

MAR 18 2009

SENATE CONCURRENT RESOLUTION

ENCOURAGING THE REAL ESTATE COMMISSION TO MODIFY AND ADOPT RULES
TO REFLECT CHANGES IN THE CONDOMINIUM LAW UNDER CHAPTER
514B, HAWAII REVISED STATUTES.

1 WHEREAS, during the 2004, 2005, and 2006 legislative
2 sessions, the Legislature passed several acts (Act 164, Session
3 Laws of Hawaii 2004; Act 93, Session Laws of Hawaii 2005; and
4 Act 273, Session Laws of Hawaii 2006) that revised the
5 "Condominium Property Act", chapter 514A, Hawaii Revised
6 Statutes (HRS), and recodified it as chapter 514B, Hawaii
7 Revised Statutes, effective July 1, 2006; and

8
9 WHEREAS, the intent of the recodification was to "update,
10 clarify, organize, deregulate, and provide for consistency and
11 ease of use of the condominium property regimes law", as
12 directed by Act 213, Session Laws of Hawaii 2000, which called
13 for a review of Hawaii's condominium property regimes laws in
14 preparation for the recodification; and

15
16 WHEREAS, as also explained by Act 213, two of the
17 objections to chapter 514A, HRS, were that it is "overly
18 regulatory" and "hinders development"; and

19
20 WHEREAS, in order to permit the Real Estate Commission to
21 provide guidance regarding the implementation of the new
22 Condominium Property Act, the Legislature enacted section
23 514B-61, HRS, in Act 93, Session Laws of Hawaii 2005,
24 authorizing the Real Estate Commission to "[a]dopt, amend, and
25 repeal rules pursuant to chapter 91[, Hawaii Revised Statutes]";
26 and

27
28 WHEREAS, the Legislature finds that except for an
29 additional subchapter relating to replacement reserves that was
30 added in 1995, the current administrative rules relating to
31 condominiums, chapter 107, Hawaii Administrative Rules, have not
32 been updated since 1981; and



1
2 WHEREAS, notwithstanding that two and one-half years have
3 elapsed since the new Condominium Property Act took effect, the
4 Real Estate Commission has not yet adopted administrative rules
5 that pertain to chapter 514B, HRS, nor has it begun to do so;
6 and

7
8 WHEREAS, furthermore, section 16-107-1, Hawaii
9 Administrative Rules (HAR), states that chapter 107, HAR, is
10 "intended to clarify and implement chapter 514A, HRS" and no
11 mention is made of the chapter's applicability to chapter 514B,
12 HRS; and

13
14 WHEREAS, instead of updating its administrative rules, the
15 Real Estate Commission has been following its long-standing
16 practice of issuing "nonbinding" opinions, some of which
17 interpret statutory provisions of chapter 514B, HRS; and

18
19 WHEREAS, these nonbinding opinions are issued for specific
20 projects during monthly Condominium Review Committee and Real
21 Estate Commission meetings that are not part of the rulemaking
22 procedures as established under chapter 91, HRS; and

23
24 WHEREAS, it has been reported that, these "nonbinding"
25 opinions are used by the Real Estate Commission to interpret the
26 questions of developers, their attorneys, and Real Estate
27 Commission private consultants for purposes of the condominium
28 public report application process, and that effective dates for
29 condominium public reports are not issued except in compliance
30 with these nonbinding opinions; and

31
32 WHEREAS, the Legislature is concerned that, by issuing such
33 nonbinding opinions in lieu of adopting administrative rules,
34 and then relying on these nonbinding opinions for future
35 decisions, the Real Estate Commission may be engaging in
36 rulemaking without adhering to chapter 91, HRS; and

37
38 WHEREAS, the Legislature is also concerned that the
39 practice of issuing a nonbinding opinion based upon a unique set
40 of facts presented at a Real Estate Commission hearing and then
41 applying the opinion to other projects may lead to situations
42 where precedential weight is ascribed to a decision merely
43 because it is the first to be heard by the Real Estate



