



Robin K. Matsunaga
Ombudsman

Yvonne M.F. Jinbo
First Assistant

**OFFICE OF THE OMBUDSMAN
STATE OF HAWAII**

465 South King Street, 4th Floor
Honolulu, Hawaii 96813
Tel: 808-587-0770 Fax: 808-587-0773 TTY: 808-587-0774
complaints@ombudsman.hawaii.gov

**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,
ON H.B. NO. 2524, H.D. 1, A BILL FOR AN ACT
RELATING TO CONDOMINIUMS**

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

MARCH 14, 2024

Chair McKelvey and Members of the Committee on Government Operations:

Thank you for the opportunity to share my serious concerns on H.B. No. 2524, H.D. 1. My concerns are specifically in regard to Section 1 of the bill.

Section 1 amends Chapter 96, Hawaii Revised Statutes, by adding a new section that would require the Ombudsman to issue the findings, within an unspecified number of days, of the Ombudsman's investigation of complaints against the Real Estate Commission (Commission) that pertain to the Commission's duties that are proposed in Section 2 of the bill. Although the intent of the proposed amendment may be to address or emphasize the time-sensitivity and importance of resolving disputes between condominium unit owners and associations subject to Chapter 514B, HRS, establishing a deadline for the Ombudsman to issue findings for the specified type of investigations will have significant adverse consequences that the bill author(s) may not have been aware of, which I will explain below.

First, it is difficult, if not impossible, to predict how long an investigation will take. Among the myriad of factors that impact the duration of an investigation, the most common are the availability and responsiveness of witnesses and the amount of time it takes to obtain and review documentary and physical evidence. My office conducts all investigations in as timely a manner as possible, but our investigations must be thorough and we will not make determinations and render findings until we are satisfied that all relevant persons have been interviewed and all relevant evidence has been obtained. Therefore, in order to comply with a specific deadline to render findings, it is very possible that investigations will be closed with a finding that no determination can be made, which may not be helpful to the complainant.

In addition, establishing a deadline that applies only to investigations of the identified type of complaints would require the Ombudsman to give the investigations of these complaints priority consideration over all other complaints being investigated by the Ombudsman in order to avoid violating the statutory deadline to issue findings. This would effectively require the Ombudsman

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to treat the specified type of complaint as being of greater importance than all other complaints that are investigated by the Ombudsman, including complaints that have significant health and safety ramifications for a complainant. In addition, it will likely cause the thousands of individuals who have other types of complaints to perceive that the Legislature does not view their complaints against government in Hawaii to be as important or time-sensitive as the complaints condominium unit owners have against their associations.

There are other less than favorable consequences for my office and the people we serve that can result from the amendment to Chapter 96, HRS, that is proposed in Section 1 of the bill. However, what I have described above are the primary and most significant impacts, and I hope you will consider these impacts when making your decision on this bill.

Finally, I would note that my office has authority to investigate the administrative acts of the Real Estate Commission, so even if Section 1 was removed from HB 2524, H.D. 1, any party aggrieved by a decision by the Real Estate Commission would still have the right to file a complaint about that decision with my office.

Thank you for your consideration of this testimony and for your support of my office.

HB-2524-HD-1

Submitted on: 3/11/2024 3:30:10 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Idor Harris	Testifying for Honolulu Tower AOA	Oppose	Written Testimony Only

Comments:

Honolulu Tower is a 396 unit condominium located at Beretania and Maunakea Streets on the edge of Chinatown. At our monthly board meeting on February 5, 2024, the board unanimously opposed the passage of HB2524 which requires the Real Estate Commission to receive and investigate complaints by condo owners against the association.

The board requests that you defer this bill.

Idor Harris
Resident Manager

HB-2524-HD-1

Submitted on: 3/11/2024 8:46:58 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mark McKellar	Testifying for Law Offices of Mark K. McKellar, LLC	Oppose	Written Testimony Only

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2524 H.D. 1 for the reasons set forth below.

Under Hawaii Revised Statutes (“HRS”) Sections 514B-65 and 514B-66, the Real Estate Commission of the State of Hawaii has the authority to investigate violations of specific sections of the Condominium Property Act, issue complaints, conduct hearings, render findings of facts and if necessary, issue cease and desist orders, in accordance with the detailed procedures set forth in those sections.

H.B. 2524 H.D. 1 adds vague and ambiguous language to HRS Section 467-4 that would compel the commission to “[r]eceive and investigate complaints by condominium unit owners against associations that are subject to chapter 514B . . .” The measure fails to specify:

1. The types of complaints that would be subject to investigation by the commission;
2. The procedures for conducting the investigations;
3. The steps that the commission may take if it finds evidence of violations;
4. The power of the commission to conduct hearings;
5. The power of the commission to issue cease and desist orders or grant other relief.

Furthermore, H.B. 2524 H.D. 1 is unnecessary given the broad investigative powers of the commission under HRS Sections 514B-65 and 514B-66. In that regard, H.B. 2524 H.D. 1 will create confusion as it significantly overlaps with HRS Sections 514B-65 and 514B-66. If the measure is adopted, the commission could have a duty to conduct investigations under both HRS Section 467-4 and Section 514B-65; however, the procedures will be different under the two sections and actions taken by the commission under HRS Section 467-4 will be subject to challenge given the vague and ambiguous language in that section. The Legislature should not impose additional duties on the commission absent a demonstrated need to do so. Additionally, the Legislature should not adopt laws that are vague and ambiguous.

For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Mark McKellar

Testimony of the Hawai'i Real Estate Commission

**Before the
Senate Committee on Government Operations
Thursday, March 14, 2024
3:00 p.m.
Conference Room 225 and Videoconference**

**On the following measure:
H.B. 2524, H.D. 1, RELATING TO CONDOMINIUMS**

Chair McKelvey 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 opposes section 2 of this bill.

The purposes of this bill are to: (1) require the Commission to receive and investigate complaints by condominium unit owners against associations that are subject to condominium laws; and (2) require the Ombudsman to issue findings within an unspecified number of days after a complaint is filed with the Ombudsman against the Commission regarding the Commission's foregoing duties.

The Commission is unsure of the intent of this bill. Section 2 expands the Commission's powers and duties in chapter 467-4, Hawaii Revised Statutes (HRS), to receive and investigate complaints by condominium unit owners against associations; however, the Commission is required to delegate its authority to receive and investigate complaints to the Department of Commerce and Consumer Affairs and its enforcement officer, the Regulated Industries Complaints Office (RICO), pursuant to chapters 26-9(h), and 26-9(m), HRS. RICO currently has a complaint and enforcement process in place for the provisions enumerated in chapters 514B-65, 514B-66, and 514B-68, HRS. These provisions include, for example, violations where the unit owners are unable to obtain from the association necessary information to govern themselves and to oversee the actions of the board of directors.

The proposed language in section 2 is vague, ambiguous, could result in a duplication of existing government processes and services, and could unintentionally run counter to the basic tenet of the condominium law of self-enforcement of the laws and rules by the owners, with limited government involvement. If the intent of this section is to expand government involvement in condominiums, then the Commission

respectfully suggests consideration be given to the efforts of the Condominium Property Regime Task Force (CPM Task Force) established by Act 189, SLH 2023. The CPM Task Force is tasked with examining issues regarding condominiums and chapter 514B, HRS, and has asked the Legislative Reference Bureau (LRB) to conduct a study on how other jurisdictions handle similar issues through currently introduced measures H.B. 1814, H.D. 1 and S.B. 2726, S.D. 2. The scope of the LRB study specifically explores how other states approach governmental regulation and enforcement of condominium operations and governance. Along with LRB's study, the CPM Task Force will submit to the Legislature a final report of its findings, including any recommended legislation, for appropriate consideration.

Thank you for the opportunity to testify on this bill.

**The Senate
The Thirty-Second Legislature
Committee on Government Operations
Thursday, March 14, 2024
3:00 p.m.**

To: Senator Angus L.K. McKelvey, Chair
Re: **HB 2524 HD 1**, Relating to Condominiums

Aloha Chair McKelvey, Vice-Chair Gabbard, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups which has served our community since 1972, and I serve on the board of the Hawaii Alliance for Retired Americans which has a local membership of over 20,000 retirees.

I also serve as the leader of a coalition of hundreds of property owners, mostly seniors, who own and/or reside in associations throughout Hawaii and I have served as an officer on three condominium associations' boards.

Mahalo for the opportunity to testify in **support of HB 2524 HD 1**. I appreciate your committee's consideration of this measure as we condo owners deserve and require consumer protections.

Just as we have shared our concerns with Legislators about improper condo governance exemplified by malfeasance, deferred maintenance that affects the fiscal and physical health of owners and occupants, underfunded reserves, and rising insurance costs, and enabled by defective election procedures, we have shared these concerns with the Department of Commerce and Consumer Affairs (DCCA) on the assumption that the Department was concerned about "consumer affairs" and with its Real Estate Commission (REC).

However, unlike the Legislature, the DCCA and REC dismissed our concerns, with a DCCA official explaining "condo owners are not licensed" and the REC clarifying that condo owners "are not stakeholders."

Thus, it is encouraging that this measure proposes to investigate complaints against the REC. But it is concerning if the REC--partially populated by members of the association trade industry including those with whom we have many issues--will be able to investigate our complaints about our condo associations fairly and impartially.

In supporting this measure, I am not asking for more government bureaucracy, and am only asking that the DCCA REC fulfill its "Fiscal Year 2022-2023 Program of Work and Budget"¹ and give credence to owners' concerns about their associations by investigating "complaints by

¹ <https://cca.hawaii.gov/reb/files/2023/03/pow22-23.pdf>

condominium unit owners against associations that are subject to 514B” by enforcing compliance of those statutes.

Real estate ownership, considered by most to be the first rung in the pursuit of the American Dream, is challenging in Hawaii. Despite disparaging portrayals by the association trade industry that Hawaii’s condo owners are deadbeats or mentally impaired,² condo owners reflect the broad diversity of our population except that most of us are Hawaii’s working middle class.

To purchase real estate in Hawaii, owners must demonstrate significant discipline to scrape together their downpayment, self-control to maintain excellent credit scores, the agility to survive economic hardships that are not of their making, and responsibility to qualify for mortgage payments much larger than their mainland cohorts on wages that are comparably smaller. Among us, it is not unusual to find three, and even four, full-time jobs split between two partners as they reach for that first rung.

I was selected to participate on the DCCA Condominium Property Regime (CPR) Task Force enacted by LY2023 Act 189, elected to be its Vice-Chair, and attended all four meetings in 2023. Thus far, no meetings have been scheduled for 2024.

Throughout the four meetings, I was disappointed in the lack of urgency and concern, especially when we read and heard testimonies from condominium owners³ who had been through or attempted to participate in alternative dispute resolution (ADR), testimonies diminished by the Task Force Chair as “not empirical data [or evidence]” and belittled as “repetitive.”

The CPR Task Force’s work needs to be more substantial because of the government’s focus on building more housing to attract and retain skilled workers who are essential to the health of our community. This focus includes the robust development of this higher-density, comparatively-lower-cost housing model, the condominium, in greater housing unit numbers than traditional single-family houses.

In testimonies to the CPR Task Force, I referenced studies by the Legislative Reference Bureau (LRB) in 1989⁴ and the Real Estate Commission (REC) in 1991⁵ which examined recurring problems with Directors’ failure to fulfill responsibilities that often resulted in internal strife. Gregory Tanaka’s work for the REC included diagrams of the then-existing ADR scheme and his proposed alternative dispute resolution that included an ombudsman. See Exhibit A.

Since the decades-old LRB and REC studies, it appears that **not much has improved** in condo governance, including the understanding of duties and responsibilities of directors and owners.

² Nerney, Philip S. “Challenges to Condominium Self-Governance.” Hawaii Bar Journal. November 2017, pp 4-15.

³ <https://cca.hawaii.gov/working-groups-and-task-forces/>

⁴ https://lrb.hawaii.gov/wp-content/uploads/1989_CondominiumGovernance.pdf

⁵ Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives – An Issues Paper for the Hawaii Real Estate Commission, by Gregory K. Tanaka (January 1991).

Thus, it is our contention that the State’s housing goals magnify the importance of improving condominium association governance and enhancing community harmony through education.

Without these needed improvements, the development of additional condominium housing will be ineffective because prospective purchasers, including those whom the government hopes to retain or attract, will be unable to afford escalating costs caused by the mismanagement and misgovernance of *existing* condominium associations.

On November 2, 2023, Dathan Choy, Condo Specialist with DCCA, reported in an email:

“Per our records as of today, there are 230,729 units in 3,411 condominium registrations with six units or more which would generally be required to register their AOOU...There are 13,154 units in 5,512 condominium registrations where each condominium registrations is five or fewer units and individually, are exempted from AOOU registration.”

If the Condo Specialist’s November 2023 estimate of condominium units is correct, the 243,883 condominium units in 8,923 associations compared against the most recent US Census data⁶ that Hawaii has 568,075 housing units, reveals that **more than 40% of Hawaii’s current housing units are condominium units.**

Compared to Hawaii, the 2023 *U.S. National and State Statistical Review for Community Association Data*⁷ shows that California leads the nation with 50,700 associations, which are homes to 14.4 million residents. Florida has the second-most associations with 49,800, followed by Texas (22,300), Illinois (19,550), North Carolina (14,900), and New York (14,400).

Despite the significant differences in the number of associations between the more populous states and Hawaii, local insurance industry experts, Surita “Sue” Savio^{8,9} and Robin Martin,¹⁰ claim that Hawaii has a greatly disproportionate degree of malfeasance and infidelity to fiduciary duties, including that, **nationally, Hawaii has the most Directors and Officers Insurance claims and among the highest insurance settlements.**

The insurance brokers’ remarks are further substantiated by reports found in the Real Estate Commission publication, the *Hawaii Condominium Bulletin*,^{11,12,13} which revealed that since September 2015 and updated to December 2023, **a large majority of the mediation cases reported, nearly 80%, were initiated by owners against their association and/or board.**

⁶ <https://www.census.gov/quickfacts/fact/table/HI#>

⁷ <https://foundation.caionline.org/wp-content/uploads/2024/01/2023StatsReviewDigital-002.pdf>

⁸ ThinkTech “Condo Insider” program, “How Condo Disputes Can Increase Your Maintenance Fees,” September 19, 2019

⁹ <https://www.youtube.com/watch?v=8wOM10cgYS0&t=353s>

¹⁰ April 5, 2023, AOA Nauru Tower Board Special Meeting

¹¹ <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2011-2015/>

¹² <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2016-2020/>

¹³ <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2021-2025/>

Additionally, only 35.505% of these cases were mediated to an agreement, leaving **more than three out of every five mediation cases unresolved or withdrawn**, a metric that disputes unsubstantiated claims that “mediations are successful.” Please refer to Exhibit B.

