

## **Testimony of the Real Estate Commission**

**Before the  
House Committee on Consumer Protection and Commerce  
Wednesday, March 29, 2023  
2:10 p.m.  
Conference Room 329 and Videoconference**

**On the following measure:**

**H.C.R. 99 URGING THE REAL ESTATE COMMISSION TO DEVELOP POLICIES AND PROGRAMS TO INFORM AND EDUCATE CONDOMINIUM ASSOCIATION OWNERS AND BOARD MEMBERS OF CERTAIN MATTERS TO PROMOTE THE EFFICIENT ADMINISTRATION OF CONDOMINIUM ASSOCIATIONS**

Chair Nakashima and Members of the Committee:

My name is Derrick Yamane, and I am the Chairperson of the Hawai'i Real Estate Commission (Commission). The Commission supports this concurrent resolution, but questions its necessity.

The purpose of this concurrent resolution is to urge the Commission to develop policies and programs to inform and educate condominium association owners and board members of certain matters to promote the efficient administration of condominium associations.

For the Committee's information, Hawaii Revised Statutes section 514B-71, the Commission's current mandate is to administer the Condominium Education Trust Fund (CETF) for education and research in areas including condominium management, the efficient administration of associations, and support for mediation and arbitration. Condominium education is the focus of the Commission.

The Commission currently offers an extensive menu of educational programs both in-person and on-line, and reaches out to communities throughout the State. In addition to answering in-office inquiries via walk-ins, emails, and mailed correspondence, the Commission created and provided the following educational opportunities:

- Brochures, flyers; magazine articles, quarterly Commission Condominium Bulletin;
- Educational fairs;
- In-person and virtual Condorama educational panel series;

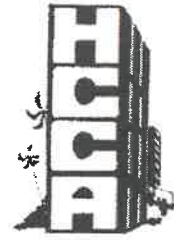
- Regular informational email distribution;
- Educational presentations to association management companies, the Hawaii State Bar Association; Title companies; the Community Council of Maui; Kauai Board of REALTORS; Hawaii Home Ownership Center; Condo Insider - Think Tech;
- Subsidized workshops, seminars, and newsletter articles through CAI Hawaii; and
- Hawaii Condo Living Guide video series.

Additionally, over the last several years, the Commission's programs have been recognized locally and nationally for their educational excellence. It is the mission of the Commission to protect the interests of Hawai'i consumers regarding real estate and condominium matters; the Commission continues to strive to educate the condominium community through creating and providing multiple and varied condominium educational opportunities.

Thank you for the opportunity to testify on this resolution.



**Hawaii Council of Associations  
of Apartment Owners**  
**DBA: Hawaii Council of Community Associations**  
1050 Bishop Street, #366, Honolulu, Hawaii 96813



March 25, 2023

Rep. Mark Nakashima, Chair  
Rep. Jackson Sayama, Vice-Chair  
House Committee on Consumer Protection & Commerce

Re: Testimony in Support of  
HCC99 and HR106 Condo Education  
Hearing: Wednesday, March 29, 2023, 2:19 p.m., Conf. Rm. #329

Chair Nakashima, Vice-Chair Sayama and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCCAO dba HCCA).

HCCA strongly supports the development of policies and programs to educate condominium owners and board members. HCCA further believes that requiring condominium board members to acknowledge and be aware of the contents of their governing documents and to participate in education and training in community association governance would improve their decision-making and governance skills and providing training and educational opportunities to condominium owners may minimize disputes by and among owners and their boards.

Accordingly, we ask that your Committee pass these two (2) resolutions.

Thank you for the opportunity to testify on this matter.

  
Jane Sugimura, President

Hui 'Oia'i'o

**House of Representatives  
Committee on Consumer Protection & Commerce  
Wednesday, March 29, 2023  
2:10 p.m.**

To: Chair Mark Nakashima  
Re: HCR 99 / HR 106

Aloha Chair Nakashima, Vice-Chair Sayama, and Members of the Committee,

I am Lila Mower, the leader of Hui 'Oia'i'o, a coalition of property owners--mostly seniors--from over 150 common-interest associations including condominium associations, planned community associations, and a few cooperative housing corporations throughout Hawaii, and served as an officer on three condominium associations' boards.

On behalf of Hui 'Oia'i'o, I **support HCR 99** and its companion, **HR 106**.

