Spring / Summer 2026

LEGAL ALERT

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

BEST LAW FIRMS RANKED BY Best Lawyers UNITED STATES 2026

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

Pursuing Claims for Loss Caused by Recent Kona Low Storms for Homeowners and Businesses

By Tred R. Eyerly

Since February, multiple storm systems have created an unusually wet period in Hawaii. The recent Kona Low storms that hit all islands were devastating, causing significant property damage. Saturated hillsides collapsed onto roads and heavy rain caused damage to homes and businesses. Many residents were forced to evacuate their homes to avoid rising flood waters.

Following the heavy rains, homeowners and businesses will be seeking coverage under their insurance policies to recover for their losses. Here is a brief look at what may be covered, and which exclusions may be troublesome in homeowners' and business commercial property policies.

Typically, both a homeowners' policy and a commercial property policy include a grant of coverage for "direct physical loss of or damage to Covered Property." Covered perils are listed in the policy, including events such as fire, lightning, or wind storm. Covered Property includes dwellings or buildings, other structures on the property, personal property, and business personal property. Additional coverages are usually provided. These include debris removal after a peril insured against or collapse of a structure. In a homeowners' policy, additional living expenses are likely covered when the damaged home is not fit to live in.

Continued on page 2

Inside this Issue:

Continued from cover

After stating which property damaged by listed perils is covered, the policy lists exclusions. For example, loss caused by wear and tear or deterioration is excluded from coverage. Mold, fungus, or wet rot are also excluded.

Because floods are typically covered by a flood policy, damage caused by water is also excluded. The policy defines water damage as "flood, surface water, waves, tidal water, overflow of a body of water, or spray." Hopefully, victims of the recent storms have a flood policy to fill this gap in coverage created by water damage exclusions.

The homeowners and commercial property policies impose duties on the policyholders. The insured must give prompt notice of a loss. Further, the policyholder must take all reasonable steps to protect the property from further damage.

Once it is determined the loss is covered, the policy sets forth how payment for the loss will be made. The policy typically provides that the insurer will make an initial payment of actual cash value, meaning the value of the damaged property minus depreciation. Once the property is replaced or repaired, replacement cost value is paid, an additional payment reflecting the cost of repairing or replacing the damaged property without deduction for depreciation.

If the insurance company and the policyholder disagree on the value of the property or the amount of the loss, either may request an appraisal. Each party chooses an appraiser. If the two appraisers cannot agree on the value of the property and amount of loss, they select an umpire. A decision agreed to by any two will set the amount of the loss.

If the insurance company denies the claim and the policyholder is considering a lawsuit to establish coverage, the policy may include a "Suit Limitation" or "Suit Against Us" provision. This provision states that suit must be filed within a period of time (e.g., one year) from the date of the loss. Suit Limitation provisions have been upheld even if they differ from a statute of limitations which grants more time to file suit.

We hope that victims of the recent storms have flood insurance in addition to homeowners and commercial property coverage. Homeowners and commercial property policies typically do not cover flood damage. Flood insurance is provided in a separate policy that can cover buildings, the contents in a building, or both. Contents coverage protects such things as personal belongings like clothing, furniture, and electronic equipment; curtains; washer and dryer, portable and window air conditioners; and valuable items, such as original artwork (up to $2500). Coverage for buildings includes additions and extensions attached to and in contact with the dwelling by a wall, a stairway, an elevated walkway, or a roof.

Homes and businesses in high-risk flood areas with mortgages from government-backed lenders are required to have flood insurance. As those impacted by the recent storms know, flooding can happen anywhere at any time. Poor drainage systems, summer storms, neighborhood construction, and broken water mains can cause flooding. A flood policy will cover overflow of inland or tidal waters, unusual and rapid accumulation, or runoff of surface waters from any source, and mudflow.

Similar to homeowners and commercial property policies, a flood policy provides for an appraisal process if there is disagreement on the replacement cost of damaged property. Flood policies also contain a suit limitation provision usually requiring that suit be filed within one year after written denial of all or part of the claim. Any suit under a flood policy issued under the National Flood Insurance Program must be filed in federal court.

We wish the best to all homeowners and businesses suffering damage from the recent storms.

