

# STARN • O'TOOLE • MARCUS & FISHER

A LAW CORPORATION



**Director**

dfisher@starnlaw.com  
(808) 537-6100

**Education:**

**University of California**  
Hastings College of Law  
J.D. (1991)

Two Term Member and Instructor -  
Hastings Moot Court Board

**University of Colorado**

B.S. Business Administration  
(1984)

**Areas of Practice:**

Real Estate, Hotels & Resorts, Business Structure  
and Operations, Commercial Transactions

**Professional Activities:**

Licensed in California (inactive) & Hawaii  
American Bar Association  
(Member of Real Property, Probate and Trust Law  
Section)  
Hawaii State Bar Association  
(Member of Real Property and Financial Services  
Law Section)  
State Bar of California (Member of Real Property  
Law Section)

Since 2011

## DUANE R. FISHER

Hawaii real estate lawyer Duane R. Fisher concentrates his practice in the areas of real estate law, hotels and resorts, construction law, business structure and operations and commercial transactions. Mr. Fisher has represented a wide range of business organizations, from hotel owners, telecommunications companies, general contractors, Wall Street investment firms and multi-billion dollar energy development companies to closely held corporations and sole proprietors, in both private transactions and before federal and state administrative agencies.

Mr. Fisher holds *Martindale-Hubbell's* highest possible professional rating (AV); this rating is given by Mr. Fisher's legal peers, based on their knowledge of his work, reputation and integrity.

Mr. Fisher is recognized by peers and clients as a pre-eminent lawyer in Hawaii. He has been selected for inclusion by his peers to the coveted **Top 25, 2014 Hawaii Super Lawyers** list for real estate law in Hawaii.

*Best Lawyers in America* has included him in their real estate, corporate law, construction law and business organizations "*Best Lawyers*" in Hawaii lists. Mr. Fisher has been named **2015 Best Lawyers in America**®, "**Lawyer of the Year**" in Honolulu, in the practice area of **Corporate Law**. Finally, the exclusive *Chambers USA Directory of Leading Lawyers for Business* includes Mr. Fisher as a preeminent lawyer for his real estate law and corporate law expertise. *Chambers USA* also includes Mr. Fisher in the practice area of corporate/commercial law as a recognized practitioner.

Some examples of his recent work include:

**International Hotel Company.** Acts as local Hawaii counsel for one of the world's largest international hotel companies. Work includes acquisitions, development, permitting, title issues, contracting and advice regarding a multitude of operational issues.

**Wireless Telecommunications Company.** Serves as outside general counsel for the premier pre-paid wireless telecommunications (cellular phone service and broadband internet access) company in Hawaii. Has negotiated and/or drafted well over 100 antenna site lease/license agreements, hundreds of vendor contracts, drafted terms and conditions of service, provided advice and documentation relating to credit facility and the security therefore, and worked with various city, state, county and

federal agencies, as well as local private landowners.

**Design Builder/General Contractor.** Acts as outside general counsel for large, Hawaii based design-builder/general contractor. Negotiates and prepares design-build contracts, construction contracts, joint-venture agreements and the like. Works with client and the litigation team at SOM&F in connection with construction litigation, mechanics' lien claims, and bond claims.

**Large Real Estate Transactions.** Has represented both buyers and sellers in all aspects of multi-million dollar real estate transactions, including negotiating terms of sale, establishment of and interface with escrow, supervising closings, procurement of various types of title insurance and negotiating endorsements with title insurers, and advising clients concerning land use matters.

**Business Sales and Formations.** Mr. Fisher regularly advises clients with regard to a wide range of real estate and business law issues including the acquisition/sale of existing businesses, as well as the formation of business entities. He has drafted numerous purchase and sale agreements and organizational documents and agreements, such as articles, bylaws, operating agreements, shareholder agreements, buy-sell agreements and the like. Assists clients to prepare company minutes and resolutions, and keep appropriate company record books.

**Construction Contracts.** Has represented owners and contractors with real estate law needs in the area of real property in the negotiation, execution, implementation and completion of construction and architect contracts, including custom contracts and modifications to Standard AIA and DBIA contract documents, in both commercial and large residential transactions.

**Sale of Large Waikoloa Resort Hotel.** Represented 87% owner in the sale of its interest in world- class resort hotel to the minority owner/manager of the hotel. Transaction was complicated by a number of factors, including (1) the fact that a significant portion of the purchase price was paid for with unregistered shares of stock of a publicly traded corporation; (2) the real property upon which the hotel is situated is leasehold and the transaction required the consent of the ground lessor; (3) a portion of the premises involved "ceded lands" that were the subject of significant title issues; and (4) the hotel was subject to a collective bargaining agreement. Mr. Fisher was primarily responsible for drafting and negotiating the purchase and sale agreement, and was substantially involved in resolving all complexities of the deal, and coordinated a successful real estate closing of the transaction all in less than thirty days. All parties remarked that they had never witnessed such a complicated

commercial real estate transaction brought to such a smooth closing in so short a period of time.

**Sale of Downtown Honolulu Office Building.** Represented owner in the sale of 30-story office building in Downtown Honolulu. Negotiated terms of the sale, prepared and negotiated transaction documents, interfaced with tenants as to leasing issues, and brought the complex Hawaii real estate sale to a timely closing.

