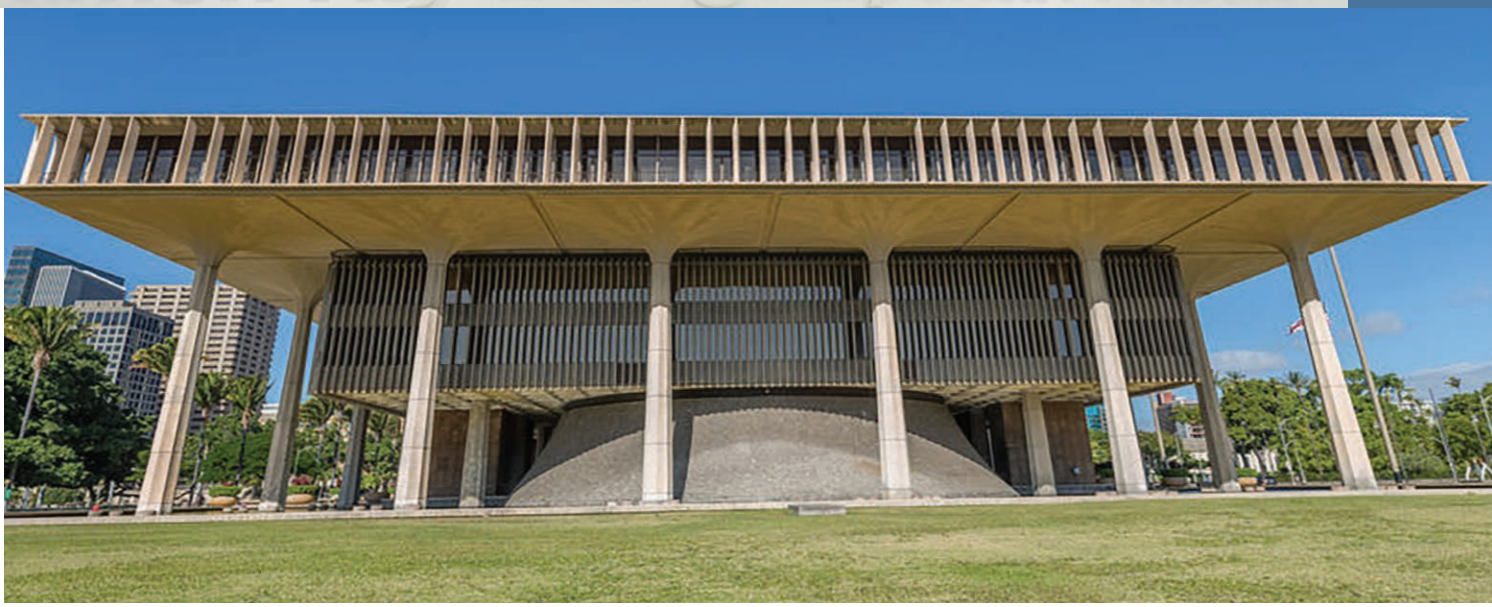
Relating To Eviction Mediation; Landlord–Tenant Code Amendments

Act 278 (SB825), effective February 5, 2026, extends the notice period for termination of rental agreements from five business days to ten calendar days. It also requires landlords, tenants, and their agents to participate in mediation before an eviction may proceed. The law increases protections for tenants while lengthening the process for landlords.



Relating To Condominiums; Condominium Governance

Act 161 (SB385), effective June 3, 2025, requires condominium associations to provide electronic copies of governing documents to unit owners or their agents upon request, at no cost. Associations may no longer charge fees for such copies, expanding transparency obligations.



Property Insurance Cancellations

Act 110 (SB752), effective January 1, 2026, lengthens the notice period insurers must provide before canceling or non-renewing property insurance policies, including for nonpayment, from 10 days to 20 days. This provides homeowners with additional time to secure replacement coverage.

Relating To Conformity To The Internal Revenue Code; Tax Conformity and Business Impacts

Act 123 (SB1464), effective May 29, 2025, aligns Hawaii's income, estate, and generation-skipping transfer tax laws with the Internal Revenue Code as of December 31, 2024.

Act 058 (HB1146), effective May 15, 2025, requires members of pass-through entities to adjust income for taxes paid by the entity, clarifying obligations for partnerships and LLCs. It applies to taxable years beginning after December 31, 2024.

Relating To The Procedure For Tax Appeals

Act 171 (HB1175), effective May 2025, provides that appeals from the Tax Appeal Court may be filed directly with the Intermediate Court of Appeals within thirty days. This streamlines procedures for businesses and property taxpayers contesting assessments.

Relating To Historic Preservation Reviews; Historic Preservation and Development

Act 306 (HB830), effective July 1, 2026 and sunsets June 30, 2030, authorizes the State Historic Preservation Division to outsource review of projects affecting historic properties to qualified third-party consultants. Developers of properties with cultural or historic significance may face new processes and costs for the third-party consultants.