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

DAMON KEY LEONG KUPCHAK HASTERT | hawaiilawyer.com®

2026 “Lawyer of the Year” & The Best Lawyers in America®

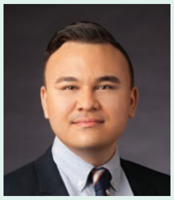
Above photo, first row L to R: **Anna H. Oshiro** (Construction Law), **Diane D. Hastert** (Commercial Litigation), **Tred R. Eyerly** (Lawyer of the Year, Litigation-Insurance), **Christine A. Kubota** (Corporate Law), **Matthew T. Evans** (Litigation-Real Estate), **Na Lan** (Community Association Law), **Madeleine M.V. Young** (Litigation-Trusts & Estates), *Second row L to R:* **Gregory W. Kugle** (Litigation-Land Use & Zoning), **Mark M. Murakami** (Real Estate Law), **Michael A. Yoshida** (Business Organizations including LLC’s & Partnerships), **Kenneth R. Kupchak** (Construction Law), **Douglas C. Smith** (Lawyer of the Year, Litigation-Trusts and Estates)

Best Lawyers
LAWYER OF THE YEAR
DOUGLAS C. SMITH
LITIGATION - TRUSTS AND ESTATES
HONOLULU
2026

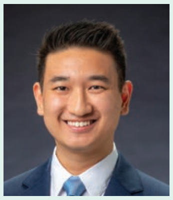
Best Lawyers
LAWYER OF THE YEAR
TRED R. EYERLY
LITIGATION - INSURANCE
HONOLULU
2026

Congratulations to Douglas C. Smith and Tred R. Eyerly on being awarded the “Lawyer of the Year” honors and our colleagues on being selected by *Best Lawyers*® and Best Lawyers: *Ones to Watch*® *in America*.

Best Lawyers: Ones to Watch® in America



Ross Uehara-Tilton
(Tax Law)



Casey T. Miyashiro
(Commercial Litigation)

Nicholas Ernst
(Appellate Practice)

Local Firm. Global Perspective.

For 62 years, Damon Key Leong Kupchak Hastert has helped landowners, businesses, and individuals navigate Hawaii’s state and local government systems. As a local firm with a global perspective, clients trust us to meet their needs wherever they arise, combining our international resources with extensive local knowledge and unparalleled legal expertise. Scan the QR code or visit our website to see the practice areas in which our colleagues have been recognized by Best Lawyers®.

MERITAS
LAW FIRMS WORLDWIDE

Tier 1 in 16 practice areas by Best Law Firms®
A member of Meritas – Law Firms Worldwide, a global alliance of independent law firms.

BEST LAW FIRMS
RANKED BY Best Lawyers
UNITED STATES
2026

Attorney Cara J. Rozzi Joins Damon Key

Damon Key is pleased to welcome attorney Cara J. Rozzi to the firm's Business & Commercial Law, Real Estate, and Wills, Trusts & Estates practice groups. While becoming a lawyer has long been a dream of Cara's, it took time for her to realize it was truly the path she wanted to follow. After major life events, she recognized the importance of building strength through knowledge and ultimately decided to pursue law school. She's never looked back.

Cara earned her law degree from the University of Hawaii at Manoa, William S. Richardson School of Law. While there, she received the CALI Excellence for the Future Award for the highest grade in Legal Research. She served as a Senior Editor for the *Asian-Pacific Law and Policy Journal*, a teaching assistant for Torts, the Chief Operating Officer of the Law and Business Organization, and a member of Advocates for Public Interest Law.

In 2024, Cara was a Summer Law Associate at Damon Key, assisting with various legal tasks. While summering at Damon Key, she gained experience in both transactional and litigation work, handling tasks ranging from estate planning and tax matters to assisting with drafting motions for ongoing litigation. Her role allowed her to develop skills across diverse areas of law while contributing meaningfully to active cases. During her first summer in law school, she served as a Summer Legal Intern at the City and County of Honolulu Department of the Corporation Counsel, where she researched, analyzed, and drafted legal memoranda relating to various land-use issues, among other duties.

"My journey to becoming an attorney has been transformative. Entirely new and challenging, the experience pushed me far outside my comfort zone," said Cara. "The rigor of the coursework, the intensity of the workload, and the constant demand for critical thinking all forced me to grow—not only intellectually, but personally. Law school didn't just prepare me to practice law; it fundamentally shaped the person I am today."