In earlier testimonies to your Committee, I referenced studies by the Legislative Reference Bureau (LRB) in 1989<sup>1</sup> and the Real Estate Commission (REC) in 1991<sup>2</sup> which examined recurring problems with Board Directors' failure to fulfill responsibilities that often resulted in internal strife.

It appears that these studies and other studies did lead to programs that attempted to inform and educate condominium association owners (including directors), however, there was no subsequent survey of condominium owners to investigate their awareness of these educational opportunities, and of owners' reviews about the cost, accessibility (place and time), quality, relevance, and effectiveness of these educational efforts, including materials, and whether the services of vendors retained by the DCCA were satisfactory to those owners.

Since the aforementioned LRB and REC studies, it appears that **much has not improved** in condo governance, including the understanding of duties and responsibilities of owners and directors, despite the DCCA's attempts, conceivably **because there was no enforcement mechanism**. Enforcement mechanisms were suggested in other measures which came before your committee this session, including provisions that directors should provide certification to assure that they have read their governing documents and other documents pertinent to the governance of their associations and are prepared for the managerial, financial, and legal responsibilities necessary to properly govern.

Additionally, the DCCA's attempts to inform and educate are only as good as their outreach.

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<sup>1</sup> [https://lrb.hawaii.gov/wp-content/uploads/1989\\_CondominiumGovernance.pdf](https://lrb.hawaii.gov/wp-content/uploads/1989_CondominiumGovernance.pdf)

<sup>2</sup> Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives – An Issues Paper for the Hawaii Real Estate Commission, by Gregory K. Tanaka (January 1991).

It was revealed during an informational meeting for the Senate's Committee on Commerce and Consumer Protection, by a Condo Specialist from the REC's Real Estate Branch (REB) that their email list, by which they apprise the public of their activities including educational classes, had less than a thousand addresses despite that there are approximately 180,000 condominium units<sup>3</sup> in Hawaii.

Further, it was also revealed that the Real Estate Branch depended on Managing Agents (MA) (property management companies) to distribute information about educational classes and educational material, but that Managing Agents were rarely compliant. The motives of the REB and MAs may conflict as owners' ignorance assured their dependence on MAs for information, integral to the business model of MAs.

All buildings deteriorate with time and associations must have adequate levels of reserves to mitigate and remediate any structural issues that may occur. Directors must make difficult decisions that may include unappealing but necessary financial choices such as increasing fees that will enable them to keep their associations physically and fiscally sound. To generate trust and overcome financial conflicts, directors must be able to help owners understand their responsibilities. This was recently exemplified by the One Archer Lane incident.<sup>4</sup>

The education of owners and directors can also reduce the burden of condo-related disputes which has the positive consequence of mitigating rising association insurance costs.

States like Florida require that Board Directors must be certified to demonstrate their knowledge of their governing documents and other documents essential to good governance and they offer many **free** classes which are convenient in time and location for owners and directors alike:

<https://www.campbellpropertymanagement.com/education/upcoming-events/tag/board-certifications>

<https://www.youtube.com/watch?v=3vTLrIZ-cog>

<https://www.youtube.com/watch?v=ElnVX52gGcE>

<https://www.youtube.com/watch?v=Yq38BcRsMrA>

<https://www.citybiz.co/article/334469/free-virtual-condo-and-hoa-board-certification-course-with-eisinger-law-partners/>

The DCCA should be encouraged to produce such classes without the added expense of a third-party vendor. This belief is supported by the Real Estate Branch's free Condorama series<sup>5</sup> which has been more successful in reaching owners than the classes conducted by that vendor, while presenting the same or similar speakers and topics without the vendors' exorbitant class fees and inconveniently scheduled midweek, midday classes.

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<sup>3</sup> <https://cca.hawaii.gov/reb/files/2021/02/AOUOContact2102.pdf>

<sup>4</sup> [https://www.kitv.com/news/hundreds-of-condo-owners-at-one-archer-lane-hit-with-up-to-21-000-repair/article\\_20b4fb00-b19d-11ed-b4fa-5f97730dfa25.html](https://www.kitv.com/news/hundreds-of-condo-owners-at-one-archer-lane-hit-with-up-to-21-000-repair/article_20b4fb00-b19d-11ed-b4fa-5f97730dfa25.html)

<sup>5</sup> <https://cca.hawaii.gov/reb/files/2022/12/CB2212.pdf>

Hui 'Oia'i'o

The DCCA must also have measurable standards to determine the success of these policies and programs and to enforce participation by owners, especially directors, or these policies and programs will inevitably fail their intent.

