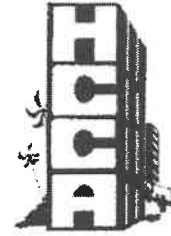




**Hawaii Council of Associations  
of Apartment Owners**  
**DBA: Hawaii Council of Community Associations**  
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 21, 2023

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

Re: Testimony in Support (With Amendments) of  
HB1509, HD1 Re Common-Interest Developments  
Hearing: Thursday, February 22, 2023, 2 p.m., Conf. Rm. #329

Chair Hashimoto, Vice-Chair Aiu and Members of the Committee:

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

HCCA supports passage of this bill to allow discussion and consideration of establishing one law in Hawaii for common-interest developments, i.e., condos (HRS 514B), co-ops (HRS 421I) and planned community associations (HRS 421J) so that residents of co-ops and planned community associations can enjoy the expanded rights and benefits of the provisions in HRS Chapter 514B (condominiums), e.g., registration with and oversight by the DCCA and Real Estate Commission; providing co-op lessees and homeowners with the right to speak on issues at board meetings and rights to redress through RICO actions; subsidized evaluative mediations and voluntary binding arbitration for dispute resolution, protection against retaliation by an association, board, managing agent or site manager. Although combining these developments under the DCCA would require additional staff, the revenue generated from the registration fees collected from these entities should offset the expense of staffing that department.

Other states have adopted such laws and Hawaii should do the same so that laws relating to condos, co-ops and planned community associations will confer the same rights and benefits to the owners and residents of these common-interest developments.

Section 2.(b)(3) of HD1 provides that the task group should “develop any necessary legislation to effectuate the purposes of this subsection.” I suggest that this provision be amended to include consideration of requiring the Real Estate Commission to implement policies requiring training and/or education of board members so that they will be able to better serve their community associations.

HB 1509 HD1 Relating to Common-Interest Oversight Task Force  
House Committee on Commerce and Consumer Protection  
February 21, 2023  
Page 2 of 2

Thank you for the opportunity to testify on this matter.



Jane Sugimura, President



February 18, 2023

VIA WEB TRANSMITTAL

Hearing Date: Wednesday, February 22, 2023

Time: 2:00 p.m.

Place: Conference Room 329

Representative Mark M. Nakashima, Chair  
Representative Jackson D. Sayama, Vice Chair  
Committee on Consumer Protection & Commerce

Re: Hawaii Chapter, Community Associations Institute's  
**Testimony in opposition to HB 1509 HD1**

Dear Chair Nakashima, Vice Chair Sayama and Committee Members:

I am the Chair of the Legislative Action Committee of the Community Associations Institute, Hawaii Chapter ("CAI-LAC"). We represent the condominium and community association industry and submit this testimony in opposition to HB 1509 HD 1. Attacks on self-governance are regularly introduced and HB 1509 HD 1 is no exception. The potential effect of this Bill would be to impair self-governance.

An article in the November 2017 Hawaii Bar Journal, titled *Challenges to Condominium Self-Governance* ("Challenges"), addresses some of those attacks, including the 2016 proposal for the "Office of Self-Governance Oversight," which was to be headed by a "condominium czar." The same concept was repackaged as the "Office of Condominium Complaints and Enforcement" in 2017.<sup>1</sup>

HB 1509 is merely a further repackaging of that same effort. The essential thrust is to impose granular control by government over entities that are explicitly intended to be self-governing. Note, though, that concern leading to recodification of condominium law included that prior condominium law "micromanages condominium associations."<sup>2</sup>

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<sup>1</sup> Both bills were premised on essentially the same proposed "finding." As framed in HB 35:

The legislature finds that while condominium self-governance has been successful in the State, there have been abuses as evidenced by the actions of certain condominium boards. The legislature also finds that a central enforcement body is needed to address the problems faced by many condominium owners who sometimes fear retribution from certain board members when challenging their governance.

<sup>2</sup> Per the Final Report to the Legislature-Recodification of Chapter 514A, Hawaii Revised Statutes –

It is also worth noting that the precise concept, of including other entities in the recodification process, was expressly *rejected*:

The Commission considered expanding the scope of the recodification to include other Hawaii common interest ownership communities under a UCIOA-like law. [This would have included HRS Chapters 421H (Limited Equity Housing Cooperatives), 421I (Cooperative Housing Corporations), 19 and 421J (Planned Community Associations).] The Commission quickly decided, however, that recodification of HRS Chapter 514A (Condominium Property Regimes) alone made the most practical sense at that time. Condominium issues, in general, are substantially different from those of single-family detached units in planned communities. The unit owner mindsets, problems, and solutions are quite different for each type of common interest ownership community.

A Florida court once observed that:

[I]nherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners . . . each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property.

Single-family detached unit homeowners in planned communities generally have different expectations than condominium owners regarding the degree of freedom they must give up when they buy their respective units. This is one of the factors that make it exceedingly difficult to reconcile the varying interests of unit owners in different forms of common interest ownership communities.

Final Report at 8-9. The same circumstances exist today. Condominiums and planned community associations are distinct.<sup>3</sup>

More particularly, here, the proposed findings contained in HB 1509 HD1 lack empirical support and are factually inaccurate. That is, the predicate assumption of a

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Condominium Property Regimes (“Final Report”):

The 2000 Legislature recognized that “[Hawaii’s] condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micromanages condominium associations . . . [t]he law is also overly regulatory, hinders development, and ignores technological changes and the present day development process.” Consequently, the Legislature directed the Real Estate Commission of the State of Hawaii (Commission) to conduct a review of Hawaii’s condominium property regimes law, and to submit draft legislation to the 2003 Legislature that would “update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law.”

<sup>3</sup> This distinction was noted by the Supreme Court of Hawaii in 2006:

“[A] fundamental distinction between condominium property regimes and planned community associations — [is] that condominium property regimes are creatures of statute, whereas planned community associations are primarily creatures of common law.”

