

# LAW OFFICES OF PHILIP S. NERNEY, LLLC

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February 13, 2023

Chair Troy N. Hashimoto  
Vice Chair Micah P.K. Aiu  
Committee on Housing  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **HB 1509 OPPOSE**

Dear Chair Hashimoto, Vice Chair Aiu and Committee Members:

HB 1509 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 Troy N. Hashimoto  
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(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.

**LATE**

**HB-1509**

Submitted on: 2/14/2023 3:11:14 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

<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. Please pass this bill.

Mike Golojuch, President

**LATE**

**HB-1509**

Submitted on: 2/14/2023 3:51:59 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Raelene Tenno	Individual	Support	Written Testimony Only

Comments:

I am Raelene Tenno, Education Chair for Hawaii Council of Community Associations.

I am submitting testimony in support of HB1509 to consider establishing one law for developments such as Co-ops under HRS 421I, Planned unit Developments/Planned Community Associations under HRS 421 and bring them under HRS 514B which is much more expanded and clearer than the other two statutes.

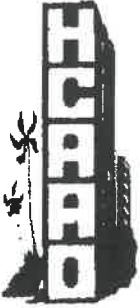
This will allow DCCA and RICO to provide homeowners with complaint rights.

Additionally, the education requirements for Realtors and Board members would be simplified if the 2 were brought under HRS 514B.

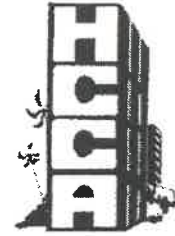
Thank you for the opportunity to testify on HB1509.

Raelene Tenno

Education Chair and Condo Owner



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



February 14, 2023

Rep. Troy Hashimoto, Chair  
Rep. Micah Aiu, Vice-Chair  
House Committee on Housing

**LATE**

Re: Testimony in Support of  
HB1509 Re Common-Interest Developments  
Hearing: Wednesday, February 15, 2023, 9:30 a.m., Conf. Rm. #312

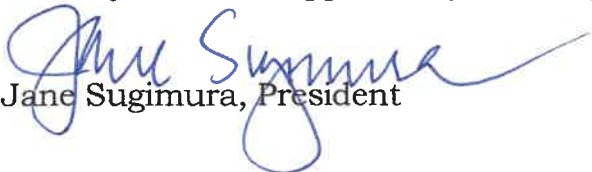
Chair Hashimoto, Vice-Chair Aiu and Members of the Committee:

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 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.

Thank you for the opportunity to testify on this matter.

  
Jane Sugimura, President

**HB-1509**

Submitted on: 2/13/2023 2:42:53 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

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

Comments:

To put any further task under auspices of DCCA can never rectify the problem of self-governance that is their short answer to owners who have issues. Advice is to take them elsewhere, when it's gvmnt by and for people. Industry and gvmnt are too tied at the hip. State has to provide a truly independent office whose goal it is, is to insure bldg health above all else.

**HB-1509**

Submitted on: 2/13/2023 6:28:30 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

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

Comments:

The legal structure, governing documents, and licensing are an obstacle to supervisin by DCCA. There is nothing wrong with the current system.

**HB-1509**

Submitted on: 2/14/2023 5:28:27 AM

Testimony for HSG on 2/15/2023 9:30:00 AM

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

Comments:

I support HB1509



**HB-1509**

Submitted on: 2/14/2023 8:28:31 AM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Lila Mower	Individual	Support	Written Testimony Only

Comments:

support

**LATE** **LATE**

**HB-1509**

Submitted on: 2/15/2023 9:28:13 AM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
David H Levy	Individual	Support	Written Testimony Only

Comments:

As a retired CPA from Northern California with 40+ years experience in the community association industry, including living most of my life in several different community associations, I support the continued effort to improve the lot of often under-represented owners of community associations. The first step needs to be to identify (and register for the purpose of communication) all community associations in the state of Hawaii (not just condominiums). In California, approximately 1/3 of the State's 55,000 community associations are planned unit developments (i.e. generally detached single-family home projects). If asked, I would be pleased to contribute some of my knowledge and experience to such an oversight task force.