1 Commission and not because the decision is truly generally
2 applicable to other projects; and


3
4 WHEREAS, the Legislature believes that it would be far more
5 beneficial to developers, their attorneys, and Real Estate
6 Commission private consultants for the Real Estate Commission to
7 engage in public rulemaking pursuant to chapter 91, HRS, in
8 order to assure that various views are heard, rather than
9 issuing nonbinding opinions based on the argument of only one
10 developer or attorney presenting his or her case at a Real
11 Estate Commission meeting; and

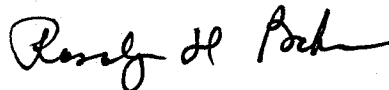
12
13 WHEREAS, the Legislature believes that engaging in the
14 rulemaking procedures under chapter 91, HRS, will ensure that
15 the Real Estate Commission adheres to the law and allows input
16 from the public to assure that chapter 514B, HRS, does, in fact,
17 "provide for consistency and ease of use of the condominium
18 property regimes law", as directed by Act 213; now, therefore,

19
20 BE IT RESOLVED by the Senate of the Twenty-fifth
21 Legislature of the State of Hawaii, Regular Session of 2009, the
22 House of Representatives concurring, that the Real Estate
23 Commission is encouraged to draft, adopt, and implement revised
24 or additional administrative rules under chapter 107, HAR, to
25 reflect changes in the condominium law under chapter 514B, HRS,
26 by no later than December 31, 2009; and

27
28 BE IT FURTHER RESOLVED that the Chair of the Real Estate
29 Commission is requested to report on the progress made to
30 updating chapter 107, HAR, to the Legislature not later than
31 twenty days before the convening of the Regular Session of 2010;
32 and

33
34 BE IT FURTHER RESOLVED that certified copies of this
35 Concurrent Resolution be transmitted to the Director of Commerce
36 and Consumer Affairs and the Chair of the Real Estate
37 Commission.

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39
40 OFFERED BY: 





**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Friday, April 3, 2009
9:30 a.m.

**TESTIMONY ON SENATE CONCURRENT RESOLUTION NO. 95, ENCOURAGING
THE REAL ESTATE COMMISSION TO MODIFY AND ADOPT RULES TO REFLECT
CHANGES IN THE CONDOMINIUM LAW UNDER CHAPTER 514B, HAWAII
REVISED STATUTES.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is William S. Chee and I serve as the Chairperson of the Real Estate Commission's ("Commission") Condominium Review Committee. I thank you for the opportunity to present testimony on Senate Concurrent Resolution No. 95. We support the intent of the resolution and understand the importance of formal rulemaking, however, we feel the resolution is unnecessary for reasons stated below.

Senate Concurrent Resolution No. 95 encourages the Commission to draft, adopt, and implement revised or additional administrative rules under Chapter 107, HAR, to reflect changes in the condominium law under Chapter 514B, HRS, by no later than December 31, 2009; and requests that the Chair of the Commission report on the progress made to updating Chapter 107, HAR, to the Legislature not later than twenty days before the convening of the Regular Session of 2010.

Chapter 514B, HRS, provides for a whole new regulatory registration and condominium management framework. Since July 1, 2006, the effective date of

Chapter 514B, HRS, the Commission has been actively engaged in the rulemaking process. Through the Commission's regularly scheduled monthly Condominium Review Committee ("CRC") meetings, participation in the legislative process, neighbor island outreach meetings, and educational presentations to condominium owners, board members, developers, developer's attorneys, real estate licensees, and managing agents, the Commission received numerous comments and concerns from the diverse stakeholders identifying the implementation issues, procedures, topics, and concerns for formal rulemaking. The identification and compilation would not have been possible but for the period of information gathering.