Lee v. Puamana Community Association, 128 P.3d 874, 888 (Haw. 2006).

problem to be solved is undercut by scientifically valid data. As noted in the Challenges article mentioned above:

[E]mpirical data is available. CAI has commissioned scientifically valid national surveys of satisfaction with association living in 2005, 2007, 2009, 2012, 2014, and 2016. Those surveys have found that: "By large majorities, most residents rate their overall community experience as positive or, at worst, neutral." The range of those who have reported negative perspectives in those surveys, from 2005 to 2016, was 8 percent to 12 percent. This is consistent with CAI survey results for Hawaii. A total of "87% of residents rate their community association experience as positive (65%) or neutral (22%)." CAI issued a Statement of Survey Integrity following what it termed "inaccurate statements" by an entity that developed different findings through an on-line self-report survey. CAI argued that its polling was conducted scientifically and that the competing findings lacked scientific validity.

A 2020 satisfaction survey shows consistent findings. See <https://foundation.caionline.org/wp-content/uploads/2020/07/2020HomeSatisfactionSurveyResults07.22.20final.pdf>

The putative rationale for restructuring current law relates to dispute resolution. The apparent assumption is that "owners within condominium associations may also request the department of commerce and consumer affairs, including the real estate commission and regulated industries complaints office, to facilitate in the resolution of or intervene in a dispute, [while] owners in other developments are unable to request such support."

Current guidance on the DCCA Real Estate Branch website, however, emphasizes self-governance, minimal government intrusion and referral to other sources:

[Home](#) » [FAQs](#) » [Condominium FAQs](#) » What Services Does the Real Estate Branch (REB) Provide to the Condominium Community?

### **What Services Does the Real Estate Branch (REB) Provide to the Condominium Community?**

Condominium associations are set up by law to operate as self-governing entities with minimal government intervention. The Real Estate Branch ("REB"), through its condominium specialists, provides information, and referral services to the Hawaii condominium community, including owners, board members, developers, and general consumers, regarding the Hawaii condominium law, Hawaii Revised Statute (HRS), Chapter 514B, and other condominium-related issues. The educational efforts of the REB are governed by the Condominium Education Trust Fund (CETF), the purpose of which is to finance and promote education and research in the condominium field, promote efficient administration of condominium associations, and promote expeditious and inexpensive procedures for resolving association disputes,

including mediation and arbitration. As such, this educational emphasis is consistent with the philosophy underlying the condominium law of self-enforcement by the owners of the association.

The REB website address is [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec), where you will find information related to condominiums and the work of the REB, in addition to helpful links. E-mail correspondence may be directed to [hirec@dcca.hawaii.gov](mailto:hirec@dcca.hawaii.gov). To ask a question about the condominium law, call a condominium specialist. They may be reached at the REB at (808) 586-2643.

Revised 1/30/2023

[https://dcca.hawaii.gov/reb/faqs/condo\\_faqs/what-services-does-the-real-estate-branch-reb](https://dcca.hawaii.gov/reb/faqs/condo_faqs/what-services-does-the-real-estate-branch-reb)

These services include access to mediation and to arbitration. The mediation of disputes is mandated pursuant to both Chapter 421J (planned community associations) and Chapter 421I (cooperative housing corporations). Indeed, HRS §421I-9 effectively incorporates the mediation and arbitration requirements contained in Chapter 514B, governing condominiums.

Based upon the foregoing, we respectfully submit there is no obvious need or reason to fundamentally restructure well-functioning legal and contractual<sup>4</sup> relationships. Please defer HB 1509 HD1. Thank you for your time and consideration.

Sincerely yours,

/s/ R. Laree McGuire  
R Laree McGuire  
CAI LAC Hawaii

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<sup>4</sup> Potential constitutional concerns, relating to impairment of contract, are also a hazard to be considered.

**HB-1509-HD-1**

Submitted on: 2/20/2023 8:35:22 PM

Testimony for CPC on 2/22/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Mike Golojuch, Sr.	Palehua Townhouse Association	Support	Written Testimony Only

Comments:

Our Palehua Townhouse Association supports HB1509.

Mike Golojuch, Sr., President

**HB-1509-HD-1**

Submitted on: 2/21/2023 12:29:17 PM

Testimony for CPC on 2/22/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Idor Harris	Honolulu Tower AOA	Oppose	Written Testimony Only

Comments:

Honolulu Tower is a 396 unit condominium built in 1982 located at the corner of Maunakea and N. Beretania Streets. The Honolulu Tower Association of Apartment Owners board of directors (comprised of nine elected volunteer members, none of whom receive compensation) voted unanimously, at its Feb. 6, 2023 meeting, to oppose certain provisions of bills working their way through the legislature.

Included in those provisions are establishment of a task force to examine the feasibility of bringing various common interest developments in the state under one umbrella.

Idor Harris

Resident Manager, Honolulu Tower



**HB-1509-HD-1**

Submitted on: 2/20/2023 9:55:35 AM

Testimony for CPC on 2/22/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
lynne matusow	Individual	Oppose	Written Testimony Only

Comments:

Please accept this as testimony in strong opposition to HB1509. As a longtime (more than 30 years and counting) owner occupant of a downtown Honolulu condo, I get more and more frustrated with elected officials meddling in our affairs. Task forces mainly are a waste of time, money and energy. Often accomplishing nothing as their recommendations die. They are really a cop out for legislators who do not want to take a position.

If a forum is needed to deal with complaint rights, it is a forum for the vox populi (aka the public) to have established rights to complain about their legislators.



**GORDON M. ARAKAKI**

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February 21, 2023

Hearing Date: Wednesday, February 22, 2023

Time: 2:00 PM

Place: Conference Room 329

The Honorable Mark M. Nakashima, Chair  
The Honorable Jackson D. Sayama, Vice Chair  
House Committee on Consumer Protection and Commerce

Re: Comments on HB 1509, HD 1 – Relating to Common Interest Developments  
(Written Testimony Only)

Aloha, Chair Nakashima, Vice Chair Sayama, and Members of the House Committee on Consumer Protection and Commerce:

I am Gordon M. Arakaki, providing written comments as an individual regarding HB 1509, HD 1, which would establish a “Common-Interest Development Oversight Task Force” to examine the feasibility of bringing the various common interest developments in the State under the oversight of the Department of Commerce and Consumer Affairs (“DCCA”). I commend the Legislature for examining the feasibility of such a project before diving in. It will be more complicated than you might imagine and, if the task force determines that bringing the various common interest developments in Hawaii under the oversight of the DCCA is feasible, it will likely take longer than you think for the volunteer task force to craft appropriate and workable proposed legislation for consideration by the Legislature.

