

## Testimony of the Real Estate Commission

Before the  
House Committee on Consumer Protection and Commerce  
Thursday, March 21, 2019  
2:00 p.m.  
State Capitol, Conference Room 329

On the following measure:

**H.C.R. 62, REQUESTING THE LEGISLATIVE REFERENCE BUREAU, IN CONSULTATION WITH THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, TO CONDUCT A STUDY ON THE IMPLEMENTATION OF RECOMMENDATIONS FOUND IN THE CONDOMINIUM GOVERNANCE – AN EXAMINATION OF SOME ISSUES 1989 REPORT BY THE LEGISLATIVE REFERENCE BUREAU**

Chair Takumi and Members of the Committee:

My name is Michael Pang, and I am the Chairperson of the Real Estate Commission (Commission). The Commission supports this concurrent resolution and suggests amendments.

The purpose of this concurrent resolution is to request that the Legislative Reference Bureau (Bureau), in consultation with the Department of Commerce and Consumer Affairs and with the cooperation of the Commission, conduct a study on whether, and to what degree, the findings and recommendations in a study titled *Condominium Governance – An Examination of Some Issues*, Report No. 4, 1989, have been implemented. In addition, it requests that the study address any further action that may be needed and that a report be submitted to the Legislature prior to the convening of the Regular Session of 2020.

The Commission notes that most of the findings and recommendations in the 1989 study have been addressed over the past 30 years and is committed to assisting the Bureau in any follow-up study.

The Commission suggests that any follow-up study include at least three additional areas of inquiry and provide recommended solutions. First, the study should assess whether the current form and content of the developer's public report provides adequate and understandable disclosures to prospective purchasers of new and converted condominium projects. Second, the study should assess whether the current

reserves requirement provides sufficient incentives for registered condominium associations to adequately fund and study the issue. Third, the study should assess whether the use of the current voting process, including proxy voting and the disparate interests of owner-occupants, investor owners, and commercial owners, is appropriate.

The following are the suggested amendments:

BE IT FURTHER RESOLVED that the study shall also assess whether the developer's public report provides adequate and understandable disclosures to prospective purchasers of new and converted projects; if the disclosures are inadequate, provide for methods to further educate prospective purchasers; and

BE IT FURTHER RESOLVED that the study shall also assess and recommend solutions on whether the current financial reserves study and funding requirements completed by the registered associations are sufficient; and

BE IT FURTHER RESOLVED that the study shall also assess and recommend solutions on whether the use of the current voting process is appropriate; whether the proxy voting process provides an advantage or a disadvantage in the governing process; and whether there are inherent conflicts between owner-occupants versus investor owners versus commercial owners.

Thank you for the opportunity to testify on this concurrent resolution.

Charlotte A. Carter-Yamauchi  
Director

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LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol, Room 446  
415 S. Beretania Street  
Honolulu, Hawaii 96813

## Written Testimony

### **HCR62**

### **REQUESTING THE LEGISLATIVE REFERENCE BUREAU, IN CONSULTATION WITH THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, TO CONDUCT A STUDY ON THE IMPLEMENTATION OF RECOMMENDATIONS FOUND IN THE CONDOMINIUM GOVERNANCE – AN EXAMINATION OF SOME ISSUES 1989 REPORT BY THE LEGISLATIVE REFERENCE BUREAU**

Testimony by the Legislative Reference Bureau  
Charlotte A. Carter-Yamauchi, Director

Presented to the House Committee on Consumer Protection and Commerce

Thursday, March 21, 2019, 2:00 p.m.  
Conference Room 329

Chair Takumi and Members of the Committee:

Good afternoon Chair Takumi and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on H.C.R. No. 62, Requesting the Legislative Reference Bureau, in Consultation with the Department of Commerce and Consumer Affairs, to Conduct a Study on the Implementation of Recommendations Found in the Condominium Governance – an Examination of Some Issues 1989 Report by the Legislative Reference Bureau.

The purpose of this measure is to request that:

- (1) The Legislative Reference Bureau, in consultation with the Department of Commerce and Consumer Affairs, conduct a study on whether, and to what degree, the findings and recommendations found in the Condominium Governance – An Examination of Some Issues, Report No. 4, 1989, have been implemented;
- (2) The study also address any further action that may be needed to fulfill unresolved findings and recommendations and any other comments and concerns that interested parties may provide;
- (3) The Real Estate Commission cooperate with the Legislative Reference Bureau and make available to the Bureau any and all records and other information that the Bureau considers pertinent to the study; and

- (4) The Legislative Reference Bureau submit a report of its findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 2020.