The Commission believes the resolution is unnecessary for the following reasons:

- The proponent of this resolution is also a retained consultant to the Commission for condominium project registrations and has volunteered to assist the Commission in the formal rulemaking process by drafting the proposed rules. At the Commission's CRC meeting of March 11, 2009, the Commission accepted and expressed its appreciation of his offer concerning this massive undertaking.
- The request to complete rulemaking by December 31, 2009 is unattainable if not impossible. Formal rulemaking involves many levels of administrative review and recommendations, i.e., the Attorney General, Legislative Reference Bureau, Budget and Finance, Department of

Business and Economic Development and Tourism, and the Small Business Regulatory Review Board, including the Governor's approval to conduct public hearings on the proposed rules, and statewide public hearings. Unfortunately, the general guideline set for implementation of new rules is approximately two years.

- The request that the Chair of the Commission report on the progress made to updating Chapter 107, HAR, to the legislature twenty days prior to the convening of the legislature in 2010 as requested on page 2 lines 28-32 is unnecessary and is duplicative. The Commission pursuant to §514B-73 (d), HRS, relating to the management of the Condominium Education Trust Fund ("CETF") reports annually to the legislature a summary of the programs funded by the CETF for the prior fiscal year and for the upcoming fiscal year. Rulemaking, Chapter 107 is one of those programs.

For these reasons the Commission believes Senate Concurrent Resolution No. 95 is unnecessary and requests that it be held. Thank you for the opportunity to present testimony.

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April 2, 2009

VIA E-MAIL senbaker@capitol.hawaii.gov

Senator Rosalyn H. Baker
Chairperson, Senate Commerce and Consumer Protection Committee
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: Testimony of the Real Property & Financial Services Section of
the Hawaii State Bar Association on SCR 95

Dear Senator Baker & Committee Members:

I am the Chair of the Real Property & Financial Services Section of the Hawaii State Bar Association. On behalf of the Board of Directors of our Section, I am writing to express our support for the intent of Senate Concurrent Resolution No. 95. Although Hawaii's new condominium law took effect in 2006, implementing rules for the condominium law have yet to be drafted. Such rules are vital to the consistent, fair and predictable application of the law, so we strongly support their prompt adoption. Thank you for this opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Kugle".

Gregory W. Kugle
Chair, Real Property & Financial Services
Section HSBA

GWK:rt
[216429.1]

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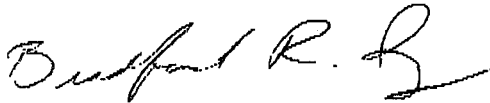
April 2, 2009

Rosalyn H. Baker, Senator
Chairperson
Commerce and Consumer Protection Committee
Fax: (808) 586-6071

Dear Senator Baker:

My name is Bradford R. Ing and I am a practicing lawyer on the Island of Maui. I am writing to express my support for the passage of SCR 95 and SCR96 in its current form, which will be before the commerce and Consumer Protection Committee tomorrow April 3, 2009. Thank you for your time and consideration on this matter.

Sincerely,



Bradford R. Ing

JOEL ESER RICHMAN
ATTORNEY AT LAW

April 2, 2009

Senator Rosalyn H. Baker
Chairperson, Commerce and Consumer Protection Committee
State of Hawaii

Via Fax to 808-586-6071

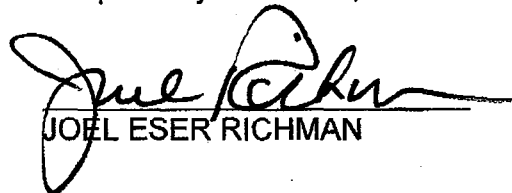
Re: Senate Concurrent Resolution No. 95
Senate Concurrent Resolution No. 96

Dear Senator Baker:

I am writing to state my support for the above two resolutions - S.C.R. No. 95 requesting the Real Estate Commission to promulgate and implement administrative rules for H.R.S. Chapter 514B, and S.C.R. No. 96 requesting the Real Estate Commission to accept condominium registration filings in electronic format.