Of the cases that reached an agreement, many of those settled in favor of owners were allegedly disregarded, lacking enforcement.

Further, HRS 514B-146(g) states that when ADR fails, the association may proceed with the collection of all amounts due from the condominium owner for attorneys’ fees and costs, or any other charges not imposed as a common expense, revealing **a statute which disincentivizes associations and/or their boards from resolving disputes**.

Testimonies from several owners who participated in mediations suggest that the apparent goal of the legal profession serving associations is to make it difficult for owners to file complaints and to prevent those complaints from becoming a part of the public record. Thus, association attorneys may be reluctant to terminate Condominium Education Trust Fund-subsidized ADR that are cloaked by nondisclosure agreements, making it impossible for the condo community to learn constructively from these legal disputes and resolutions (if any).

Additionally, some legal professionals, including those who lobby at the Legislature for the association trade industry, market their ADR services to associations, creating an additional income stream for themselves while creating the possibility of biased and lopsided ADR.

In earlier legislative sessions, mediation and arbitration were promoted as inexpensive avenues to dispute resolution, however, owners’ experiences contradict that assertion. The cost of mediation and arbitration, even when subsidized, is beyond the means of many condo owners already burdened with increased insurance costs, increased maintenance fees, special assessments, and increased property taxes.

Owners who can afford the \$375 fee to participate in mediation complain of the escalating thousands needed to proceed against a platoon of association attorneys representing the association and/or board. Associations have the combined financial resources of all their members, including insurance coverage that protects board members from personal liability, and the ability to raise additional funds through assessments from owners, unlike owners limited to their own assets.

Owners who have gone through this process also allege that the costs of arbitration are nearly as costly as litigation.

Thus, current Condominium Education Trust Fund (CETF) subsidized ADR fails its intent.

Given that a home is, for most people, the most significant asset they have, protecting the value of that asset and mitigating and resolving disputes over that asset is an important policy goal, one that has **not** been served well by current CETF-subsidized ADR.

Those who testify to preserve the status quo are those who have benefitted from the quagmire that condo owners now find themselves—with insufficient reserves to fund needed repairs and improvements, expensive Directors’ and Officers’ (D&O) liability insurance and property insurance premiums, exacerbated by the loss of insurers unwilling to take on the risks of these associations, under-educated directors and management more interested in keeping their seats or agency rather than serving and protecting the owners and residents of these properties.

Hawaii’s condominium owners need relief from expenses rising beyond our control. Rather than looking at merely relieving the symptoms (e.g., rising insurance premiums that force association fees to increase), potent efforts to address the problems that cause these symptoms should be made.

Long overdue improvements to condominium governance should be studied; a partial list includes:

- AN INVESTIGATION OF AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM THAT WILL:
 - Not use taxpayer general funds;
 - Not inhibit the ability of an association to govern the community;
 - Not create more government bureaucracy or entity but build upon that which already exists;
 - Not deny an owner or the association the right to a court or other legal action in problem resolution;
 - Not interfere or attempt to invalidate or circumvent any local, State, or Federal laws and/or regulations;
 - Enforce existing State common interest community association laws and rules immediately;
 - Allow owners to pursue their rights under the law that they would otherwise not do so because of costs;
 - Not result in material increases in owner assessments or any measurable increase in operating costs on associations, owners, or association management companies;
 - Have the authority to invoke penalties on parties including the removal of an association Board member, suspend the association’s authority to impose fines, liens or pursue foreclosures, and other penalties as deemed appropriate;
 - Reduce the millions of dollars spent in legal costs between disputing owners and associations; and
 - Ease the burden upon Courts to litigate minor violations of association laws and rules.
- An investigation of the success or failure of subsidized mediation and arbitration under HRS 514B, including:
 - Whether parties who participated without legal representation were familiarized by the mediation centers or mediators with the mediation process;

- Whether parties were apprised of any conflict of interest before the mediator was selected and before the mediation was initiated;
 - The various causes of these disputes including whether they were based on violations of HRS 514B (e.g., common expense assessments, enforcement of access to records, retaliation), HRS 414D (e.g., directors’ duties, conflict of interest, etc.), the association’s governing documents (e.g., fees, fines, and penalties; allocation of expenses; limitations of authority; House Rules violations), or other violations (e.g., theft, embezzlement, fraud, intentional damage); and
 - If those violations were resolved or terminated pre-ADR, when submitted to ADR, or through ADR.
- An investigation of subsidized cases that included participation by legal counsel or representation for just one party, for both parties, or none at all, and
 - The proportion or number of cases settled as a result of mediation if legal counsel or representation were involved, and if no legal counsel or representation occurred;
 - The proportion or number of cases brought by owners and of those,
 - how many included legal counsel or representation for these owners, and
 - how many cases were mediated to an agreement through subsidized ADR;
 - The proportion or number of cases brought by the association (or its board), and of those,
 - how many included legal counsel for the association or board, and of those,
 - how many were mediated to an agreement through subsidized ADR;
 - Whether attorneys’ fees and late fees exceeded the value of the original penalty fine or amounts owed;
 - If the association’s management company was included in the dispute, examine whether
 - the association paid for the management company’s legal fees, and
 - the dispute was mediated to an agreement.
- An investigation whether the following statute was enforced, and if so, how often:

HRS514B-146(g) The mediation shall be completed within sixty days of the unit owner's request for mediation; provided that if the mediation is not completed within sixty days or the parties are unable to resolve the dispute by mediation, the association may proceed with collection of all amounts due from the unit owner for attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense.
- An investigation whether retaliation, intimidation, harassment, and/or discrimination were alleged, and whether these acts were the results of other disagreements or challenges (e.g., House Rules violations, contest between election candidates).
- An investigation of the lack of enforcement or the unequal enforcement of HRS 514B, HRS 414D, the governing documents, or other laws and rules and if they were significant components of the dispute.

- LEGAL FEES.

While the legal industry appears to believe that disputes and challenges may be handled through attorneys and the Court system, owners do not have that same confidence.

It takes courage to challenge authority, even if that authority is the party that violated laws or associations rules. Fewer are bold enough to go pro se when the opposition is armed with attorneys. And even when the condo owner prevails, there is still the chance that his/her legal fees may not be recoverable.

- Examine the effect of litigation upon association insurance costs, particularly Directors and Officers Insurance;
- Examine the proportion of legal fees and costs associated with dispute resolution to the amount awarded;
- Examine the proportion of legal fees and costs associated with foreclosures with the delinquent common expense assessment amount;
- Examine the legality of association attorneys or associations levying individual owners with non-commonly assessed legal fees although the assessed owners did not request or demand legal advice from that attorney or otherwise caused legal fees to be charged. Examples of legal fees charged to individual owners for services requested by a party other than the owners are: legal fees caused by an association or its directors that demand that the owner “cease and desist” for unstated or unsubstantiated violations, fees caused by an association or its directors that serve to silence or intimidate dissenting owners; and
- Examine whether detailed legal billing is provided to owners upon request.

The following quotation comes from a Florida attorney who specializes in condominium and HOA law and substantiates owners’ concerns:

“The problem lies with the association attorneys...They advise their clients the likelihood of someone litigating against the association is slim and even if they do chances are they will drop the case when they realize the money it will take, which is between \$100,000 and \$150,000 on average to get a case to court.

“In fact one association law firm gave a sales presentation that I sat in on and stated that 95% of the homeowners cannot afford to litigate against you. Their motto was "do now, defend later." The board members, once educated on this fact, then start to abuse the power they have to suppress the property rights of the owners.

“Tactics include censorship of those outspoken owners and litigation against them if possible. Associations will foreclose on an owner who is past due a few hundred dollars and is outspoken rather than foreclose on someone who owes more but doesn't make trouble.

“Attorneys' fees are the biggest problem with association abuse. The statutes actually provide for the owner to reimburse the association the attorneys' fees without a court action!”¹⁴

- FINES AND FEES. Examine the possibility of reforming fines and fees so that they do not disproportionately burden vulnerable residents and set off a cycle of inescapable consequences (e.g., they may rely on debt mechanisms such as loans or credit cards which can worsen their credit rating that can impair their employment opportunities that can affect their income which causes increased economic distress, etc.) and investigate the use and efficacy of repayment programs.
- EDUCATION. The education of owners and directors can 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.

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 series¹⁵ 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 vendor's exorbitant class fees and inconveniently scheduled midweek, midday classes.

- Examine existing educational programs through the DCCA's use of the owner-funded Condominium Education Trust Fund (CETF) whether they require additional funds from attendees, are open to the public, are scheduled at convenient time, day, and location for the public, and are unbiased and apolitical.
- Examine existing for-fee educational programs subsidized through the DCCA CETF and, of the attendees, quantify how many were industry-related (e.g., employees of management companies, association attorneys, parliamentarians, and other vendors), association board members, owners who are not directors, and the public. Also quantify which of the attendees' fees were waived, paid by their employers, paid by their associations, and paid by the attendees themselves.
- Also quantify attendance relative to class topic(s) to ascertain interest or necessity.
- Investigate the dependence of DCCA on parties with conflicts of interest to provide the education that is mandated by HRS 514B;
- Currently, education is voluntary for owners, directors, and management. Examine whether mandating education should be implemented. Because a director's position is voluntary, examine if the education of directors can be required, evidenced by qualified

¹⁴ <https://condohoalaw.blogspot.com/2014/04/abuse-of-power-living-miserably-in.html>

¹⁵ <https://cca.hawaii.gov/reb/files/2022/12/CB2212.pdf>

certification, and enforced by the possible revocation of that certification if the director fails education or fails certain ethical standards.

- Currently, education is voluntary for those who participate in the management of condominium associations, therefore, examine the mandating of education of those involved in the management of associations, coupled with mandating licensure of those involved in management, not as real estate licensees, but in line with Community Associations Institute that “opposes the licensing of community association managers as real estate brokers, agents or property managers”¹⁶ and “prefers the licensure of individual community association manager practitioners as opposed to licensure of management companies.”¹⁷ Licensure will assure greater compliance with applicable laws and rules, and violations of those laws and rules are enforceable with suspension or revocation of that license.
- ACCESS TO INFORMATION. Associations operate as self-governing entities. Although democratic representative self-governance is predicated on its members’ access to information and the accountability that transparency encourages, and decades-old studies by the Hawaii Real Estate Commission¹⁸ and the State’s Legislative Reference Bureau^{19,20} confirmed that access to information, including open communication and education, need improvement, these deficiencies still exist despite improved ease, speed, delivery costs, and ubiquity of technological enhancements to communication.

This demands an investigation regarding the accessibility of important association governing documents and other documents relevant to associations’ physical and fiscal health,

- including whether the enforcement provisions regarding document access/delivery are adequate to ensure that those who control access and delivery feel compelled to provide those documents;
- including the cost of those documents, especially those charged for “electronic” documents;
- including the ease or difficulty of accessibility or other hurdles that may impact some parties unfairly;
- whether the requirement for an affidavit is necessary for owners to have access to documents (vis a vis, prospective buyers, their lenders, and their insurers are not required to complete affidavits to examine those documents);
- whether eight “free” hours of examination per association is adequate;
- if an online platform such as that used by eCourt Kokua can be utilized to maximize access, lower costs (\$3 per electronic document), handle data, and maintain timeliness;

¹⁶ <https://www.caionline.org/Advocacy/PublicPolicies/Pages/Community-Association-Manager-Licensing-Policy.aspx>

¹⁷ <https://www.caionline.org/Advocacy/PublicPolicies/Pages/Community-Association-Manager-Licensing-Policy.aspx>

¹⁸ Gregory Tanaka, “Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives,” Hawaii Real Estate Commission, 1991.

¹⁹ Charlotte A. Carter-Yamauchi, “Condominium Governance – An Examination of Some Issues,” Hawaii Legislative Reference Bureau, 1989.

²⁰ Pamela Martin, “Fighting Battles in Modern American Castles: Condominium Dispute Resolution,” Hawaii Legislative Reference Bureau, 1996.

- or if an alternative is the expansion of the State’s registration of condominium associations to provide a central online publicly accessible registry of information and documentation (similar to Miami-Dade, Florida’s Code of Ordinances Chapter sections 17D-3 and 17D-4, and with enforcement provisions like Chapter 17D-5²¹).
- DISTRIBUTION AND DISSEMINATION OF INFORMATION
 - An investigation into the efficacy of DCCA's dependence on management companies to disseminate information about classes and online education;
 - An investigation into whether owners’ email addresses should be provided to other owners under HRS 514B-154.5.
- CLEAN ELECTIONS: Delve into the election process to eliminate opportunities for fraud and electoral misconduct, including that election facilitators (usually management) have provided incumbent directors access to email addresses unavailable to other candidates or owners and control association communication, have notified incumbent directors as to proxy assignments, and other unfair election practices.
- Then, there was a comment from a reader of Civil Beat who responded to the article, “Condo Task Force Facing Deadline May Punt to State Auditor Instead,”²²

“Another area that should be examined is performance requirements for the management companies hired by associations such as response time to owner queries, promptness and accuracy of payments to vendors and contractors and minimum qualifications for community managers. The management companies need to have increased accountability through routine oversight by a government agency. Board members are not usually qualified to do this and the companies themselves are less than forthcoming. The CPA audits that are required annually do not capture this level of operational and management performance.”

The above list of needed investigations is but a few necessary to improve condominium association governance.

The large community of condominium owners and residents should not have to wait for justice.