While the Legislative Reference Bureau takes no position on the merits of the measure, we submit the following comments for your consideration.

The Bureau would like to note that the report referenced in the measure is thirty years old and the condominium law that it studied has been repealed. Furthermore, at the time of the writing of the 1989 report, the position of condominium specialist within the Department of Commerce and Consumer Affairs' Real Estate Branch had just been established and originally filled on July 1, 1988 (the time of the original report's writing), so very little inherent condominium governance experience had been amassed. Currently, according to the Real Estate Commission's website, there are roughly 1,668 condominium association registrations and 29 condominium hotel operator registrations, and the Department of Commerce and Consumer Affairs' Real Estate Branch has had the benefit of thirty years of practical experience relating to condominium property regimes and is authorized to employ multiple condominium specialists. It would seem that the practical experience obtained by the Real Estate Branch, along with the Real Estate Commission, which is responsible for, among other things, the licensure, education and discipline of condominium projects, condominium associations, condominium managing agents, and condominium hotel operators, not only over the past thirty years, but also through the transition of the statutorily-established governance structure of condominiums from Chapter 514A to Chapter 514B, Hawaii Revised Statutes, would place either entity in a far better experiential position to conduct the study contemplated in this measure than the Bureau, which has not maintained an ongoing policy review of condominium property regimes over the past thirty years.

Thank you again for your consideration.

**HCR-62**

Submitted on: 3/20/2019 8:42:56 AM

Testimony for CPC on 3/21/2019 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Lila Mower          | Hui `Oia`i`o        | Support                   | Yes                       |

Comments:

Lourdes Scheibert  
920 Ward Avenue #6D  
Honolulu, Hawaii 96814

**LATE**

March 20, 2019

Re: Submitting Opinions And Experiences:

HCR62/HR63: Requesting The Legislative Reference Bureau, In Consultation With The Department Of Commerce And Consumer Affairs, To Conduct A Study On The Implementation Of Recommendations Found In The Condominium Governance – An Examination Of Some Issues 1989 Report By The Legislative Reference Bureau.

Dear Representative Linda Ichiyama and Roy Takumi,

I, submit as a condominium owner problems and concerns I have endured in condominium self-governance. Although, I considered my experiences unique, I was wrong. Instead many of my problems are experienced by many other owners.

I recommend a missing part of the 1989 & 1996 study be included for HCR62/HR62. This being the management methodology of an Association Board of Directors assigning all duties described in a property's Declaration, By-Laws and House Rules to the management companies. To include review of their principle Real Estate Broker's duties on over-site of their property managers.

In particular, the assignment to the Management Company, the authority of the maintenance/repair/replacement of the common area and limited common area. Include review of the daily duties of managing the Resident Manager, Site Manager or General Manager. Do these positions take directions daily only by the property manager? If so, is the property manager considered the managing authority over the Association's employees, the RM, SM or GM?

This study to include the review of the workload of a property manager of 10 to 14 condominium projects assigned to them. How effective can this management methodology be under such a heavy workload. How many Brokers in a management company are there for over-site of the property managers? Property managers are not included in State of Hawaii vocational licensing division. Very few are real estate agents.

In my experience and observation for more than 10 years, this management methodology has caused confusion with the owners. Who is the leadership? When assigning all duties to the management company, in my opinion, creates a dual

governing structure leaving an owner frustrated to their concerns/complaints not addressed in a timely manner by management. Owners using YELP and other social media show the frustration in lack of or no response to communication with the management company, their property managers or even their board of directors.

An example, my leaking lanai ceiling was not repaired to stop the water infiltration for 5 years in what I believe, an abusive management style attributed to this management methodology. The majority board directors gave complete authority to the property manager. The majority board directors refused to over ride the property manager's decisions. Instead, I was told it was my responsibility to find the origination of the water leak. When I asked for permission to access the exterior of the building to find the a crack with a licensed window washer, I was denied. I was denied because it would be a liability to the Association. The only entity that can access the common area and limited common area is the Association. I pay maintenance fees for the upkeep of the buildings infrastructure and was refused service for 5 years while I continued to pay my maintenance fees on time every time.

