



JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
Ka 'Oihana Mālama Mo'ohelu a Kālā
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT

WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
ON
SENATE BILL NO. 3205

February 6, 2024
9:30 a.m.
Room 415 and Videoconference

RELATING TO CONDOMINIUM ASSOCIATIONS

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill (S.B.) No. 3205 adds new parts to and amends various Sections of Chapter 514B, HRS, to: 1) establish the Ombudsman's Office (OO) for Condominium Associations (OOCA) within the Department of Commerce and Consumer Affairs' (DCCA) Office of Consumer Protection (OCP), to be headed by an appointed Ombudsman, exempt from Chapter 76, HRS; 2) require the Ombudsman to appoint exempt complaints and enforcement officers (CEO) and integrate existing condominium specialist positions in DCCA into OOCA as intake specialists; 3) allow the personnel and administrative costs of OOCA to be funded by the Condominium Education Trust Fund (CETF); 4) grant the Ombudsman and CEO various powers to regulate disputes between unit owners, associations, boards, and board members including receiving complaints, conducting investigations, and issuing fines and subpoenas, among other powers; 5) establish processes for contested case hearings and condominium association election monitoring; 6) amend, update, and repeal various provisions pertaining to boards, board members, associations, attorney services, dispute resolution, and arbitration; 7) establish an Ombudsman's Office Special Fund (OOSF) to receive all fines collected pursuant to this

Chapter and all fees to be deposited into the CETF; 8) allow OOCA to utilize funds from the CETF for educational purposes; 9) appropriate an unspecified sum of trust funds for FY 25 from the CETF to be deposited into the OOSF; and 10) appropriate an unspecified sum of special funds for FY 25 from the OOSF for administrative costs to establish OOCA.

As a matter of general policy, B&F does not support the creation of any special fund, which does not meet the requirements of Section 37-52.3, HRS. Special funds should: 1) serve a need as demonstrated by the purpose, scope of work, and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. Regarding S.B. No. 3205, it is difficult to determine whether the OOSF would be self-sustaining.

B&F has concerns that depositing 100% of the fee revenues from the CETF to the proposed OOSF would render the CETF unnecessary and consideration should be given to abolishing the CETF. If the intent is to utilize only a certain amount of the CETF to fund the OOSF, then clarification needs to be included in identifying which specific CETF funds are to be transferred from the CETF to the OOSF. Additionally, it is unclear which fund is intended to fund OOCA as Page 8 of the bill states "personnel and administrative costs of the OO shall be funded by the CETF," while the bill also provides a specific appropriation to the OOSF for "administrative costs associated with the establishment of the OO within the DCCA, including the hiring of necessary staff." Furthermore, it should be noted that this bill does not provide any position counts necessary to fill the Ombudsman, CEOs, or any other OOCA staff positions. Finally, B&F defers to DCCA's OCP on the programmatic merits of this bill.

Thank you for your consideration of our comments.



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

KA 'OIHANA PILI KĀLEPA
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

Testimony of the Department of Commerce and Consumer Affairs

Office of Consumer Protection

Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, February 6, 2024
9:30 a.m.
Via Videoconference
Conference Room 229

On the following measure:
S.B. 3205, RELATING TO CONDOMINIUM ASSOCIATIONS

Chair Keohokalole and Members of the Committee:

My name is Mana Moriarty, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). OCP takes no position on the merits of the bill, but respectfully requests that the bill be amended to remove the Ombudsman's Office from OCP. OCP has no expertise in condominium laws and does not enforce chapter 514B, Hawaii Revised Statutes. Because OCP has no expertise in condominium laws, placing the Ombudsman's Office within OCP will not realize any efficiencies.

Moreover, the various functions of the Ombudsman's Office set forth in this bill do not align with OCP's functions or focus. OCP does not currently serve as a registry for industry documents, providing training and certification for board members or

Testimony of DCCA

S.B. 3205

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directors, or seek to ensure compliance with association governing documents. These functions are not placed in or match with OCP's enabling statute.

For the foregoing reasons, we respectfully request that the bill be amended and the Ombudsman's Office, if created be placed in a more appropriate location

Thank you for the opportunity to testify on this bill.

Testimony of the Hawai'i Real Estate Commission

**Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, February 6, 2024
9:30 a.m.
Conference Room 229 and Videoconference**

**On the following measure:
S.B. 3205, RELATING TO CONDOMINIUM ASSOCIATIONS**

Chair Keohokalole and Members of the Committee:

My name is Derrick Yamane, and I am the Chairperson of the Hawai'i Real Estate Commission (Commission). The Commission supports the intent and offers comments on this bill.

The purposes of this bill are to: (1) establish the Ombudsman's Office for condominium associations within the Department of Commerce and Consumer Affairs (Department); (2) establish the Ombudsman's Office Special Fund; (3) require condominium association board members to meet certain educational requirements through classes offered by the Ombudsman; (4) update the Condominium Property Act to integrate the role and functions of the ombudsman's office for condominium associations; (5) appropriate funds for establishment of the Ombudsman's Office; and (6) set an effective date of 1/1/2025.

The Commission supports this bill's intent to assist condominium unit owners with resolving condominium disputes and recognizes that condominium governance is an area that has been traditionally the most difficult to address. The creation of a new Ombudsman's Office to address these concerns is a matter worthy of further discussion and may have merit. In the establishment of a new Ombudsman's Office, the Commission respectfully requests all provisions of this bill that do not pertain to the actual creation and operation of the Ombudsman's Office be deleted. The Commission believes these supplemental provisions may introduce additional complexities that would complicate the proposal.

For example, section 4 of this bill requires condominium board members to complete educational classes within three months of acceptance to the board and every three years thereafter. This section appears to propose new regulatory controls over

condominium board members, which require a sunrise review by the Auditor, pursuant to section 26H-6, HRS. The Commission notes that similar requirements were proposed in prior legislative bills, for example, H.B. 405, H.B. 406, and S.B. 378 from the 2017 legislative session; however, testifiers raised concerns that mandatory education may discourage unit owners from volunteering for their board. A sunrise review would provide a cost benefit analysis on the proposed regulations and identify necessary safeguards to ensure the success of any educational requirements while limiting unintended consequences.

The Commission requests clarification on the proposed funding amendments to section 514B-71(b), HRS, (page 27, lines 8-11). If the intent of the amendments is to specify that any new funds collected upon the deletion of the existing mediation and arbitration programs are to be dedicated to the new Ombudsman's Office, the Commission recommends the language be amended to read: "provided that one hundred per cent of the fees required to be deposited into the trust fund by ~~[this chapter]~~ section 514B-72(a)(2) shall be transferred to the ombudsman's office special fund established under section 514B-H for use by the ombudsman's office."

Although the Commission supports the intent of this measure, the Commission opposes page 8, lines 15-18, transferring and reclassifying the current Commission's condominium specialists into the proposed Ombudsman's Office as complaints intake specialists. The transferring and reclassifying of any current condominium specialists essentially render the Commission unable to execute any of its condominium-related programs of work, including collecting for the aforementioned funding section. The condominium specialists serve unique and highly specialized roles that, in addition to responding to thousands of requests for information, advice, and referral each year, include, but are not limited to, administering the registration of condominium projects and developer's public reports for unit sales, implementing the association biennial registration program, maintaining the Commission's online public database of registered associations, researching and providing educational opportunities to the condominium community, participating in the legislative process, attending and speaking at various condominium forums, such as neighborhood town halls, and engaging in the rulemaking

process for the Commission's draft Hawaii Administrative Rules. The Commission's 2023 Annual Report to the Legislature (DC100) describes these programs of work and the responsibilities of the condominium specialists in further detail.

As this bill involves a large change in public policy with respect to condominium self-governance, 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 has also asked the Legislative Reference Bureau (LRB) to conduct a study on how other jurisdictions handle similar issues through currently introduced HB1814 and SB2726. The scope of the LRB study specifically explores the strengths and weaknesses of condominium ombudsman offices employed in other states, including their approaches to 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 and recommendations, including any proposed legislation, for appropriate consideration.

Thank you for the opportunity to testify on this bill.

**The Senate
The Thirty-Second Legislature
Committee on Commerce and Consumer Protection
Tuesday, February 6, 2024
9:30 a.m.**

To: Senator Jarrett Keohokalole, Chair
Re: SB 3205, Relating to Condominiums

Aloha Chair Jarrett Keohokalole, Vice-Chair Carol Fukunaga, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups with over 800 members and affiliates in Hawaii and I serve on the board of the Hawaii Alliance for Retired Americans, with 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 allowing me to submit testimony on behalf of Kokua Council and Hui Oiaio in **strong support of SB 3205**.

Justice that is available to only those who can afford it is not justice.

On November 2, 2023, Dathan Choy, Condo Specialist with DCCA wrote:

"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."

Assuming that Mr. Choy's data is correct, then the DCCA's 2023 Annual Report of the Real Estate Commission¹ reveals that more than half of the associations failed to complete their statutorily required biennial registration, thus underfunding the Condominium Education Trust Fund.

Additionally, it can be deduced, using Mr. Choy's data when compared against the most recent US Census data,² that **more than 40% of Hawaii's housing units are condominiums**. That sizable portion will only increase because of the State's focus on the development of housing, especially more affordable housing for our residents, and because the current median sales price of a single-family dwelling (i.e., a house) in Hawaii exceeds \$1,000,000.³

¹ <https://cca.hawaii.gov/reb/files/2024/01/2023-AnnualReportoftheRealEstateCommission.pdf>

² <https://www.census.gov/quickfacts/fact/table/HI#>

³ <https://www.hawaiiirealtors.com/resources/housing-trends-2/>

The condominium development model optimizes density and utilizes shared infrastructure and shared common expenses, offsetting Hawaii's high construction and land costs, and reducing public infrastructure costs.

Despite benefits that flow from these communities to the rest of the State, Hawaii's condominium owners are in a highly vulnerable situation as our government openly favors the interests of those who profit from the condominium association trade industry over the needs of those who reside in and own association-governed units.

For years when condominium owners sought government's assistance to resolve systemic problems, lobbyists prevented that assistance insisting that government oversight would subvert associations' self-governance.⁴ Rather than representing homeowners, these lobbyists represent the interests of community association managers, community managing agents, property managers, and association attorneys under the guise of serving Legislators as reliable sources for association-governed communities, leaving abusive practices unchecked because of biased representation.

Condominium association issues affect Hawaii residents' rights, finances, and daily lives. Despite the usual reticence of the local population, complaints from condominium owners and residents to the local boards of Realtors, neighborhood boards, county offices, legislators, DCCA Condominium Specialists, and RICO have been so numerous that the DCCA received requests in 2021 for assistance from 96,390 "condo owners and interested parties," received in 2022, 78,730 such requests; and in 2023, 76,303 requests,⁵ suggesting that thousands of consumers may be experiencing distress.

Hawaii's government and statutes do little to address these concerns. The DCCA does not implement statutes and registers condominiums but does not regulate them. The DCCA has no oversight of condominiums and minimal oversight of property management companies. It hears thousands of homeowner complaints and concerns each year but will not investigate most complaints or make any decisions except when requested documents are not provided or some remote real estate law was violated.

There are few penalties in the law for board members and community association managers (CAMs⁶) who knowingly violate HRS 514B or the association's governing documents, thus unprincipled directors and CAMs have minimal incentive to follow the statutes or governing documents.

Worse, penalties against the association punish innocent association members, not the directors or CAM who violated the laws.

⁴ Phil Nerney, Hawaii Bar Journal, November 2017

⁵ <https://cca.hawaii.gov/reb/files/2024/01/2023-AnnualReportoftheRealEstateCommission.pdf>

⁶ CAM are community association managers, the individuals who serve associations, and are employed by CMAs, condominium managing agents which may be individuals or companies.

Statements from Hawaii association insurance industry experts, Surita “Sue” Savio^{7,8,9} (who asserted that Hawaii had more D&O insurance claims than any other state in the nation, reflecting a greatly disproportionate degree of malfeasance and less fidelity to fiduciary duties¹⁰ despite our state’s comparatively minute size and population¹¹) and Robin Martin of Insurance Factors (who similarly reiterated, “*Hawaii and New York are the two most litigious states for D&O*”¹²) align with and are further validated by reports found in the Real Estate Commission publication, the *Hawaii Condominium Bulletin*:^{13,14,15}

Since July 2015, when Condominium Education Trust Funds were first used to subsidize evaluation mediations, a large majority of the subsidized mediation cases reported, nearly 80%, were initiated by owners against their association and/or board. Additionally, only 35.505% of these cases were mediated to an agreement, leaving more than 3 out of every 5 mediation cases unresolved or withdrawn, a metric that disputes unsubstantiated claims that “mediations are successful.” Please refer to Exhibit A.

A more extensive study, going back to the Fall of 1991, of the summaries of mediation cases reported in the *Hawaii Condominium Bulletin*^{16,17,18,19,20} revealed that roughly only 1 out of every 4 mediation cases were mediated to agreement. This analysis also reveals that over 3 out of 4 cases involved alleged violations of associations’ governing rules. Please see Exhibit B.

In January of that same year, 1991, Gregory Tanaka produced, “*Condominium Disputer Resolution: Philosophical Considerations and Structural Alternatives*” for the Hawaii Real Estate Commission. Then, like now, the enforcement of owners’ rights was counterproductive, involving costly legal fees that most could not and still cannot afford and unfamiliar processes that most do not understand.

Despite Mr. Tanaka’s suggestion “*to implement major structural change to seek a public need for quick, inexpensive and fair resolution in disputes,*” most of the same practices are still in place, victimizing thousands of owners over these decades. The last page of his study is copied herein, as Exhibit A, and entitled “Possible Dispute Resolution Flowchart and Structure by 1992.”

⁷ DCCA subsidized CAI Hawaii seminar, “The Fundamentals of Serving on a Board,” November 3, 2016.

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 Milton Motooka, Esq., “Simple Steps to Avoid Lawsuits,” “The top ten claims filed under Directors’ and Officers’ Liability Insurance are as follows: 1) Discrimination 2) Failure to maintain buildings 3) Wrongful foreclosure 4) Assessment dispute 5) Breach of governing documents 6) Wrongful termination 7) Breach of contract 8) Failure to properly reserve funds 9) Libel, slander, & defamation of character 10) Conflict of Interest.”

¹¹ <https://foundation.caionline.org/wp-content/uploads/2024/01/2023StatsReviewDigital-002.pdf>

¹² April 5, 2023, AOA Nauru Tower Board Special Meeting

¹³ <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2011-2015/>

¹⁴ <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2016-2020/>

¹⁵ <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2021-2025/>

¹⁶ Ibid.

¹⁷ https://cca.hawaii.gov/reb/condo_ed/condo_bull2/cb_91_95/

¹⁸ https://cca.hawaii.gov/reb/condo_ed/condo_bull2/cb_96_00/

¹⁹ https://cca.hawaii.gov/reb/condo_ed/condo_bull2/cb_01_05/

²⁰ <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2006-2010/>

Notably, although mediation was implemented as suggested by Mr. Tanaka, an integral intermediary step was not, the DCCA Ombudsman.