I have been a practicing attorney on Maui since 1985, and have represented condominium developers since the recodification took effect in 2006. My support of these two resolutions is based on my belief that their passage will benefit developers, consumers and attorneys involved in the formation and purchase of condominiums in Hawaii. The need for revised rules to accommodate the changes contained in H.R.S. Chapter 514B is obvious as well as overdue, and the cost savings to developers, attorneys and (as a result) to consumers which would result from electronic filing of condominium registration documents will be substantial. In addition, electronic filing will save trees and allow our land-fills to last a little longer

Respectfully submitted,



JOEL ESER RICHMAN

JER/tt

LAWRENCE N. C. ING
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April 2, 2009

VIA EMAIL

SENATOR ROSALYN H BAKER
SENATOR KALANI ENGLISH
SENATOR SHAN S TSUTSUI

Re: Hearings on SCR 95 and SCR 96

Dear Senators:

The undersigned practices law on the Island of Maui and express my support for the passage of **SCR 95 and SCR 96** in its current form, which will be before the Commerce and Consumer Protection Committee tomorrow, April 3, 2009.

Your favorable action on this matter is appreciated.

Thank you.

Sincerely,



LAWRENCE N. C. ING

LAWRENCE N. C. ING
DAVID M. JORGENSEN

JENNIFER M. P. E. OANA
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April 2, 2009

**VIA E-MAIL (senbaker@capitol.hawaii.gov)
AND FACSIMILE (808 586-6071)**

Rosalyn H. Baker, Senator
Chairperson
Commerce and Consumer Protection Committee

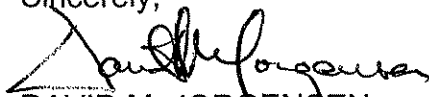
Aloha Senator Baker:

My name is David M. Jorgensen and, as you may recall, I'm the Managing Partner with the Wailuku, Maui law firm of Ing & Jorgensen.

I've been practicing law on Maui since 1992. In my practice, I do a fair amount of condominium work and I'm writing to express my strong support for the passage of SCR 95 and SCR96 in its current form, which will be before your Commerce and Consumer Protection Committee tomorrow, April 3, 2009.

I hereby request your support of SCR 95 and SCR96 and I thank you for your time and consideration on this matter.

Sincerely,



DAVID M. JORGENSEN
Managing Partner

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† A Law Corporation

April 2, 2009

The Honorable Rosalyn H. Baker, Chair
and Members of the Committee on
Commerce and Consumer Protection
Senate
State Capitol
Honolulu, HI 96813

Re: Senate Concurrent Resolution No. 95

Dear Chair Baker and Members of the Committee:

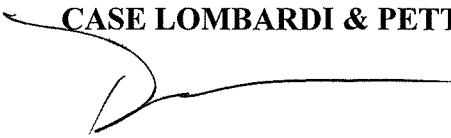
We appreciate the opportunity to testify **in strong support** of Senate Concurrent Resolution 95, encouraging the Real Estate Commission to modify and adopt rules to reflect changes in the condominium law under Chapter 514B, Hawaii Revised Statutes ("HRS").

Our firm represents many condominium developers, associations, and unit owners. We believe that revised and/or additional administrative rules under Chapter 107, HAR are needed, and will provide all of the condominium stakeholders with much needed guidance. The current administrative rules are outdated and inadequate to address the many issues and concerns that have arisen from the adoption of Chapter 514B, HRS. Furthermore, we believe that having the new rules implemented no later than December 31, 2009 is very important, as further delays in the rulemaking process only serve to prolong the uncertainties.

For the foregoing reasons, we urge you to adopt Senate Concurrent Resolution No. 95.

Very truly yours,

CASE LOMBARDI & PETTIT



Dennis M. Lombardi
David G. Brittin

09-
DML:DGB