By way of background, from December 2000 through June 2004, I served as the Hawaii Real Estate Commission’s Condominium Law Recodification Project Attorney. During my time as the Recodification Project Attorney, I worked with lawmakers, the Commission, a blue ribbon advisory committee, and stakeholders throughout the State to “update, clarify, organize, deregulate, and provide for consistency and ease of use” of Hawaii’s then 44+ year old condominium law. I am the author of the Commission’s final report to the Legislature on the recodification of Hawaii’s condominium property regimes law,<sup>1</sup> which the Legislature stated should be used as an aid in understanding and interpreting the new law (HRS Chapter 514B).<sup>2</sup> For my work with the condominium community in “helping craft and advance the next

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<sup>1</sup> “Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes), in response to Act 213, Section 4 (SLH 2000)”, by the Hawaii Real Estate Commission, dated December 31, 2003 (“Commission’s 2003 Final Report”).

<sup>2</sup> Pursuant to Act 164 [Session Laws of Hawaii (“SLH”) 2004], the Hawaii Real Estate Commission’s 2003 Final Report should be used as an aid in understanding and interpreting the new condominium law (HRS Chapter 514B).

generation of the Hawaii Condominium Property Act,” I received the Community Associations Institute—Hawaii Chapter’s 2004 “Public Advocate Award.” Since that time (with a two-year break spent serving as Chief of Staff/Committee Clerk of the Senate Ways and Means Committee), I have worked as a private attorney specializing in, among a few other things, condominium law.

I have three main comments regarding HB 1509, HD 1:

1. Adopting a version of the Uniform Common Interest Ownership Act for Hawaii was considered and rejected during the recodification of Hawaii’s condominium law;
2. Assuming that it is feasible to bring the various common interest developments in Hawaii under the oversight of the DCCA, it is unlikely that the volunteer task force appointed pursuant to HB 1509, HD 1, will be able to craft appropriate and workable proposed legislation in time for the 2024 legislative session; and
3. Fundamental legal differences between Condominiums, Planned Community Developments, and Cooperative Housing Corporations appropriately call for some differences in governance.

**I. Adopting a version of the Uniform Common Interest Ownership Act for Hawaii was considered and rejected during the recodification of Hawaii’s condominium law.**

When Hawaii’s condominium law was last recodified, the Hawaii Real Estate Commission [which had been given the task by the Legislature in Act 213, Session Laws of Hawaii (“SLH”) 2000] considered adopting a version of the Uniform Common Interest Ownership Act (“UCIOA”) for Hawaii, but rejected the idea as impractical at that time. As stated in the Commission’s 2003 Final Report (“Scope of Recodification” at pages 8-9, internal citations omitted):

The Commission considered expanding the scope of the recodification to include other Hawaii common interest ownership communities under a UCIOA-like law. [This would have included HRS Chapters 421H (Limited Equity Housing Cooperatives), 421I (Cooperative Housing Corporations), and 421J (Planned Community Associations).] The Commission quickly decided, however, that recodification of HRS Chapter 514A (Condominium Property Regimes) alone makes the most practical sense at this time.

Condominium issues, in general, are substantially different from those of single-family detached units in planned communities. The unit owner mindsets, problems, and solutions are quite different for each type of common interest ownership community.

A Florida court once observed that:

[I]nherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners . . . each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property.

Single-family detached unit homeowners in planned communities generally have different expectations than condominium owners regarding the degree of freedom they

must give up when they buy their respective units. This is one of the factors that make it exceedingly difficult to reconcile the varying interests of unit owners in different forms of common interest ownership communities.

Although condominiums can take many physical forms – from high-rise developments to townhouses to single-family detached units – the common perception that a condominium is a tall building consisting of many individual units within a common structure (“horizontal property regime”) makes it easier for average people to understand the interdependence of unit owners in condominiums (as opposed to single-family detached homeowners in planned communities).

Therefore, the Commission limited its efforts to recodifying Hawaii’s condominium property regimes law.

In conjunction with the Commission’s 2003 public hearings on the recodification, some people requested that cooperatives be added to the community governance sections of the condominium law. The Commission ultimately decided to limit its efforts to recodifying Hawaii’s condominium law and followed the philosophy that problems should be fixed in the statutory provisions that contain or created the problems in the first place.<sup>3</sup>

**II. Assuming that it is feasible to bring the various common interest developments in Hawaii under the oversight of the DCCA, it is unlikely that the volunteer task force appointed pursuant to HB 1509, HD 1, will be able to craft appropriate and workable proposed legislation in time for the 2024 legislative session.**

Based on my experience as the Hawaii Condominium Law Recodification Attorney, determining the feasibility of bringing the various common interest developments in Hawaii under the oversight of the DCCA *and* crafting appropriate and workable proposed legislation in time for the 2024 legislative session will be, at best, extremely difficult. The fact that the task force appointed pursuant to HB 1509, HD 1, will consist entirely of volunteers makes it even less likely that workable legislation can be prepared in the given timeframe.

To give you an idea of what was involved in recodifying Hawaii’s condominium law, I have attached to this testimony my work plan for the Recodification. It would appear to make sense for the task force envisioned in HB 1509, HD 1, to follow many of the same steps.

**III. Fundamental legal differences between Condominiums, Planned Community Developments, and Cooperative Housing Corporations appropriately call for some differences in governance.**

The basic question of who owns what in the “various common interest developments” demonstrates the fundamental legal differences between condominiums, planned community developments, and cooperative housing corporations. These differences in ownership make it clear that some difference in governance of the various common interest developments is appropriate.

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<sup>3</sup> See, Commission’s 2003 Final Report, footnote 19, at page 8.