Regarding mediation, many condominium owners and residents who participate with Kokua Council and Hui Oiaio have alleged that mediation is not or was not a viable dispute solution for them for the following reasons:

- Associations and their boards are usually represented by one or more attorneys (in one case, seven attorneys represented the association and its D&O carrier) compelling owners to feel that they must retain an attorney for some approximation of fair legal representation.
- However, the financial bar to retain legal representation is remarkably high. Roughly five years ago, owners complained that attorneys' retainers were as much as \$5000; currently owners report retainers as high as \$10,000 and even more.
- For many in Hawaii, condominiums are "entry-level" housing, and most urban "affordable homes" are built as condominiums. But those property owners' recourse to justice may be anything but affordable.
- Although the mediation process may be subsidized by the Condo Education Trust Fund, each party must still initiate the process with \$375, which discourages many owners from participating when there is no assurance of resolution.
- Even when parties come to a written agreement, the enforcement of that agreement is not assured, thus making some resolutions ineffective unless the parties go to Court.
- Although mediation is mandatory in many cases, some associations/boards do not participate knowing that the owner must go to Court to enforce this mandate.
- Additionally, there is a clause in HRS 514B that serves to disincentive associations from participating and obliges the owner to pay disputed fees, even if those fees are incorrect, unsubstantiated, or unfair:

§514B-146 Association fiscal matters; lien for assessments. (g) ...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.

- Further, anyone can be a mediator. The mediator does not need to be versed in condominium law or law. There are no professional standards for mediators. And mediators may not be neutral parties; some allegedly fail to disclose their conflicts of interest.

In comparison, condominium owners' concerns, as proposed in **SB 3205**, will be handled by an Ombudsman's Office to address violations of HRS 514B and/or association governing documents with exceptions approved by DCCA. This will provide owners with an affordable, accessible, effective, and non-litigious venue for alternative dispute resolution compared to the costly and litigious court system that tests the limited resources of the owner against the unlimited financial and legal resources of the association.

Under SB 3205, the proposed Ombudsman's Office within the State DCCA Office of Consumer Protection will:

- Not use taxpayer general funds; funding is through association registration;
- Not result in material increases in owner assessments or any measurable increase in operating costs on associations, owners, or association management companies;
- Not negatively influence owners from volunteering or increase volunteer legal liability;
- 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 condominium laws and association governing documents immediately;
- Allow owners to pursue their rights under the law that they would otherwise not do so because of costs;
- Receive, review for acceptance or rejection, investigate and render decisions on complaints;
- Have the authority to invoke penalties on parties including the removal of an association Board member(s), suspend the association's authority to impose fines, liens or pursue foreclosures, and other penalties as deemed appropriate;
- Reduce the millions of dollars that are spent in legal costs between disputing owners and associations;
- Ease the burden upon Courts to litigate minor violations of association laws and rules;
- Work to improve association governance through legislative initiatives;
- Integrate the existing Condominium Specialist position as complaints intake specialists; and
- Require that board members satisfy educational requirements offered through the Ombudsman's Office.

As proposed in SB 3205, the Ombudsman's Office will be funded through an association registration fee of \$25.00 per biennium per unit (the equivalent of \$1.04 per month per unit). Using the DCCA's data to calculate the amount that can be collected to fund the Ombudsman's Office, \$5,768,225 per biennium may be collected from condominium owners.

The Office will be empowered to impose injunctive relief and non-monetary penalties for association non-compliance with HRS 514B or an association's governing documents.

The Office would retain all responsibilities of the DCCA Real Estate Commission’s current mission.²¹

These characteristics of the Ombudsman’s Office as proposed by SB 3205 will create an Ombudsman’s Office *unlike* the offices of existing community association ombudsman in other states as reported in the CAI (Community Associations Institute) May 2023 “Report on Offices of Community Association Ombudsman”²² and copied here:

Existing Programs

Currently, Colorado, Delaware, Florida, Illinois, Nevada, South Carolina, and Virginia have some version of an ombudsman program. The following section contains the duties of each state’s office.

Comparison of Function and Duties⁷

<i>Function or Duty</i>	<i>Colorado</i>	<i>Delaware⁸</i>	<i>Florida</i>	<i>Illinois⁹</i>	<i>Nevada</i>	<i>South Carolina</i>	<i>Virginia</i>
<i>Accepts complaints</i>	Yes	Limited	Yes	Limited	Yes	Yes	Limited
<i>Investigates/verifies complaints</i>	No	Yes	Limited	No	Yes	Limited	Yes
<i>Resolves complaints</i>	No	Limited	Yes	Limited	Yes	No	Limited
<i>In-house mediation</i>	No	Yes	Yes	No	Yes	No	No
<i>Mandates mediation</i>	No	No	No	No	Limited	No	No
<i>ADR referrals</i>	Yes	Yes	Yes	No	Yes	No	Yes
<i>Administrative hearing</i>	No	No	Yes	No	Yes	No	Yes
<i>Monitor election procedures disputes</i>	No	Yes	Yes	No	Yes	No	Yes
<i>Reports alleged election misconduct</i>	Yes	Yes	Yes	No	Yes	Yes	No
<i>Appoints election monitors</i>	No	Yes	Yes	No	Yes	No	No
<i>Per unit fee</i>	No	No	Yes	No	Yes	No	No

The ADR reform proposed by SB 3205 should financially benefit condominium associations and owners by eliminating abusive practices for which owners pay through increased association fees, which include attorneys’ and other legal fees, and rising costs for association boards’ D&O insurance policies. The savings to consumers would far exceed the cost to administer the program.

²¹ <https://cca.hawaii.gov/reb/files/2023/03/pow22-23.pdf>

²² https://www.caionline.org/Advocacy/Priorities/Ombudsman/Documents/Ombudsman_Report_2023MayUpdate.pdf

February 6, 2024

Lila Mower, President, Kokua Council

Condominium ADR reform will improve the quality of life and cost of living in a condominium association and provide owners and residents the basic rights and protections to which they are entitled and for which they pay handsomely.

Justice that is available to only those who can afford it is not justice.

Mahalo for the opportunity to testify in **strong support of SB 3205.**

EXHIBIT A²³

UPDATED TALLY OF MEDIATION CASES REPORTED IN HAWAII CONDOMINIUM BULLETIN SINCE JULY 2015 INCEPTION OF CETF FUNDED EVALUATIVE MEDIATION PROGRAM²⁴

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 medtr	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	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>

EXHIBIT B: Mediation Cases Reported in the Hawaii Condominium Bulletin since 1991

- association declined, refused, nonresponsive, or withdrew
- ** owner declined, refused, nonresponsive, or withdrew
- *** other* includes cases which outcomes were unclear (e.g., "mediated," "don't," "unable to schedule," "resolution before or after mediation, etc.)
- based on interpretation of comments
- purple font indicates direct correlation with bulletin reports
- blue font indicates direct and indirect correlation with bulletin reports
- grey font indicates interpretation of bulletin reports and are provided only for tracking purposes
- blue background indicates unclear data and resolution, e.g., "mediator/mediator" and "mediated" do not describe with or without agreement
- grey background indicates that there was no report of mediation cases in that bulletin
- 0.5* was used in styling whenever there was shared responsibility for a split decision

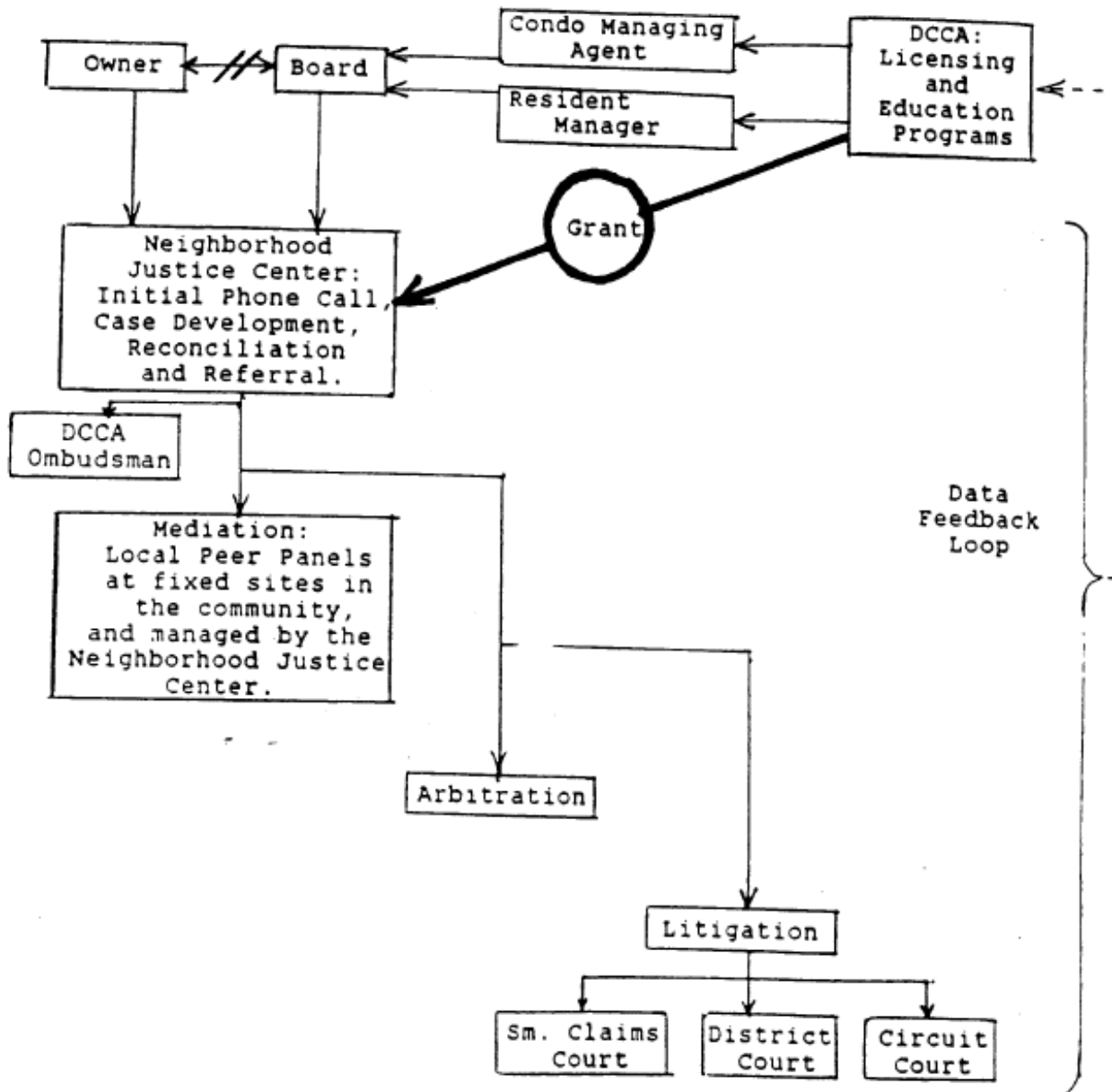
Mediation Cases Reported in Hawaii Condominium Bulletin Since 1991																		
HI Condo Bulletin ISSUE MONTH	ACAO/BOO V/OWNER	OWNER V ACOA/BOO	OWNER V OWNER	OWNER V CAM	OWNER V CAM	TOTAL CASES	HI Condo Bulletin ISSUE MONTH	mediated to agreement	mediated no agreement	assn did not mediate*	owner did not mediate**	elevated to arbitration	other ***	HI Condo Bulletin ISSUE MONTH	mentions allegations of violation of S148	refutation of violations of S148	IPV/docs	water leaks, intrusion etc
September-23	0	13				13	September-23	8	6		1	1	2	September-23			18	4
June-23	4	10				14	June-23	3	4	0	2		3	June-23	1		13	1
March-23	3	15				18	March-23	1.5	14.5		2		0	March-23	1		18	1
December-22	3	8				11	December-22	1	7	0	0		1	December-22	1	0.5	9.5	
September-22	2	4				6	September-22	3	1	0	0		2	September-22	2		4	1
June-22	3	14				19	June-22	4.5	10.5			1	4	June-22	1	1	17	
March-22	2	15				17	March-22	8	4	4			2	March-22	1		16	5
December-21	1	8				9	December-21	3	4	4			2	December-21		0.5	8.5	2
September-21	3	13				16	September-21	8	5				3	September-21			16	3
June-21	5	12				17	June-21	8	5	2			2	June-21	1		16	1
December-20	1	9				10	December-20	4	3		2		1	December-20	1	1	9	
September-20	5	15				20	September-20	2	12		1		1	September-20		1	19	1
March-20	3	2				5	March-20	3	0				1	March-20			3	
December-19	2	13			1	16	December-19	5	6		2		3	December-19	1		15	1
September-19	3	8				11	September-19	6	4				1	September-19	1		10	2
June-19	0	10				10	June-19	5	3		1		1	June-19	1		9	1
March-19	2	13				15	March-19	7	4		1		2	March-19	1		14	2
December-18	1	2				3	December-18	0	3					December-18			3	1
September-18	3	7				10	September-18	4	2	1	1		2	September-18	1		9	1
June-18	1	4.5		0.5		6	June-18	2	3	1			3	June-18			6	1
March-18	5	5		1		11	March-18	3	3		2		3	March-18		1	10	
December-17	3	13				16	December-17	5	6	3	2			December-17			16	5
September-17	1	10				11	September-17	3	5	2	1			September-17	1		10	1
June-17	0	6				6	June-17	3	3					June-17	1		5	2
March-17	2	4				6	March-17	2	4	2				March-17			6	3
December-16	2	2				4	December-16	2	4	2				December-16			8	3
September-16	2	8				10	September-16	2	5	1	2			September-16	2		8	1
June-16	1	3		1		5	June-16	3	0	0	1		1	June-16	1		3	1
March-16	2	10				12	March-16	3	2	1	4		2	March-16	1		11	
December-15	2	7				9	December-15	3	2	3	1			December-15	1		8	
September-15	0	2		1		3	September-15	1	2	3	1		2	September-15			3	1
June-15	1	7		1		9	June-15	0	2	3	2			June-15			9	
March-15	1	13				14	March-15	7	4	2	1			March-15			14	
December-14	1	5				6	December-14	2	1	0	0		3	December-14	1.5		4.5	
September-14	1	8				9	September-14	2	2	3	1		1	September-14			9	1
June-14	0	8				8	June-14	2	2	1	3			June-14			8	1
March-14	0	3				3	March-14	2	2		1			March-14			3	
December-13	1	6				7	December-13	3	3	1	3			December-13			7	3
September-13	0	8				8	September-13	1	2	2	3			September-13			8	2
June-13	1	6				7	June-13	0	4	2	1			June-13	3		4	1