What Cara enjoys most about being a lawyer is the opportunity for continuous learning and growth. According to Cara, since the law is constantly evolving, there's always something new to understand. She also savors the challenge of staying informed and using that knowledge to make a difference. Most importantly, being a lawyer enables her to help people in meaningful ways, whether by advocating for their rights, guiding them through difficult situations, or contributing to positive change in the community. The combination of intellectual challenge and the ability to make a real impact is what she finds most rewarding about a legal career.

Cara holds a Bachelor of Arts in Psychology & Communicology, earning the double major at the University of Hawaii at Manoa. Outside of work, Cara enjoys riding horses, which she mastered while growing up in California. She also has a passion for yoga, going to the beach, and reading. But above all, Cara enjoys quality time at home with her husband and their two cats.

When a Trust Pushes the Limits: Understanding Hawaii's Non-Waivable Rules

By Cara J. Rozzi

What happens when a trust tells you to go left, but Hawaii's Uniform Trust Code insists you go right? Since Hawaii adopted the Uniform Trust Code in 2022, as Hawaii Revised Statute Chapter 554D, certain statutory rules now operate as non-negotiable guardrails, rules that can override even the most carefully drafted trust instructions. When a settlor's directive appears to clash with these mandatory provisions, the question becomes unavoidable: **whose voice controls the outcome? The trust's or the statute's?**

Consider a trust that allows the trustee, "in the trustee's sole and absolute discretion," to withhold all financial information from beneficiaries to avoid family conflict. The settlor's intent is clear: minimize drama, keep the peace and give the trustee broad authority. But once the trust becomes irrevocable, Hawaii Revised Statutes § 554D-813 requires trustees to provide certain disclosures and respond to reasonable beneficiary requests. The clause doesn't blatantly violate a mandatory rule, but it comes very close.

Chapter 554D draws a bright line between rules a trust may override and rules it absolutely cannot. And when a trust provision crosses that line, the law steps in not to undermine the trust, but to preserve the integrity of the system that governs it.

Under Hawaii Revised Statutes Chapter 554D, the law distinguishes between **default rules**, which a trust may freely override, and **mandatory rules**, which it cannot. These include the basic requirements for creating a valid trust and the trustee's non-waivable duty to act in good faith, consistent with the trust's purposes and the beneficiaries' interests. The trust must also serve a lawful, achievable purpose and operate for the benefit of its beneficiaries as defined by its terms. Courts retain the power to modify or terminate a trust under sections 554D-410 through 554D-416, and statutory rules governing spendthrift provisions and creditor rights cannot be drafted away. Likewise, the court's authority to require or adjust a trustee's bond, or to modify trustee compensation that is unreasonably high or low, remains intact regardless of what the trust says.

The statute also preserves certain beneficiary rights that a trust cannot eliminate. These include the duty to notify qualified beneficiaries of an irrevocable trust's existence, the identity of the trustee, and their right to request reports, as well as the trustee's obligation to provide information reasonably related to the trust's administration. Additional mandatory provisions govern the effect of exculpatory clauses, the rights of non-beneficiary third parties, applicable limitation periods, and the court's inherent authority to act in the interests of justice. Finally, the statute fixes subject-matter jurisdiction and venue rules for trust proceedings, which cannot be altered by the trust instrument. Together, these mandatory rules form the legal boundaries within which every Hawaii trust must operate, no matter how detailed or specific the settlor's instructions may be.

By ensuring that every trust in Hawaii operates within a consistent legal framework, Chapter 554D protects beneficiaries, promotes transparency, and prevents abuse of discretion. Preserving intent while upholding these core statutory principles strengthens the reliability of a trust, giving everyone involved greater confidence that a trust will function as it was meant to.