Pursuant to HRS §514B-3, a condominium is “real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.” Furthermore, “[r]eal estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.” In other words, a development is not a condominium unless the common elements (e.g., roofs, driveways, common area parks) are owned jointly by all of the unit owners.

In planned community developments, the units and their lots are entirely and separately owned and the common areas are owned by the planned community association legal entities (usually organized as nonprofit corporations).

In cooperative housing corporations, the housing corporation owns the entire structure and grounds, including all of the housing units. Each of the members of the corporation (i.e., stockholders) is entitled to the exclusive possession of a unit through a proprietary lease. [Note that Section 1 of HB 1509, HD 1, incorrectly asserts that individuals own property in all common interest developments. That is not the case in cooperative housing corporations.]

Therefore, “getting the permission of the owner” to do things on various parts of common interest developments may differ depending on whether you live in a condominium, planned community development, or cooperative housing corporation. And that is necessary and reasonable.

#### **IV. Conclusion.**

Thank you for your time and consideration of my comments regarding HB 1509, HD 1, as you ponder this issue.

Sincerely,

Gordon M. Arakaki

# HRS Chapter 514A Recodification Workplan

## I. Purpose of Recodification

Pursuant to Act 213, Session Laws of Hawaii (SLH) 2000, the purpose of recodifying Hawaii Revised Statutes (HRS) Chapter 514A is to “update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law.”

## II. Act 213, SLH 2000 – Basic Requirements

### A. Review laws and uniform acts for guidance in the recodification process.

1. Examine condominium and common interest community laws of other jurisdictions.
2. Examine the Uniform Common Interest Ownership Act, the Uniform Condominium Act, the Uniform Planned Community Act, and other uniform laws that may be helpful in pursuing recodification.  
[Note: Members of state and national organizations were consulted about their practical experience with the uniform common interest community laws.]
3. Examine other related laws and issues, such as those related to mandatory seller disclosures, zoning, use of agricultural lands for condominiums, and subdivision of land.

### B. Solicit input from organizations and individuals affected by Hawaii’s condominium property regimes (CPR) law.

1. Consult with public and private organizations and individuals whose duties and interests are affected by the CPR law (i.e., stakeholders), including the Department of Commerce and Consumer Affairs, and other state, county, and private agencies and individuals.
2. Conduct a public hearing for the purpose of receiving comments and input on the CPR law and related laws and issues.  
[Note: As part of its original workplan (codified in Act 131, SLH 2003), the Real Estate Commission conducted a series of public hearings to better solicit input from stakeholders – particularly those on the Neighbor Islands.]

## III. Additional Guidelines

- A. Balance the desire to modernize Hawaii’s CPR law with the need to protect the public and to allow the condominium community to govern itself.
- B. Understand the historical perspective regarding the development of Hawaii’s CPR law, and use that perspective to help fashion the new law.
- C. Engage the participation of stakeholders early in the recodification process.

IV. Practical/Operational Considerations

A. Staffing

1. Act 213, SLH 2000, authorized the establishment of one full-time temporary condominium specialist position to conduct the CPR law recodification. The position was not filled until December 19, 2000.
2. The position and funding authorized by Act 213, SLH 2000, was extended by Act 131, SLH 2003, to complete the recodification project.

B. Timeframe

1. Act 131, SLH 2003, requires the Real Estate Commission to submit a final report on the CPR law review and draft legislation to the Legislature at least 20 days before the convening of the 2004 regular session.
2. A first draft of the recodified condominium law based on the Uniform Condominium and Uniform Common Interest Ownership Acts was completed in January 2002. Based on feedback the Commission received from its Blue Ribbon Recodification Advisory Committee, realtors, property managers, and others, HRS Chapter 514A (rather than the uniform laws) was used as the basis for most of draft #2 of the recodification (i.e., general provisions; creation, alteration, and termination of condominiums; protection of purchasers; administration and registration of condominiums; and condominium management education fund). The Uniform Condominium Act and Uniform Common Interest Ownership Act – along with appropriate provisions of HRS Chapter 514A, other jurisdictions’ laws, and the Restatement of the Law, Third, Property (Servitudes) – remained as the basis for condominium governance matters. Following the 2003 legislative session, the Commission: (i) continued to work with affected members of the community and the Blue Ribbon Recodification Advisory Committee to refine Recodification Draft #2; (ii) took the resulting draft (“Public Hearing Discussion Draft”) to public hearing in each of Hawaii’s counties; and (iii) worked with the Blue Ribbon Recodification Advisory Committee and others to incorporate appropriate changes and submit a final draft of the proposed condominium law recodification to the 2004 Legislature.

Goals/Actions to be Taken	Target Dates	Comments
<b>Goal I:</b> Research Laws of Other Jurisdictions, Uniform Acts, and Commentary to gain an Understanding of Relevant Issues and Approaches to CPR Regulation		
A. Examine condominium and common interest community laws of other jurisdictions; compare with HRS Chapter 514A.	1/2/01 – 3/1/01; ongoing	See Attachment #1, “Selected Relevant Laws”