March-13	1	5				6	March-13	2	3	3	0	0	1			1	March-13	1	6	1
December-12	2	9	2			11	December-12	2	2	6	1	3	1			3	December-12	1	10	4
September-12	0		2			4	September-12	0	0	0	1	1	2			1	September-12		4	
June-12	0	4.5			0.5	5	June-12	1	1	0	1	2	1			1	June-12		5	1
March-12	1	3				4	March-12	1	1	1	1	2	2			1	March-12		4	1
December-11	1	6.5			0.5	8	December-11	0	1	1	3	2	1			2	December-11		8	5
September-11	1	4				5	September-11	2	2	2	2	3	1			2	September-11		5	1
May-11	2	8				10	May-11	2	2	2	2	3	1			2	May-11		10	1
February-11	2	4				6	February-11	1	2	2	3	1				2	February-11		5	
November-10	3	11				14	November-10	5	5	4	1	1				3	November-10		12	1
August-10	2	14.5				20	August-10	2	2	2	1	1				16	August-10		14	1
March-10	2	5			2.5	10	March-10	2	2	2	2	1				6	March-10		10	
November-09	1	4			1	6	November-09	3	3	0	1	1				10	November-09		4	1
June, July -09	0	19				19	June, July -09	8	8	1	1					2	June, July -09		17	1
February-09							February-09										February-09			
October-08	4	9				14	October-08	1	1	1	4					8	October-08		13	1
Total cases	105	467	10.5	6.5	1.78%	589	Total cases	144	198	8.40%	50	50	0.51%	104	Total cases	37.5	4	546.5	56	
Total by %	17.83%	79.29%	1.78%	1.10%		100.00%	Total by %	33.26%	33.62%	8.40%	8.40%	0.51%	17.60%	Total by %	6.37%	0.68%	92.78%	9.51%		
June-08	1	10	1			12	June-08	3	1	1	2	2				4	June-08		12	
February-08	2	10.5	1		0.5	12	February-08	3	1	1	5	3				3	February-08		12	
Oct., Nov. - 07	2	9	2			13	Oct., Nov. - 07	2	5	5	2	6				6	Oct., Nov. - 07		12	1
July-07	4	6	1			11	July-07	1	1	3	2	2				5	July-07		10	
Jan., Febr. - 07	1	14				16	Jan., Febr. - 07	2	5	5	2	2				2	Jan., Febr. - 07		14	
September-06							September-06										September-06			
January-06							January-06										January-06			
September-05	4	11				15	September-05	2	5	2	3	3				3	September-05		15	
June-05							June-05										June-05			
March-05	2	9				12	March-05	2	2	6	1	1				3	March-05		1	1
October-04							October-04										October-04			
June-04	1	10				11	June-04	4	4	1	3	3				3	June-04		9	1
February-04							February-04										February-04			
October-03	0	7				7	October-03									7	October-03		7	
June-03							June-03										June-03			
February-03	1	6			1	8	February-03					1	1			7	February-03		8	
October-02	1	22	0.5		5.5	29	October-02	3	3	2	3	3			21	October-02		29		
July-02	0	2				10	July-02	4									July-02		4	
December-01	0	1				11	December-01	1	1						5	December-01		4		
September-01	0	2				13	September-01	1	1						10	September-01		1		
June-01	3	1	4			8	June-01	5	1	1	2	2			13	June-01		2	1	
February-01	0	2				2	February-01	1	1						2	February-01		8		
October-00	0	1.5			0.5	2	October-00								1	October-00		2	1	
June-00	0	6	1		3	10	June-00	1	1	3	1	1			2	June-00		2		
February-00							February-00								4	February-00		4		
November-99	0	4				4	November-99				2	1			1	November-99		4		
September-99							September-99										September-99			
Spring 1999							Spring 1999										Spring 1999			
Fall 1998							Fall 1998										Fall 1998			
Summer 1998							Summer 1998										Summer 1998			
Spring 1998							Spring 1998								17	Spring 1998				
Winter 1998							Winter 1998								20	Winter 1998				
Fall 1997							Fall 1997										Fall 1997			
Spring 1997							Spring 1997										Spring 1997			
Winter 1997							Winter 1997										Winter 1997			
Summer 1996							Summer 1996										Summer 1996			
Spring 1996							Spring 1996										Spring 1996			
Winter 1996							Winter 1996										Winter 1996			

est. total cases	125	601	21	10.5	897	est. total cases	239	235	81	69	3	268	est. total cases	43.5	4	697.5	61
est. total by %	13.94%	67.00%	2.34%	1.90%	100.00%	est. total by %	26.64%	26.20%	9.03%	7.69%	0.33%	29.88%	est. total by %	4.83%	0.46%	77.78%	6.80%
est. auto total cases	20	134	10.5	10.5	308	est. auto total cases	55	37	31	19	0	164	est. auto total cases	6	0	151	5
Fall 1995						Fall 1991							Fall 1995				
Summer 1995						est. total cases	239	235	81	69	3	268	Summer 1995				
Spring 1995						Fall 1991							Spring 1995				
Spring 1994						est. total cases	239	235	81	69	3	268	Spring 1994				
Winter 1994						Fall 1991							Winter 1994				
Fall 1993						est. total by %	26.64%	26.20%	9.03%	7.69%	0.33%	29.88%	Fall 1993				
Summer 1993						est. auto total cases	55	37	31	19	0	164	Summer 1993				
Spring 1993						Fall 1991							Spring 1993				
Winter 1993						est. total cases	239	235	81	69	3	268	Winter 1993				
Fall/Winter 1992						Fall 1991							Fall/Winter 1992				
Summer 1992						est. total cases	239	235	81	69	3	268	Summer 1992				
Spring 1992						Fall 1991							Spring 1992				
Fall 1991						est. total by %	26.64%	26.20%	9.03%	7.69%	0.33%	29.88%	Fall 1991				
est. auto total cases	20	134	10.5	10.5	308	est. auto total cases	55	37	31	19	0	164	est. auto total cases	6	0	151	5
est. total cases	125	601	21	10.5	897	est. total cases	239	235	81	69	3	268	est. total cases	43.5	4	697.5	61
est. total by %	13.94%	67.00%	2.34%	1.90%	100.00%	est. total by %	26.64%	26.20%	9.03%	7.69%	0.33%	29.88%	est. total by %	4.83%	0.46%	77.78%	6.80%

Exhibit C²⁵

Possible Dispute Resolution Flowchart and Structure
(by 1992)



²⁵ Tanaka, Gregory, January 1991. "Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives, An Issues Paper for the Hawaii Real Estate Commission."

**HAWAII FIRST REALTY LLC
RB-19713
4167 Kaimamahila Street
Honolulu, HI 96816**

February 4, 2024

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Jarrett Keohokalole, Chair
Senator Carol Fukanaga, Vice Chair

Opposition to SB 3205

Dear Chair Keohokalole and Committee Members,

My name is Richard Emery with a 30-year history of condominium management. I am a member of the National Association of Parliamentarians. For the last 10-years I have provided expert reports related to condominium disputes. I have represented both owners and associations.

It is my view that you already have an ombudsman better know as RICO. If there are specific areas that need to be addressed in condominium management that RICO could be authorized additional enforcement authority.

The proposed Bill seems to infer that a condominium Board unfairly enforces the contractual requirements created for the association and owner upon purchase. I can tell you from experience that disputes are often created by Owners who simply do not want to follow the rules. The following are short examples of current litigation:

- Suit alleging an owner's death was due to poor security.
- Suit requiring an owners to allow the repair of a leaking deck that is the roof of the unit below. The owner barred entry and sued the Board claiming the deck is private property (contrary to the Declaration).
- Suit against an owner that made substantive unpermitted and changes not permitted by code changes to their unit that adversely effected its neighbors.
- Suit against an owner for the unauthorized removal of a load bearing wall.

These are legal matters best decided by a court of law. The pretext of condo owner abuse is exaggerated and overstated. Considering there are approximately 175,000 individual units; only 72 were mediated in 2022 with more than half resolved amicably. Owners have an equal responsibility in conformance with their requirements as defined in the governing documents. I read the testimony submitted by some owners but must say there are two sides to every story and in most cases, the legislature is only presented part of the facts. Not all owners are innocent victims as described by them.

The proposed Bill seems to take away constitutional rights of parties by denying any appeal. It is my understanding that the Hawaii Supreme Court has previously ruled that the relationship between an

owner and the association is contractual in nature and cannot be impaired by legislation or the denial of the court system.

I would be the first to admit that Boards are not perfect either. But they are owners and have been elected to enforce the governing documents. Owners currently have processes to resolve disputes that have been largely successful.

I strongly support a “deep dive” on the issues by approving **SB 2726** for a report by the Legislative Reference Bureau. A task force was approved by the legislature last year and their work should be completed before any new law. The cost of the Ombudsman office will only increase the cost of Housing including affordable housing.

I strongly oppose SB3205 for the reasons stated.

Sincerely,

Richard Emery, RB-17147, RS-8

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 3, 2024

Honorable Jarret Keohokalole
Honorable Carol Fukunaga
Committee on Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **SB 3205 OPPOSE**

Dear Chair Keohokalole, Vice Chair Fukunaga and Committee Members:

CAI opposes SB 3205. This is so for two basic reasons.

First, the Condominium Property Regime Task Force, created pursuant to Act 189 (2023), unanimously called for study of the subject matter of SB 3205 to enable recommendations for legislating in a future legislative session. SB 2726 reflects the Task Force recommendation and that bill should be passed instead.

Second, SB 3205 is based on a faulty premise, embodies an approach that has been repeatedly rejected, and is constitutionally infirm.

Section 1 reflects a cynical view of condominiums that lacks merit. Attacks on self-governance are not new and have not gained additional relevance or validity in the years since a "condominium czar" (HB 1802 [2016]) or a "complaints and enforcement officer" (HB 35 [2017]) were soundly rejected. As framed in HB 35 (2017):

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

The same dark vision of association life has been assiduously repeated by the same activists for years. The Committee simply should not countenance needless attacks on self-governance.

Honorable Jarret Keohokalole
Honorable Carol Fukunaga
February 3, 2024
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The sum and substance is that activists wish to impose executive branch control on the operation and governance of condominiums. That would be unwarranted.

As conceived here:

No proceeding or decision of the ombudsman may be reviewed by any court unless the proceeding or decision contravenes this chapter. The ombudsman shall have the same immunities from civil and criminal liability as a judge of the State. The ombudsman and the staff of the ombudsman's office shall not testify in any court concerning matters coming to their attention in the exercise of their official duties except as may be necessary to enforce this chapter. (Emphasis added)

The Ombudsman is to be all powerful and be beyond the reach of the courts. Why?

How would autocratic governmental rule over private communities be better than democracy? What if the dictator were arbitrary or capricious? Or incompetent? Or corrupt?

There simply is no objective basis for considering the end of self-governance.¹ There may be adjustments to current law that can be considered after the Legislative Reference Bureau conducts the study unanimously called for by the Task Force.

One good question, incidentally, is why wasn't this proposal presented to and vetted by the Task Force? Shouldn't it have been?

Views differ about the condominium form of ownership. The significant point, though, is that the condominium form of ownership is an established fact.

The Supreme Court of Hawaii stated, in Harrison v. Casa De Emdeko, Incorporated, 418 P.3d 559, 567 (Haw. 2018), that:

Generally, the declaration and bylaws of a condominium serve as a contract between the condominium owners and the association, establishing the rules governing the condominium. See Association of Apartment Owners of Maalaea Kai, Inc. v. Stillson, 108 Hawai'i 2, 9, 116 P.3d 644, 651 (2005) (citing Bradford Square Condo. Ass'n v. Miller, 258 Ga.App. 240, 245, 573 S.E.2d 405, 409 (2002) ("The condominium instruments, including the bylaws and the sales agreement, are a contract that governs the legal rights between the [a]ssociation and unit owners.")).

¹ The attached article was published in the Hawaii Bar Journal in 2017.

Honorable Jarret Keohokalole
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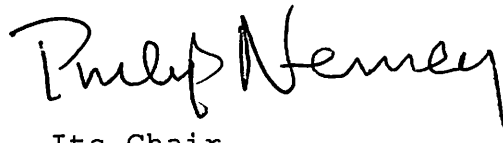
Existing condominiums are subject to contracts that provide for self-governance. LRB data will be useful to facilitate the development of policy proposals that remain within constitutional limits.

Constitutional limits on legislating about condominiums came into focus in Galima v. AOA of Palm Court, Case 1:16-cv-00023-LEK-RT Document 282 Filed 04/10/20, when a judge of the United States District Court for the District of Hawaii held that: "Act 282 [2019] cannot be enforced because it violates Plaintiffs' constitutional rights under the Contracts Clause² of the United States Constitution."

The Contracts Clause, the right to trial by jury, and, perhaps, other constitutional provision may limit the scope of potential legislation. Radical departures from current law are unneeded in all events.

SB 3205 should be deferred.

CAI Legislative Action Committee, by



Its Chair

² **Article I Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.**

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.
(Emphasis added)

Challenges to Condominium Self-Governance

by Philip S. Nerney

Condominiums have traditionally been self-governing. Recently, however, there have been legislative efforts to subject condominiums to direct operational control by government.

Advocates for executive branch control promoted substantially identical bills in 2016 (HB 1802) and 2017 (HB 35). The "Office of Self-Governance Oversight" was proposed in 2016. The office was to be headed by the "condominium czar."

The same concept was repackaged as the "Office of Condominium Complaints and Enforcement" in 2017. The office was to be headed by the "complaints and enforcement officer."

Those bills did not become law. Still, the interest in having a government employee regulate the specific functions of condominiums is significant.

Both bills were premised on essentially the same proposed "finding." As framed in HB 35:

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

There were 160,854 condominium units (aka apartments) within 1,693 registered condominium associations as of June 30, 2015;¹ so it is possible to imagine that abuses have occurred. The more interesting question is whether direct governmental control of approximately 29 percent of the housing units in the state² would be appropriate. Condominium units are private (and *not* public) housing.

Nonetheless, "condominiums are creatures of statute."³ As noted in the Real Estate Commission's ("Commission") 2003 Final Report to the Legislature ("Final Report") concerning recodification of condominium law, "condominium property regimes law is essentially an *enabling* law," that: 1) allows the condominium form of ownership, 2) protects purchasers through adequate disclosures; and 3) allows for management of the ongoing affairs of the condominium community.⁴

The first Hawaii statute enabling the condominium form of ownership was passed in 1961, more than half a century ago.⁵ A premise of that form of ownership is that each condominium unit is a separate parcel of real estate that is separately taxed.⁶

"Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.⁷

Condominium projects entering the market must be registered with the Commission.⁸ Disclosures about the project are part of the registration process.⁹

Purchasers, therefore, have an opportunity to understand that they are purchasing something quite different from a single-family dwelling. An understanding of condominium governance is relevant here.

I. The structure of condominium governance

Condominium governance is structured by statute. That structure begins with unit owners. The owners of all the units form an association.¹⁰ The prime function of the association is to elect a board of directors ("Board"), and certain major decisions set forth in statute and in the association's governing documents are also reserved to the association.¹¹

The governing documents are the declaration of condominium property regime ("Declaration"), the condominium map, By-laws and house rules. A condominium is created by the recordation of a Declaration. The land and improvements comprising the condominium are described in the condominium map. By-laws and house rules add operational detail to the governance structure.

The powers and duties of the Board are substantial.

§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.

Board power is limited by statute, by provisions of the governing documents, and by the owners' power to remove directors who perform poorly. Otherwise, the Board governs the association.

Legal and political restraints on director behavior are significant. Some owners consider such restraints to be inadequate though due to the financial and personal impacts that can result from the exercise of Board power.

Questions of power and control are at the heart of the differing perspectives regarding the sufficiency of existing condominium governance structures. There is no doubt that personal autonomy is burdened in the condominium setting; so those valuing personal autonomy over the benefits of condominium living may feel infringed upon or even powerless. One Florida court balanced the benefits and burdens this way:

It appears to us that inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property. Condominium unit owners comprise a little democratic sub society of necessity more restrictive as it pertains to use of condominium property than may be existent outside the condominium organization.