**Waikiki Hotel Acquisition.** Acted as local Hawaii counsel in representing the purchaser of a premier Waikiki resort hotel. Responsibilities included advising with respect to the purchase and sale agreement, conducting and coordinating the due diligence investigation, negotiating title insurance and endorsements, negotiating and documenting financing for the acquisition, transferring the hotel liquor license and other permits, licenses and leases to the buyer, interfacing with labor counsel with regard to union and other labor issues, opening and interfacing with escrow, and coordinating the timely closing of the sale.

**Hotel Owner and Commercial Landlord - Tenant Matters.** Represented the hotel owner/landlord of an 800 room Waikiki hotel with over 50 commercial tenants. Created model form office and retail leases for the landlord. Responsible for negotiating and documenting the office and retail leases for the hotel, and for handling legal issues with respect to the commercial tenants. Successfully represented landlord in summary possession action against a defaulting tenant.

**Complex Stock Acquisition of Publicly Traded Real Estate Development Company.** Represented purchaser of a majority shareholder interest in publicly traded Delaware corporation with substantial real estate assets for development in various locations in Hawaii primarily undeveloped land on Maui and the Big Island. Negotiated the purchase and sale agreement, coordinated due diligence, interfaced with tax advisors, negotiated amendments and ancillary agreements, coordinated with S.E.C. and Delaware counsel, negotiated and documented new loans and refinancing of existing target company loans.

**Real Property Tax Appeals.** Represents owners with Hawaii real tax appeals concerning valuation and assessment. In one case, lead negotiator in settlement discussions with the real property tax office, Mr. Fisher successfully negotiated a settlement resulting in tax savings of more than \$650,000 per year. The two-year settlement saved the client more than \$1.3 million.

**Court-Appointed Receiver.** Mr. Fisher was appointed by the First Circuit Court of the State of Hawaii as a receiver to take control of a debtor's

judgment, execute upon and sell a large, multi-million dollar parcel of land, and distribute the proceeds pursuant to Court Order. Ultimately, the appointment of Mr. Fisher as receiver, and his actions taken in that capacity, forced the debtor to raise monies sufficient to pay off his primary creditor, who for some eighteen years had tried to collect money from the debtor. This favorable result occurred within sixty days of Mr. Fisher's receivership appointment.

**Sale of Loan.** Acted as local counsel in time-pressured, fiscal year-end sale of multi-million dollar real estate-secured loan by very large Japanese bank. Worked with Tokyo counsel to prepare, negotiate and execute various loan sale documentation. Advised with respect to Hawaii real estate law issues and brought the transaction to a timely closing.

**Foreign Lending Consortium/Hotel Sale.** Represented consortium of Japanese companies in a \$67 million transaction involving purchase of fee title to land and their subsequent sale of a large Maui hotel. Interfaced with Securities and Exchange Commission and obtained exemption from Hart Scott Rodino filings. Negotiated terms of purchase and sale agreement, real property conveyance instruments, assignment of contracts and related agreements, and handled closing the transaction.

**Wall Street Investment Bank.** Represented major Wall Street investment banking firm in their review of several major Hawaii real estate properties for potential acquisition. Work included due diligence review, advice concerning long-term commercial leasehold estates in Hawaii, contract review and negotiation with Seller.

**Off-Shore Company.** Incorporated off-shore holding company for high net worth individual. Liaised with foreign lawyers and accountants to ensure compliance with foreign laws. Overcame foreign legal technical requirements by creating class of redeemable preferred shares of stock to allow for financial flexibility. Advised and worked closely with directors in multiple aspects of ongoing business operations, including registering the company to do business in the Far East, and completion of independent audit and tax planning.

**Energy Development Company.** Assisted lead counsel in representation of international energy development company in formulating strategic approach to developing \$100,000,000 energy project in Hawaii. Took active role in representation of the development company in multiple proceedings before the State of Hawaii Public Utilities Commission, including lead role in utility integrated resource planning proceeding, and as co-counsel in complaint proceeding brought pursuant to the PURPA and

state law.

**Pro Bono, Civic and Charitable Matters.** Mr. Fisher regularly provides Hawaii business law services to charitable institutions on a pro bono basis including incorporating Hawaii non-profit corporations for charitable purposes.

**What People Say About Mr. Fisher:**

*"...strong endorsement from both clients and peers, who praise his expertise in Hawaiian real estate law."*

Chambers and Partners, USA Directory Of America's Leading Lawyers For Business

*"A very solid corporate and real estate attorney."*

Chambers and Partners, USA Directory Of America's Leading Lawyers For Business

*"...praised by clients for his responsiveness and for being "a good business partner."*

Chambers and Partners, USA Directory Of America's Leading Lawyers For Business

*"Experienced transactional lawyer Duane Fisher is well regarded for his skills in the handling of development projects, particularly with respect to condominiums and hotels."*

Chambers and Partners, USA Directory Of America's Leading Lawyers For Business

*"Duane Fisher is an experienced real estate development counsel, recently noted for activity in eminent domain proceedings. "He has provided a calm, thoughtful oversight on all of our major business matters," says a client. He advised ProsPac Holdings on the purchase and assemblage of parcels of land in the Honolulu urban core, and continues to represent them in connection with development of the land."*

Chambers and Partners, USA Directory Of America's Leading Lawyers For Business