Goals/Actions to be Taken	Target Dates	Comments
<p>B. Examine the Uniform Common Interest Ownership Act (UCIOA), Uniform Condominium Act (UCA), Uniform Planned Community Act (UCPCA); compare with HRS Chapter 514A.</p> <p>1. Examine other jurisdictions' practical experience with the uniform common interest community laws.</p>	<p>1/2/01 – 3/1/01</p> <p>ongoing</p>	<p>Websites:</p> <p><a href="http://www.law.upenn.edu/bll/ulc/fnact99/1990s/ucioa94.htm">http://www.law.upenn.edu/bll/ulc/fnact99/1990s/ucioa94.htm</a></p> <p><a href="http://www.law.upenn.edu/bll/ulc/fnact99/1980s/uca80.htm">http://www.law.upenn.edu/bll/ulc/fnact99/1980s/uca80.htm</a></p> <p><a href="http://www.law.upenn.edu/bll/ulc/fnact99/1980s/upca80.htm">http://www.law.upenn.edu/bll/ulc/fnact99/1980s/upca80.htm</a></p> <p><i>Section by section comparison of UCIOA, UCA, and HRS Chpt. 514A completed. (✓ 3/8/01; Word document)</i></p> <p>Consult with representatives from state and national organizations having practical experience with the uniform common interest community laws.</p> <p><i>Attended Community Associations Institute National Conferences and Forums 5/3-5/5/01, 10/18-10/20/01, and 5/2-5/4/02. Met with experts and practitioners from many other jurisdictions.</i></p>
<p>C. Examine other related laws (including case law) and issues, such as those related to mandatory seller disclosures, zoning, use of agricultural lands for condominiums, and subdivision of land.</p>	<p>1/2/01 – 3/1/01; ongoing</p>	<p>See Attachment #1, "Selected Relevant Laws"</p>
<p>D. Research the policy basis for HRS 514A and its amendments.</p>	<p>1/2/01 – 3/1/01; ongoing</p>	<p>See Attachment #1, "Selected Relevant Laws"</p>
<p>E. Examine Attorney General's opinions relating to various sections of HRS Chapter 514A.</p>	<p>1/2/01 – 3/1/01</p>	<p><i>Hard copy of AG opinions (8/8/77-present) in REC files reviewed. (✓ 2/20-2/21/01)</i></p> <p><i>Eventually, the Commission should scan and post AG opinions as part of its virtual bookshelf. Currently, only formal AG opinions are posted on the AG's website (1992-2000, <a href="http://www.state.hi.us/ag/optable/table.htm">http://www.state.hi.us/ag/optable/table.htm</a>) and the Hawaii State Bar Association's website (1987-1992, <a href="http://hsba.org/Hawaii/Admin/Ag/agindex.htm">http://hsba.org/Hawaii/Admin/Ag/agindex.htm</a>). None of these formal opinions specifically relate to HRS Chapter 514A.</i></p> <p><i>✓ 2/7/02 – Hard copy of AG opinions (8/8/77-3/5/98) in REC files summarized and photocopied for distribution to Blue Ribbon Recodification Advisory Committee. Both the summary and actual AG opinions should be posted on the REC website.</i></p>
<p>F. Research treatises, articles, commentary, and other such materials to gain insight into alternative approaches to CPR regulation.</p>	<p>1/2/01 – 3/1/01; ongoing</p>	<p>See Attachment #2, "Selected Resource List"</p>



Goals/Actions to be Taken	Target Dates	Comments
<b>Goal II: Determine and Prioritize Areas of Focus</b> Answer the question: What do we want to see in the recodified Hawaii CPR law?		
A. Review relevant literature.	12/19/00 – 6/1/01; ongoing	See Attachment #2, "Selected Resource List"
B. Determine initial areas of focus; prioritize.	12/19/00 – 3/1/01	The 1995 Real Estate Commission's report to the Legislature on "A Plan to Recodify Chapter 514A, Hawaii Revised Statutes, Condominium Property Regime" identified (as a "partial listing") the following areas for research/statutory amendments:
		1. Registration Issues: Definition of "apartment;" definition of "developer;" contents of Declaration; circumstances requiring registration of a condominium project; exemptions from registration; circumstances requiring the issuance of public reports; disclosures on resales of apartments; agricultural condominiums and the respective county codes; performance bond.
		2. Management Issues: Association mailouts and notices of meetings (i.e., in removal of directors, board elections, proxy solicitations); retroactivity of certain statute provisions (i.e., bylaw requirements); bylaw amendments; managing agents competencies real estate brokers license requirement; directors' duties; directors' liability; voting in conflict of interests situations; budgeting and reserves (board's power to assess); election and removal of directors; renting common elements; proxy forms and solicitation; Robert's Rules of Order – Uniform Application; officers' requirements; owner's access to association records not specifically enumerated in the statute; financial controls and handling of association funds.
C. Work with DCCA management and staff, Real Estate Commission members, and other stakeholders to refine areas of focus and priorities. <ul style="list-style-type: none"> <li>• Meet regularly with DCCA Real Estate Branch Supervising Executive Officer and/or Senior Condominium Specialist.</li> </ul>	12/19/00 – 6/1/01  12/19/00 – 6/30/04	Make initial determinations, then adjust as necessary throughout the recodification process.  Daily meetings for first six months. Meet as appropriate after that.

Goals/Actions to be Taken	Target Dates	Comments
<ul style="list-style-type: none"> <li>Meet regularly with Real Estate Commission Condominium Review Committee (CRC) Chair.</li> <li>Meet with deputy attorney generals (past and present) regarding their experience with HRS Chapter 514A.</li> </ul>	<p>12/19/00 – 6/30/04</p> <p>12/19/00 – 6/1/01; ongoing</p>	<p>Bi-weekly meetings with CRC Chair for first six months. Meet as appropriate after that.</p> <p>Discussed possible additional goals: Examine interplay of Hawaii's CPR law with new technologies (e.g., Internet sales of timeshares); improve on-line capabilities in the condominium arena.</p> <p>Spoke informally with past and present deputy attorney generals.</p>
<p><b>Goal III: Get input from organizations and individuals affected by the CPR law (i.e., stakeholders)</b></p>		
<p>A. Compile list of organizations and individuals to be contacted regarding recodification of HRS Chapter 514A.</p>	<p>1/2/01; ongoing updates</p>	<p>The 1995 Real Estate Commission's report to the Legislature on "A Plan to Recodify Chapter 514A, Hawaii Revised Statutes, Condominium Property Regime" identified (as a "partial listing") the following "interested stakeholders who should be consulted on the recodification":</p> <ol style="list-style-type: none"> <li>Regulators directly involved with Chapter 514A (Real Estate Commission members, Real Estate Commission staff involved with condominium governance and project registration, DCCA Director, Professional and Vocational Licensing Division Administrator and staff who may be impacted by the recodification, Regulated Industries Complaints Office).</li> <li>Other State and county agencies' regulators directly or indirectly involved with Chapter 514A (State and county departments including Planning and Land Utilization – now combined under Planning and Permitting, State Bureau of Conveyances, Hawaii Housing Authority – now combined under Housing and Development Corporation of Hawaii, other 49 state regulators (where applicable) involved with condominium governance and project registration.</li> <li>Legislators (chairs of Senate and House Consumer Protection Committees, Housing Committees, Judiciary Committees, and Finance/Ways and Means Committees).</li> </ol>