Hidden Harbour Estates, Inc. v. Norman, 309 So.2d 180, 182 (Fla. App. 1975). The premise of majority rule is recognized in that often-cited formulation.

Legislation passed in 2000 resulted in a comprehensive review of Hawaii condominium law. Review was indicated because the legislature found that:

Those who live and work with the law report that the condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micromanages condominium associations. The law is also overly regulatory, hinders development, and ignores technological changes and the present-day development process. However, the desire to modernize the law must be balanced by the need to protect the public and to allow the condominium community to govern itself.

Act 213 (2000). The review task was performed by an appointed committee of stakeholders with competing interests. The resulting Final Report was accompanied by proposed draft legislation.

The draft legislation was influenced by numerous sources and authorities. These include the 1980 Uniform Condominium Act, the 1994 Uniform Common Interest Ownership Act, the Restatement (Third) of Property: Servitudes (Am. Law Inst. 2000), then-current Hawaii law, the condominium law of other jurisdictions, and public input.¹²

The legislature thereafter enacted Chapter 514B of the Hawaii Revised Statutes ("Haw. Rev. Stat.") effective in 2006. Complaints about condominium governance have continued unabated since then.

The legislature did not repeal the prior condominium law (Chapter 514A) until 2017. Repeal will become effective on January 1, 2019, leaving certain developers additional time to bring projects approved under prior law to market.

Chapter 514B has controlled most aspects of condominium governance since it became effective, and Chapter 514A has largely been a dead letter since then. Some amount of study has nonetheless been necessary to achieve a proper understanding of what law applies in what circumstance.

The simple fact that a condominium home is not a castle is central to the debate over self-governance. Common expectations about the level of autonomy and self-determination that should accompany home ownership may go unmet in the condominium setting. Worse yet, condominium ownership means being involved in a substantial economic enterprise in common with strangers who may come and go at will.

The members of a condominium association form a *secondary* group, in sociological terms, suggesting one that is largely impersonal and transactional. Regulation of such groups tends to be more formal and structured than in *primary* groups, which tend to be regulated by deep, enduring interpersonal bonds and shared culture.¹³

And yet, individual owners want liberty. One owner's expression of liberty, though, sometimes sharply conflicts with some other owner's liberty interest. One owner's political and/or social values may be abhorrent to another owner. Nonetheless, condominium owners are stuck together all the same, whether they like it or not.

II. The governance tasks to be performed

Conspicuous governance tasks include budgeting for maintenance and repair, overseeing the use of the condominium project, and general administration. Each of these tasks present challenges relevant to the debate over self-governance.

A. Budgeting for maintenance and repair

As noted above, portions of condominium property, known as common elements, are held in common by unit owners. The maintenance and repair of these common elements is an operational aspect of condominium governance. The whole association must sustain the building or buildings in which the individually owned units exist and the grounds on which the condominium is located. Owners, by contrast, are individually obligated to maintain and to repair their respective *units*.

The maintenance and repair of the common elements entails expense. Common expenses are assessed to unit owners through the budgeting process. Owners are each assigned a percentage of the common expense "in proportion to the common interest appurtenant to their respective units, except as otherwise provided in the declaration or bylaws."¹⁴

"'Common interest' means the percentage of undivided interest in the common elements appurtenant to each unit, as expressed in the declaration, and any specified percentage of the common interest means such percentage of the undivided interests in the aggregate."¹⁵ The aggregated common interests total 100 percent and the percentages of common interest assigned to specific units correspond to a prescribed scheme such as one based on unit size. Owners of larger units typically pay a greater portion of the common expenses than smaller units do, because the percentage of common interest allocated to a larger unit is usually greater than the percentage allocated to a smaller unit.

An operating budget must be adopted at least annually and made available to unit owners.¹⁶ Some of the budget components, such as insurance, are prescribed by statute.¹⁷ Other budget components may depend on the features and amenities of a given condominium.

Board members owe a fiduciary duty to the association; so they cannot in good faith satisfy the desire to limit assessments by keeping maintenance fees artificially low. The assessment of adequate replacement reserves, for example, is mandated by statute.¹⁸

Deferred maintenance can prove to be unwise in all events. Many industry professionals can recite examples of how something like the failure to paint

a building or to repair concrete spalling at an early stage has led to substantially increased costs when the work is finally performed.

B. Overseeing use of the condominium project

The use of a condominium project affects quality of life issues. The resale value of units may also be affected by how the project is used.

An association's Declaration and By-laws provide a basic structure for use of the project. House rules can also be adopted to further regulate use of the common elements. The use of house rules to regulate behavior within units is limited by statute.¹⁹ In practical effect, that limited power often relates to preventing nuisances.

C. General administration

General administration is used herein to signify a broad array of tasks. Maintenance fees must be collected, books and records must be kept, contracts must be negotiated, and there must be a focal point for attending to ordinary and extraordinary events affecting the condominium. The Board performs these tasks.

Board officers are chosen by, and serve at the pleasure of, the Board. The President, Vice-President, Secretary, and Treasurer have assigned duties. Directors who are not officers only have a specific governance role during meetings or as assigned by the Board.

Most Boards are aided in governing the condominium by professional managing agents, serving as independent contractors. Managing agents add a significant layer of administrative support to a condominium. In particular, some functions of the offices of Secretary and Treasurer are often performed by the managing agent.

"Every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent."²⁰ Managing agents must be licensed real estate brokers, register with the Commission, and carry a fidelity bond.

Property managers working for the managing agent need not be brokers themselves, but they often hold professional credentials supplied by industry. The Community Associations Institute ("CAI") enables property managers to earn various designations, for example, including its top designation of Professional Community Association Manager.

Resident managers are employees who provide day-to-day operational support for the condominium. Resident managers commonly interact with

owners and vendors. They may perform or supervise maintenance work and/or attend to other duties. Duties may vary significantly depending on the needs of the condominium.

Much of the administrative load associated with condominium governance is handled by Boards with the support of managing agents. Resident managers round out the administrative team.

III. The fiduciary duty

Board members are fiduciaries. This is stated in Haw. Rev. Stat. § 514B-106(a), and standards applicable to officers and directors of non-profit corporations are incorporated therein by reference. Based on Act 87 (2017), condominium directors (*see* Haw. Rev. Stat. § 414D-149) and officers (*see* Haw. Rev. Stat. § 414D-155) must discharge their respective duties: 1) in good faith; 2) consistent with the duty of loyalty; 3) with ordinary care; and 4) in the best interests of the condominium association. These requirements apply as a matter of *condominium* law, regardless of whether the condominium association is incorporated, and are consistent with common law requirements.

Unpaid volunteer Board members who serve faithfully are protected from personal liability by statute, and grossly negligent Board members are not.²¹ In addition, condominium By-laws generally provide for the indemnification of Board members. Well-written indemnification provisions grant indemnification except in the events of gross negligence and willful misconduct. Directors' and officers' insurance further reduces the risk of service.

Service on a condominium Board entails at least some irreducible legal risk. That risk may not always be appreciated and can come as a surprise. Risk sometimes stems from resentment by owners who expect to live in their homes free from external control.

IV. The meaning of home

The importance of home to identity is easy to appreciate. It has been said that home is where the heart is. More philosophically, the establishment of a home has been described as "at the heart of the real."²² The balance of power in a home, then, may be intensely felt and meaningful to many.

V. The balance of power

Advocates of government control rightly note that there are power imbalances in condominium governance. Broad power is vested in the Board, subject to meeting the standard of a fiduciary.

The system of electing representatives to govern a broader populace is familiar in America. That system is in effect at the municipal, state, and federal levels.

Elected officials do not, in that larger sphere, always receive the votes of all voters or enact policies favored by all. Elected officials have power all the same.

The power to elect and to remove Board members is held by condominium owners. Choosing wisely and monitoring the performance of Board members enables the reflection of majority preferences in condominium governance.

The power to remove directors is an important check on Board power. The decision to remove a director need not be for cause or even be rational. It need only be supported by owners holding more than fifty percent of the common interest.²³

The power to amend the governing documents is also held by the owners. Under Chapter 514B, most Declaration and By-laws provisions can be amended with the approval of owners holding at least sixty-seven percent of the common interest.²⁴ Law and public policy seem to supply the only limits on what amendments can be made.²⁵

The nature of condominium governance is further reflected in the fact that Board members owe a fiduciary duty to the *association* rather than to individual owners. The *membership* of an association consists of unit owners, but the association itself is more than the sum of its parts. The association has separate legal existence, regardless of whether it is incorporated or unincorporated.²⁶

External control is a feature of condominium ownership that differs markedly from the ownership of other real property. Discrepancies between the expectations of owners and the reality of condominium ownership can lead to conflict in some situations.

VI. Conflict in condominiums

The sources of conflict in condominiums are manifold. Some conflict is simply explained, because conflict appears to be endemic to human society.

A complaint about condominium governance, therefore, may really be about something else. It is important to distinguish between real governance issues and issues that simply become manifest in the condominium setting.

For example, some conflict is interpersonal. Owner A dislikes owner B.

Some conflict is intrapersonal. Financial and/or personal stressors can overwhelm a person's normal coping mechanisms. Also, the National Institute of Mental Health reported for 2015 that 17.9 percent of all U.S. adults experienced a diagnosable mental illness within the previous year.²⁷

Problems of governance can arise when interpersonal or intrapersonal conflicts become manifest in the condominium setting. This is not necessarily because of a clear nexus to some Board power or duty.

Some claims of abuse of power stem from dissatisfaction with a Board's response to an owner's demand. That is, a dissatisfied owner may either perceive Board action or inaction to be abusive, in and of itself, or an unsatisfactory experience may become a catalyst for challenging subsequent Board action. There are many points of potential friction in the condominium setting, some of which may be inevitable regardless of what governing authority is in place.

VII. The abuse of power

The real thrust of the case against self-governance is the allegation of serious malfeasance reflected in HB 35. In this view, Boards are venal. Board members oppress owners and retaliate against those who exercise their rights. Owners must live in fear.

The HB 35 finding (quoted above) was not the result of study, however. The extent of the alleged abuse was unquantified, and that finding was not supported by empirical data.

That is unfortunate, because empirical data is available. CAI has commissioned scientifically valid national surveys of satisfaction with association living in 2005, 2007, 2009, 2012, 2014, and 2016.²⁸ Those surveys have found that: "By large majorities, most residents rate their overall community experience as positive or, at worst, neutral."²⁹ The range of those who have reported negative perspectives in those surveys, from 2005 to 2016, was 8 percent to 12 percent. This is consistent with CAI survey results for Hawaii. A total of "87% of residents rate their community association experience as positive (65%) or neutral (22%)."³⁰

CAI issued a Statement of Survey Integrity following what it termed "inaccurate statements" by an entity that developed different findings through an on-line self-report survey. CAI argued that its polling was conducted scientifically and that the competing findings lacked scientific validity.³¹

The prevalence of abuse of power by Boards has yet to be established. There is an objective basis for suggesting that only a small percentage of owners perceive Boards to be abusive.

There is also a question as to whether abuse of power would be eliminated by appointment of a government official to serve as "condominium czar." According to the FBI, "it is estimated that public corruption costs the U.S. government and the public billions of dollars each year."³²

Power might be abused in various ways, by whomever is in charge. For example, money might be stolen. Bribes might be taken. Pet projects might be approved. Elections might be rigged. Mandates contained in law and the governing documents might be ignored.

A. Crime

Theft and bribery are crimes. Criminal law is an available remedy to address alleged crime in condominium governance.

The handling and the disbursement of association funds are directed by statute. Also, "Any person who embezzles or knowingly misapplies association funds received by a managing agent or association shall be guilty of a class C felony."³³ When a management company executive stole association funds several years ago, she was prosecuted and the funds were repaid.³⁴

Owners are entitled to receive an annual audited financial statement,³⁵ as an aid to transparency. Owners are also entitled to a wide variety of financial, and other, documents of the association.³⁶

Managing agents, being licensed real estate brokers, are subject to discipline by the Regulated Industries Complaints Office. Violation of Chapter 514B can subject a licensee to disciplinary action;³⁷ so administrative remedies are also available to facilitate transparency.

B. Pet projects

Board approval of someone's pet project means that at least a majority of a quorum of the Board supported the project. If that seems abusive, the political process itself is available to check moves in an unpopular direction, even in the absence of a specific violation of law or of the governing documents.

Owners have input into Board conduct. Owners can attend and participate in Board meetings. Executive sessions are allowed only for prescribed reasons.³⁸

Board conduct that breaches fiduciary duty is an abuse of power. Board conduct that is merely unpopular with a minority of owners is not. The adage that elections have consequences applies to condominiums.

C. Election rigging

"But the election was rigged!" A common complaint is that the election is allegedly rigged because proxy voting is authorized by statute and Boards often hold many owner proxies.

Owners choose whether to give a proxy. They can choose to ignore the meeting or attend it and vote in person instead. Owners also choose the proxy holder if a proxy is given.

Standard proxy forms authorized by the association must contain boxes indicating whether the proxy is to be used for quorum purposes only, given to a named individual, or given to the Board. Owners giving a proxy to a Board can further choose that the proxy be voted based on the preference of the majority of the directors present at the meeting or, alternatively, voted by each director receiving an equal share of the proxy.³⁹

A Board that intends to use common funds to solicit proxies must post notice of the intent to do so at least 21 days before making the solicitation and must then include the solicitations or statements of owners who timely request to be included. Board members seeking proxies individually are bound by the same limitations as other owners.⁴⁰ Owners are also free to solicit proxies at personal expense and they are entitled to request a list of owners for the purpose.

It is true that political action requires the investment of time, effort and money. Owners who want change must mount a campaign.

The argument that owners should not be allowed to give proxies to incumbents has been made to, but not adopted by, the legislature. Owners are free to consciously support or to passively accept the choices made by incumbents.

Some claims of vote rigging, then, merely reflect the frustration of those who have lost elections.

The legitimate question is whether condominium elections have integrity. Condominium vote fraud is possible. It is not probable.

Votes are usually tallied in the open by tally clerks employed by the managing agent. The tally clerks are usually watched by election tellers who are association members. It is the tellers who certify the election results.

Association members are entitled to examine proxies, tally sheets, ballots, owner check-in lists, and the certificate of election after the meeting at which the election takes place so that challenges can be made.⁴¹ Examination requests are not uncommon, particularly at projects that are politically divided.

D. General misconduct

There can still be the matter of a Board's general failure, negligence or refusal to comply with legal or contractual requirements. Board members who breach fiduciary duty run risks because Chapter 514B expressly provides that "[a]ny right or obligation declared by this chapter is enforceable by judicial pro-ceeding."⁴²

VIII. Remedies for the abuse of power

A fundamental aspect of the critique of self-governance is that the remedies for the abuse of power are inadequate. Boards have money, power, and counsel. Owners must pursue remedies at personal expense and risk.

The condominium czar model would be one in which owners need only complain to government. Government would investigate, advocate for the complainant, and adjudicate outcomes.

There is an obvious question about whether government should choose sides in a civil dispute involving privately owned real estate. Another obvious question is whether government should both advocate for one side to the dispute and adjudicate the outcome as well.

Remedies do exist under current law. In addition to criminal and administrative remedies to vindicate the rights of the public, available private remedies include mediation, arbitration, litigation, and taking political action.