²¹ https://library.municode.com/fl/miami_-dade_county/codes/code_of_ordinances?nodeId=PTIIICOR_CH17DRECOAS_S17D-1SHTIAP

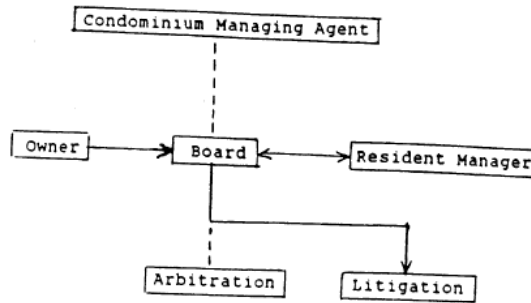
²² <https://www.civilbeat.org/2023/12/condo-task-force-facing-deadline-may-punt-to-state-auditor-instead/>

Exhibit A

(Source: Gregory K. Tanaka, "Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives," DCCA Real Estate Commission, January 1991)

Appendix D

Present Structure
for
Dispute Resolution
1990



Appendix E

Possible Dispute Resolution Flowchart and Structure
(by 1992)

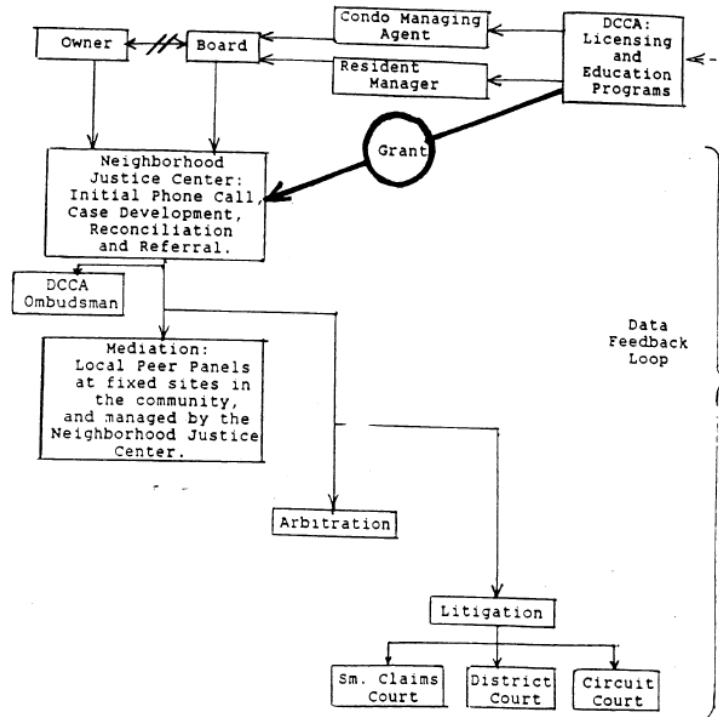


EXHIBIT B
TALLY OF MEDIATION CASES REPORTED IN HAWAII CONDOMINIUM BULLETIN
SINCE JULY 2015 INCEPTION OF CETF FUNDED EVALUATIVE MEDIATION PROGRAM^{23,24}

CONDO EDUCATION TRUST FUND SUBSIDIZED MEDIATION CASES											
HI Condo Bulletin	AOAO/BOD V	OWNER V	OWNER V	OWNER V	TOTAL	mediated	mediated	assn did not	owner did not	resolution	elevated
ISSUE MONTH	OWNER	AOAO/BOD	OWNER	CAM	CASES	to agreemnt	w/o agreemnt	mediate*	mediate**	outside medtrn	to arbitration
December-23	5	13			18	8	6		1		1
September-23	0	8			8	3	4				1
June-23	4	10			14	4	5	1.5	3.5		
March-23	3	15			18	1	14		2	1	
December-22	3	8			11	1	7	0.5	2.5		
September-22	2	4			6	3	1	0.5	0.5	1	
June-22	5	14			19	4.5	10.5			4	
March-22	2	15			17	8	4			4	1
December-21	1	8			9	3	4			2	
September-21	3	13			16	8	5			3	
June-21	5	12			17	8	5	2		2	
March-21	1	9			10	4	3		2	1	
December-20	5	15			20	7	12		1		
September-20	2	4			6	2	3	0.5	0.5		
June-20	1	2			3	3	0		.		
March-20	3	13			16	5	9		1	1	
December-19	2	13		1	16	5	6		2	3	
September-19	3	8			11	6	4			1	
June-19	0	10			10	5	3	0.5	1.5		
March-19	2	13			15	7	4	1	1	2	
December-18	1	2			3	0	3				
September-18	3	7			10	4	2	1.5	1.5	1	
June-18	1	4.5	0.5		6	2	3	1			
March-18	5	5	1		11	3	3	1.5	3.5		
December-17	3	13			16	5	6	3	2		
September-17	1	10			11	3	5	2	1		
June-17	0	6			6	3	3				
March-17	2	4			6	4	2				
December-16	2	6			8	2	4	2			
September-16	2	8			10	2	5	1	2		
June-16	1	3	1		5	3	0	0.5	1.5		
March-16	2	10			12	3	2	1.5	5.5		
December-15	2	7			9	3	2	3	1		
September-15	0	2	1		3	1	1				
total cases	77	294.5	3.5	1	376	133.5	150.5	24.5	36.5	26	3
total by percent	20.479%	78.324%	0.931%	0.266%	100.000%	35.505%	40.027%	6.516%	9.707%	6.915%	0.798%
*association declined, refused, nonresponsive, or withdrew											
**owner declined, refused, nonresponsive, or withdrew											
*based on interpretation of comments											

²³ <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2016-2020/>, <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2021-2025/>

²⁴ <https://cca.hawaii.gov/reb/files/2015/03/cb1503.pdf>

HB-2524-HD-1

Submitted on: 3/11/2024 1:51:23 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sandie Wong	Individual	Oppose	Remotely Via Zoom

Comments:

I strongly oppose HB2524 regarding a Ombudsman for condo disputes. There is already a mediation process that is required under statute and, thus, this bill is not necessary. Thank you.

HB-2524-HD-1

Submitted on: 3/11/2024 2:08:09 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Anne Anderson	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2524 H.D. 1 for the reasons set forth below.

Under Hawaii Revised Statutes (“HRS”) Sections 514B-65 and 514B-66, the Real Estate Commission of the State of Hawaii has the authority to investigate violations of specific sections of the Condominium Property Act, issue complaints, conduct hearings, render findings of facts and if necessary, issue cease and desist orders, in accordance with the detailed procedures set forth in those sections.

H.B. 2524 H.D. 1 adds vague and ambiguous language to HRS Section 467-4 that would compel the commission to “[r]eceive and investigate complaints by condominium unit owners against associations that are subject to chapter 514B . . .” The measure fails to specify:

1. The types of complaints that would be subject to investigation by the commission;
2. The procedures for conducting the investigations;
3. The steps that the commission may take if it finds evidence of violations;
4. The power of the commission to conduct hearings;
5. The power of the commission to issue cease and desist orders or grant other relief.

Furthermore, H.B. 2524 H.D. 1 is unnecessary given the broad investigative powers of the commission under HRS Sections 514B-65 and 514B-66. In that regard, H.B. 2524 H.D. 1 will create confusion as it significantly overlaps with HRS Sections 514B-65 and 514B-66. If the measure is adopted, the commission could have a duty to conduct investigations under both HRS Section 467-4 and Section 514B-65; however, the procedures will be different under the two sections and actions taken by the commission under HRS Section 467-4 will be subject to challenge given the vague and ambiguous language in that section. The Legislature should not impose additional duties on the commission absent a demonstrated need to do so. Additionally, the Legislature should not adopt laws that are vague and ambiguous.

For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Anne Anderson

HB-2524-HD-1

Submitted on: 3/11/2024 2:11:30 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laurie Sokach	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2524 H.D. 1 for the reasons set forth below.

Under Hawaii Revised Statutes (“HRS”) Sections 514B-65 and 514B-66, the Real Estate Commission of the State of Hawaii has the authority to investigate violations of specific sections of the Condominium Property Act, issue complaints, conduct hearings, render findings of facts and if necessary, issue cease and desist orders, in accordance with the detailed procedures set forth in those sections.

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For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Laurie Sokach AMS, PCAM

HB-2524-HD-1

Submitted on: 3/11/2024 2:13:54 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Margaret Murchie	Individual	Comments	Written Testimony Only

Comments:

We have a really hard time ordering our document packages from various property management companies and half the time they come incorrectly even though we pay a full fee. Last week I ordered documents from Hawaiian Properties paid my \$375 and received incomplete files and all of the questions on the mandated r105c were answered "not to my knowledge". It would be good to have the companies post the documents online consistently and only tweak the document pertinent to the particular unit. One of the commissioners is a big offender, and he has tweaked your rules to the advantage of the management companies. He was a former lobbyist and sold his company to a bigger company and helped craft a lot of the legislation as a lobbyist in favor of the bigger companies and attorneys. He is now a commissioner! he has done a lot of damage to the industry in my opinion. We definitely need changes. He now has a real estate company that he operates out of his home and Kahala which is against the rules if you have agents working for you. What kind of message does this send? This is too important to ignore and we need some consistency with these management companies documents as they affect a lot of the public. If their information is incorrect, it could affect mortgages. Most are very sloppy.

HB-2524-HD-1

Submitted on: 3/11/2024 3:05:24 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Joe M Taylor	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2524 H.D. 1 for the reasons set forth below.

Under Hawaii Revised Statutes (“HRS”) Sections 514B-65 and 514B-66, the Real Estate Commission of the State of Hawaii has the authority to investigate violations of specific sections of the Condominium Property Act, issue complaints, conduct hearings, render findings of facts and if necessary, issue cease and desist orders, in accordance with the detailed procedures set forth in those sections.

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sections and actions taken by the commission under HRS Section 467-4 will be subject to challenge given the vague and ambiguous language in that section. The Legislature should not impose additional duties on the commission absent a demonstrated need to do so. Additionally, the Legislature should not adopt laws that are vague and ambiguous.

For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Joe Taylor

HB-2524-HD-1

Submitted on: 3/11/2024 3:28:01 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Oppose	Written Testimony Only

Comments:

This seems to be the year of the legislature on the attack against condo board members. As a condo owner and board member I am outraged. There is no substance in this bill. What types of complaints? What procedures will be used to conduct the investigations? After they investigate, what happens? Do they fine, do they remove, do they file their notes? If the commission finds evidence of violations, what procedures does it follow? What power does the commission have to hold hearings? Can the commission grant relief? Is it authorized to grant cease and desist orders?

We already have systems in place. There is no need to tinker with them. What is needed is a study of what other states do, to learn from them and then maybe do an overhaul.

Please defer this bill.

HB-2524-HD-1

Submitted on: 3/11/2024 3:28:03 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
John Toalson	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2524 H.D. 1 for the reasons set forth below.

Under Hawaii Revised Statutes (“HRS”) Sections 514B-65 and 514B-66, the Real Estate Commission of the State of Hawaii has the authority to investigate violations of specific sections of the Condominium Property Act, issue complaints, conduct hearings, render findings of facts and if necessary, issue cease and desist orders, in accordance with the detailed procedures set forth in those sections.

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For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

John Toalson

HB-2524-HD-1

Submitted on: 3/11/2024 3:32:12 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Targgart	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2524 H.D. 1 for the reasons set forth below.

Under Hawaii Revised Statutes (“HRS”) Sections 514B-65 and 514B-66, the Real Estate Commission of the State of Hawaii has the authority to investigate violations of specific sections of the Condominium Property Act, issue complaints, conduct hearings, render findings of facts and if necessary, issue cease and desist orders, in accordance with the detailed procedures set forth in those sections.

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For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Michael Targgart

HB-2524-HD-1

Submitted on: 3/11/2024 8:26:46 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
mary freeman	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee:

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For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Mary Freeman

Ewa Beach



The Senate
Ka 'Aha Kenekoa

STATE CAPITOL
HONOLULU, HAWAII 96813

February 9, 2024

Ms. Nadine Ando, Director
Department of Commerce and Consumer Affairs
335 Merchant Street
Honolulu, Hawaii'i 96813

Dear Director Ando,

SUBJECT: REQUEST FOR INVESTIGATION ON BEHALF OF CHRISTINE MORRISON

I would like to make an inquiry on behalf of a constituent that the Department of Commerce and Consumer Affairs investigate a complaint that may lie within your jurisdiction. My constituent, Ms. Christine Morrison, is seeking a comprehensive investigation of the Kehalani Community Association and their agents, Hawaiiiana Management Co. LTD, Quam Properties Hawaii'i, and Destination Maui, Inc., for reasons including but not limited to allegations of misappropriation of funds, wrongful foreclosure attempts and debt collection, and violations of rules under HRS-514B allowing access to association records. Additional information that may prove to be helpful have been attached to this letter, which includes a very detailed timeline.

Ms. Morrison's alternative option is to take the Association to court. However, she does not have adequate funds to proceed. Ms. Morrison believes that court action should not be the only option for the owner, and has also mentioned to us that she has previously worked with the Office of Consumer Protection (case #2023-0629 and #2023-0281).

Nevertheless, Ms. Morrison remains concerned that the association and their agents have continued to be in violation of the issues mentioned above. She is therefore seeking a reinvestigation as it may potentially affect other tenants. I am requesting that the Department's Regulated Industries Complaints Office investigate into these issues as Ms. Morrison has currently only made progress with the Better Business Bureau. In the case that the Department is unable to offer assistance, any helpful resources or suggestions as to Ms. Morrison's next steps would be greatly appreciated.

Senator Troy N. Hashimoto
Wailuku, Kahului, Waihe'e, Waikapū Mauka, Wai'eahu
Hawaii'i State Capitol, Room 223 || Honolulu, Hawaii'i 96813
Phone: (808) 586-7344 Fax: (808) 586-7348
Email: senhashimoto@capitol.hawaii.gov

February 9, 2024
Page 2 of 2

Thank you for your consideration. If you have any questions or concerns, please do not hesitate to contact Sen. Hashimoto at (808) 586-7344 or by email at SenHashimoto@capitol.hawaii.gov.

Sincerely,



Troy N. Hashimoto
State Senator
District 5

cc: Christine Morrison

Enclosure



HI SB2128 | 2024 | Regular Session

Hawaii Senate Bill 2128

Status

Spectrum: Partisan Bill (Democrat 1-0)
Status: Introduced on January 17 2024 - 25% progression
Action: 2024-01-18 - Referred to CPN.
Pending: Senate Commerce and Consumer Protection Committee
Text: Latest bill text (Introduced) [HTML]

Summary

Requires condominium homeowner associations to include in their bylaws an option for a unit owner to opt-out of a condominium. Establishes a procedure for a unit owner of a condominium, planned community association, or cooperative housing corporation to opt-out of their respective private community.

Title

Relating To Deannexation Of Real Property.

Sponsors

Sen. Troy Hashimoto [D]

History

Date	Chamber	Action
2024-01-18	Senate	Referred to CPN.
2024-01-17	Senate	Introduced and passed First Reading.
2024-01-16	Senate	Pending Introduction.

Subjects

- Association
- Condominiums
- Cooperative Housing Corporations
- Deannexation
- Planned Community Associations
- Unit Owner

Hawaii State Sources

Type	Source
Summary	https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=2128&year=2024
Text	https://www.capitol.hawaii.gov/sessions/session2024/bills/SB2128_.HTM

Bill Comments

HB-2524-HD-1

Submitted on: 3/12/2024 8:06:05 AM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Paul A. Ireland Koftinow	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2524 H.D. 1 for the reasons set forth below.

Under Hawaii Revised Statutes (“HRS”) Sections 514B-65 and 514B-66, the Real Estate Commission of the State of Hawaii has the authority to investigate violations of specific sections of the Condominium Property Act, issue complaints, conduct hearings, render findings of facts and if necessary, issue cease and desist orders, in accordance with the detailed procedures set forth in those sections.