In a review of the Hawaii Condominium Bulletin from March 2016 through December 2022<sup>6</sup>, nearly four out of every five mediation cases were filed by owners against their boards or associations. And 1/3 of the residents in association-governed communities rated their overall community association experience as **less than “good”** with nearly 10% rating their experiences as “bad” or “very bad” in a recent survey done for the national organization, Community Associations Institute.<sup>7</sup>

These discouraging metrics are significant because the State government is focused on building more “affordable homes,” which implies further development of this higher-density, comparatively-lower-cost housing model and magnifies the importance of improving condominium association governance and enhancing community harmony through education.

Mahalo for the opportunity to testify in support of HCR 99 and HR 106.

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<sup>6</sup> <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2016-2020/>, <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2021-2025/>

<sup>7</sup> [https://foundation.caonline.org/research/survey\\_homeowner/homeowner-satisfaction-survey-dashboard/](https://foundation.caonline.org/research/survey_homeowner/homeowner-satisfaction-survey-dashboard/)

**HCR-99**

Submitted on: 3/25/2023 11:13:30 AM

Testimony for CPC on 3/29/2023 2:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Richard Emery	Individual	Comments	Written Testimony Only

Comments:

I support reasonable voluntary education programs for condo directors.

**HCR-99**

Submitted on: 3/24/2023 5:48:30 PM

Testimony for CPC on 3/29/2023 2:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Andrew Crossland	Individual	Support	Written Testimony Only

Comments:

I support this Resolution.



House of Representatives  
Regular Session of 2023

Committee on Consumer Protection & Commerce  
Hearing on Wednesday, March 29, 2023  
2:10 pm, Conf. Rm. 329

Chair Nakashima, V.Chair Sayama & Members of the CPC Committee:

I am submitting testimony in **support of HCR 99 & HR 106.**

I recently attended my condo's annual meeting after not attending for the past 2 years because of COVID. I had forgotten how badly our board operates!

I left the meeting really irritated because the board was poorly organized and could not answer the owners' questions, especially when it related to expenses and the operational budget.

Our board members have been on the board for years and keep collecting enough proxy votes to stay on the board. Many of the members remain on the board because of their own agenda and not necessarily to provide the owners with the best living conditions.

Our board really needs basic training to understand how the condo governance should operate. They need to learn how to read our Horizontal Property Regime, our budget sheets, and by-laws, etc.

Our annual fiscal audit was late again this year, so it will be mailed to us when it is ready. When an owner asked about misspent funds he noticed in the Annual Executive Summary, the Treasurer replied, "The annual audit shows that the books balance so the money has been spent well." (Fiscal audits do not identify misspent/mismanaged funds.)

Since to board members keep electing themselves to the board the same people just switch positions every couple of years. The current Treasure was the Recording Secretary for a number of years. She never brought paper and pen/pencil to the meetings nor any electronic device to take notes. Someone asked if she had a recording device in her pocket or bra at one of our meetings. She didn't respond, probably because she didn't understand the sarcastic question.

A long-standing argument between the owners and the board is, "who owns our condo's windows." The Board President claims that the AOA owns the jalousie window metal frames and the owners own the jalousie glass panes. (The President has misinterpreted our Horizontal Property Regime) When a glass pane falls out the owner has to argue with the board on who will fix the window.

The building is old, about 40 years old, so the handles to the metal window frames are breaking. The current argument is who should pay to have the handles fixed. It used to be the AOA would fix the handles, but now that it has become quite costly, the board has decided that the owners have to fix the handles. Owners keep asking why they have to fix the handles since it is a part of the frame?!

The major issue at our annual meeting was voting on installing fire sprinklers vs. the life safety evaluation option. The life safety evaluation won by only 52% and only about 10% of the owners were present at the meeting. I questioned how the board could pass this motion with such a small group voting.

The attorney who attends our annual meeting, whispered to the President that it was an acceptable voting result.

The problem is that this is a significant change to our rules and regulations and infrastructure so it really should be added to our by-laws and therefore all owners should be asked to vote; and not only the 20-25 owners who were at the meeting. Our condo has 200 units.

Our board needs to learn the difference between the Condo AOA by-laws vs. House Rules. The board claims that the attorney told them they do not have to update our condo's by-laws. Our condo by-laws have not been updated since the 1970's.

The board has implemented some major changes such as a No Smoking in the Bldg. Policy and now allow a/c in the individual units with board approval. Although these changes should have been added to our by-laws, our board opted to add the changed rules only to our House Rules.