A. Mediation

Condominium law mandates the mediation of most condominium disputes, upon request.⁴³ The cost of professional mediation services is subsidized⁴⁴ because of an industry-sponsored initiative.

Moreover, subsidized mediation is intended to be evaluative. Thus, the mediator can do more than facilitate process. The mediator can provide guidance.

One complaint about mediation is that Boards bring counsel. Fiduciary duty generally obliges a condominium Board to address legal disputes through

counsel. Nothing prevents owners from bringing counsel to mediation, apart from the cost of doing so.

Mediation is an affordable and available non-binding alternative dispute resolution mechanism. The frankly evaluative nature of subsidized condominium mediation is such that even unrepresented parties may benefit from participation.

B. Arbitration

Condominium law also mandates the arbitration of most condominium disputes, upon request.⁴⁵ Condominium arbitration awards can be rejected in favor of trial de novo, but the party who rejects the award and does not then prevail at trial will be assessed the fees and costs of the trial.⁴⁶ There is, therefore, a significant incentive to accept the arbitration award.

C. Litigation

Grievances can always be presented to the courts. As with the exercise of civil remedies in other contexts, litigating condominium claims requires effort, takes time, and costs money. The prevailing party in a condominium dispute is entitled to reasonable attorneys' fees and costs; so owners with meritorious claims should be able to retain counsel.⁴⁷ Of course, the owner must be able to afford counsel in the first instance and must bear the risk of loss.

D. Political action

The removal of offending directors and the election of new directors can remedy abuses of power. This remedy requires political action.

IX. The missing piece

The piece that is perceived to be missing in the remedial scheme is a remedy that does not entail risk or effort.

That missing piece must be understood to relate solely to the exercise of private civil remedies regarding privately owned real property, because the Commission already has substantial statutory and rulemaking authority to vindicate the public interest.⁴⁸ Laws of general application can be passed during annual legislative sessions as well.

It is the private grievances of individual condominium owners that owners must pursue on their own. The justification for government action in favor of one party to a private condominium dispute has yet to be established.

X. Recent legislative action

Legislative action in 2017 included targeted responses to several specific complaints about condominium governance. The repeal of Chapter 514A has already been noted.

Act 190 prohibits retaliation against persons who act lawfully to address, prevent or stop a violation of Chapter 514B or an association's governing documents. State district courts have jurisdiction over this new cause of action and may enjoin retaliatory conduct, award damages, or grant other relief that the court deems to be appropriate. As defined in Act 190:

"Retaliate" means to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents.

The cause of action works both ways. Board members and others who retaliate against owners are at risk. Owners who retaliate against Board members and others are also at risk.

Act 81 addresses multiple concerns. The concern that some Boards might resist participation in mandatory mediation or arbitration is addressed by providing that such resistance may be deemed to be a breach of fiduciary duty. The adoption of owner participation rules for Board meetings is provided for to ensure that owners can participate in deliberations and discussions of Board business. Agendas must now include expected items of business. An affirmative vote, rather than mere "approval," is required to go into executive session. Draft minutes must be available within thirty rather than sixty days.

Act 71 provides (among other things) for the disclosure of an on-site manager's contract. The redaction of certain personal information is allowed. This resolves tension between the call for disclosure and the employee's right to privacy.

XI. Democracy versus autocracy

There is a reasonable basis for suggesting that condominium self-governance is viable. Hawaii condominiums have governed themselves for more than half a century, and the condominium form of ownership has steadily grown over that period.⁴⁹

Even so, the *number* of unhappy condominium owners may increase as more condominiums are built, regardless of whether the *percentage* of unhappy owners remains relatively constant. The condominium czar proposal is an indication that the mass of unhappy owners has become politically significant.

To do the greatest good for the greatest number of people, though, legislators may wish to base policy on objective facts discerned through reasonable and responsible investigation involving all stakeholders in an open process. That is how Chapter 514B was developed. No comparable process has been proposed to undo condominium self-governance.

Notes:

¹ State of Hawaii, Dep't. of Bus., Econ. Dev. & Tourism, State of Hawaii Data Book 2016 ("Data Book"), Table 21.10, (<http://dbedt.hawaii.gov/economic/databook/>).

² Compare *id.* with Data Book Table 21.20.

³ *Lee v. Puamana Community Association*, 109 Hawaii 561, 128 P.3d 874, 888 (2006).

⁴ Final Report at 5.

⁵ *Id.* at 1.

⁶ Haw. Rev. Stat. § 514B-4.

⁷ Haw. Rev. Stat. § 514B-3.

⁸ Haw. Rev. Stat. § 514B-51.

⁹ Haw. Rev. Stat. § 514B-82.

¹⁰ Haw. Rev. Stat. § 514B-102(b).

¹¹ Haw. Rev. Stat. §§ 514B-105 and 514B-106.

¹² Final Report at 7-8.

¹³ Jasmine Martirossian, *Decision Making in Communities*, 3, (Debra H. Lewin, ed. 2001).

¹⁴ Haw. Rev. Stat. § 514B-41(a).

- ¹⁵ Haw. Rev. Stat. § 514B-3.
- ¹⁶ Haw. Rev. Stat. §§ 514B-144(a) and 514B-106(c).
- ¹⁷ Haw. Rev. Stat. § 514B-143.
- ¹⁸ Haw. Rev. Stat. § 514B-148.
- ¹⁹ Haw. Rev. Stat. § 514B-105.
- ²⁰ Haw. Rev. Stat. § 514B-132(c).
- ²¹ See, e.g., Haw. Rev. Stat. § 414D-149.
- ²² John Berger, *And Our Faces, My Heart, Brief as Photos*, 51, (1st Vintage International ed. 1984).
- ²³ Haw. Rev. Stat. § 514B-106(f).
- ²⁴ Haw. Rev. Stat. § 514B-32 (Declaration) and § 514B-108 (Bylaws).
- ²⁵ *Lee*, 128 P.3d at 883-4.
- ²⁶ Haw. Rev. Stat. § 414D-52 and §429-4.
- ²⁷ Any Mental Illness (AMI) Among U.S. Adults, <https://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-us-adults.shtml> (last visited September 9, 2017).
- ²⁸ How Sweet HOA: A survey of satisfaction of community association living. Statement of Survey Integrity. CAI ("Statement of Survey Integrity").

²⁹ <https://foundation.caionline.org/wp-content/uploads/2017/06/2016NationalHomeownerSurvey.pdf> (last visited September 9, 2017).
- ³⁰ Hawaii Community Associations facts & figures, CAI, <https://www.caionline.org/Advocacy/Resources/Pages/State-Facts-Figures.aspx> (last visited September 9, 2017).
- ³¹ Statement of Survey Integrity.
- ³² Public Corruption, <https://www.fbi.gov/investigate/public-corruption> (last visited September 9, 2017).
- ³³ Haw. Rev. Stat. § 514B-149(f).
- ³⁴ See eCourt Kookua case ID 1PC151000250, <http://jimspssl.courts.state.hi.us:8080/eCourt/ECC/CaseSearch.iface> (last visited September 9, 2017).

- [35.](#) Haw. Rev. Stat. § 514B-150.
- [36.](#) Haw. Rev. Stat. § 514B-154.5.
- [37.](#) Haw. Rev. Stat. § 467-14.
- [38.](#) Haw. Rev. Stat. § 514B-125.
- [39.](#) Haw. Rev. Stat. § 514B-123.
- [40.](#) *Id.*
- [41.](#) Haw. Rev. Stat. § 514B-154.
- [42.](#) Haw. Rev. Stat. § 514B-10(c).
- [43.](#) Haw. Rev. Stat. § 514B-161.
- [44.](#) Haw. Rev. Stat. § 514B-72.
- [45.](#) Haw. Rev. Stat. § 514B-162.
- [46.](#) Haw. Rev. Stat. § 514B-163.
- [47.](#) Haw. Rev. Stat. § 514B-157.
- [48.](#) Haw. Rev. Stat. §§ 514B-65 to 514B-69.
- [49.](#) Table 21.10, Data Book.

Philip S. Nerney has represented community associations since 1990. He is a co-chair of the Community Associations Institute's Legislative Action Committee (Hawaii Chapter).



DISTRICT 25 COUNCIL

Ala Moana
Kakaako
Downtown

District
Council
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Vice Chair

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Tyler Dos Santos-Tam
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Dyson Chee
Miriam Elliot
Nicole Woo
Francis Choe
Thomas Brandt
Harris Nakamoto
Catherine Lau
Stephan Bracha
Patricia Stolfa
Mark Forman

Sen. Jarrett Keohokalole, Chair
Sen. Carol Fukunaga, Vice-Chair
Comm. on Commerce & Consumer Protection

Tuesday, February 6, 2024
9:30 AM
Via Videoconference

RE: **SB3205** Condo Ombudsman's Office - **Support**

Dear Chair Keohokalole, Vice Chair Fukunaga & Committee Members,

On November 21, 2023, District 25 Council of the Democratic Party of Hawaii, held an open meeting via zoom that was publicized to all registered democrats residing in District 25. Upon unanimous vote of all those in attendance, we determined that Consumer Protections for Condo Owners would be one of our district council's Top 5 Legislative Priorities for the 2024 Legislative Session.

We specifically determined to support those measures included in the Ala Moana - Kakaako Neighborhood Board Resolution Supporting Consumer Protection Bills for Condo Owners. (Please see attached copy below; note that it was adopted unanimously.) The resolutions specifically asks the legislature to pass bills that will "Create a State Ombudsman Office to efficiently resolve complaints from homeowners and associations when laws and rules are not followed," and "Mandate educational requirements for association directors and community managers, to ensure they are prepared to properly fulfill their fiduciary, managerial, financial, and legal responsibilities to the association and the homeowners they serve."

Almost half of all registered voters in District 25 are condo owners and they are paying very close attention to bills that may affect, what may be, their most valuable asset. Residents in our district received campaign mailers that educated them about the legislative process; so they know that legislative leaders can publicly support a bill, and simultaneously use their power to kill that same bill behind the scenes. So condo owners in District 25 are looking to see if their elected officials are sincere in using their influence as legislative leaders to enact laws that protect condo owners.



ALA MOANA-KAKA'AKO NEIGHBORHOOD BOARD NO. 11

c/o NEIGHBORHOOD COMMISSION 925 DILLINGHAM BOULEVARD, SUITE 160 - HONOLULU, HAWAII,
96817 PHONE (808) 768-3710 FAX (808) 768-3711 INTERNET <http://www.honolulu.gov/nco>

RESOLUTION SUPPORTING CONSUMER PROTECTION BILLS FOR CONDO OWNERS

WHEREAS, the establishment of a condominium ombudsman has been proposed to aid in the resolution of condominium related disputes; and

WHEREAS, the Real Estate Branch of the Department of Commerce and Consumer Affairs (DCCA) is not providing the necessary assistance to help resolve disputes and concerns regarding violations of Hawaii Revised Statutes 514B, and the Regulated Industries Complaints Office (RICO) has very limited jurisdiction to assist and often closes cases with no findings, even with evidence of violations presented; and

WHEREAS, the Real Estate Branch of the DCCA has been required since 2013 to use the condominium education trust fund (CETF) to support mediation of condominium related disputes pursuant to Hawaii Revised Statute 514B-71, section (a)(4); and

WHEREAS, in 2018, the Real Estate Commission expanded the use of the condominium education trust fund to support voluntary binding arbitration; and

WHEREAS, mediation and arbitration has proven to be costly to homeowners and associations, but profitable for the attorneys and association management companies hired by the associations; and

WHEREAS, to eliminate the shortcomings and increase the effectiveness and accessibility of alternative dispute resolution at little to no additional cost to condominium owners and associations; and

WHEREAS, proxy voting unfairly benefits the incumbent association directors and managers who maintain restricted access to phone numbers and email addresses for each homeowner; and

WHEREAS, proxy voting has been confusing and ambiguous to owners who prefer to vote on their own, but are unable to attend their association elections; and

WHEREAS, each property management company is required to have one licensed real estate broker on staff, yet there is no licensure requirement for association community managers who are responsible for billions of dollars of real estate, and compliance with laws, rules, and professional standards; and

WHEREAS, the 2021 collapse of the Florida condominium, Champlain Towers South, exemplified the significant need for community association managers and board directors to know and fulfill their fiduciary duties to condo owners through the understanding of HRS 514B and their associations' governing documents; and

WHEREAS, documents reporting investigation and consultation studies of an association's buildings and infrastructure should be availed to all owners for their health and safety; and

WHEREAS, other association documents pertinent to and necessary for good governance should be availed to all owners in keeping with the theory that associations should be self-governed and self-regulated as intended by HRS 514B; so

NOW THEREFORE BE IT RESOLVED, that the Ala Moana-Kaka'ako Neighborhood Board No. 11 supports the passage of legislative bills that include the following solutions:

- Create a State Ombudsman Office to efficiently resolve complaints from homeowners and associations when laws and rules are not followed;
- Eliminate voting by proxy and allow only in-person or mail-in ballot voting;
- Increase transparency and homeowner access to association documents by increasing frequency of filing, quickening wait time, and broadening which documents are to be filed automatically, and by reducing the burdensome cost of electronic documents and extending owners free access to their association documents;

- Mandate licensure of association community managers to verify competency and ensure accountability and compliance with rules, laws, and professional standards; and
- Mandate educational requirements for association directors and community managers, to ensure they are prepared to properly fulfill their fiduciary, managerial, financial, and legal responsibilities to the association and the homeowners they serve.

BE IT FURTHER RESOLVED, that copies of this signed resolution be sent to all Hawaii Legislators.

This Resolution was adopted by the Ala Moana/Kaka'ako Neighborhood Board No. 11 by Unanimous Consent on Tuesday, February 28, 2023. (9-0-0) (AYE: Chee, Farinas, Lee, Zehner, Rice, Mariano, Chung, Nam, Faringer. NAY: None. ABSTAIN: None.)

Signed by Kathleen Lee, NB11 Chair

Date: 2/28/23

X  _____

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Enlightened Energy
Honolulu

Chamber of
Sustainable
Commerce
P.O. Box 22394
Honolulu, HI
96823



Sen. Jarrett Keohokalole, Chair
Sen. Carol Fukunaga, Vice-Chair
Comm. on Commerce & Consumer Protection

Tuesday, February 6, 2024
9:30 AM
Via Videoconference

RE: **SB3205** Relating To Condominium Associations - **Support**

Dear Chair Keohokalole, Vice Chair Fukunaga & Committee Members,

The Chamber of Sustainable Commerce represents over 100 small businesses across the State of Hawaii that strive for a triple bottom line: people, planet and prosperity; we know Hawaii can strengthen its economy without hurting workers, consumers, communities or the environment. This is why we support S3205, which establishes the Ombudsman's Office for condo associations and requires condo association board members to meet certain educational requirements.

Yours is the only committee charged with protecting consumers; in this case, 1) protecting condo owners from avoidable, expensive and often ineffective arbitration with associations and 2) protecting condo owners from volunteer board members who refuse to carry out their fiduciary duties with care – to the detriment of individual condo owners.

Data has been available for decades in Hawaii, demonstrating that most conflicts between owners and associations arise from non-compliance with state laws and rules, not a dispute of facts that needs to be adjudicated by an arbitrator, mediator or judge.