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For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Paul A. Ireland Koftinow

HB-2524-HD-1

Submitted on: 3/12/2024 8:31:36 AM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lance S. Fujisaki	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee:

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For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Lance Fujisaki

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- .The power of the commission to conduct hearings;
- .The power of the commission to issue cease and desist orders or grant other relief.

Further, H.B. 2524 H.D. 1 is unnecessary given the broad investigative powers of the commission under HRS Sections 514B-65 and 514B-66. In that regard, H.B. 2524 H.D. 1 will create confusion as it significantly overlaps with HRS Sections 514B-65 and 514B-66. If the measure is adopted, the commission could have a duty to conduct investigations under both HRS Section 467-4 and Section 514B-65; however, the procedures will be different under the two sections and actions taken by the commission under HRS Section 467-4 will be subject to challenge given the vague and ambiguous language in that section. The Legislature should not impose additional duties on the commission absent a demonstrated need to do so. The Legislature also should not adopt laws that are vague and ambiguous.

For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Pamela J. Schell

HB-2524-HD-1

Submitted on: 3/12/2024 12:23:04 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Renate Alarcon	Individual	Support	Written Testimony Only

Comments:

I totally support HB2524, relating to Condominiums - Ombudsman

Presently, there is no oversight when it comes to HOA board members, (we are still awaiting for a curriculum to have Board members Certified, a year later, even then when they are Certified, the board members are still not held accountable, they still can do their own thing as they do now.) Presently, they do their own thing they make up their own rules as they go along, when you point out as an owner that they did not follow condo's by-laws, house rules, HRS514-B, Robert's Rules of Orders, the board members have their tactic, either ignoring to just go away, or just vile bullying you to go away, this happen constantly and this is not a way of living.

I viewed the previous online testimony for HB2524, those are individuals and companies who are mostly representing the condo industry, they are not helping individual owners. They are opposing HB2524 and sure looks like they got the MEMO and copied each other opposing the bill, instead of having their own knowledge and opinion getting involved with HB2524. That is why we are in need of an Ombudsman who is there for the individual condo owner.

The management company is not there for us, they support whatever they need to do to keep their contract.

The only help we as a condo owner are getting from the Real Estate Branch, which laws are available for us and interpreting some of the rules. They have the knowledge, the only enforcement they are capable of doing is making sure that we are receiving the requested documents from the Management Company, that is it. If you ask any further question, well hire an attorney. When you file a complaint with RICO, about the errors their Management Agent made, the actual and only resource we have right now, RICO are ignoring Condo's By-Laws, House Rules, HRS-514B, Robert Rules of Orders and favor the Management Company, even when you presented the facts and circumstances.

That is why we need an Ombudsman who is there for us as an individual condo owner, since Board members are not capable representing us as they should do their fiduciary duty. This is multi million and billion industry and no one is accountable, how sad. So PLEASE pass the Bill HB2524 this time and give us the much needed Ombudsman.

HB-2524-HD-1

Submitted on: 3/12/2024 1:44:21 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laura Bearden	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2524 H.D. 1 for the reasons set forth below.

Under Hawaii Revised Statutes (“HRS”) Sections 514B-65 and 514B-66, the Real Estate Commission of the State of Hawaii has the authority to investigate violations of specific sections of the Condominium Property Act, issue complaints, conduct hearings, render findings of facts and if necessary, issue cease and desist orders, in accordance with the detailed procedures set forth in those sections.

H.B. 2524 H.D. 1 adds vague and ambiguous language to HRS Section 467-4 that would compel the commission to “[r]eceive and investigate complaints by condominium unit owners against associations that are subject to chapter 514B . . .” The measure fails to specify:

1. The types of complaints that would be subject to investigation by the commission;
2. The procedures for conducting the investigations;
3. The steps that the commission may take if it finds evidence of violations;
4. The power of the commission to conduct hearings;
5. The power of the commission to issue cease and desist orders or grant other relief.

Furthermore, H.B. 2524 H.D. 1 is unnecessary given the broad investigative powers of the commission under HRS Sections 514B-65 and 514B-66. In that regard, H.B. 2524 H.D. 1 will create confusion as it significantly overlaps with HRS Sections 514B-65 and 514B-66. If the measure is adopted, the commission could have a duty to conduct investigations under both HRS Section 467-4 and Section 514B-65; however, the procedures will be different under the two sections and actions taken by the commission under HRS Section 467-4 will be subject to challenge given the vague and ambiguous language in that section. The Legislature should not impose additional duties on the commission absent a demonstrated need to do so. Additionally, the Legislature should not adopt laws that are vague and ambiguous.

For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Laura Bearden

HB-2524-HD-1

Submitted on: 3/12/2024 3:50:55 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Individual	Comments	Written Testimony Only

Comments:

There are two many missing connecations in this Bill. Suggest the Task Force gather meaningful information before new laws enacted.

HB-2524-HD-1

Submitted on: 3/12/2024 4:35:26 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jeff Sadino	Individual	Support	Written Testimony Only

Comments:

I support this Bill because right now, there is no functional way for an owner's complaint against bad behavior of board members to have any substance to it. This creates an environment of a lack of accountability and this encourages bad behavior by boards, property managers, and attorneys.

In my situation, my AOA filed one baseless lawsuit against me in 2017 and a second baseless lawsuit against me in 2020. I raised my grievances of bad behavior to RICO with no movement on their part. I raised my grievances to the Real Estate Branch of DCCA, who just referred me to RICO. I raised my grievances to the Office of Disciplinary Council, who took about two years to investigate something very basic and never disclosed their results to me. I raised my concerns to the property manager, who blew me off. I requested that the AOA participate in mandatory mediation, which was a waste of time and money.

My AOA hired the property manager Hawai'iana for the past 50 years. Halfway through the second lawsuit, we fired Hawai'iana. My AOA hired the law firm PMKC in May 2017. By August 2017, PMKC was already sending me demand letters and then filed their first lawsuit against me in November 2017. After concluding the second lawsuit, my AOA fired PMKC. Obviously, my claim that the condo property manager and the condo law firm were behaving badly was in effect seconded by their firing.

Both lawsuits were dismissed without any ruling on the merits in favor of the AOA.

I spent over \$100,000 in attorney fees and had to take out a second mortgage on my condo so that I could defend my innocence.

Nobody should have to go through what I went through. Right now, nobody is providing working oversight of the condo industry. If this Bill will create some resemblance of oversight and accountability for the condo trade industry, then I fully support it!

Thank you for the opportunity to provide testimony,

Jeff Sadino

TO: Hawaii State Legislators

FROM: Sheldon S Y Lee

Re: My testimony in support of HB2524

Members of the board and the property manager at a condominium building paid a contractor \$2.6 million.

The contractor gave back some of the money to the board and property manager, in exchange for being given the job.

The expenditure was never authorized by the unit owners, as required by the bylaws.

The board had already spent about \$800,000 on “repairs and renovations.”

A bank was more than willing to extend a loan of \$3.3 million.

The board went ahead and spent the other \$700,000, without a vote by the owners.

As a result, the owners’ monthly fees tripled, indefinitely.

The interest rate on the loan would increase after 15 years.

The association—and its attorneys--foreclosed on owners who could not pay the higher fees.

Two of the owners were a retired couple who had to move to the mainland.

A third of the owners sold their units, mostly at reduced prices.

The building became gentrified.

The trouble began when an engineer moved into the penthouse and became the treasurer.

Recently, the existing property manager had retired.

Existing board members did not like the engineer and resigned. The president was replaced through proxy voting.

The large contract was put out to bid, but awarded to the contractor that the treasurer preferred.

The treasurer had worked with that contractor before.

The treasurer was constantly in contact with the contractor, architects and another engineer, on his own.

The expenditure of \$2.6 million was more than three times the amount on the permit.

The new president had complained about having to pay his son's tuition.

Suddenly, he retired and bought a large, expensive car.

The treasurer had owned a luxury vehicle that often did not run.

The treasurer bought a new luxury vehicle.

Obtaining the records of an association or "looking at the books" is not a cure-all.

Anyone with any sense would not show kickbacks on the books of a condo association.

Owners do not have the authority to see the private financial records of board members, property managers or contractors.

Kickbacks, large and small (a hundred dollars here and there, Zippy's gift cards, etc.) may be a way of life in Hawaii, but should not be.

I have personally known contractors who gave kickbacks, because "otherwise, [they] wouldn't get the work. Somebody else would get it."

By the way, the property manager admitted to me that some of the damage at the building was due to negligence on the part of his company.

There is a lot more that I could say.

Simply "educating" board members and property managers will not prevent them from stealing, if that is what they intend to do and if they can get away with it.

Condo owners should be educated about the steps they can take if they suspect corruption at their building.

There is an anti-corruption statute in Hawaii, HRS §708-880 Commercial bribery, but there is little that condo owners can do to enforce it.

John McCarthy of the Honolulu Police Department has written an article about that statute and condo associations in the CAI (Community Associations Institute) newsletter.

I would support an agency with the power to review expenditures at condo associations and to refer suspicious activities to HPD.

There are many honest and intelligent citizens who have had issues at their condominiums.

What is happening at condominiums in Hawaii is dirty and I hope that our public representatives can do something about it.

Thank you.

HB-2524-HD-1

Submitted on: 3/13/2024 8:53:02 AM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Eva Calcagno	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee: **I OPPOSE H.B. 2524 H.D. 1** for multiple reasons.

Under Hawaii Revised Statutes (“HRS”) Sections 514B-65 and 514B-66, the Real Estate Commission of the State of Hawaii has the authority to investigate violations of specific sections of the Condominium Property Act, issue complaints, conduct hearings, render findings of facts and if necessary, issue cease and desist orders, in accordance with the detailed procedures set forth in those sections.

H.B. 2524 H.D. 1 adds vague and ambiguous language to HRS Section 467-4 that would compel the commission to “[r]eceive and investigate complaints by condominium unit owners against associations that are subject to chapter 514B . . .” The measure fails to specify:

1. The types of complaints that would be subject to investigation by the commission;
2. The procedures for conducting the investigations;
3. The steps that the commission may take if it finds evidence of violations;
4. The power of the commission to conduct hearings;
5. The power of the commission to issue cease and desist orders or grant other relief.

This change is unnecessary because it overlaps with existing law, and it is vague and ambiguous so would increase the number of challenges to any investigations. The Legislature should not impose additional duties on the commission **absent a demonstrated need to do so**. Additionally, the Legislature should not adopt laws that are vague and ambiguous.

For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Eva Calcagno

HB-2524-HD-1

Submitted on: 3/13/2024 9:43:47 AM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Marcia Kimura	Individual	Support	Written Testimony Only

Comments:

I support the intent of this measure, BUT it needs to include more than mere investigations of condominium owner complaints, by placing the findings of the investigations on record, contacting board directors and owners of associations to inform them of the results of the investigations, and making recommendations for resolutions of complaints.

Lourdes Scheibert
920 Ward Ave
Honolulu, Hawaii. 96814

March 13, 2024

Committee on Government Operations
Chair Senator Angus L.K. McKelvey, Chair
Vice Chair Senator Mike Gabbard

RE: Testimony H.B. 2524 HD 1 in support

Aloha Chair McKelvey, Vice Chair Gabbard,

I especially support the HOUSE Committee report:

- (1) Require the Real Estate Commission (Commission to receive and investigate complaints by condominium unit owners against associations that are subject to condominium laws;

It would be beneficial and essential to involve the oversight of the Real Estate Commission by mandating professional licensing for the role of the Community Association Manager (CAM). This is the point at which a majority of condominium owners face repercussions that escalate to retaliation, mediation and extensive civil lawsuits.

Best to describe in SB402 introduced by San Buenaventura & McKelvy:

*Prohibits planned community associations, condominium associations, or their boards of directors from expending association funds to enforce against **de minimis** violations of association bylaws, rules, or regulations that result in not more than three complaints from separate units in the association within a calendar year or result in a fine of not more than \$500 per violation pursuant to the bylaws, rules, or regulations of the association.*

The Community Association Manager (CAM) serves as the initial point of contact for the board of directors and embodies the property management agreement with the Association. The board of directors assigns tasks to the CAM. Also, the CAM is described as the "Agent," primarily signifying the board of directors. Ultimately, the CAM is accountable to obey the decisions made by the President of the Association of Apartment Owners (AOAO) board of directors.

Numerous grievances stem from the Association's property management agreement, which delegates the routine tasks of overseeing the property's shared spaces. This responsibility of the Community Association Manager (CAM) also includes an advisory role to the Resident Manager. The Resident Manager's management responsibilities partially encompass the owners and their respective units. However, the property management company's liability and accountability are confined solely to the common and limited common areas.

In this contract, it's common for the board to direct owners to discuss their complaints and issues with the Community Association Manager (CAM) and the Resident Manager, who follows the CAM's advice. However, neither of these roles are decision-making positions. Rather than delving into the details of this often frustrating process, it's important to note that the owner is typically left with a unit in need of repair. This is usually the starting point of issues that then intensify. This style of property management often leads to a disconnect between the board and the community, with the board frequently resorting to attorney referrals.

I am convinced that most complaints from condominium owners, which are often perceived as minor or de minimis issues, could be effectively addressed through the Real Estate Commission's supervision of the professional license of the Community Association Manager. This approach could prevent such issues from escalating to mediation, arbitration, or even a comprehensive civil lawsuit. Meanwhile, the more serious matters could be appropriately handled by the State Ombudsman office.

I am of the view that the professional licensing of the Community Association Manager (CAM) is fitting and is in line with other professional licenses, such as those for General Contractors and their subcontractors, including plumbers and electricians, among others. Similarly, in the beauty industry, beauty salons are licensed and are required to employ professionally licensed hairdressers, cosmetologists, facial and massage therapists, and so on. Likewise, a mechanic must be certified by the Automotive Service Excellence before they can apply for a professional mechanic's license.

These professional licenses necessitate meeting the educational requirements and mandated hours set by their respective organizations prior to applying to the Department of Commerce and Consumer Affairs (DCCA) professional licensing office..

The property management industry, which employs the Community Association Manager (CAM), is no exception. The Community Association Institute is the organization that certifies roles managing condominium communities, among other types of communities. The Real Estate Commission exhibits hesitation in licensing Community Association Managers (CAMs).

The following are articles available on the Community Association Institute (CAI)'s website that endorse states requiring CAM licensing. These examples demonstrate that where there's a will, there's a way. Unfortunately, I believe that the CAI leadership in Hawaii is strongly opposed to CAM licensing for a variety of reasons, many of which I consider to be unfounded.

Thank-you
Lourdes Scheibert
Condominium Owner.

+++++

CAI POLICY





The CMA, Condominium Managing Agent, license should be reinstated and all individual practitioners who serve in a management capacity for condominium associations should be required to qualify for and obtain that license.