In the last several years, I have been part of a group of condominium HUI participants who have experienced bad management to the point of pushing us into participating in legislation of Condominium Law. We advocated for ACT 195 that changes the priority of payments allowing an owner to mediation before payments to non-essential fees. This ACT 195 to SUNSET in 2020. We advocate to delete (reference HRS514B-123) the proxies given “ to the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting.”

2019 legislation for SB551 SD1 HD1: Provides an explicit grant of power of sale to associations for the purposes of enforcing association liens under the power of sale procedures in state foreclosure law. This measure provides in chapter 667, regardless of the presence or absence of power of sale language in an association's governing documents thus allowing the Association to non judicial foreclosure. My condominium and perhaps more that 350 condominiums are with out power of sale language. So no over sight by the courts. A member of my family lost her property for a \$1.00 that gave the Association an asset/value in the property that way over exceeded the assessment costs. The bank owning her mortgage ask that she stop payment on her mortgage so they could sue the Association and get their property back. The Bank did and got their property back. Can the Association appeal this decision should SB551 SD1 HD1 become law? What will the Banks do if they get sued by the Association?

If HCR62/HR63 passes, it should give the ordinary condominium owners a voice in shaping the HRS514B Condominium Law to ensure due process, timely notification

for owner's in put to changes to the House Rules and fair elections. That these property rights are preserved. (not limited to)

According to CONDOMINIUM GOVERNANCE -AN EXAMINATION OF SOME ISSUES 1989 Page 4:

*The Bureau has attempted to explore the remaining issues as fully as possible given the time constraints of the study. Nevertheless, some of these are complex and multi-faceted issues that, under ideal circumstances, would require additional time and study. Further, many of the concerns raised herein resist easy or simple solutions, as is evident from the fact that many of the same issues have been studied and discussed for a number of years with little or no resolution.' Accordingly, the reader is cautioned that the discussions and recommendations that follow are not, nor do they claim to be, thoroughly comprehensive.*

This time around and 30 years later, we're still on square one. The complexities are amplified with substantial increase of condominium properties and owners. Prior studies have not included the condominium owners themselves. We need to join the conversation.

Thank-you,  
Lourdes Scheibert  
Condo Owner



**HCR-62**

Submitted on: 3/20/2019 3:48:59 PM

Testimony for CPC on 3/21/2019 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Dale                | Individual          | Support                   | No                        |

Comments:

HCR62 - REQUESTING THE LEGISLATIVE REFERENCE BUREAU, IN CONSULTATION WITH THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, TO CONDUCT A STUDY ON THE IMPLEMENTATION OF RECOMMENDATIONS FOUND IN THE CONDOMINIUM GOVERNANCE – AN EXAMINATION OF SOME ISSUES 1989 REPORT BY THE LEGISLATIVE REFERENCE BUREAU.

To: Honorable Representatives Linda Ichiyama & Roy Takumi, and, esteemed members of the Committee

Aloha: I am in favor of this HCR. As 3 decades have passed since inception of the study, reviving the matter and related issues is appropriate.

When the state promulgated its condo statutes and coined the term ‘self governing’, it created a situation which deprives condo owners of rights and privileges that most people take for granted, rendering us to be ‘2nd class’ citizens. Our HRS 514b is basically ‘voluntary’ when it comes to compliance as there is no state agency empowered to enforce it. Oh, yes, there is a weak agency with a fancy title, Regulated Industries Complaint Office, but, while they may receive complaints of Imisconduct by agents of property management companies, and, even members of associations Boards of Directors, they are gutless in the realm of enforcement.

In my 3+ decades as a condo owner/occupant, and 10+ years on our Board in a Waianae complex, have witnessed much mischief and misconduct by managers. Fire one property management company, then hire another, and later yet another. Still, they cannot refrain from interfering in our elections. Bad karma. While there is, of course, Civil Court, most people do not have hundreds of thousands of dollars in disposable income to hire a private practice attorney.

Please note that when a rare condo related Civil Court case makes the news, a commonality is the issue of bullying by Board leadership which is immune to pecuniary accountability. Victims may, or, may not receive some compensation, but the bullles never are punished. Instead, if there is a big award given to appellants, it falls on an association insurer, and, eventually, on other associations members to foot the bill.

We need Consumer Protection and are not now receiving more than a modicum of it.

Respectfully, Dale A. Head Sunnymakaha@yahoo.com (808) 228-8508 Text or Cell