Condo-owners already pay a specific fee to the state for condo law education – this fee should be used by an ombudsman's office to 1) educate board members about their fiduciary duties to prevent conflicts and 2) educate both parties in an existing conflict about the relevant rules and responsibilities that should apply to their situation.

Condo owners may find their most valuable asset at the mercy of the association and elected board members. Please do not be persuaded by the laziest or most arrogant board members testifying that being trained on their fiduciary duties would impose an "unreasonable burden" and would discourage people from seeking election to the association board – that would be the point.

When Directors & Officers Insurance covers board members' malfeasance, there is no incentive to do better; SB3205 will help everyone do better.

SB-3205

Submitted on: 2/5/2024 9:18:17 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Rachel Glanstein	Testifying for AOA Lakeview Sands	Oppose	Written Testimony Only

Comments:

Aloha,

I STRONGLY OPPOSE S.B. 3205 for the reasons set forth below. Please defer this bill.

First, S.B. 3205 is a massive 78-page bill. A bill of this nature and magnitude should not be considered until it has been fully reviewed and evaluated by a task force comprised of competent professionals and other persons fairly representing the community association industry as well as the Hawaii Real Estate Commission.

Second, Section 1 of the bill contains numerous findings by the Legislature with very little facts or data to support those findings. Findings should be based on facts and data, not opinions.

Third, this bill is an extremely bad bill. It will mandate that associations participate in investigations and contested case hearings before an ombudsman, whose decisions are binding, with a limited right to a trial de novo. This bill will deprive condominiums with full access to the Hawaii courts and deprive them of due process. In all likelihood, some aspects of the bill are unconstitutional.

Fourth, given the length of the bill and the short time period to submit testimony, it is impossible to address all objections to the bill. It is only possible to address some major points of concern, as set forth below.

The bill will require the ombudsman to develop educational classes and require certifications for all members of a condominium board even though no need for such has been established.

The new Section 514B-C(a)(22), provides that the ombudsman shall “assist unit owners” with disputes concerning association elections or meetings, including recommending that the department of commerce and consumer affairs pursue an enforcement action in any matter where the ombudsman has reasonable cause to believe that election misconduct has occurred, pursuant to section 514B-I. In other words, it appears that the ombudsman is not to act as a neutral fact finder, but as an advocate for owners.

The new Section 514B-C(a)(23) provides that the ombudsman shall have the authority to remove from the board any board member of an association who is found to have committed wilful misconduct in violation of any laws or the condominium's governing documents, as provided in section 514B-105(f). This is a drastic remedy to be giving to a single individual, who is not necessarily acting as a neutral fact finder.

The new Section 514B-D provides that a unit owner or association, by its board members, who is a party to a dispute involving the interpretation or enforcement of an association's governing documents, including the condominium's declaration, bylaws, and house rules, Chapter 514B, or any other law the association is obligated to follow, may submit to the ombudsman's office a written request for dispute intervention setting forth the facts forming the basis of the dispute. HRS Section 514B-E provides that upon receipt of a dispute intervention request pursuant to section 514B-D, the complaints and enforcement officer shall open an investigation into the dispute and participation by the complainant, board members, and the board shall be mandatory. No exception is made for matters that are already pending before a court or arbitrator.

The new Section 514B-E further provides that an owner or board member who refuses to participate shall be subject to penalties and fines to be predetermined and published by the ombudsman. Additionally, it provides that if the board determines not to participate, each board member voting not to participate shall be considered in violation of the Act, shall be personally assessed a monetary fine, and may be removed from the board. The change to HRS Section 514B-105(f) provides that any board member who is found to have committed wilful misconduct in violation of any laws or the governing documents shall be removed from the board by the authority of the ombudsman. No right to appeal is afforded, and it is not clear that these types of actions fall under the right to trial de novo provided for in Section 19, because the new Section 514B-C(b) provides that "no proceeding or decision of the ombudsman may be reviewed by any court unless the proceeding or decision contravenes this chapter." Unchecked authority given to the ombudsman could lead to abusive practices, especially since Section 514B-C(b) provides that the "ombudsman shall have the same immunities from civil and criminal liability as a judge of the State."

The new HRS Section 514B-E(f) provides that if the parties are unable to reach an agreement or if a party does not agree with the decision of the complaints and enforcement officer, a party may request a contested case hearing with the ombudsman's office that shall be presided over by the ombudsman. It provides that participation in a contested case hearing by the complainant, board members, and the board shall be mandatory. Again, no exception is made for instances in which there is already a pending court action or arbitration.

HRS Section 514B-F(b) provides that the ombudsman shall not be bound by the rules of evidence when conducting a hearing to determine whether a violation of this part has occurred. HRS Section 514B-F(f) provides that any final decision made by the ombudsman shall be binding on all parties. In other words, this new law will require associations and board members to participate in contested case hearings, subject them to fines and removal if they refuse, permit hearsay and other inadmissible evidence to be used against them, bind them to the decision of the ombudsman, and deny them the right to appeal to the courts of the State of

Hawaii, other than a possible right to file a demand for trial de novo under Section 19 of the bill, but subject to the limitation, if applicable, found in Section 514B-C(b) which permits judicial review only where the decision of the ombudsman “contravenes” HRS Chapter 514B. These provisions are heavy-handed. Any denial of access to the Hawaii courts is likely unconstitutional.

The new Section 514B-G provides that any fine or fees collected pursuant to the provisions of the bill shall be deposited into the ombudsman’s office special fund. This creates an obvious incentive for the Ombudsman to impose fines and fees and invites abuse.

For no good reason, this bill will require associations to hold special meetings to discuss any proposals to borrow funds.

This bill adds a new subsection (f) to HRS Section 514B-105 which states that if the association or the board is involved in a dispute intervention through the ombudsman’s office, no special assessment related to the dispute, including association attorneys’ fees, shall be assessed or collected from unit owners until the ombudsman’s office has completed an investigation and rendered a final decision. It also states that if the final decision is in favor of the unit owner, any and all assessments, fines, costs, expenses, interest, and legal fees improperly assessed to the unit owner shall be reversed. This provision is poorly drafted and could conceivably be construed as meaning that a complaining owner is released from his obligation to pay his proportionate share of common expenses, including attorneys’ fees incurred by the association and charged as a common expense, despite the fact that the law and most governing documents provide that common expenses are to be paid based on common interest.

This bill amends HRS Section 154.5(9) to require associations to provide owners with copies of minutes of executive session voting results regarding the imposition of special assessments, charges, and fines, including legal fees, to owners. This defeats the whole purpose of executive session.

This bill adds a new and confusing section to HRS Section 514B-157 related to attorneys’ fees and could be construed by some to mean that certain attorneys’ fees may not be charged to the unit owners, even as a common expense, when the association is responding to such things as complaints or requests for dispute intervention by unit owners. If an association cannot charge fees as a common expense, then there would be no funds from which to pay attorneys’ fees. This provision should either be deleted or reworded.

This bill strikes and deletes HRS Section 514B-161 related to mediation and HRS Section 514B-162 related to arbitration. These alternative dispute resolution procedures will no longer be available to associations or owners even when no one wishes to submit a claim to the ombudsman. This is very short-sighted.

There are many other objectionable provisions in S.B. 3205. The bill is too massive to address every provision on such short notice.

S.B. 3205 is a bad bill for the above reasons and many more. I strongly urge the Committee to defer S.B. 3205.

Mahalo for your time,

Rachel Glanstein

SB-3205

Submitted on: 2/5/2024 9:04:38 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 3205 for the reasons set forth below.

First, S.B. 3205 is a massive 78-page bill. A bill of this nature and magnitude should not be considered until it has been fully reviewed and evaluated by a task force comprised of competent professionals and other persons fairly representing the community association industry as well as the Hawaii Real Estate Commission.

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There are many other objectionable provisions in S.B. 3205. The bill is too massive to address every provision on such short notice.

S.B. 3205 is a bad bill for the above reasons and many more. I strongly urge the Committee to defer S.B. 3205.

Respectfully submitted,

Mark McKellar

SB-3205

Submitted on: 2/2/2024 10:21:31 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Testifying for Palehua Townhouse Association	Oppose	Written Testimony Only

Comments:

Until a further study is done, the Palehua Townhouse Association cannot support SB3205. Please defer this bill.

Mike Golojuch, Sr., President

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

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S.B. 3205 is a bad bill for the above reasons and many more. I strongly urge the Committee to defer S.B. 3205.

I concur with a number of other Association Attorneys and Board of Directors who hold the same opinion.

Respectfully submitted,

Reyna C. Murakami

AOUO President of Mariner's Village 1

AOUO President of Waialae Place

AOUO Vice President of The Continental Apartments

SB-3205

Submitted on: 2/4/2024 10:07:40 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Teresa Ahsing	Testifying for Sky Tower Apartments	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

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This bill adds a new subsection (f) to HRS Section 514B-105 which states that if the association or the board is involved in a dispute intervention through the ombudsman’s office, no special assessment related to the dispute, including association attorneys’ fees, shall be assessed or collected from unit owners until the ombudsman’s office has completed an investigation and rendered a final decision. It also states that if the final decision is in favor of the unit owner, any and all assessments, fines, costs, expenses, interest, and legal fees improperly assessed to the unit owner shall be reversed. This provision is poorly drafted and could conceivably be construed as meaning that a complaining owner is released from his obligation to pay his proportionate share of common expenses, including attorneys’ fees incurred by the association and charged as a common expense, despite the fact that the law and most governing documents provide that common expenses are to be paid based on common interest.

This bill amends HRS Section 154.5(9) to require associations to provide owners with copies of minutes of executive session voting results regarding the imposition of special assessments, charges, and fines, including legal fees, to owners. This defeats the whole purpose of executive session.

This bill adds a new and confusing section to HRS Section 514B-157 related to attorneys’ fees and could be construed by some to mean that certain attorneys’ fees may not be charged to the unit owners, even as a common expense, when the association is responding to such things as complaints or requests for dispute intervention by unit owners. If an association cannot charge fees as a common expense, then there would be no funds from which to pay attorneys’ fees. This provision should either be deleted or reworded.

This bill strikes and deletes HRS Section 514B-161 related to mediation and HRS Section 514B-162 related to arbitration. These alternative dispute resolution procedures will no longer be available to associations or owners even when no one wishes to submit a claim to the ombudsman. This is very short-sighted.

There are many other objectionable provisions in S.B. 3205. The bill is too massive to address every provision on such short notice.

S.B. 3205 is a bad bill for the above reasons and many more. I strongly urge the Committee to defer S.B. 3205.

Respectfully submitted,

Teresa Ahsing

SB-3205

Submitted on: 2/3/2024 3:07:41 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dale Head	Individual	Support	In Person

Comments:

Aloha Chair Jarret Keohokalole & Vice Chair Carol Fukunaga:

Regarding SB3205 (Establishes the Ombudsman's Office for condominium associations within the Department of Commerce and Consumer Affairs. Establishes the Ombudsman's Office Special Fund. Requires condominium association board members to meet certain educational requirements through classes offered by the Ombudsman. Updates the Condominium Property Act to integrate the role and functions of the ombudsman's office for condominium associations. Appropriates funds for establishment of the Ombudsman's Office. Effective 1/1/2025).

I SUPPORT this measure as it is intended to offset the problem of bullying by Boards of Directors members, many of whom are wrongfully seated through intrigues (proxy manipulation) by Managing Agent(s) employees are not licensed professionals. It is not that lawyer lobbyists did not intend for their contributions to fashion HRS514b to be something of a Bully Authorization Act, but, that is how it often works, as has been my experience.

Sincerely, Dale Arthur Head sunnymakaha@yahoo.com

Committee on Commerce & Consumer Protection

Tuesday, February 6, 2024 @ 9:30 AM

SB 3205: Ombudsman

My name is Jeff Sadino, I am a condo owner in Makiki, and I **STRONGLY SUPPORT** this Bill.

In condo governance, condo owners are **guilty until proven innocent**. In order to prove their innocence, they need to risk going to trial. While the final cost of litigation is unknown at the outset, at the outset the condo owner must be financially prepared to pay hundreds of thousands of dollars (i.e.: **the complete destruction of everything they have ever worked for in their entire lives**) if the final verdict (or appeal process) is not in their favor. This risk is too high. It is estimated that there are 50,000 wrongfully accused people sitting in prison at any one time. Even if a condo owner feels bulletproof in the merits of their case, they still cannot risk going to litigation and losing everything they have because of an unjust verdict.

The attorneys for the trade industry will likely argue that litigation is appropriate because every person has a constitutional right to litigation. I find this argument supremely ironic. In condo governance, the Board serves as the Legislative Branch when they draft the Governing Documents. The Board also serves as the Executive Branch when there are claims that those Governing Documents have been violated. Where is the Judicial Branch in condo governance??? There is none. The Judicial Branch needs to be independent from the Executive Branch. Otherwise, when the Executive Branch gets to decide the outcome of disputes, it is too easy for condo owner rights to be blatantly ignored and for a dictatorship to evolve over time. For the trade industry attorneys who have dedicated their lives to make justice accessible to everyone, they should be more in favor of creating a Judicial Branch for condo governance than anybody else. I assume they probably will not...is this because they have a direct financial interest in dispute escalation and creating the costliest litigation possible?

I will provide you examples of the trade industry ignoring all attempts by myself to resolve our disputes through cost-effective means, either through common sense, neighborly good-faith, or through the processes mandated in my Governing Documents. PMKC benefited from blatantly ignoring the law and our Governing Documents and escalating our dispute because they got my Association to pay them at least \$55,000 in attorney fees (\$55,000 is the publicly disclosed amount. The true number I cannot disclose due to confidentiality restrictions demanded by PMKC, but it is higher).

What I am including here is a small fraction of the 16,000+ bate-stamped pages of evidence I submitted under oath of bad-faith and law-breaking behavior by my Board Members, Hawaiiana, and PMKC.

Thank you for the opportunity to testify,

Jeff Sadino

Attachment #1

Hawaiiana Refuses My Request For Dialogue

There was a dispute between me and my Association.

The Governing Documents of my Association state that I “shall be afforded the right to a hearing.”

Abiding by my Governing Documents, I requested a Board Hearing to discuss the dispute with the Board.

Almost immediately, instead of engaging in a dialogue with me or following the mandates of the Fines Enforcement Policy of my specific Association, Hawaiiana entered me into attorney status with Laree McGuire of PMKC.

Laree McGuire, in blatant violation of the Governing Documents (and moral and ethical behavior), accepted the referral and began charging attorney fees to my account.

I literally had my life almost destroyed because I took the initiative to engage in a dialogue with my Board about a disagreement that we were having.

jsadino.axa@hotmail.com

From: Jesi Anderson <jesia@hmcmtg.com>
Sent: Monday, August 5, 2019 5:38 PM
To: Sadino, Jeffrey
Subject: [External]Ode Rancho re Invoice

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Jesi, DPR

Jeff,

I was just informed that any correspondence from this point forward must go to the attorney. I apologize, but the Board is seeking guidance on how to move forward with this situation.

Here is the attorney handling your case:

Mike Biechler
mbiechler@hawaiiilegal.com

Laree McGuire
lmcguire@hawaiiilegal.com

The phone number to reach them is 808-539-1100.