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Summary	Eligibility	Exam	Exam Preparation	Testing Info	Recertification	Related Occupations
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Certified Manager of Community Association (CMCA)

Summary

Certification: [Certified Manager of Community Association \(CMCA\)](#)    

Certifying Agency: [Community Association Managers International Certification Board \(CAMICB\)](#)

Credential Type: National Certification

Renewal Period: 2 years

The Community Association Managers International Certification Board (CAMICB), Certified Manager of Community Association (CMCA) is an entry-level certification for professionals who manage all types of communities, including condominium and homeowner associations, housing cooperatives, resort communities and commercial tenant associations. CMCA demonstrate knowledge in areas of Governance, Legal, and Ethical Conduct, Budgets, Reserves, Investments, and Assessments, Contracting, Financial Controls, Risk Management and Insurance, Property Maintenance, Meetings, and Human Resources. Candidates must meet a choice of eligibility requirements and pass a written exam.

More information can be found on the [certifying agency's website](#).

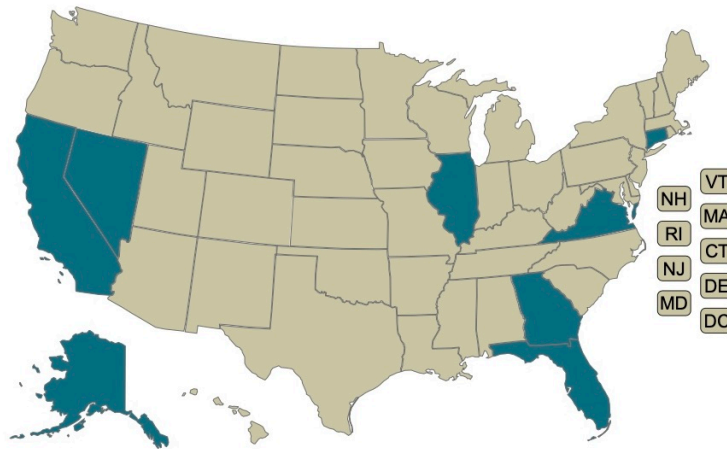
- Additional Advocacy Issues
- Condo Safety Laws and Legislation
- Fannie Mae & Freddie Mac Condo and Housing Cooperative Lender/Appraiser Requirements
- Corporate Transparency Act

[Click here to support this legislation!](#)

CAI advocates for industry-developed professional certifications or designation programs for community managers so they can self-regulate. If regulation is bound, CAI supports a regulatory system that incorporates protections for homeowners, mandatory education and testing on fundamental community association management knowledge, standards of conduct, and appropriate insurance requirements.

[Click here to see the federal bills related to manager licensing.](#)

Click on one of the eight **blue** states below to read a synopsis of the current state law.



- Alaska
- California
- Connecticut
- Florida
- Georgia
- Illinois
- Nevada
- Virginia

California common interest developments as a “certified” common interest development manager.

In states that either propose or begin discussions related to mandatory regulation of community association managers, CAI will support a regulatory system that includes the following:

- Adequate protections for homeowners living in community associations;
- Mandatory education and testing on fundamental knowledge of community association management and operations;

- Definition and enforcement of standards of professional and ethical conduct; and,
- Appropriate insurance requirements.

CAI will support a regulatory system that provides legal recognition of the community association management profession and provides assurances to the public that individuals representing themselves as being involved in the profession have met minimum qualifications for education and/or experience as a community association manager.

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CALIFORNIA (sample of their legislation)

CHAPTER 1116

An act to amend Section 10153.2 of, to amend, repeal, and add Section 10170.5 of, and to add and repeal Part 4 (commencing with Section 11500) of Division 4 of the Business and Professions Code, and to amend Sections 1363.5 and 1365 of the Civil Code, relating to common interest development managers.

[Filed with Secretary of State September 30, 2002. Approved by Governor September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 555, Dutra. Common interest development managers.

(1) Existing law, the Davis-Stirling Common Interest Development Act, establishes a scheme for the regulation of common interest developments. This bill would require a person, in order to be called a "certified common interest development manager" to have either passed an examination or achieved certification designated by a professional association for [community association managers](#) within the previous 5 years and to have satisfied other specified educational requirements. The bill would also require a person who provides or contemplates providing management services to a community association to disclose to that association whether that person is a certified common interest development manager. The bill would also make it an unfair business practice for a common interest development manager and certain other persons, to use the title of "certified common interest development manager" without meeting specified requirements, or to state or advertise that he or she is certified or licensed by a governmental agency to act as certified common interest development manager. The bill would provide that the above provisions would remain in effect only until January 1, 2008, unless extended.

(2) Existing law requires applicants for the real estate broker license examination and applicants for a real estate license renewal to meet certain education requirements.

This bill would include on July 1, 2004, in those requirements education in the subject of California law relating to common interest developments. The bill would also provide on July 1, 2003, that successful completion of coursework for renewal of a real estate license requires an applicant to demonstrate that he or she has passed a final examination.

(3) Existing law requires the articles of incorporation of common interest development associations to include specified information, including a statement that identifies the name and address of the association's managing agent, if any.

This bill would additionally require the articles of incorporation of a common interest development to state whether the association's managing agent is certified. The bill would further require a common interest development association to distribute to its members a summary of its fidelity insurance policies within 60 days preceding the start of the association's fiscal year.

DIGEST KEY

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) A large number of Californians find housing in the more than 33,000 common interest developments in this state. California common interest developments contain over three million homes, that house more than nine million people.

(b) Homes in common interest developments are no different than homes that are not in that they most often represent the owner's single largest lifetime investment.

(c) The management and operation of common interest developments is governed by a complex set of laws contained in the Civil, Corporations, Government, and Health and Safety Codes, and in federal statutes. In addition to possessing an understanding of this significant body of law, the successful professional common interest development management and the operations of a common interest development require fundamental skills in subjects including, but not limited to, finance accounting and bookkeeping, contract administration, human resources, and parliamentary procedure.

(d) Common interest development managers are often delegated the authority, by the governing body of the common interest development, to collect and disburse substantial sums of money annually in homeowner assessments, for the purpose of maintaining and operating the community.

(e) The growth in common interest developments, coupled with the addition of governing statutes, has created a demand for individuals who possess the necessary skills and technical expertise to act as common interest development managers.

(f) Currently, individuals hired to manage common interest developments are not recognized by law as possessing any educational or management skill standards if they identify themselves as "certified." In essence, any person can call himself or herself a certified common interest development manager without having received specific education and training in managing a common interest development.

(g) Those who reside in common interest developments in this state, or who participate as board members of homeowner associations of common interest developments, need to be assured that common interest development managers who refer to themselves as "certified" have met certain minimal education requirements and standards if they offer their services to

HB-2524-HD-1

Submitted on: 3/13/2024 12:07:40 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Candace Y. Yap	Individual	Oppose	Written Testimony Only

Comments:

The Ombusman should receive and investigate all complaints by condominium unit owners against the associations over perhaps 20 units for example that are subject to condominium laws. In addition, the Ombudsman to issue findings within 30 days after a complaint is filed against the Real Estate Commission's duties. The effective date should be immediately, not 76 year from this year in July 1, 3000. The Real Estate Commission has done very little in the way that the aoao management companies have been failing to provide a complete, accurate and up-to-date set of condominium documents upon the transfer of a property that requires condominium documents due to poor management processes. The management companies have also been charging ridiculously high fees for said condominium documents which should be already be readily available online. For example, these documents will not change and are sometimes inadvertently omitted when ordering the condominium documents (Declaration, Articles of Incorporation, By Laws, House Rules, Amendments, etc.). The documents that do change and should be charged reasonably for are the Minutes, Annual Minutes, RR105c, etc. The RR105c should be completed accurately and up-to-date. The management companies already make their moneys from the owner's maintenance fee payments. The management companies have failed miserably to deliver complete, accurate and up-to-date documents for property transfers should be held liable for their negligent errors. The Real Estate Commission should just stick to its current responsibilities and not be involved with complaints by condo owners against associations. Both complaints against the Real Estate Commission and and Associations should be handled by the Ombudsman.

Dale Arthur Head

1637 Ala Mahina Place Honolulu, HI 96819

Wednesday 12 March 2024 [sunnymakaha@yahoo.com]

Aloha Senate GVO Chair Angus L.K. McKelvey, Vice Chair Mike Gabbard, and committee members

*Regarding **HB2524HD**:* Requires the Real Estate Commission (Commission) to receive and investigate complaints by condominium unit owners against associations that are subject to condominium laws. Requires the Ombudsman to issue findings within an unspecified number of days after a complaint is filed with the Ombudsman against the Commission regarding the Commission's foregoing duties. Effective 7/1/3000. (HD1)

- 1. Well, this Bill is only a few decades overdue, this as buyers of HOA (Home Owners Association) properties have no clue they are stepping into a rigged system whereby their rights are ignored and they are subjected, very often, to bullying by haughty Board of Directors members and Managing Agent employees.*
- 2. The state has an anti-citizen doctrine that as Home Owners Associations are supposedly "self governing", that the state cannot involve itself in their affairs. Yet, we have something of a "shadow legislature" that has been allowed to write a plethora of rules they love, into something called HRS514b, which, as most of it is not enforced by the Executive Branch renders the statute "voluntary". What a nightmare for consumers. I use the term "anti citizen" in consideration of state policy relegating HOA residents to a "2nd class" status' in direct disregard of the Equal Protection Clause (from 1868), its Section 1 of the 14th Amendment to our US Constitution which specifies "nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws." It mandates that individuals in similar situations be treated equally by the law.*
- 3. My own experience of owning in an HOA had a long learning curve as I had no clue Managing Agents are allowed by the state to, with malice, manipulate, hijack, and steal elections for Board of Directors. This is a FACT! This means we, as members of the public, are deprived of integrity of government which we all pay taxes to fund.*
- 4. Please be aware that our REC (Real Estate Commission) now consist of just six members appointed by the Governor. Only two are listed as "Public Members", whatever that means I don't know as the public is not told of their fancy titles. The other 4 are listed as "Brokers". One of them shows up frequently at our Capitol for HOA/condominium related issues, but, likes to list himself as an "individual". Last year, 2023, he denounced as a "Horrible bill" one proposal to let all HOA members cast their own vote. Obviously, representative democracy cannot blossom with such players.*
- 5. My Waianae HOA, next to Waianae High School, last Fall discovered a criminal case of embezzlement. No problem, only a few hundred thousand dollars. Did the state show interest? Nope!! The management company gave some money back then severed itself from the victim HOA. Meaning, they get to keep their business license,*

issued by the state of Hawaii, and say nothing of it to their hundreds of other HOA clients. For love of money corruption thrives. Good story about this in Civil Beat. Go to their page and type into their search window, 'Makaha Surfside'. When the same company would hijack our Annual Meeting Board of Directors Elections, RICO (Regulated Industries Complaint Office) of the DCCA (Department of Commerce and Consumer Affairs) always refused to investigate and take action. Meaning, this is **racketeering**, big time!! There are now several thousand HOAs housing perhaps **40%** of Hawaii's population. That, is a LOT of 2nd class citizens.

6. Please pass this Bill and put some integrity into HRS514b by doing so.

Respectfully, Dale A. Head

HB-2524-HD-1

Submitted on: 3/13/2024 1:55:53 PM

Testimony for GVO on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carol Walker	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2524 H.D. 1 for the reasons set forth below.

Under Hawaii Revised Statutes (“HRS”) Sections 514B-65 and 514B-66, the Real Estate Commission of the State of Hawaii has the authority to investigate violations of specific sections of the Condominium Property Act, issue complaints, conduct hearings, render findings of facts and if necessary, issue cease and desist orders, in accordance with the detailed procedures set forth in those sections.

H.B. 2524 H.D. 1 adds vague and ambiguous language to HRS Section 467-4 that would compel the commission to “[r]eceive and investigate complaints by condominium unit owners against associations that are subject to chapter 514B . . .” The measure fails to specify:

1. The types of complaints that would be subject to investigation by the commission;
2. The procedures for conducting the investigations;
3. The steps that the commission may take if it finds evidence of violations;
4. The power of the commission to conduct hearings;
5. The power of the commission to issue cease and desist orders or grant other relief.

Furthermore, H.B. 2524 H.D. 1 is unnecessary given the broad investigative powers of the commission under HRS Sections 514B-65 and 514B-66. In that regard, H.B. 2524 H.D. 1 will create confusion as it significantly overlaps with HRS Sections 514B-65 and 514B-66. If the measure is adopted, the commission could have a duty to conduct investigations under both HRS Section 467-4 and Section 514B-65; however, the procedures will be different under the two sections and actions taken by the commission under HRS Section 467-4 will be subject to challenge given the vague and ambiguous language in that section. The Legislature should not impose additional duties on the commission absent a demonstrated need to do so. Additionally, the Legislature should not adopt laws that are vague and ambiguous.

For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Carol Walker

TESTIMONY OF SANDRA J. DUBOFF AND DARYL WILSON MARCH 14, 2024 with respect to HB2524.

Bill HB 2524 proposes adding a new section 9) "Receive and investigate complaints by condominium unit owners against associations that are subject to chapter 514B". We are owners at the Association of Apartment Owners at the Masters at Kaanapali Hillside, Maui, which is subject to Hawaii 514b, and are members of the Governance Committee. We are submitting testimony with respect to a complaint under Hawaii 514b. The Governance Committee was tasked with reviewing a Restatement of our Bylaws prepared by outside counsel, the purpose of which was to eliminate references to 514A and to incorporate prior amendments into one document. Since the Board was restating the bylaws for the purpose of conforming our governing documents to the current law, and there were to be no substantive changes, owner consent was not required. During the course of our review the question was raised as to whether or not the legislature when it deleted in 2005 the language from the Hawaii 514A predecessor statute to Hawaii 514b 106 (f) "including cumulative voting" intended that unincorporated home owners associations, such as the Masters, which provide for cumulative voting in their bylaws, not have the protections in Hawaii 414d 138 (d) for incorporated associations and Hawaii 421 j 3.3 for planned communities which prevent a simple majority from immediately removing a director elected by cumulative voting.

During the course of the Governance Committee review, we and other members of the Governance Committee questioned our counsel's advice that we remove the following language from our bylaws in the Section on removal of Directors: "provided that an individual Director shall not be removed (unless the entire Board is removed) if Owners having sufficient votes to elect one Director by cumulative voting present at such meeting shall vote against his removal".

The same Section of our Bylaws also has the following language: "Such removal and replacement shall be in accordance with all applicable requirements and procedures in these Bylaws for the removal and replacement of directors, including, but not limited to any provisions related to cumulative voting."