Goals/Actions to be Taken	Target Dates	Comments
		<p>4. Representatives from various groups and organizations involved with condominium project registration and governance matters (Real Estate Commission's Condominium Project Review Consultants, Hawaii State Bar Association Real Property and Financial Services Section, Hawaii Chapter of the Community Association Institute, Hawaii Council of Association of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners Association, Hawaii Real Estate Research and Education Center, Hawaii member of the National Conference of Commissioners on Uniform State Laws, Hawaii member of the Restatement of the Law of Property 3<sup>rd</sup>, Hawaii Association of Realtors® including its island boards, State lending institutions, mortgage companies, escrow companies, insurance companies).</p> <p>To the stakeholders listed by the Real Estate Commission in its 1995 recodification plan, we should add other representatives of state professional, industry, and trade organizations, such as the Building Industry Association, Land Use Research Foundation, Mortgage Bankers Association, Hawaii Bankers Association, Hawaii Developers Council, Condominium Council of Maui, and more.</p>
<p>B. Request comments of those organizations and individuals listed above regarding existing condominium law and practices and suggestions for change.</p>	<p>3/31/01; ongoing</p>	<p>This "request for comments" will be in addition to the input regularly solicited by the Real Estate Commission Condominium Review Committee as part of its monthly public meetings.</p> <p>✓ 4/16/01, request for comments mailed out to condominium law recodification stakeholders.</p> <p><i>[See also, under Goal IV.E. below, various speaking engagements.]</i></p> <p>Recodification of HRS Chapter 514A is (and has been for some time) a permanent agenda item for the Condominium Review Committee's meetings. The Committee continues to accept comments on the recodification from any organizations or individuals wishing to address the Committee at its regular meetings.</p> <p>In addition, comments are routinely requested in the <i>Hawaii Condominium Bulletin</i> and the <i>Hawaii Real Estate Commission Bulletin</i>.</p>
<p>C. Conduct public hearings to receive comments and input on the CPR law and related laws and issue.</p>	<p>Between 9/1/03 and 10/15/03</p>	<p>In addition to the single public hearing required by Act 213, SLH 2000, the Real Estate Commission conducted public hearings on each of the Neighbor Islands. (This was part of the Commission's original workplan. It was codified in Act 131, SLH 2003, which extended the</p>

Goals/Actions to be Taken	Target Dates	Comments
		condominium law recodification project for one year.) Hearings were held as follows: Kauai – September 16, 2003 (1:00 - 4:30 p.m.), State Office Building; Maui – September 23, 2003 (3:00 - 6:30 p.m.), Kihei Community Center; Kona – September 29, 2003 (3:00 - 6:30 p.m.), Kona Civic Center; Hilo – September 30, 2003 (1:00 - 4:30 p.m.), State Building; Oahu – October 7, 2003 (6:00 - 9:30 p.m.), State Capitol.
<b>Goal IV:</b> Keep stakeholders informed of progress on the recodification of Hawaii's CPR law		
A. Use the Real Estate Commission's website as the primary means of keeping stakeholders informed of progress on recodification of HRS Chapter 514A.	1/2/01 – 6/30/04	Website: <a href="http://www.hawaii.gov/hirec/">http://www.hawaii.gov/hirec/</a>
B. Develop printed material for those who do not have access to the Internet.	1/2/01 – 6/30/04	Address the "digital divide" issue.
C. Use the <i>Hawaii Condominium Bulletin</i> as another vehicle for keeping stakeholders informed of progress on the recodification of HRS Chapter 514A.	1/2/01 – 6/30/04	<i>February 2001 issue at page 5</i> <i>June 2001 issue at page 5</i> <i>September 2001 issue at pages 1 and 7</i> <i>December 2001 issue at page 1</i> <i>March 2002 issue at page 1</i> <i>July 2002 issue at pages 1 and 6</i> <i>October 2002 issue at pages 1 and 7</i> <i>February 2003 issue at page 5</i> <i>June 2003 issue at page 7</i> <i>October 2003 issue at page 6</i>
C.1 Use the <i>Hawaii Real Estate Commission Bulletin</i> as another vehicle for keeping stakeholders informed of progress on the recodification of HRS Chapter 514A.	1/2/01 – 6/30/04	<i>February 2001 issue at page 11</i> <i>March 2002 issue at page 8</i> <i>October 2002 issue at page 3 ("The Chair's Message")</i> <i>February 2003 issue at page 3 ("The Chair's Message")</i> <i>May 2003 issue at page 11</i> <i>August 2003 issue at page 3 ("The Chair's Message")</i> <i>November 2003 issue at page 3 ("The Chair's Message")</i>