For more information or questions on this article, please call Sunny at (808) 531-8031, email her at lsj@hawaiilawyer.com or scan the code with your smartphone.

New Hawaii Insurance Law Aims to Provide Lower Premiums for High-Risk High-Rises

by B. Matthew Gozun

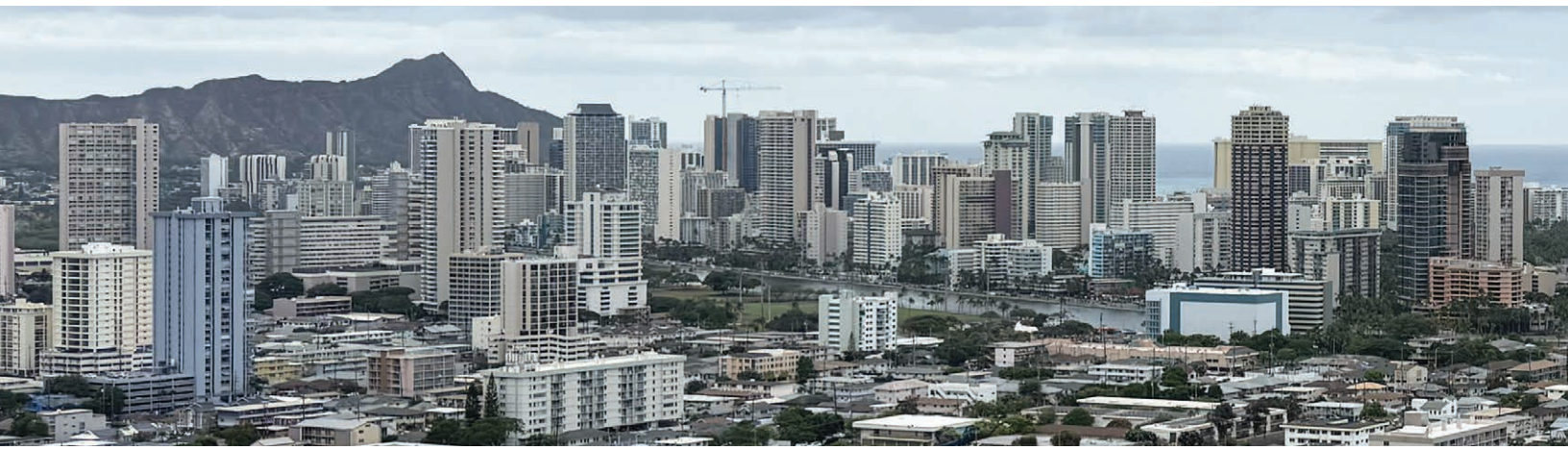
Rejection is always difficult. Anyone who has been turned down by a love interest, dream school, or potential employer can tell you that the old adage "there are other fish in the sea" is not very comforting. But at least those spurned suitors, applicants, and jobseekers have other choices. What does one do when rejection means there are no other options?

This is the problem facing some Hawaii condo associations regarding their insurance coverage. Most associations, either by law or under their internal rules, are required to obtain master condominium property insurance, which covers a condo's common areas, including its foundation, roof, and frame. In light of the Surfside condominium collapse in Florida and the Lahaina wildfires, insurance costs for Hawaii condos have increased dramatically in recent years. A predicted increase in natural disasters and aging building infrastructure means that, for many insurers, certain buildings have become simply too risky to insure. As a result, many condos, especially older ones requiring significant maintenance, have seen their insurance policies terminated. And once one insurer dumps a condo, its association can only expect to receive further rejections in the future.

To obtain insurance, some associations have resorted to purchasing policies on the less-regulated secondary insurance market, which can charge premiums several times higher than conventional insurers. According to a recent study by the Economic Research Organization at the University of Hawaii, some condos reported premium increases as high as 1,000%. These costs are then passed down to residents in the form of higher HOA payments.

However, despite this expense, the prospect of going without insurance is even worse. Without full insurance coverage, an association (meaning, ultimately, the unit owners themselves) must pay out of pocket to repair expensive building damage caused by fire, flood, and other mishaps. And "uninsurable" isn't exactly a keyword that fetches top dollar on Zillow or Redfin. In fact, if a condo lacks sufficient insurance coverage, it can be incredibly difficult, if not impossible, for a potential buyer to obtain a mortgage for a unit, leaving current owners stuck with unsellable properties in buildings with increasingly expensive maintenance costs.

Seeking to address this problem, Hawaii Governor Josh Green signed into law SB1044 on July 7, 2025. SB1044, also known as Act 296, authorizes the state government to take actions aimed at stabilizing Hawaii's condo insurance market and provide associations with additional options in light of a decrease in willing insurers.