Since the Board was restating our Bylaws without owner consent, Daryl, I and other members of the Governance Committee were concerned that removing the language as suggested by counsel was a substantive change. We viewed it as a defacto amendment of our bylaws by functionally eliminating cumulative voting, which is specifically provided for in our bylaws. If a director elected by cumulative voting can be removed without cause by majority vote, then there is no cumulative voting. This happened at the Masters in 2021 when a director was elected by cumulative voting, five minutes later a motion was made to remove the director, and the director was removed and replaced with majority vote. This almost happened again on March 9, 2024 at our Annual Owners Meeting.

I, Sandra, am an attorney licensed to practice in NY, NJ and CT. Daryl is an Associate Member of the Law Society of Alberta, not an Active Member. Two other members of the Governance Committee are attorneys. We all have experience interpreting statutes. We have read Hawaii 514b 106 (f) :

"(f) At any regular or special meeting of the association, any member of the board may be removed and successors shall be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be by a vote of a majority of the unit owners and, otherwise, in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors and, if removal and replacement is to occur at a special meeting, section 514B-121(c)."

We interpreted the language "and, otherwise, in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement" to include the above quoted provisions in our bylaws for taking into account cumulative voting when removing a director. Our counsel advised that since in 2005 the legislature removed from what is now Hawai'i 514b 106 (f) the words at the end "including cumulative voting " the legislature intended that a majority could remove directors elected by cumulative voting. The lawyers on our Governance Committee thought the deletion of the phrase "including cumulative voting" did not mean that cumulative voting did not apply to removal because if that had been the legislative intent, the legislature would have said "but not including cumulative voting". Our counsel disagreed.

The Governance Committee pointed out to our counsel and parliamentarian that in 2022 the legislature amended 421j adding a new section 3.3 to clarify that if bylaws provide for cumulative voting then a director could not be removed if a sufficient number of cumulative votes to elect a director voted against the director's removal. This was to protect those who voted for a candidate by cumulative voting from having that candidate removed by simple majority .Hawaii 414d in Section 138 (d) also has the same language by providing "(d) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit or grouping of members, the number of votes of that class, chapter, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal".

Notwithstanding the arguments of the Governance Committee, our parliamentarian and counsel have advised us the majority may immediately remove a director elected by cumulative voting based on the removal by the legislature in 2005 of the words "including cumulative voting" Our counsel spoke to a lobbyist who told our counsel "the legislature deliberately struck out AOA cumulative voting language because it didn't want AOA's to have this director removal requirement. "

As owners, we are concerned that if Hawaii 514b 106 (f) below is interpreted to mean that the "and otherwise, in accordance with applicable procedures and requirements in the bylaws" does not include cumulative voting, then our bylaws have been defacto amended to eliminate cumulative voting without 67% owner approval.

Was it the legislative intent that unincorporated associations be able to remove a director elected by cumulative voting as provided in the bylaws by a majority vote, effectively eliminating the right to elect a director by cumulative voting, but to protect cumulative voting if allowed in the bylaws of incorporated associations and planned communities? Why would an owner in an unincorporated association have less protection than an owner in an incorporated association or a planned community?

If the legislature did not intend to eliminate the right in our bylaws to protect directors elected by cumulative voting from being immediately removed without cause by majority vote and to be replaced with a director elected by majority vote, please amend Hawaii 514b 106 (f) to provide more clarity.

Thank you for your attention to this matter. For your convenience, we are attaching the statutory sections referred to in this testimony and the relevant sections of our bylaws.

Sandra DuBoff, Member of, and Daryl Wilson, Chair of, the Governance Committee

Owners at the Association of Apartment Owners at the Masters at Kaanapali Hillside, Maui

Master Bylaws

SECTION 8. Conduct of Meetings and Order of Business. All meetings of the Association shall be conducted in accordance with the then most current edition of Roberts Rules of Order. The Order of business at all annual meetings of the Association shall be as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of Officers;
- (e) Report of Board;
- (f) Reports of committees;
- (g) Selection of inspectors of election by Chairperson (when so required);
- (h) Election of members of the Board (when so required);
- (i) Unfinished business;
- (j) New business: and
- (k) Adjournment.⁶

SECTION 9. Cumulative Voting. Election of Directors shall be by cumulative voting, and each apartment may cast for any one or more nominees to the Board a vote equivalent to the common interest for the apartment multiplied by the number of Directors to be elected. Each Owner shall be entitled to cumulate his vote and give all thereof to one nominee or to distribute his vote in such manner as he shall determine among any or all of the nominees; and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of Directors to be elected, shall be deemed elected.

SECTION 10. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of Apartment Owners having at least fifty percent (50%) of the total common interests of all apartments shall constitute a quorum at all meetings of the Association.

SECTION 11. Majority Vote. The vote of a majority of a quorum present, in person or by proxy, at a meeting shall be binding upon all Apartment Owners for all purposes unless the Declaration or these By-Laws or Hawaii law requires a higher percentage.⁷

[§421J-3.3] Removal of directors elected by members or directors. (a)

The members may remove a director elected by the members with or without cause unless otherwise provided in the association documents. If the removal is successful, the replacement director shall be elected for the remainder of the removed director's term in accordance with all applicable requirements and procedures in the association documents and this chapter. If the replacement director is not elected at the meeting in which the removal occurred, notwithstanding anything to the contrary in the association documents, the board may fill vacancies to serve until the next annual or duly noticed special meeting of the association.

(b) If a director is elected by a class, chapter, or other organizational unit, or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

(c) Except as provided in subsection (i), a director may be removed under subsection (a) or (b) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized at the meeting, the director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping, sufficient to elect the director under cumulative voting is against the director's removal.

(e) A director elected by members may be removed by the members at any regular or special meeting; provided that:

- (1) The board of directors recommends removal of the director; or
- (2) A member delivers to the secretary of the association or managing agent a petition for removal of the director that:
 - (A) Is signed by members representing at least one hundred units or members who own at least twenty-five per cent of the total number of units in the planned community, whichever is less;
 - (B) Contains the printed name, identification of the unit, address of the signing members, and dates of their signatures;
 - (C) Is delivered within seven days after the posting of a notice of intent to distribute proxies that includes the election of directors in accordance with section 421J-4(e), or within seven days after the posting of a notice of intent to distribute a notice of a meeting under section 421J-3.5(f); and
 - (D) Is submitted within one hundred twenty days of the earliest signature.

(f) If the board of directors recommends removal, or if a timely petition is delivered to the secretary of the association or managing agent, the secretary or managing agent shall include the proposed removal in the notice of the meeting.

(g) In computing whether a director is protected from removal under subsections (b) through (d), it shall be assumed that the votes against removal of the director are cast in an election for the number of directors to the class to which that director belonged at the meeting at which the removal is proposed.

(h) An entire board of directors may be removed pursuant to subsections (a)

through (c).

(i) If, at the beginning of a director's term on the board, the association documents provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal. [L 2022, c 69, pt of §1]

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2022 Hawaii Revised Statutes

Title 23. Corporations and Partnerships

414D. Hawaii Nonprofit Corporations Act

414D-138 Removal of directors elected by members or directors.

Universal Citation: HI Rev Stat § 414D-138 (2022)

§414D-138 Removal of directors elected by members or directors. (a) The members may remove one or more directors elected by them without cause unless otherwise provided in the articles or bylaws.

(b) If a director is elected by a class, chapter, or other organizational unit, or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

(c) Except as provided in subsection (i), a director may be removed under subsection (a) or (b) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(f) In computing whether a director is protected from removal under subsections (b) to (d), it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a) to (e).

(h) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws; provided that a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(i) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal. [L 2001, c 105, pt of §1]

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2022 Hawaii Revised Statutes

Title 28. Property

514B. Condominiums

514B-106 Board; powers and duties.

Universal Citation: HI Rev Stat § 514B-106 (2022)

§514B-106 Board; powers and duties. (a) Except as provided in the declaration, the bylaws, subsection (b), or other provisions of this chapter, the board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D. Any violation by a board or its officers or members of the mandatory provisions of section 514B-161 or 514B-162 may constitute a violation of the fiduciary duty owed pursuant to this subsection; provided that a board member may avoid liability under this subsection by indicating in writing the board member's disagreement with such board action or rescinding or withdrawing the violating conduct within forty-five days of the occurrence of the initial violation.

(b) The board may not act on behalf of the association to amend the declaration or bylaws (sections 514B-32(a)(11) and 514B-108(b)(7)), to remove the condominium from the provisions of this chapter (section 514B-47), or to elect members of the board or determine the qualifications, powers and duties, or terms of office of board members (subsection (e)); provided that nothing in this subsection shall be construed to prohibit board members from voting proxies (section 514B-123) to elect members of the board; provided further that notwithstanding anything to the contrary in the declaration or bylaws, the board may only fill vacancies in its membership to serve until the next annual or duly noticed special association meeting. Notice of a special association meeting to fill vacancies shall include notice of the election. Any special association meeting to fill vacancies shall be held on a date that allows sufficient time for owners to declare their intention to run for election and to solicit proxies for that purpose.

(c) Within thirty days after the adoption of any proposed budget for the condominium, the board shall make available a copy of the budget to all the unit owners and shall notify each unit owner that

514B106

the unit owner may request a copy of the budget.

(d) The declaration may provide for a period of developer control of the association, during which a developer, or persons designated by the developer, may appoint and remove the officers and members of the board. Regardless of the period provided in the declaration, a period of developer control terminates no later than the earlier of:

- (1) Sixty days after conveyance of seventy-five per cent of the common interest appurtenant to units that may be created to unit owners other than a developer or affiliate of the developer;
- (2) Two years after the developer has ceased to offer units for sale in the ordinary course of business;
- (3) Two years after any right to add new units was last exercised; or
- (4) The day the developer, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association.

A developer may voluntarily surrender the right to appoint and remove officers and members of the board before termination of that period, but in that event the developer may require, for the duration of the period of developer control, that specified actions of the association or board, as described in a recorded instrument executed by the developer, be approved by the developer before they become effective.

(e) Not later than the termination of any period of developer control, the unit owners shall elect a board of at least three members; provided that projects created after May 18, 1984, with one hundred or more individual units, shall have an elected board of at least nine members unless the membership has amended the bylaws to reduce the number of directors; and provided further that projects with more than one hundred individual units where at least seventy per cent of the unit owners do not reside at the project may amend the bylaws to reduce the board to as few as five members by the written consent of a majority of the unit owners or the vote of a majority of a quorum at any annual meeting or special meeting called for that purpose. The association may rely on its membership records in determining whether a unit is owner-occupied. A decrease in the number of directors shall not deprive an incumbent director of any remaining term of office.

(f) At any regular or special meeting of the association, any member of the board may be removed and successors shall be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be by a vote of a majority of the unit owners and, otherwise, in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors and, if removal and replacement is to occur at a special meeting, section 514B-121(c). [L 2004, c 164, pt of §2; am L 2005, c 93, §7 and c 155, §3; am L 2006, c 273, §16; am L 2014, c 189, §4 and c 235, §3; am L 2017, c 81, §2; am L 2019, c 14, §2]

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2005 Hawaii Laws Act 155 (S.B. 1798)

HAWAII 2005 SESSION LAWS

2005 REGULAR SESSION OF THE 23rd LEGISLATURE

Additions are indicated by **Text**; deletions by

~~Text~~ . Changes in tables are made but not highlighted.

Vetoed provisions within tabular material are not displayed.

Act 155

S.B. No. 1798

AOAOS—CUMULATIVE VOTING—DIRECTOR REMOVAL

A BILL FOR AN ACT RELATING TO NONPROFIT CORPORATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 514A–82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

<< HI ST § 514A–82 >>

“(b) In addition to the requirements of subsection (a), the bylaws shall be consistent with the following provisions:

- (1) At any regular or special meeting of the apartment owners, any one or more members of the board of directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be **by a vote of a majority of the apartment owners and, otherwise,** in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors; ~~including any provision relating to cumulative voting~~ . If removal and replacement is to occur at a special association meeting, the call for the meeting shall be by the president or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership; provided that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the bylaws. Except as otherwise provided in this section, the meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association: §
- (2) The bylaws may be amended at any time by the vote or written consent of sixty-five per cent of all apartment owners; provided that:
 - (A) Each one of the particulars set forth in this subsection shall be embodied in the bylaws always; and
 - (B) Any proposed bylaws with the rationale for the proposal may be submitted by the board of directors or by a volunteer apartment owners' committee. If submitted by that committee, the proposal shall be accompanied by a petition signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board of directors to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board of directors. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within three hundred sixty-five days after mailing for a proposed bylaw submitted by either the board of directors or a volunteer apartment owners' committee. If the bylaw is duly adopted, then the board shall cause the bylaw amendment to be recorded in the bureau of conveyances or

filed in the land court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the board.

This subsection paragraph shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any bylaw amendment at any annual association meeting: ;

(3) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any: ;

(4) No resident manager or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the association of owners that employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any association meeting except for the purpose of establishing a quorum. Any board of directors that intends to use association funds to distribute proxies, including the standard proxy form referred to in paragraph (3), shall first post notice of its intent to distribute proxies in prominent locations within the project at least thirty days prior to its distribution of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:

(A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or

(B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies: ;

(5) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made: ;

(6) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments: ;

(7) An owner shall not act as an officer of an association and an employee of the managing agent employed by the association: ;

(8) An association's employees shall not engage in selling or renting apartments in the condominium in which they are employed except association-owned units, unless such activity is approved by an affirmative vote of sixty-five per cent of the membership: ;

(9) The board of directors shall meet at least once a year. Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors: ;

(10) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses: ;

(11) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments: ;

(12) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of paragraph (10): ;

(13) A lien created pursuant to section 514A-90 may be enforced by the association in any manner permitted by law, including nonjudicial or power of sale foreclosure procedures authorized by chapter 667: ;and

(14) If the bylaws provide for cumulative voting by the owners, the owners may so vote if an owner gives notice of the owner's intent to cumulatively vote before voting commences.

The provisions of this subsection shall be deemed incorporated into the bylaws of all condominium projects existing as of January 1, 1988, and all condominium projects created after that date."