Mahalo,

Jesi K. Anderson-Park | Management Executive, CMCA®
Hawaiiana Management Company, Limited
Pacific Park Plaza, Suite 700
711 Kapiolani Boulevard | Honolulu, HI 96813
PH: 808.593.6319 Cell: 808.694.0782
www.hmcmtg.com | jesia@hmcmtg.com

From: Sadino, Jeffrey <Jeffrey.Sadino@axa-advisors.com>
Sent: Monday, August 5, 2019 5:10 PM
To: Jesi Anderson <jesia@hmcmtg.com>
Subject: RE: [External]Ode Rancho re Invoice

Hi Jesi,

I would like to be able to speak with the Board about these charges, as laid out in B4 of our Governing Documents. I am OK with waiving the 30-day requirement for this specific issue and speaking with the Board at the next regular meeting scheduled for I assume the 2nd Tuesday in September, as long as the Board is willing to permanently waive any late fees that result from that extended timeframe.

Please let me know the next step. Thank you,
Jeff

4. An alleged Violator/Owner shall be afforded the right to a hearing before a representative of the Association if the alleged Violator/Owner requests a hearing in writing no later than ten (10) days from the date of the violation notice. If the alleged Violator/Owner fails to request a hearing in writing within the time allowed, he or she shall be deemed to have waived the right to a hearing and if a fine was levied, it shall be paid by the Violator or responsible Owner within fifteen (15) days of the date of the written statement of the violation, unless the Violator/Owner has requested a hearing on the fine. In lieu of requesting a hearing an alleged Violator/Owner shall have the right to initiate a dispute resolution process as provided by Sections 514B-161, 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the State Department of Commerce and Consumer Affairs.

Jeff Sadino
Financial Consultant
1003 Bishop St, Suite 1450
Honolulu, HI 96813
Direct: 808-441-5127
Cell: 808-371-2017
Fax: 808-538-1048
Jeffrey.Sadino@axa-advisors.com

Jeff Sadino is a registered representative who offers securities through AXA Advisors, LLC (NY, NY 212-314-4600), member FINRA, SIPC and an agent who offers annuity and insurance products through AXA Network, LLC. AXA Network conducts business in CA as AXA Network Insurance Agency of California, LLC, in UT as AXA Network Insurance Agency of Utah, LLC, and in PR as AXA Network of Puerto Rico, Inc. Investment advisory products and services offered through AXA Advisors, LLC, an investment advisor registered with the SEC. AXA Advisors and AXA Network are affiliated companies and do not provide tax or legal advice. Representatives may transact business, which includes offering products and services and/or responding to inquiries, only in state(s) in which they are properly registered and/or licensed. Your receipt of this e-mail does not necessarily indicate that the sender is able to transact business in your state. RetireHI is not owned or operated by AXA Advisors or its affiliates. CA Insurance License #0189139.

From: Jesi Anderson <jesia@hmcmt.com>
Sent: Friday, July 26, 2019 10:52 AM
To: Sadino, Jeffrey <Jeffrey.Sadino@axa-advisors.com>
Subject: [External]Ode Rancho re Invoice

Jeff,

I am sending you a copy of the invoice from the law firm. You will be receiving a note from me in the mail advising you that the balance on the invoice will be charged back to your account.

I will be following up with you on Monday as to the next step in the process and I hope to be able to inform you how this needs to be resolved to get you ready for your hearing in September.

I have asked the Board to consider having a special hearing with you within the next 30 days, but so far, the backup plan is the meeting.

Please let me know if you have any questions or concerns.

Jesi K. Anderson-Park | Management Executive, CMCA®

Hawaiiana Management Company, Limited

Pacific Park Plaza, Suite 700

711 Kapiolani Boulevard | Honolulu, HI 96813

PH: 808.593.6319 Cell: 808.694.0782

www.hmcmgt.com | jesia@hmcmgt.com

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Attachment #2:

Laree McGuire Refuses My Request For Dialogue

Porter McGuire responded that according to HRS (i.e.: **NOT** the Governing Documents specific to my Association that my Association adopted for us), if I wanted to dispute the Association's allegations against me, I could not do it through a (zero-cost) Board Hearing. Instead, I would have to go through the entire process (and expense) of Mediation.

Why in the world would Porter McGuire, Hawaiiana, and the Board not just sit down at a damn table and just talk to me?

Do the attorneys for the trade industry have any financial incentive to escalate disputes so that they can collect more attorney fees?

From: Mike Biechler <mbiechler@hawaiiilegal.com >
Sent: Friday, August 30, 2019 2:09 PM
To: Sadino, Jeffrey
Cc: Jesi Anderson; Laree McGuire
Subject: RE: [External]Ode Rancho re Invoice
Attachments: 514B-146 Association fiscal matters lien for assessments.pdf; 514B-161 Mediation.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: All In

EXTERNAL EMAIL (Outside EQH/AXA Equitable Network): Use caution with links and attachments.

Mr. Sadino:

We were forwarded your email to the Property Manager dated 8/25/19. As mentioned in our office's correspondence to you dated 8/13/19, the matter of your renovations has been referred to the Association's attorneys. Please direct all correspondence regarding the same to this office.

In response to your email regarding the validity of legal charges on your account, HRS 514B-146 requires that an owner who contests the amount of attorneys' fees and costs must make a written request for mediation to dispute said charges. Also note that all maintenance fees and common expense assessments on your account must be paid promptly pursuant to the governing documents and state law prior to contesting any such assessment, as outlined in our 8/13/19 letter to you. Please find attached the relevant statutes for your review outlining your rights and obligations regarding assessments..

Please also note that our office has not received a reply to our demand for the information of the licensed contractor(s) who performed all renovations on your unit in 2018. Please provide said information immediately.

If you have any questions please contact at our office at (808) 539-1100.

Best regards,

Mike Biechler • Associate Attorney

Direct Line (808) 539 1161 mbiechler@hawaiiilegal.com



PORTER • MCGUIRE • KIAKONA • CHOW • LLP

Hawaiiilegal.com

OAHU (808) 539 1100 • 841 Bishop St., Ste. 1500, Honolulu, HI 96813

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From: Jesi Anderson <jesia@hmcmt.com>
Sent: Sunday, August 25, 2019 9:54 PM
To: Laree McGuire <lmcguire@hawaiiilegal.com>; Mike Biechler <mbiechler@hawaiiilegal.com>
Subject: Fwd: [External]Ode Rancho re Invoice

See below.

Jesi K. Anderson-Park | Management Executive, CMCA®
Hawaiiiana Management Company, Limited
Pacific Park Plaza, Suite 700
711 Kapiolani Boulevard | Honolulu, HI 96813
PH: 808.593.6319 Cell: 808.694.0782
www.hmcmt.com | jesia@hmcmt.com

----- Original message -----

From: "Sadino, Jeffrey" <Jeffrey.Sadino@axa-advisors.com>
Date: 8/25/19 9:45 PM (GMT-10:00)
To: Jesi Anderson <jesia@hmcmt.com>
Subject: RE: [External]Ode Rancho re Invoice

I received a bill for \$793.69 in attorney fees. This is more than the invoice I received for \$641.86. As I do not know what the additional amounts are for and considering past errors on both Hawaiiiana's and PMKC's billing, I have to contest this additional amount in addition to **my request to speak to the Board** about the original \$641.86. If you want me to consider their validity, then you will need to send me the itemized breakdown so that I can review the additional charges.

Also, **the Board missed the 30 day deadline to meet with me to discuss the issue of my floor as I requested.** I reserve all of my rights and do not waive any of them.

Also, I did some research and was not able to find any law that says that I am not allowed to speak to you or to the Board. If there is a law, let me know.

Jeff Sadino
Financial Consultant
1003 Bishop St, Suite 1450
Honolulu, HI 96813
Direct: 808-441-5127
Cell: 808-371-2017
Fax: 808-538-1048
Jeffrey.Sadino@axa-advisors.com

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From: Jesi Anderson <jesia@hmcmtg.com>
Sent: Monday, August 5, 2019 5:38 PM
To: Sadino, Jeffrey <Jeffrey.Sadino@axa-advisors.com>
Subject: [External]Ode Rancho re Invoice

Jeff,

I was just informed that any correspondence from this point forward must go to the attorney. I apologize, but the Board is seeking guidance on how to move forward with this situation.

Here is the attorney handling your case:

Mike Biechler
mbiechler@hawaiiilegal.com

Laree McGuire
lmcguire@hawaiiilegal.com

The phone number to reach them is 808-539-1100.

Mahalo,

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To: Jesi Anderson <jesia@hmcmtg.com>
Subject: RE: [External]Ode Rancho re Invoice

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Please let me know the next step. Thank you,
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Sent: Friday, July 26, 2019 10:52 AM
To: Sadino, Jeffrey <Jeffrey.Sadino@axa-advisors.com>
Subject: [External]Ode Rancho re Invoice

Jeff,

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I will be following up with you on Monday as to the next step in the process and I hope to be able to inform you how this needs to be resolved to get you ready for your hearing in September.

I have asked the Board to consider having a special hearing with you within the next 30 days, but so far, the backup plan is the meeting.

Please let me know if you have any questions or concerns.

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Attachment #3:

Laree McGuire Starts Charging Thousands Of Dollars Of Attorney Fees To My Account Every Month

Within 1 month, Laree McGuire had posted over \$5,000 in attorney fees to my account.

Within 4 months, Laree McGuire had posted over \$9,000 in attorney fees to my account.

This went on for 3 years until June 2022.

[REDACTED]
C/O HAWAIIANA MANAGEMENT COMPANY, LTD.
711 KAPIOLANI BLVD., SUITE 700
HONOLULU, HI 96813

9/17/2019

SADINO, JEFFREY LEWIS
[REDACTED]
[REDACTED]

CREDITOR: [REDACTED]

ACCOUNT NUMBER: [REDACTED]

RE: [REDACTED]

UNIT ID: [REDACTED]

AMOUNT DELINQUENT: **5,131.76**
LEGAL FEE REIMBURSEMENT 5,131.76

Dear Owner:

Hawaiiana Management Company, Ltd., as managing agent, is writing to you on behalf of the Association.

Perhaps you have overlooked it, but our records currently reflect that your charges have not been paid. It is important to pay these charges on time because the Association uses these funds to maintain the value of Association property for the benefit of all Association members.

If you would like more information on the balance owing, please call me at the number printed with my name below.

Please make your check payable to: [REDACTED], and mail the payment to Hawaiiana Management Co., Ltd., 711 Kapiolani Blvd., Suite 700, Honolulu, HI, 96813.

If payment has been recently sent, please accept our thanks and disregard this notice.

Sincerely,

For the Board of Directors,

A-4
[Signature]

Michelle Espino, Accountant

Accounting Contact: Accounting Specialist [Phone: (808) 440-5530], Email: paymentinquiry@hmcmtg.com

CC: Management Executive

CL

Late fee, if applicable, will be treated in accordance with your priority of payments policy, project documents or applicable statute.

[REDACTED]
C/O HAWAIIANAMANAGEMENT COMPANY, LTD.
711 KAPIOLANI BLVD., SUITE 700
HONOLULU, HI 96813

December 31, 2019

SADINO, JEFFREY LEWIS
[REDACTED]
[REDACTED]

CREDITOR: [REDACTED]

ACCOUNT NUMBER: [REDACTED]

RE: [REDACTED]

UNIT ID: [REDACTED]

AMOUNT DELINQUENT: **9,238.01**
LEGAL FEE REIMBURSEMENT 9,238.01

Dear Owner:

Hawaiiana Management Company, Ltd., as managing agent, is writing to you on behalf of the Association.

Perhaps you have overlooked it, but we have not received a response to our prior notice concerning your delinquent account. Our records show your account is now delinquent in the amount reflected above.

Note: These figures do not include amounts becoming due on the first of the next month.

It is important to pay the delinquent amount as soon as possible to avoid further late and collection fees. If your account is not paid up to date within ten days of your receipt of this letter, we may refer this matter to the Association's attorney - who may seek all collection costs, including attorney fees, from you.

If full payment has been recently sent, please accept our thanks and disregard this notice.

Sincerely,
For the Board of Directors,

Michelle Espejo, Accountant

Accounting Contact: Accounting Specialist [Phone: (808) 440-5530], Email: paymentinquiry@hmcmgt.com

CC: Management Executive

C2

Late fee, if applicable, will be treated in accordance with your priority of payments policy, project documents or applicable statute.

Attachment #4:

Laree McGuire Refuses To Attend Mediation

At the unsuccessful conclusion of our first Mediation, I requested a second Mediation session so that we could continue discussing our disputes. I fully admit that I was unfortunately responsible for missing a mutually agreed upon deadline by 7 days. Laree McGuire took this opening to **refuse to attend further Mediation**. If the trade industry so often says that Mediation is effective, then why did they refuse it?

1 month later, Laree McGuire filed a Complaint against me, which dragged on for over two more years (i.e.: lots and lots of attorney fees to collect).

Do the attorneys for the trade industry have any financial incentive to escalate disputes so that they can collect more attorney fees?

----- Forwarded message -----

From: **Kelly Bryant** <KellyBryant@dprhawaii.com>

Date: Fri, Feb 7, 2020 at 2:27 PM

Subject: RE: Jeff Sadino v. AOA Ode Rancho mediation/19-0439-M - Nishimura- Summary

To: Laree McGuire <lmcguire@hawaiiilegal.com>, Hilary Chen <hc@herranlawfirm.com>, Rhonda Nishimura <ranishimura@gmail.com>, Paul Herr-n <ph@herranlawfirm.com>

Cc: Anne Lefai <alefai@hawaiiilegal.com>, Dawn Daido <ddaido@hawaiiilegal.com>, Mike Biechler <mbiechler@hawaiiilegal.com>

Dear Counsel:

I spoke to Judge Nishimura and based on the emails from counsel and given the current status, the Judge confirms that she will close her file at this time.

If Paul provides the documents to Laree at some point in the future, and Laree feels further mediation would be effective, we can open a new file.

Thank you.

Kelly Bryant

Case Manager

Dispute Prevention & Resolution, Inc.

1003 Bishop Street, Suite 1155

Honolulu, Hawaii 96813

(808) 523-1234

www.dprhawaii.com

From: **Laree McGuire** <lmcguire@hawaiiilegal.com>

Sent: Friday, **February 7**, 2020 11:19 AM

To: Kelly Bryant <KellyBryant@dprhawaii.com>; Hilary Chen <hc@herranlawfirm.com>; Rhonda Nishimura <ranishimura@gmail.com>; Paul Herr-n <ph@herranlawfirm.com>

Cc: Anne Lefai <alefai@hawaiiilegal.com>; Dawn Daido <ddaido@hawaiiilegal.com>; Mike Biechler <mbiechler@hawaiiilegal.com>

Subject: RE: Jeff Sadino v. AOA Ode Rancho mediation/19-0439-M - Nishimura- Summary

Hi Kelly,

Sadino's additional documentation was due to us on **Jan. 31, 2020**. Nothing was received on that date and to date, no documents have been received. I will forward you the email we received this week wherein opposing counsel advised he had 3 pretrial statements due this week and was thus, unable to get us anything this week. **I believe add'l mediation would be a waste of time** as Sadino has had months to provide us with add'l documentation and has failed to do so.

I will forward you the email.

Mahalo,

Laree

Mahalo,

R. Laree McGuire • Partner



Hawaiiilegal.com

(808) 539 1100 • 841 Bishop St., Ste. 1500, Honolulu, HI 96813

IF THIS COMMUNICATION RELATES TO A DEBT, THEN THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED AS A RESULT OF OR IN CONNECTION WITH THIS COMMUNICATION WILL BE USED FOR THAT PURPOSE.