Goals/Actions to be Taken	Target Dates	Comments
D. Develop articles and opinion/editorial pieces for local newspapers when appropriate.	1/2/01 – 6/30/04	<p><i>“Rewriting Hawaii’s Condominium Property Act,” Ka Nu Hou – The Newsletter of the Real Property &amp; Financial Services Section of the Hawaii State Bar Association, March 2001 at pages 1-2</i></p> <p><i>“Industry makes move to redefine 1960s condo law,” Pacific Business News, June 8, 2001 at page 40</i></p> <p><i>“Commissioner’s Corner – Condominium Recodification and New Condo Laws,” Hawaii REALTOR® Journal, September 2002, at page 2</i></p> <p><i>“Public hearing on draft of condo law changes set Tuesday,” The Maui News, September 22, 2003, at page A3</i></p>
E. Use the Real Estate Commission Condominium Review Committee’s monthly public meetings, Condominium Speakership Program, Condominium Specialists Office for the Day (on Neighbor Islands) Program, and Interactive Participation with Organizations Program as means to keep stakeholders informed of progress on the recodification of HRS Chapter 514A.	Ongoing programs	<p>2/16/01 – <i>Speak with Hawaii State Bar Association Real Property &amp; Financial Services Section Board of Directors (approximately 20 regular attendees) [Note: Continue to sit in on monthly HSBA-RPFS Board meetings]</i></p> <p>3/28/01 – <i>Speak at Condominium Council of Maui’s Annual Meeting (approximately 120 attendees)</i></p> <p>7/2/01 – <i>Speak at Land Use Research Foundation Board Meeting (approximately 35 attendees)</i></p> <p>7/13/01 – <i>Speak at West Oahu Realty, Inc. Meeting (approximately 15 attendees)</i></p> <p>7/19/01 – <i>Speak at Community Associations Institute – Hawaii Chapter Seminar (approximately 100 attendees)</i></p> <p>7/24/01 – <i>Speak at Chun, Kerr, Dodd, Beaman &amp; Wong in-house meeting (approximately 8 attendees)</i></p> <p>9/7/01 – <i>Speak at Lambda Alpha International – Aloha Chapter (an honorary land economics society) Meeting (approximately 35 attendees)</i></p> <p>9/11/01 – <i>Speak at Waianae Realtor/Lender Educational Presentation sponsored by Title Guaranty, Waipahu Branch (approximately 40 attendees)</i></p> <p>9/26/01 – <i>Speak at Mortgage Bankers Association of Hawaii Meeting (approximately 10 attendees)</i></p> <p>9/28/01 – <i>Speak at Herbert K. Horita Realty, Inc. Meeting (approximately 25 attendees)</i></p> <p>11/27/01 – <i>Speak at Mortgage Bankers Association of Hawaii Meeting</i></p>

Goals/Actions to be Taken	Target Dates	Comments
		<p><i>(approximately 50 attendees)</i></p> <p>1/4/02 – <i>Speak at Real Estate Commission Community Outreach Meeting (and earlier committee meetings) on Maui (approximately 15 attendees)</i></p> <p>3/22/02 – <i>Speak at Condominium Council of Maui’s Annual Meeting (approximately 100 attendees) [Note: Wrote article for Condominium Council of Maui’s Summer 2002 Newsletter]</i></p> <p>5/23/02 – <i>Speak at Business Development Meeting sponsored by City Bank (approximately 35 attendees)</i></p> <p>6/14/02 – <i>Speak at Real Estate Commission Community Outreach Meeting on Kauai (approximately 10 attendees)</i></p> <p>6/24/02 – <i>Speak at meeting with Land Use Commission, Dept. of Business, Economic Development, &amp; Tourism – Office of Planning, and County Planning Directors (approximately 10 attendees)</i></p> <p>7/18/02 – <i>Speak at Community Associations Institute – Hawaii Chapter Seminar (approximately 80 attendees)</i></p> <p>8/5/02 – <i>Speak at Hawaii Developers Council Meeting (approximately 30 attendees) [Note: Primarily small developers]</i></p> <p>11/12/02 – <i>Speak at Appraisal Institute-Hawaii Chapter Meeting (approximately 30 attendees)</i></p>
		<p>1/10/03 – <i>Speak at Real Estate Commission Community Outreach Meeting (and earlier committee meetings) on Maui (approximately 15 attendees)</i></p> <p>3/18/03 – <i>Speak at Condominium Council of Maui’s Annual Meeting (approximately 100 attendees)</i></p> <p><i>(Also met with, and will continue to meet and talk with, various interested individuals.)</i></p>
<b>Goal V: Draft Recodification Legislation for 2004 Regular Session</b>		
A. Begin actual drafting – recodification of HRS Chapter 514A	7/1/01	The Commission is targeting production of a series of HRS Chapter 514A recodification drafts. Each draft will be posted/circulated for comment among stakeholders until a final draft is submitted to the

Goals/Actions to be Taken	Target Dates	Comments
		Legislature. <i>[Note: The Commission is submitting proposed legislation to the 2004 Legislature.]</i>
B. Post first draft of recodified HRS Chapter 514A.	1/1/02	Note: As initial drafts of individual sections are completed, they should be circulated among the DCCA Real Estate Branch Supervising Executive Officer, Senior Condominium Specialist, and CRC Chair for comment/revision. The draft should then be reviewed by the CRC and Real Estate Commission for approval to circulate/post as an initial "working draft."  <i>✓ 1/31/02 – First draft of recodification posted on Real Estate Commission website.</i>
C. Convene Blue Ribbon Recodification Advisory Committee to review and revise drafts of HRS Chapter 514A recodification.	1/15/02 – 12/31/02; ongoing	The Commission plans to tap into our community's collective expertise by asking various individuals to carefully and critically review our drafts of the HRS Chapter 514A recodification.  The first step in this process is the convening of a Blue Ribbon Recodification Advisory Committee (comprised of attorneys whose practices, collectively, cover the full spectrum of condominium law) to review and revise drafts of the recodification. The Blue Ribbon Recodification Advisory Committee will meet monthly from January through at least December 2002.  The Commission plans to widen the breadth of our community reviewing the recodification with each successive draft.  <i>✓ 1/31/02-12/26/02 – The Blue Ribbon Recodification Advisory Committee and separate subject matter subcommittees met at least once-a-month. In the month of October 2002, members met twice-a-week for half-day sessions to work on the second draft of the recodification.</i>
C.1 Post second draft of recodified HRS Chapter 514A.	1/15/03	<i>✓ 1/15/03 – Second preliminary draft of recodification posted on Real Estate Commission website as part of progress report to Legislature.</i>
D. Request that Legislature extend recodification project for one year (Commission's recommended legislation to be submitted to 2004 Legislature.)	1/2/03 – 5/1/03	<i>✓ Act 131, SLH 2003.</i>
E. Public Hearings on second draft of HRS Chapter 514A recodification.	9/1/03 – 10/15/03	<i>In addition to the single public hearing required by Act 213, SLH 2000, the Real Estate Commission conducted public hearings on each of the Neighbor Islands. (This was part of the Commission's original workplan. It was codified in Act 131, SLH 2003, which extended the</i>