This is unacceptable because House Rules are not enforceable policies and will not hold up in a legal challenge.

The intent of HCR99 & HR106 is to have the Real Estate Commission to develop policies and programs to inform and educate condo owners and board members of the governance rules, and efficient administration of those rules.

I hope my examples illustrated the need for HCR99 & HR106 at our condo and other condo's like ours.

I humbly ask that the Committee on Consumer Protection & Commerce pass HCR 99 & HR 106.

Thank you,

Laurie Hirohata, MSW, MEd

**HCR-99**

Submitted on: 3/28/2023 11:28:19 AM

Testimony for CPC on 3/29/2023 2:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Dale A. Head	Individual	Support	Remotely Via Zoom

Comments:

**HCR99 - URGING THE REAL ESTATE COMMISSION TO DEVELOP POLICIES AND PROGRAMS TO INFORM AND EDUCATE CONDOMINIUM ASSOCIATION OWNERS AND BOARD MEMBERS OF CERTAIN MATTERS TO PROMOTE THE EFFICIENT ADMINISTRATION OF CONDOMINIUM ASSOCIATIONS.**

***Aloha: Well, this is only a few decades overdue. In my three and one half decades in an HOA property, to include over a decade on the Board, the state premise that volunteers with zero experience in handling money or management skills can effectively govern an entity of several hundred dwellings in any HOA is a prescription for chaos.***

***Although Legislators have spent many years tinkering with HRS 414 and 514b, as the state is unwilling to enforce any of it is not funny. Too many lawyers dipping their 'beaks' into collections of hyper inflated HOA fees and the fine art of bullying owners by puppet Boards fo Directors loyal to unlicensed property managers take the joy out of condominium living. Warn your family and friends that before a mortgage can be paid off the monthly HOA contract management fees will skyrocket past whatever the mortgage amount originally was means getting into one is unwise, money wise.***

***Humor - While sane people would never go along with getting medical care, even surgeries, from untrained staff, that is equivalent to what property management companies insist on by opposing members of Boards of Directors having to sign a paper verifying they have received any training or read and understand their own ByLaws. Quite amazing.***

***I note one of our Governor's appointed people on the 9 member Real Estate Commission likes to testify against voting rights bills for taxpayers of HOA properties, as an 'individual', and claiming such a Bill to be 'Horrible'!! Well, we need civil rights and Consumer Protection for property owner/taxpayers of such dwellings, but, aren't getting it. Ergo, any such training must focus on free, transparent, and auditable elections in order to realize the 'dream' of self-government.***

*I am volunteering to be on such a Task Force, and suggest other HOA Advocates be included. Absolutely, any such members who derive a living from 'managing' HOA properties should be excluded.*

*Respetfully, Dale A. Head      [dale.head@aol.com] Tuesday 26 March 2023*

## Testimony In Support of HCR99

**Submitted for:** Consumer Protection & Commerce Committee Hearing, scheduled to be heard on Wednesday, 3/29/23 at 2:10 PM.

Aloha Chair Nakashima, Vice Chair, Sayama, and Members of the Committee,

My name is Greg Misakian and I am submitting testimony as an individual in support of HCR99.

While it is appreciated that there is a formal statement by resolution, your Committee and others within the Legislature had many opportunities to pass numerous bills that would have afforded better consumer protections to condominium owners throughout Hawaii. Words are words, and even the statutes within HRS 514B are only words, unless there is a substantive process of enforcement behind these words. The words of one well connected group, who often oppose these common-sense bills in written and oral testimony, seem to be the only words that are heard when decision making takes place. Most are Attorneys, Parliamentarians, Management Company Representative, or others in the Condominium Trade Industry.

I currently sit on three Boards, which can be seen at the end of my testimony, but the most recent Board I was elected to, and the one of most importance, is my condominium Association Board. As an owner and a former Building Committee member I did my best to inform the Board and Management Company whenever they were doing something improperly, in violation of our governing documents, in violation of HRS 514B statutes, or other federal, state, or local regulations, ordinances, or codes. Unfortunately this was often, and has resulted in many issues and problems that I now have a fiduciary duty and a duty of care to try to resolve as a Director and Officer of my association.

My personal experience with the DCCA Real Estate Branch and RICO, are that they are not helpful, and do not seem focused on properly investigating and helping to resolve issues. I have numerous examples of this and would be happy to share with our Legislators.