SECTION 2. Section 2 of Act 164, Session Laws of Hawaii 2004, is amended by amending subsection (a) of section –104, Hawaii Revised Statutes, to read as follows:

“(a) Except as provided in section –105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

- (1) Adopt and amend the declaration, bylaws, and rules and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section –148;
- (3) Hire and discharge managing agents and other independent contractors, agents, and employees;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. For the purposes of actions under chapter 480, associations shall be deemed to be “consumers”;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall require the approval of at least sixty-seven per cent of the unit owners; provided further that if the developer discloses to the initial buyer in writing that additional areas will be designated as common elements whether pursuant to an incremental or phased project or otherwise, this requirement shall not apply as to those additional areas; and provided further that this paragraph shall not apply to the purchase of a unit for a resident manager;
- (9) Subject to section –38, grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section –35(2) and (4), and for services provided to unit owners;
- (11) Impose charges and penalties, including late fees and interest, for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, for condominiums created after May 17, 1983, if the bylaws are silent, pursuant to a resolution adopted by the board and approved by sixty-seven per cent of all unit owners at an annual meeting of the association or by the written consent of sixty-seven per cent of all unit owners;
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, documents requested for resale of units, or statements of unpaid assessments;
- (13) Provide for cumulative voting; ~~through a provision in the bylaws; provided that an owner shall provide notice of the owner's intent to cumulatively vote before voting commences;~~
- (14) Provide for the indemnification of its officers, board, committee members, and agents, and maintain directors' and officers' liability insurance;
- (15) Assign its right to future income, including the right to receive common expense assessments, but only to the extent section –105(e) expressly so provides;
- (16) Exercise any other powers conferred by the declaration or bylaws;
- (17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, except to the extent inconsistent with this chapter;
- (18) Exercise any other powers necessary and proper for the governance and operation of the association; and
- (19) By regulation, subject to sections –146, –161, and –162, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding.”

SECTION 3. Section 2 of Act 164, Session Laws of Hawaii 2004, is amended by amending subsection (f) of section –106, Hawaii Revised Statutes, to read as follows:

“(f) At any regular or special meeting of the association, any member of the board may be removed and successors shall be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be ~~by a vote of a majority of the unit owners and, otherwise,~~ in accordance with all applicable requirements and procedures in the bylaws for the

removal and replacement of directors, ~~including any provision relating to cumulative voting,~~ and, if removal and replacement is to occur at a special meeting, section –121(b).”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that sections 2 and 3 of this Act shall take effect when section 2 of Act 164, Session Laws of Hawaii 2004, takes effect.

Approved June 23, 2005.

HI LEGIS 155 (2005)

End of Document

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Testimony in Support of HB2524 HD1

Submitted for: Government Operations Committee Hearing, scheduled for Thursday, March 14, 2024 at 3:00 PM.

Aloha Chair McKelvey, Vice Chair Gabbard, and Members of the Committee,

My name is Gregory Misakian, and I currently serve as 1st Vice President of the Kokua Council, Sub-District 2 Vice Chair of the Waikiki Neighborhood Board, and a Director on my condominium association's Board.

The Kokua Council, one of the oldest elder advocacy organizations in Hawaii, proposed four measures last year for better consumer protections for condominium owners, which were introduced as six bills (two which I co-authored, HB178 and HB1501). This year, Lila Mower (President of Kokua Council) and I drafted and proposed numerous additional measures, which were introduced as SB3204, SB3205, and SB3206 (and companion bills HB2701, HB2680, and HB2681).

The Waikiki Neighborhood Board, along with Ala Moana-Kakaako, McCully-Moilili, and Makiki-Tantalus Neighborhood Boards, that have significant numbers of condominium associations in their communities, have adopted resolutions to support better consumer protection measures for condominium owners.

The Keoni Ana AOA, my condominium association where I am a frequent target for calling out misconduct by Board members and others, has the support of many owners who want to see better consumer protection measures.

The Public is concerned, engaged, and has been providing statements and testimonies to support the need for better laws and proper accountability and enforcement for bad acts by association Board members, management companies and their agents, attorneys, and others overseeing condominium associations and HOAs. I am a witness to this at many meetings I attend, and many discussions I have had one-on-one with concerned homeowners.

What is Needed

There is a lot of public support to show the need for better laws, but the support that is needed to get anything accomplished begins with you. And each of you literally hold the future of over 1/3 of the population of Hawaii in your hands. You can choose to help the residents of Hawaii, or do nothing and let the insanity continue. And when I use the word “insanity,” it is not to embellish or grandstand, you simply need to read and watch the news, read and listen to the testimonies each year, and hopefully have taken the time to read and watch testimonies from the Condominium Property Regime Task Force, where I have participated and provided testimonies (some of which I am including in my testimony here).

An Ombudsman’s Office to address condominium association disputes and to enforce HRS 514B statutes is needed now, not in 2026 (when the LRB report would be issued) or beyond. The public and the Governor expected the Condominium Property Regime (CPR) Task Force would do something, and not just meet a few times, waste time, then quickly try to meet their required report deadline by throwing their responsibilities over the wall to another Government branch (with a financial cost yet to be determined).

What was Done

Act 189, signed into law by the Governor last year, gave hope that once and for all our legislators were taking notice. Sadly, the two Task Forces that were established were stacked with the worst possible Committee members, with the exception of one or two. It elicits that well-worn phrase, “are you kidding me.” And having the two Task Forces Chaired by attorneys who oppose better consumer protection measures and who regularly sue condominium owners, is not only unconscionable, it is outrageous.

Nominating and appointing those who openly and regularly “oppose” better condominium related consumer protection measures is a clear disregard for the public’s best interest. It is also an insult to the intelligence of the public as a whole (as if it won’t be noticed). Some may be fearful to speak out, since this seems to be the “island way,” but I am not. You simply need to read (and watch) the abundant

opposition testimony from these Committee members (attorneys and DCCA staff) to see the “documented” evidence of their opposition. Some also openly show disdain for condominium owners in written statements and public comments that they make.

What is Not Needed

Our legislators need to be aware of the misinformation campaign, collusion, and conflict of interest, by many in opposition of better consumer protections for condominium owners.

Here are just some who oppose often and with disregard to the concerns and the facts, and some with conflict of interests that should disqualify testimony.

Richard Emery - Current Real Estate Commissioner & Vice President Hawaii Affairs, Associa.

Richard Ekimoto - Attorney & CAI lobbyist, who sues condominium owners.

Philip Nerney - Condominium Property Regime Task Force Chair, CAI Member and Spokesperson, and Attorney who sues condominium owners often.

Mark McKellar - Attorney who sues condominium owners often in foreclosure cases.

Steve Glanstein - Parliamentarian (should be “unbiased” per his Code of Professional Responsibility).

Rachel Glanstein - Parliamentarian (should be “unbiased” per her Code of Professional Responsibility).

Anne Anderson - Attorney

Paul A. Ireland Koftinow - Attorney representing condominium associations.

Laurie Sokach - Management Company Representative

Numerous Association Board Presidents and Directors who want to retain their power and will do anything to do so, even providing our legislators with false information and a false narrative.

Many in this group are using **boilerplate cut and paste testimony** with misinformation, very strong language, derogatory comments towards the opposing side in favor of better laws, and without any regard for “individual” opinions. This form of testimony in my opinion is outrageous and should not be allowed, should be

clear and obvious to our legislators, and at a minimum should not be considered in decision making.

What is also not needed is for the Legislature to continue to let certain people misinform openly, which I had to sit and watch on 2/22/24, as I participated in the Finance Committee hearing regarding HB1814 HD1, scheduled at 10:00 AM. The Committee chose to ask questions of Mr. Philip Nerney, who again provided “his” opinion and not facts, and “misinformed” the Committee numerous times. One glaring comment he made was that a Condominium Ombudsman would have the final say (i.e., there was no other judicial path in the courts to resolve an issue, if a party or both parties did not accept the Ombudsman’s Office findings). This is not only false, but Mr. Nerney has been informed of this numerous times, and on the record. Mr. Nerney also trivialized condominium owners’ concerns, what the issues really are, and used language that was disrespectful to condominium owners throughout Hawaii. In my opinion and the opinion of many others, he has no place on a Task Force meant to help condominium owners. Our legislators on Committees who are giving him the floor to spread more misinformation, are enabling this, and if not stopped are endorsing this. Some are also receiving campaign contributions from him, which is not only concerning, but I believe should be investigated based on what I am reporting.

Here is a snapshot of some campaign contributions:

Candidate	Contributor	Contributor					
Name	Type	Name	Date	Amount	Aggregate	Employer	Occupation
Kidani, Michelle	Individual	Nerney, Philip	12/22/2023	\$250.00	\$250.00		
McKelvey, Angus	Individual	Nerney, Philip	08/23/2023	\$250.00	\$250.00		Attorney
Keohokalole, Jarrett	Individual	Nerney, Philip	07/25/2023	\$250.00	\$250.00		
Bissen, Richard	Individual	Nerney, Philip	08/17/2022	\$750.00	\$1,000.00	Philip S. Nerney, LLLC	Attorney

Candidate Name	Contributor Type	Contributor Name	Date	Amount	Aggregate	Employer	Occupation
Luke, Sylvia	Individual	Nerney, Philip	07/08/2022	\$2,000.00	\$4,000.00	Law Offices of Philip Nerney	Attorney
Bissen, Richard	Individual	Nerney, Philip	07/07/2022	\$250.00	\$250.00	Philip S. Nerney, LLLC	Attorney
Takenouchi, Jenna	Individual	Nerney, Philip	06/03/2022	\$1,000.00	\$1,000.00	Law Offices of Philip S. Nerney LLC	Attorney
Luke, Sylvia	Individual	Nerney, Philip	12/08/2021	\$2,000.00	\$2,000.00	Law Offices of Philip Nerney	Attorney
Rhoads, Karl	Individual	Nerney, Philip	07/29/2021	\$1,000.00	\$1,000.00	Law Offices of Philip Nerney, LLC	Attorney
Takumi, Roy	Individual	Nerney, Philip	03/25/2020	\$150.00	\$650.00		
Cullen, Ty	Individual	NERNEY, PHILIP	11/05/2019	\$250.00	\$400.00		
Rhoads, Karl	Individual	Nerney, Philip	09/18/2019	\$2,000.00	\$2,350.00	Law Offices of Philip Nerney, LLC	Attorney
Luke, Sylvia	Individual	Nerney, Philip	05/07/2019	\$250.00	\$500.00	Law Offices of Philip Nerney	Attorney
Yamane, Ryan	Individual	Nerney, Philip	04/25/2019	\$150.00	\$150.00		
Cullen, Ty	Individual	NERNEY, PHILIP	04/24/2019	\$150.00	\$150.00		
Takumi, Roy	Individual	Nerney, Philip	04/16/2019	\$500.00	\$500.00		
Luke, Sylvia	Individual	Nerney, Philip	01/11/2019	\$250.00	\$250.00	Law Offices of Philip Nerney	Attorney

Candidate Name	Contributor Type	Contributor Name	Date	Amount	Aggregate	Employer	Occupation
Rhoads, Karl	Individual	Nerney, Philip	01/11/2019	\$175.00	\$350.00	Law Offices of Philip Nerney, LLC	Attorney
Green, Josh	Individual	Nerney, Philip	07/12/2018	\$500.00	\$500.00		
Fukunaga, Carol	Individual	Nerney, Philip	06/13/2018	\$500.00	\$700.00		
Yamane, Ryan	Individual	Nerney, Philip	04/27/2018	\$150.00	\$150.00		
Cullen, Ty	Individual	NERNEY, PHILIP	04/16/2018	\$150.00	\$150.00		
Luke, Sylvia	Individual	Nerney, Philip	04/12/2018	\$250.00	\$250.00	Law Offices of Philip Nerney	Attorney
Kidani, Michelle	Individual	Nerney, Philip	02/13/2018	\$150.00	\$450.00		
Rhoads, Karl	Individual	Nerney, Philip	11/08/2017	\$175.00	\$175.00	Law Offices of Philip Nerney, LLC	Attorney
Fukunaga, Carol	Individual	Nerney, Philip	09/15/2017	\$200.00	\$200.00		
Keith- Agaran, Gilbert	Individual	NERNEY, PHILIP	01/31/2017	\$250.00	\$250.00	LAW OFFICES OF PHILIP NERNEY	ATTORNEY
Rhoads, Karl	Individual	Nerney, Philip	09/26/2016	\$1,000.00	\$2,150.00	Law Offices of Philip Nerney, LLC	Attorney
Rhoads, Karl	Individual	Nerney, Philip	07/02/2016	\$1,000.00	\$1,150.00	Law Offices of Philip Nerney, LLC	Attorney
Yamane, Ryan	Individual	Nerney, Philip	04/04/2016	\$50.00	\$150.00		

Candidate Name	Contributor Type	Contributor Name	Date	Amount	Aggregate	Employer	Occupation
Luke, Sylvia	Individual	Nerney, Philip	03/29/2016	\$250.00	\$500.00	Law Offices of Philip Nerney	Attorney
Kidani, Michelle	Individual	Nerney, Philip	02/24/2016	\$150.00	\$300.00		
Rhoads, Karl	Individual	Nerney, Philip	01/20/2016	\$150.00	\$150.00	Law Offices of Philip Nerney, LLC	Attorney
Keith-Agaran, Gilbert	Individual	NERNEY, PHILIP	01/15/2016	\$150.00	\$300.00	LAW OFFICES OF PHILIP NERNEY	ATTORNEY
Luke, Sylvia	Individual	Nerney, Philip	11/03/2015	\$100.00	\$250.00	Law Offices of Philip Nerney	Attorney
Luke, Sylvia	Individual	Nerney, Philip	03/20/2015	\$150.00	\$150.00	Law Offices of Philip Nerney	Attorney
Kidani, Michelle	Individual	Nerney, Philip	02/20/2015	\$150.00	\$150.00		
Keith-Agaran, Gilbert	Individual	NERNEY, PHILIP	01/08/2015	\$150.00	\$150.00	LAW OFFICES OF PHILIP NERNEY	ATTORNEY
Luke, Sylvia	Individual	Nerney, Philip	06/20/2014	\$150.00	\$200.00	Law Offices of Philip Nerney	Attorney
Rhoads, Karl	Other Entity	Law Offices of Philip S Nerney LLLC	05/05/2014	\$150.00	\$150.00		
Kidani, Michelle	Individual	Nerney, Philip	12/18/2013	\$500.00	\$650.00		

Candidate Name	Contributor Type	Contributor Name	Date	Amount	Aggregate	Employer	Occupation
Kidani, Michelle	Individual	Nerney, Philip	03/12/2013	\$50.00	\$150.00		
Kidani, Michelle	Individual	Nerney, Philip	08/22/2012	\$25.00	\$225.00		
Abercrombie, Neil	Other Entity	Law Offices of Philip S Nerney LLLC	06/26/2012	\$300.00	\$300.00		
Kidani, Michelle	Individual	Nerney, Philip	03/01/2012	\$100.00	\$200.00		
Abercrombie, Neil	Individual	Nerney, Philip	08/29/2011	\$300.00	\$300.00		
Pacarro, Franklin Jr.	Individual	Nerney, Philip	03/26/2010	\$250.00	\$250.00		
Luke, Sylvia	Individual	Nerney, Philip	04/17/2009	\$250.00	\$250.00	Law Offices of Philip Nerney	Attorney
Luke, Sylvia	Individual	Nerney, Philip	04/18/2008	\$100.00	\$200.00	Law Offices of Philip Nerney	Attorney

News Headlines

Here are just a few Civil Beat headlines from 2023 and 2024, to further highlight how bad things are:

Slam The Brake On Runaway Legal Fees Charged By Condo Boards, January 26, 2024

Turkish Coffee Or Universal Khaki? Another Honolulu Condo Dispute Goes to Court, January 24, 2024

It Started With A Messy Front Porch. Now This Elderly Woman's Condo Association May Take Her Home, January 16, 2024

This Waianae Condo Development Has Lost Hundreds Of Thousands Of Dollars To Embezzlement, October 10, 2023

Prominent Honolulu Condo Directors Pay \$600,000 To Settle Retaliation Claim, July 13, 2023

Hawaii Property Management Giant Under Scrutiny - Records Indicate that Associa Hawaii has been operating with an inactive license. April 6, 2023

These headlines are not outliers of the issues happening every day, but are just the ones getting reported. Sadly, there are many more that you never hear about or read about, as homeowners, including many kupuna, are often afraid to fight back and speak out. They unfortunately have nowhere to turn, as you have not provided them with the proper State Office to assist them and ensure there are resolutions without repercussions from unethical Boards, Management Companies, and their representative attorneys (i.e., retaliation, harassment, unwarranted fines and assessments, improper legal actions, and foreclosures).