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

Damon Key Leong Kupchak Hastert · 1003 Bishop Street · Suite 1600 · Honolulu, Hawaii 96813
Telephone (808) 531-8031 · Facsimile (808) 533-2242 · Website www.hawaiilawyer.com

ICE Reclassifies Common Form I-9 Errors as Substantive Violations, Increasing Employer Penalty Exposure

By Frances "Nicole" L. Tabios

The Immigration Reform and Control Act of 1986 requires all US employers to verify the identity and work authorization of every employee hired after November 6, 1986, by completing Form I-9. U.S. Immigration and Customs Enforcement ("ICE") has materially changed its Form I-9 inspection guidance, increasing employer exposure during audits. In an updated fact sheet titled Form I-9 Inspection Under Immigration and Nationality Act § 274A (the "fact sheet"), ICE has reclassified numerous routine I-9 errors—many of which employers have long treated as correctable technical deficiencies—as substantive violations subject to immediate monetary penalties. The revised fact sheet "appears to reclassify numerous errors previously treated as technical or procedural deficiencies as substantive violations subject to immediate monetary penalties," signaling a departure from decades of agency interpretation and enforcement practice. Such substantive errors cannot be corrected once a Notice of Inspection ("NOI") is served. The current inflation-adjusted range is $288 to $2,861 per Form I-9, as published in the Federal Register on January 2, 2025. Because fines are assessed on a form-by-form basis, the exposure for large employers can be severe.

For nearly three decades, employers have relied on the statutory good-faith framework in INA § 274A(b)(6), which protects against penalties for technical or procedural errors corrected within at least ten business days. That framework, shaped by the 1997 Virtue Memorandum and repeatedly acknowledged in Office of the Chief Administrative Hearing Officer ("OCAHO") and federal court decisions, distinguished between correctable paperwork mistakes and substantive violations that undermine the integrity of the verification process.

The revised fact sheet narrows that distinction. Errors historically treated as technical, such as missing dates of birth, missing employee signature dates, missing dates of hire, and incomplete document information in Section 2, are now classified as substantive, even where employers retained legible copies of the underlying documents. The fact sheet no longer recognizes the long-standing retained-document exception by treating these omissions as substantive "with no apparent exception," a marked shift from prior guidance.

The changes extend beyond individual fields. ICE now treats several process-based failures as substantive violations as well, including use of the Spanish-language Form I-9 outside Puerto Rico, failure to check the alternative procedure box when using authorized remote document examination, and use of the alternative remote verification without active E-Verify participation. Electronic I-9 systems are also subject to heightened scrutiny, as the fact sheet classifies failures to meet regulatory standards for electronic completion, retention, documentation, and security as substantive violations. These developments mean that employers may face penalties for administrative oversights that previously would have been corrected during the audit process.

The abrupt nature of this policy shift raises significant legal and procedural concerns. Employers have long structured their compliance practices, internal audits, and remediation strategies around the technical-versus-substantive framework recognized by the courts and incorporated into ICE's own field manuals.

For employers, the practical implications are significant. Routine internal audits may now reveal errors that carry monetary consequences, and legacy Forms I-9 still within the retention period may require renewed review. Employers using remote verification or electronic I-9 systems should reassess their procedures to ensure alignment with the standards ICE now treats as substantive. That said, proactive remediation still matters, particularly because self-audits and corrections can help reduce future exposure and improve compliance discipline. Identifying and correcting errors before inspection, documenting remediation decisions, and maintaining strong compliance practices remain essential components of risk management, particularly given the five-year statute of limitations that continues to govern I-9 enforcement.

Employers should expect increased financial exposure as ICE now treats previously minor I-9 errors as more serious violations.

For more information or questions on this article, please call Nicole Tabios at (808) 531-8031, email her at fnt@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

Matthew T. Evans, **Ross Uehara-Tilton, Casey T. Miyashiro** and **Kira-Nariese K. Brown** attended the annual Meritas meeting in New Orleans. Matthew wrapped up a three-year term serving on the Meritas Law Firms Worldwide Board of Directors.

B. Matthew Gozun was named a HSBA Leadership Institute Fellow for 2026.

Gregory W. Kugle spoke at a seminar entitled Hawaii's Shoreline: Legal & Regulatory Issues, Sea Level Rise and Adaptation hosted by The Seminar Group. He spoke on Legislation over the past two sessions that has updated Hawaii's statutory coastal policy framework.

Anna H. Oshiro and **Katie T. Pham** attended The ABA Forum on Construction Law 2026 Annual Conference. The conference was celebrating its 50th anniversary. The event focused on "Lessons Learned from the Last 50 Years on Project Execution and Claims Management."

Mark M. Murakami attended the ABA Litigation Section Annual Conference in Boston. It brought together top trial lawyers, in-house counsel, and judges to explore trial advocacy, litigation strategy, and emerging technologies like AI.