First, SB1044 permits the state, both directly and through community development financial institutions, to offer loans that condo associations can use to finance necessary maintenance and repairs, such as upgrades to a building's sprinklers, pipes, and roof. The goal of these loans is to make condos less prone to catastrophic damage and thus less risky to insure. To qualify for a state-backed loan, a condo association must provide at least one rejection letter from a financial institution for a building maintenance or repair loan, and either obtain full replacement property and hurricane insurance coverage or affirm that it will do so after it obtains financing.

For those worried about meeting the second requirement, further relief is coming as well. Under SB1044, the state-operated Hawaii Property Insurance Association, or HPIA, which until recently solely provided insurance to homes threatened by volcanic lava flows, is now authorized to act as a property insurer of last resort for condo associations. However, the HPIA will not be operated as a charity. As with other insurers, participants will be required to pay premiums and meet deductible limits before their coverage kicks in. Further, enrollment in the HPIA's condo insurance program is statutorily limited to no more than five years, giving participating condos time to make themselves more attractive to private insurers, but not a permanent solution to their insurance woes.

Property insurance provided by the HPIA will not cover damage caused by hurricanes. For that coverage, condo associations can now look to the revitalized Hawaii Hurricane Relief Fund, or HHRF. Originally formed in 1993 after Hurricane Iniki cause many private insurers to leave the hurricane insurance market, the HHRF was mothballed for many years until its reactivation in 2024. Under SB1044, the HHRF is now authorized to provide hurricane coverage to condos, but only if its association was previously unable to obtain hurricane property insurance from private insurers.

So far, the state has allocated millions of dollars to finance these expanded programs. Much of the money will come from the existing hurricane reserve trust fund, which, as of the end of 2024, contained approximately $171 million. The law also authorizes the state to fund these programs through assessments on insurers and a new "temporary recording fee" imposed on most documents recorded with the Bureau of Conveyances or the Land Court. The flat-rate temporary recording fee replaces the percentage-based special mortgage recording fee previously used to fund the hurricane reserve trust fund in the 1990s.

While legislators hope that having the state enter the insurance business will provide some much-needed stability for condos and their residents, they also acknowledge that SB1044 is a stop-gap measure. The law itself requires the state insurance commissioner to conduct a study to recommend "long-term solutions" to Hawaii's troubled insurance market. With the number of high-rise developments in Honolulu increasing year by year, it is to be seen if a solution can be found to keep their insurance costs a little more down to earth.

For more information or questions on this article, please call Matthew Gozun at (808) 531-8031, email him at bmg@hawaiilawyer.com or scan the code with your smartphone.

DAMON KEY LEONG KUPCHAK HASTERT
A LAW CORPORATION
SERVING HAWAII SINCE 1963

hawaiilawyer.com®
MERITAS
LAW FIRMS WORLDWIDE

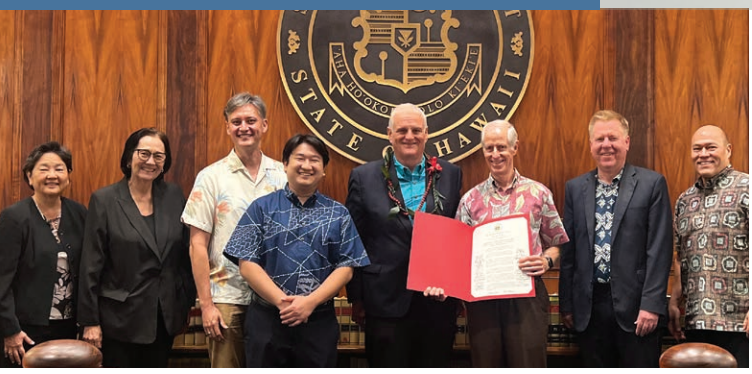
1003 Bishop Street, Suite 1600
Honolulu, Hawaii 96813

ADDRESS SERVICE REQUESTED

PRESORTED
STANDARD
U.S. POSTAGE
PAID
HONOLULU, HI
PERMIT NO. 289

ADVERTISING MATERIAL

Attorneys in the News



Damon Key Leong Kupchak Hastert was honored by the Hawaii Supreme Court for its work at the Access to Justice Room at Honolulu District Court.

Damon Key attorney and Hawaii State Bar Association President **Mark M. Murakami** joined the retirement celebration for Chief Justice Mark Recktenwald where CJ's forty-year legal and judicial career was celebrated.

Na Lan and **Logan T. Araki** were invited by Hawaii Council of Condominium Associations and spoke at its Maui Condominium Board of Directors Training held on September 19, 2025, at King Kamehameha Golf Club, Wailuku, Maui.

Christine A. Kubota spoke on a panel at The 65th Convention of Nikkei & Japanese Abroad in Japan on September 17, 2025. The topic was "The Power of Women influencing the Nikkei Community." Christine also gave the address at the Welcome Reception hosted by the Minister for Foreign Affairs of Japan.