Regarding HCR99, I'll focus on two sections which contain statements that need further clarification, or additional wording to better explain the ramifications or to be accurate.

WHEREAS, the imposition of increased maintenance fees and special assessments can create discord and conflict between the association unit owners and their boards and managing agents, resulting in frustration, hostility, and dissension; and

Aside from the likelihood of discord, conflict, frustration, hostility, and dissension, there are the real world issues of: 1) kupuna who are on fixed budgets, 2) owners and families who are on fixed budgets, 3) unlawful or improper activities sometimes resulting in increased maintenance fees, 4) improper deferred maintenance resulting in large and unfair maintenance fee increases to mitigate additional damage to the building, or to complete many projects all at once, 5) forced sales or foreclosures due to the inability to make higher payments.

WHEREAS, section 514B-71, HRS, requires the Real Estate Commission--a commission administratively attached to the Department of Commerce and Consumer Affairs that has oversight of condominiums--to establish the Condominium Education Trust

Fund to promote, among other things, education and research in condominium management, the improvement and more efficient administration of associations, and the expeditious and inexpensive resolution of association disputes; now, therefore,

Too many Legislators say “condominium associations are self-governed,” while simultaneously discussing bills or statutes that govern these associations. HRS 514B is in place because the residents of Hawaii need laws where there is a high probability that malfeasance can occur, and so much money and property is at stake. If 514B-71 requires the Real Estate Commission to promote the expeditious and inexpensive resolution of association disputes, why has my experience been the opposite. I have experience with the DCCA, RICO, and mediation, and there is nothing expeditious or inexpensive in my experience, and most importantly there is no resolution. Factual data previously presented in testimony has shown that the majority of mediations are not resolved, in addition to the many issues and concerns that never get reported or filed, as it costs \$375 just to file for a mediation.

To highlight just how bad things are:

As I write this today, the Management Company that oversees my association and many associations throughout Hawaii, and a company that oversees billions of dollars of property value, has a license that is “INACTIVE.” At the DCCA licensing portal for this Management Company it says: “LICENSE IS INACTIVE UNABLE TO PRACTICE.” I just found out it has been inactive since January of this year (and not from the Management Company, our Board, or anyone at my Association). The DCCA and RICO have both confirmed the license is inactive.

It is now my fiduciary duty to act, and I have begun that process. I hope our Legislators will act, and begin the much-needed reform needed to protect condominium owners throughout Hawaii.

I ask the Committee and all State Legislators to **please support HCR99**.

And I ask you to support and act on HB178 and HB1501 in the 2024 Legislative Session, which will provide for an Ombudsman’s Office to oversee and resolve the many valid complaints and concerns homeowners have with their Boards and Management Companies.

Mahalo,

Greg Misakian

2<sup>nd</sup> Vice President, Kokua Council  
Board Member, Waikiki Neighborhood Board  
Treasurer, Keoni Ana AOA

**HCR-99**

Submitted on: 3/28/2023 11:48:52 AM

Testimony for CPC on 3/29/2023 2:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Lourdes Scheibert	Individual	Support	Written Testimony Only

Comments:

I remember at an condominium education program, Sue Savio, Insurance Associates recommended for each new condominium owner when purchasing their units and at closing be given condominium education materials and/or the WEB links to access education on line. Savio insures the majority of Condominium Associations and is the professional opinion that this committee should seriously consider.

Up to 2016, CAI education programs were held in the middle of the week and at lunch time. A fee was paid with lunch included. I recall \$65. This was an inconvenient schedule to reach a wide number of condominium owners.

In 2016, Hui Hui 'Oia'i'o, participating property owners-- mostly seniors advocated at the REC and the Legislature to expand their reach to as many owners for a program without the lunch venue. In 2017, Condorama Hawaii was revived.

Much more is need to be done to educate owners to pay attention to the management of their buildings. Further, the directors should be mandated to attend a directors training session and sign a document that they have read their Declaration, By-Laws and Houserules, not limited.

If you don't have the time and the focus and refuse to attend classes organized and paid for by the Condominum Education Trust Fund then don't do it. Don't run for a directors position. You will do more harm to the community.

Sincerly,

Lourdes Scheibert

**HCR-99**

Submitted on: 3/28/2023 2:06:55 PM

Testimony for CPC on 3/29/2023 2:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kate Paine	Individual	Support	Written Testimony Only

Comments:

REC promoted education is very much needed to keep multi unit dwellings viable