Violations of the Laws Our Legislature Enacts

My testimony and others are compelling, and at my association the misconduct and abuse of power is extreme and pervasive, and retaliation is regularly the result of my and others raising concerns. And, as I have previously testified at last year's Condominium Property Regime Task Force meetings, my condominium association is currently being led by a public official, who is a Corporation Counsel attorney for the City and County of Honolulu. Someone who should be upholding the laws of the State of Hawaii, is regularly violating them, most recently locking out my ability to

unmute myself and speak at recent Keoni Ana AOA Board meetings via Zoom, a violation of Hawaii Revised Statute 514B-125, section (d).

SB2726 & HB1814 – Re. the Condominium Property Regime Task Force (Act 189)
(Good intentions, but too little, too late, and other reports are available.)

While I support SB2726 and HB1814 and their intentions, the urgency, severity, and frequency of issues impacting condominium owners throughout Hawaii warrants a more urgent and substantive response from our legislators, **and actions that will take effect in 2024.**

There is no more time to sit around waiting for reports that will only tell us what we already know (and previous reports have told us). The issues and concerns have gotten worse, more prevalent, and with impunity.

I advise all to read “An Issues Paper for the Hawaii Real Estate Commission,” authored by Gregory K. Tanaka, Dated January 1991. The title/subject is, “Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives.” I have forwarded a copy to the Chair, Vice Chair, and members of the Committee, prior to the submission of my testimony. Even back in 1991 it was clear that an Ombudsman was someone that could address the issues and concerns and be cost effective for everyone (reducing court cases and litigation). There are many other reports, and I am happy to forward more to you.

It was clear Hawaii needed an Ombudsman in 1991, and it’s clear Hawaii needs one now. Hawaii also needs better laws for condominium owners and the time to act is now, the time for reports was years ago. I urge you all to please listen to the Gregorys ... Gregory Tanaka, and Gregory Misakian.

The residents of Hawaii simply want a place to go to get “enforcement,” of the very laws our legislators introduce, debate, and enact (within Hawaii Revised Statutes 514B and other statutes). The residents of Hawaii also want to be treated fairly, and not extorted for money by predatory Board members, predatory attorneys, and others.

Excerpts From Testimony I Submitted to the Condominium Property Regime Task Force (Act 189, 2023), for the Nov. 30th and Dec. 14th, 2023 Task Force meetings.

Testimony In Support of:

- 1) **Condominium Owner's Rights.**
- 2) **The need for a State Ombudsman's Office** to address owner complaints of misconduct and malfeasance by condominium Association Board members, Management Companies and their agents, Site Managers, Resident Managers, General Managers, Attorneys, and others. And to address complaints owners have regarding the Department of Commerce and Consumer Affairs, the Regulated Complaints Industry Office, and others who engage in any improper acts or actions, fail to take complaints, or fail to address concerns or administer proper investigations with fair and equitable resolutions. And to require proper enforcement actions and accountability for misconduct by Board members, Management Companies and their Agents, and others.
- 3) **The need for HRS 514B reforms**, including in the areas of voting rights, Board member qualifications, education and training, Community Manager licensing and/or certification, and numerous other areas identified via the Task Force and past legislative testimony for condominium related bills (and future testimony).
- 4) **The need for a two-sided communication flow of "accurate" information to condominium owners**, and not a one-sided viewpoint tainted with conflict of interest (i.e., with all of the messaging coming from the condominium trade industry and attorneys who represent Management Companies and Association Boards).

As I previously stated in my October 27th testimony:

I am dealing with serious misconduct at my condominium association, and the number of issues and concerns and the abuse of power is literally overwhelming.

I summarized some of the issues and concerns in my previous testimony, but there are many more, and recently the abuse of power and misconduct from our Board President has gotten much worse. Below are just some of the things that happened at the most recent Keoni Ana AOA Board meeting on November 20, 2023.

- 1) The meeting notice/agenda was never sent to owners via TownSQ/Email, so many owners who do not live in the building were not aware of the Board meeting. Our Board President posted a TownSQ notice at 5:20 PM, just 25 minutes prior to the meeting, and with the wrong start time (6:00 PM noticed, vs, 5:45 PM when the Owner's Forum began). Our Board President has chosen to not properly notice Board meetings, and is disenfranchising the owners from participating in the meetings and in the Owner's Forum.
- 2) The Board President, Daniel Jacob (an attorney and public employee who works for the City and County of Honolulu, Corporation Counsel), took control of the Zoom meeting by locking the option to "unmute." When the first item on the agenda came up, I could not unmute myself to speak and raise an objection to adopt the agenda (as I wanted to motion to add items to the agenda). I also raised my hand and was not recognized. This is a serious abuse of power and is unlawful, and is also retaliation in violation of HRS 514B-191. When I was finally able to speak to give my Treasurers report and raised concerns about what was done, and ask Mr. Jacob to stop muting me, he ignored my concerns, was argumentative, and said he can do whatever he wants. He continued to mute me numerous times when I was speaking or trying to speak during the meeting. He also did this in Executive Session. To highlight just one example and reason why a State Ombudsman is needed, this is it. This is a violation of HRS 514B-125 (seen further below, with the section highlighted). And to address this one issue alone, do I have to file for a mediation, and then litigate this in court? And how long does the Task Force think this issue might take to resolve? And at what cost financially?
- 3) The meeting agenda was not followed (the Board President skipped agenda items without stating he was doing so, and numerous agenda items were not discussed).
- 4) The Board Packet for the meeting was missing a great deal of information needed for decision making and voting. It was missing previous meeting minutes (regular board meeting and the executive session). Also missing were

bids and proposals needed for decision making. In one example no bids/proposals were included for a structural engineering firm and only one proposal was verbally mentioned for a vote. I requested that the vote not be taken, as the Board had no written proposal to review, in addition to not having multiple bids/proposals (and it was verbally stated there was a second one). Our Board President still motioned for a vote and the Board majority approved the engineering firm. I am aware of other misconduct related to this and concerns of kickbacks and other improper actions.

- 5) I motioned for a Budget Committee to be formed (something I had been trying to get the Board to act on since the late summer with no success). I received no 2nd from any other Board member. The Board was already non-compliant to our governing documents regarding the budget, and Associa Hawaii had misinformed the owners regarding the Board meeting to discuss the budget (via a USPS mailing they sent). Later in the meeting our Board President motioned to form a Budget Committee (the very thing I motioned for with no 2nd). He included names of Board members and said owners could also be part of the Committee. I, the Treasurer of the Association, was excluded from the Committee. The level of retaliation I have received, both as an owner and now as a Board member, is something that no homeowner should ever have to experience.

§514B-125 Board meetings.

(d) All board meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. **Unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other during the meeting.** A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear

Excerpts From ThinkTech Hawaii, Condo Insider, where condominium owners are not invited to express their concerns and opinions.

There is numerous misinformation and one-sided discussions seen at the many ThinkTech Hawaii Condo Insider videos hosted by those from the condominium trade industry. Some of the most glaring and concerning statements were at the Condo Insider episode dated August 21, 2023, titled “New Act 189 Re Condos and HOAs,” which was hosted by Ms. Jane Sugimura, who is an attorney seen at the Hawaii State Bar Association website as Yuriko J. Sugimura.

At timestamp 19:28, Ms. Sugimura misstates Colonel Mark Brown’s case as settling before going to trial, which was not true, as this case settled during trial.

At timestamp 21:39, Ms. Sugimura quotes how many mediations there were in a period that was reported by the Real Estate Commission, and states 50% were mediated to some resolution (even though they are confidential, and you can never know if they were truly resolved or successful). What she reported also does not agree with data I have seen.

At timestamp 22:20, Ms. Sugimura makes a glaring and concerning statement, that the cases that didn’t settle at mediation didn’t go forward to litigation because the owners didn’t have good cases. As she could never know the details about the mediations or the cases, she could never make this statement. From the many discussions I have had with owners who have concerns and attempted to mediate or did mediate, many could not afford to go forward with litigation, or were concerned with the risks, including the lengthy process, and possibly having to pay the other sides attorney costs if they don’t win their cases.

At timestamp 23:03, Ms. Sugimura says:

“But the good thing that came out of that is, the ones that didn’t complete the mediation didn’t go any further, so it ended, and I think that’s what everybody wants.”

My first thought was, “did she just say that on the record.” I think the gravity of this statement is clear.

She further elaborates, providing more of her “opinion” with no facts and the opposite of what is generally known (with evidence to support).

She also goes on to directly contradict herself regarding mediations ending without lawsuits and saying there aren't many lawsuits, then goes on to say how the judges are scolding her, and there are so many condominium lawsuits.

Continuing from timestamp 25:20, at timestamp 25:33, Ms. Sugimura says the most glaring and concerning statements, *“The judges, let me tell you, the judges get, don't like the cases, they, they hate both sides, don't think you're going to get a sympathetic judge. The minute the judge finds out it's a condo dispute, I mean, I don't know what happens, the horns go up. All of a sudden, they want to rush you off to mediation or arbitration, but anyway, they want you off their docket, they don't want you in their court room, because they think the disputes are stupid and petty. And they don't understand why you have to take up public time and money, to, to have some third party resolve your dispute, you know, for you.”*

If what Ms. Sugimura states is true, that “the Judges want you off their docket” and “the Judges think the disputes are stupid and petty,” then we have a Judiciary problem, if it's not true, we have an attorney problem. Either way we have a problem, and Ms. Sugimura's public statements and misinformation, which are made often, whether in ThinkTech Hawaii Condo Insider videos for the condo trade industry, or in public testimony at the legislature, are of serious concern.

Abuse of Proxies

At my condominium association, the Keoni Ana AOA, the current Board President and other Board members have abused the use of proxies for years, enabling them to remain in power.

I live in one of the most mismanaged condominium properties in Hawaii, with extreme misconduct and abuse of power. Owners are not even notified how many open Board seats there are for our annual meeting, or encouraged to run for a seat on the Board.

On 2/9/24 SB2404 (a similar bill with additional election reforms) passed with amendments, and removed the option to give proxies to the “Board of Directors as a Whole,” but the option to give proxies to the “Directors Present at the Meeting” also

needs to be removed, as it is a loophole for a majority Board who want to remain in power and control the association. There is absolutely no reason to allow a proxy to be given to anyone other than one trusted person if an owner can't attend the annual meeting.

The real solution is to provide a ballot with candidates and association business to be voted on, and boxes to select who you want. It's simple, it's fair, and it's the way we vote in America. And it's done this way at condominium associations and HOAs throughout the United States.

And, if anyone tells you associations will not be able to attain a quorum, they forget to mention that there is a box on the proxy form, "for quorum purpose only."

Self-Governed (A term loosely and incorrectly applied.)

Saying something over and over that is not true will not simply make it true, but this has been the case and continues to be the case with many, including our legislators (who continue to use the term self-governed to define condominium associations). When State legislators enact laws that apply to condominium associations, the "Self" just became the "State" (i.e., State-Governed). But in reality, it's a bit of both and is more of a Hybrid-Governed society ... until it's not and devolves into a Board/Abuse of Power-Governed society, which seems to be the case more and more across Hawaii, and at my condominium association, the Keoni Ana AOA.

Conflict of Interest

While I do Support HB2524 HD1 and what I believe its intent is, I also have concerns. Empowering members of the Real Estate Commission who have clear conflicts of interest, to investigate condominium owners' concerns, is potentially setting up owners for bad decisions, no findings, and the status quo.

To highlight how serious my concerns are, I attended the Hawaii Buildings, Facilities & Property Management Expo on 3/7/24, and attended a seminar presented by Mr. Richard Emery, who is currently on the Real Estate Commission (see below).

THUR. MARCH 7, 2024

T1 FREE:

THE CHANGING LANDSCAPE OF HAWAII'S CONDO LAWS.

The future of Hawaii's Condos will cost owners more grief and money. Learn how recently enacted Bills and others proposed in the 2024 Legislature will drastically effect your Condo living and budget.

THUR. March 7th • 8 am to 8:50 am • Hawaii Suite 1

SPEAKER:

Richard Emery

Vice President, Hawaii Affairs

Associa

I sat and watched Mr. Emery make numerous incorrect statements, and then go on to make disparaging and untrue statements and comments regarding legislative bills I co-authored. I spoke at the end of the seminar to correct one of Mr. Emery's false statements, and asked him to please stop spreading false information regarding Ombudsman Bills.

I am aware that our legislators speak often with Mr. Emery and I've openly stated and will state it again here, that Mr. Emery has a conflict of interest and should not be allowed to be on the Real Estate Commission while working for Associa. He has also showed up at an attorney only mediation meeting where Associa's bad acts were part of the mediation, which opens up many other concerns regarding mediation (as he is not an attorney). He claims to also be a mediator and an "expert" witness, but from my observations the information he is providing is not all factual, and much of it is his opinion and not in the best interest of consumers or condominium owners. Bias and mediations are not meant to live in harmony, and fairness will never be the outcome.

The real solution, and the only correct solution, **is to have an independent Ombudsman's Office specifically for Condominium Associations and HOA's**, and there are numerous Bills introduced last year and this year to do just that (HB178, HB1501, HB1745, SB3205, SB3206, HB2680, and HB2681).

Mahalo,

Gregory Misakian