Goals/Actions to be Taken	Target Dates	Comments
		condominium law recodification project for one year.) Hearings were held as follows: Kauai – September 16, 2003 (1:00 - 4:30 p.m.), State Office Building; Maui – September 23, 2003 (3:00 - 6:30 p.m.), Kihei Community Center; Kona – September 29, 2003 (3:00 - 6:30 p.m.), Kona Civic Center; Hilo – September 30, 2003 (1:00 - 4:30 p.m.), State Building; Oahu – October 7, 2003 (6:00 - 9:30 p.m.), State Capitol. Recodification Project Attorney was slowed by surgery in May 2003.
E.1 Pre-Public Hearings meeting(s) and/or post-Public Hearings meeting(s) will be held with Blue Ribbon Recodification Advisory Committee.	3/1/03 – 7/31/03	The membership of the Blue Ribbon Recodification Advisory Committee will be expanded. Suggested additions to the advisory committee include representatives of the Hawaii Council of Associations of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners Association, Community Association Institute – Hawaii Chapter, Hawaii Association of Realtors®, and the Condominium Council of Maui.  ✓ Done per Act 131, SLH 2003. Recodification Project Attorney had been meeting with representatives of those groups before Act 131 was enacted. Numerous pre- and post-hearing meetings were held.
F. Post third draft of recodified HRS Chapter 514A.	7/31/03	✓ 9/09/03 – Public Hearing Discussion Draft of recodification posted on Real Estate Commission website. Recodification Project Attorney was slowed by surgery in May 2003.
G. Seek Attorney General's Office review of draft #3, HRS Chapter 514A recodification.	8/1/03	If the Commission's condominium law recodification is to be submitted to the Governor for inclusion in the Administration's legislative package, this review by the Attorney General's Office would be to flag any problems the Administration may have with the recodification.  [Note: The Commission is submitting the proposed legislation independently – directly to the Legislature.]
H. Submit draft legislation to Governor for inclusion in Administration's 2004 legislative package.	10/1/03	The Attorney General's Office, the Department of Budget and Finance, and the Governor's executive staff will review the proposed legislation. They may suggest revisions.  [Note: The Commission is submitting the proposed legislation independently – directly to the Legislature.]
I. Post final draft of recodified HRS Chapter 514A (i.e., draft that will be submitted to 2004 Legislature as part of Commission's final report).	12/31/03	
J. Final Report to Legislature, with proposed legislation, to be submitted to 2004 Legislature.	1/1/04	The 2004 State Legislature convenes on Wednesday, January 21, 2004. The final report to the Legislature is due twenty days before the Legislature convenes.





**HB-1509-HD-1**

Submitted on: 2/18/2023 12:56:42 PM

Testimony for CPC on 2/22/2023 2:00:00 PM

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

Comments:

I am a consultant for the association industry and oppose this Bill. There are several forms of common interest realty association to include condos, homeowner associations, planned unit developments, and cooperatives. There are separate laws to address the specific needs of each of those types of associations. A condo is more regulated with the current law requiring a managing agent to be a real estate broker. The condo law is quite detailed. Homeowner associations on the other hand, are very different as owners own and are responsible for their property. There is no common shared space as to their home. There is no licensing requirement for management. The duties are very different. As to a Co-Op they are non profit corporations with ownership through a proprietary lease. They too have their own law and fall under the nonprofit corporation act. Each operates within the governance framework established in their organizational recorded documents. There is no sensible way to take of the different issues and convert them under the DCCA. This Bill has consolidated many issues that need to be addressed independently. The task force will not help the different needs.

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February 17, 2023

Chair Mark M. Nakashima  
Vice Chair Jackson D. Sayama  
Committee on Consumer Protection & Commerce  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **HB 1509 HD1 OPPOSE**

Dear Chair Nakashima, Vice Chair Sayama and Committee Members:

HB 1509 HD1 should not be passed by the Committee. This is so because the proposed oversight task force is unwarranted.

The rationale for the bill is that owners in planned community associations ("421J") and cooperative housing corporations ("421-I") "must privately resolve their disputes through their internal processes or judicial process." That is inaccurate.

The mediation of disputes is mandated pursuant to both Chapter 421-J and Chapter 421-I. Indeed, HRS §421I-9 effectively incorporates the mediation and arbitration requirements contained in the condominium statute.

Thus, the bill also inaccurately asserts that resort to internal processes or judicial process "may be costly to the owner in comparison to the gravity of the dispute and an alternative mechanism for oversight should be examined." Community mediation centers exist to provide low-cost alternative dispute resolution services to the public.

Cooperative housing corporations are relatively rare. It is difficult to perceive the public policy need to assert oversight by the department of commerce and consumer affairs.

As to planned community associations, the Supreme Court of Hawaii has noted: "a fundamental distinction between condominium property regimes and planned community associations - that condominium property regimes are creatures of statute, whereas planned community associations are primarily creatures of common law." Lee v. Puamana Community Association, 128 P.3d 874, 888

Chair Mark M. Nakashima  
Vice Chair Jackson D. Sayama  
February 17, 2023  
Page 2 of 2

(Haw. 2006).<sup>1</sup> Lesser governmental involvement in planned community associations has been the norm.

Fundamental disruption to legal relationships should only be considered in relation to genuine need and pursuant to careful study. Such a study is unwarranted here, because the stated rationale is not based on genuine need.<sup>2</sup>

Very truly yours,

*/s/ Philip Nerney*

Philip S. Nerney

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<sup>1</sup> Moreover, the contractual nature of planned community associations implicates significant liberty interests:

[T]he right of private contract is no small part of the liberty of the citizen, and ... the usual and most important functions of courts of justice is rather to maintain and enforce contracts, than to enable parties thereto to escape from their obligation on the pretext of public policy.... [I]f there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice.

Kutkowski v. Princeville Prince Golf Course, LLC, 129 Hawaii 350, 300 P.3d 1009, 1018 (Haw. 2013).

<sup>2</sup> If a need existed, HB 1509 would hardly be adequate to the task. The proposed task force could not reasonably be expected to be credible absent a much broader stakeholder base, such as was gathered in connection with the recodification of condominium law.