Dockets

Docket #	Date	Docket	Document Name	Parties	Filing Party
1	03/09/2020	Complaint and Summons EFile Document upload of type Complaint and Summons	Complaint for Declaratory and Injunctive Relief; Summons	AOAO ODE RANCHO - Plaintiff	Mcguire, Ramona Laree, Biechler, Michael Curtis
3	03/09/2020	Payment Due to Court		Michael C Biechler - Attorney	
5	03/09/2020	New Case Assignment CASE ASSIGNED TO THE 14TH DIVISION, HONORABLE GARY WB CHANG, PRESIDING		AOAO ODE RANCHO - Plaintiff First Circuit Court 14th Division - Other	FILED BY COURT, COURT
7	03/09/2020	Notice	NOTICE OF INCOMPLETE ELECTRONIC RECORD - IMMEDIATE CORRECTIVE ACTION REQUIRED BY PLAINTIFF	AOAO ODE RANCHO - Plaintiff	FILED BY COURT, COURT
9	03/09/2020	Summons	SUMMONS	AOAO ODE RANCHO - Plaintiff	FILED BY COURT, COURT
11	03/13/2020	Payment Payment by Check/Money Order-Civil in the amount of \$315.00 by ATY - Biechler, Michael Curtis (A10943)		Michael C Biechler - Attorney	
12	04/13/2020	Return of Service EFile Document upload of type Return of Service or Summons	Return and Acknowledgment of Service	AOAO ODE RANCHO - Plaintiff	Mcguire, Ramona Laree, Biechler, Michael Curtis
14	04/30/2020	Answer EFile Document upload of type Answer	20200430 Dated FINAL Answer 2 Compl	AOAO ODE RANCHO - Plaintiff First Circuit Court 14th Division - Other Jeffrey L Sadino - Defendant	Sadino, MR Jeffrey Lewis
16	04/30/2020	Counterclaim EFile Document upload of type Counterclaim	20200430 Dated FINAL Counterclaim against AOAO Ode Rancho	AOAO ODE RANCHO - Plaintiff First Circuit Court 14th Division - Other Jeffrey L Sadino - Defendant	Sadino, MR Jeffrey Lewis
18	06/26/2020	Answer EFile Document upload of type Answer	Counterclaim Defendant Association of Apartment Owners of Ode Rancho's Answer to Defendant/Counterclaimant Jeffrey Lewis Sadino's Counterclaim filed April 30, 2020; Certificate of Service	AOAO ODE RANCHO - Plaintiff	Tilker, Brian Wayne

Attachment #5:

The Association Never Issued Me A Violation Notice

The Association submitted under oath that they have never issued me one single Violation Notice, even though Porter McGuire filed 2 lawsuits against me.

the Counterclaim and therefore denies the same on that basis.

5. Answering the allegations in Paragraph 5 of the Counterclaim, Counterclaim Defendant states that it is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein and therefore denies the same on that basis. Counterclaim Defendant avers that it is a Hawai'i non-profit corporation.

6. Answering the allegations in Paragraph 6 of the Counterclaim, Counterclaim Defendant admits that Counterclaimant has owned Unit 803 located at 1447 Kewalo Street, Honolulu, Hawai'i 96822 (the "Unit") in the Ode Rancho Condominium Project (the "Project") since June 26, 2017, and admits that Counterclaim Defendant is the unit owners' association for the Project. Counterclaim Defendant denies all allegations relating to the terms "operates," "manages," "administers," and "governing documents" as said terms are vague, ambiguous and undefined. Counterclaim Defendant denies any remaining allegations contained in Paragraph 6 of the Counterclaim.

7. Counterclaim Defendant states that it is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 7 of the Counterclaim and therefore denies the same on that basis.

8. Answering Paragraph 8 of the Counterclaim, Counterclaim Defendant avers that the document referenced therein, being a writing, speaks for itself, refers the Court to said document for a complete and accurate statement of its contents, and denies any characterization of said document that is inconsistent with its contents.

9. Answering the allegations in Paragraph 9 of the Counterclaim, Counterclaim Defendant admits that it has not issued Counterclaimant a written violation notice since he became the record owner of Unit 803. Counterclaim Defendant avers that the document

Attachment #6

Laree McGuire & Hawaiiiana Blatantly Violates Our Governing Documents Regarding Attorney Fees

Our Governing Documents state that attorney fees cannot be charged to an Owner unless they have been issued 4 Violation Notices. I have never been issued any Violation Notices.

In clear violation of the Governing Documents that my Association adopted for my specific Association, Hawaiiiana and Porter McGuire posted about **\$100,000 in attorney fees** to my account and even filed a lien against my property.

Why do Board Members, Property Managers, and Trade Industry attorneys feel like they can violate large swaths of the law with no accountability? It is because they know that for the average condo owner, to enforce their protections that exist on paper, it is financially inaccessible to go through the process of litigation to hold the trade industry accountable.

5. Failure to take corrective action within the time allowed after a first violation is issued shall constitute a second violation and be subject to a fine under the fine schedule set forth in paragraph C below. If the fine remains unpaid after thirty (30) days of the time allowed, the nonpayment shall constitute a third violation and be subject to a further fine under the fine schedule set forth in paragraph C below.

6. If the alleged Violator/Owner timely requests a hearing, he or she shall be notified in writing of the date of the hearing which shall be held within thirty (30) days of the Association's receipt of the hearing request.

7. The alleged Violator/Owner shall have the right to be heard in person or through a spokesperson at the hearing and/or by submission of a written statement.

8. If the alleged Violator/Owner does not intend on appearing at the hearing in person or through a spokesperson, he/she may send the Association's representative a written statement of facts, affidavits or declarations of witnesses, and other materials the alleged Violator/Owner wants the Association's representative to consider in deciding the alleged violation.

9. The Association's representative shall deliver or mail a written decision to the affected parties within thirty (30) days of the hearing, which decision shall specify the fine levied, if any, and the reasons therefor. If a fine is levied, it shall be paid by the responsible Owner within fifteen (15) days of the date the written decision is delivered or mailed to the affected parties.

C. Issuance of Notices and Schedule of Fines. The following schedule of fines shall apply for any violation of the Association's Declaration, By-Laws or House Rules (collectively "Governing Documents"):

- i. First Offense. A written notice delivered to both the Owner and Violator (if the Violator is not the Owner).
- ii. Second Offense. A written notice delivered to both the Owner and Violator (if the Violator is not the Owner) and a \$50.00 fine assessed against the Owner.

- iii. Third Offense. A written notice delivered to both the Owner and Violator (if the Violator is not the Owner), and a \$75.00 fine assessed against the Owner.
- iv. Fourth and Subsequent Offenses. A written notice delivered to both the Owner and Violator, and a \$100.00 fine assessed against the Owner for each offense. In addition, the matter may be referred to the Association's legal counsel for appropriate action. Any legal fees and costs incurred by the Association after the matter has been referred to legal counsel shall be assessed against the Owner.

Second, third, fourth, and subsequent offenses need not be for a violation of the same provision before a fine is imposed.

- D. Upon providing notice to all owners, the Board reserves the right to establish a new schedule of fines at any time.
- E. Violations over one (1) year old will be removed from an Owner's record and will not be used in the calculation of subsequent violations.
- F. In the event of a violation of the governing documents that poses a threat to persons or property, as determined by the Association or the authorized representative of the Association, the procedures set forth hereinabove and below, may be suspended and the violation referred directly to legal counsel for appropriate action.
- G. Remedy Not Exclusive. In addition to the imposition of fines, the Association or authorized representative of the Association is empowered to take all such other action as permitted by the Declaration, By-Laws and House Rules to enforce the provisions of the governing documents. This includes the retention of legal counsel, initiating legal action or arbitration proceedings, and/or any other form of remedy available to the Association. All remedies shall be cumulative and not be exclusive of the other."

Attachment #7

Physical Effects Of The Financial Stress

Pictures of the physical manifestation (i.e.: facial hair falling out) of the extreme stress that I was under due to Hawaiiana's & PMKC's weaponization of attorney fees and their reluctance to just sit down and engage with a dialogue with me like a responsible, ethical, moral, good-faith neighbor should be expected to do.





SB-3205

Submitted on: 2/4/2024 9:16:58 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Antonio Vierra	Individual	Support	In Person

Comments:

Aloha my name is Antonio Vierra and I am in support of SB3205 and I like to share my concerns of why SB3205 is so important and must be passed into Law. I have been a Resident Manager and Maintenance Manager for several building in which case I was treated so wrong that I was force to file a law suit.

The associations and Board Members actions against employees are questionable and in my cases I have been the Subject of retaliation and wrongful treatment without any Agency or enforcement branch to report such improper behavior, and these behaviors include, wrongful termination, retaliation and at times the violation of laws.

In the four seperate cases I had to file litigation I prevailed , please check court records to confirm. I feel that SB3205 is very important to have an agency to report such incidents and actions that action can be taken to protect all employees and property owners.

Lourdes Scheibert
920 Ward Ave
Honolulu, Hawaii. 96814

February 4, 2024

To: CPN Committee Chair Jarrett Keohokalole, Vice Chair Carol Fukunaga and members of the committee

I am Lourdes Scheibert and I support,

SB3205:

Establishes the Ombudsman's Office for condominium associations within the Department of Commerce and Consumer Affairs. Establishes the Ombudsman's Office Special Fund. Requires condominium association board members to meet certain educational requirements through classes offered by the Ombudsman. Updates the Condominium Property Act to integrate the role and functions of the ombudsman's office for condominium associations. Appropriates funds for establishment of the Ombudsman's Office. Effective 1/1/2025.

I support the report submitted to the Real Estate Commission by Gregory K. Tanaka; Condominium Dispute Resolution – Philosophical Considerations and Structural Alternatives (January 1991). The following pages show the 1990 Flow Chart still used today. Added to this flow chart includes a speedy non judicial foreclosure written into HRS514B Condominium Law.

Tanaka proposed a different approach to the flow chart used in 1990. In Tanaka's revised flow chart from 1991, there is an inclusion of a DCCA Ombudsman. Considering that the current alternative dispute resolution method has remained unchanged since 1990 and has not effectively resolved disputes, it is now necessary to implement a flow chart similar to Tanaka's. This is especially important due to the negative impact of non-judicial foreclosures on the resolution process.

Counting today's testimonies submitted for SB3205 should not influence the decision made by this committee. Rather each individual legislature should listen to their people in their district. Ask them if they would favor an ombudsman to mitigate disputes ending up in court.

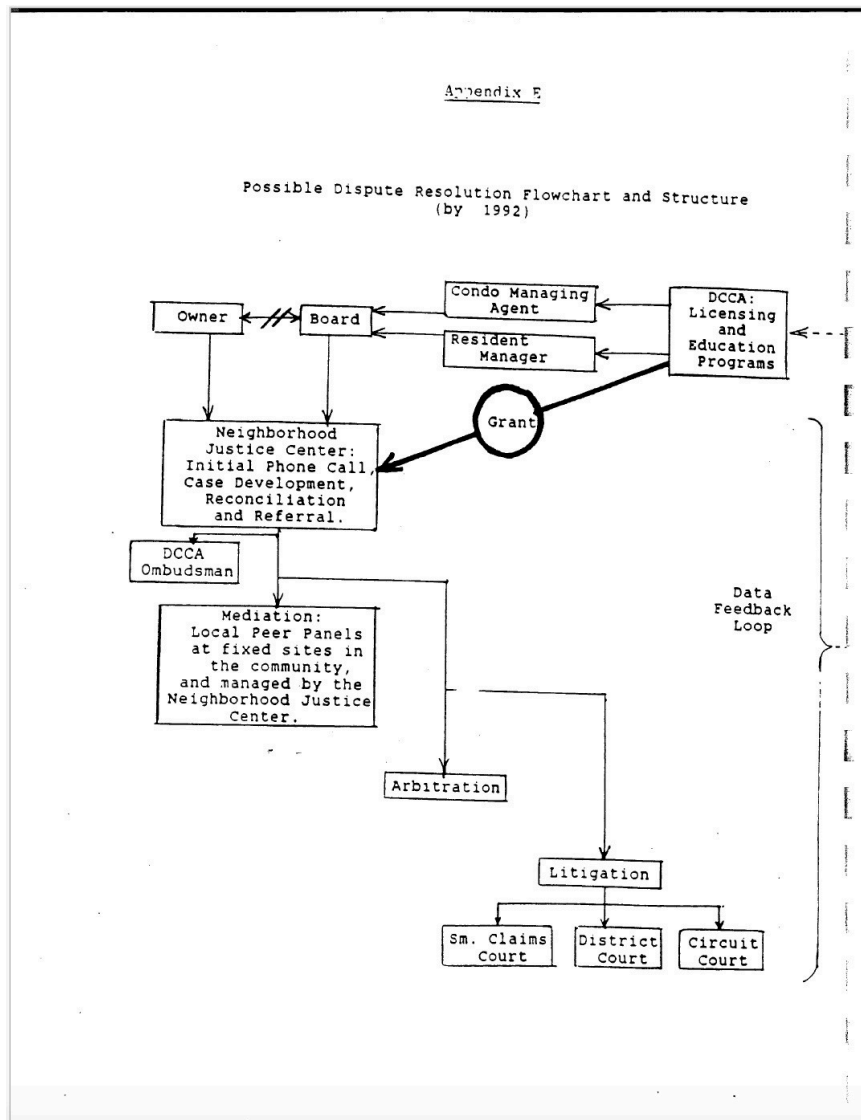
Thank-you,
Lourdes Scheibert
Condominium Owner

An Issues Paper for the Hawaii Real Estate Commission
By Gregory K. Tanaka January 1991
Introduction.

The aim of this paper is to identify and discuss alternative methods for condominium dispute resolution.

Arising primarily between the condominium owner and the association's board. These disputes have more often than not traveled a very bumpy road with litigation as the only commonly recognized means of settling disputes, there has been a growing need for speedier, less expensive and less traumatic means by which to solve these problems in the local community. The three case studies which appear in Appendix A represent what can happen when simple disputes have nowhere to go but court...

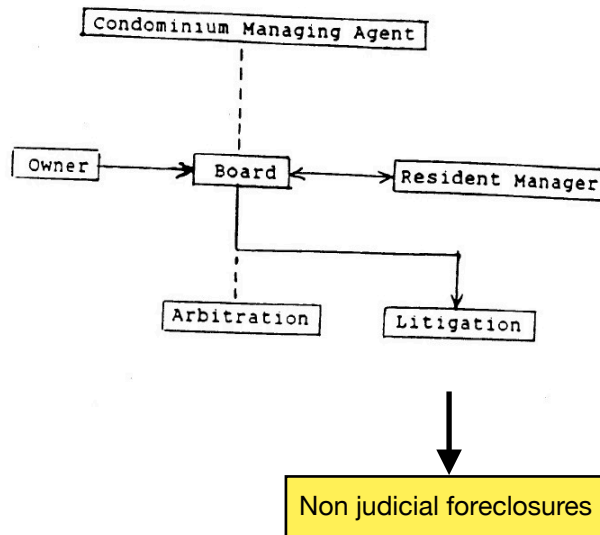
Mr. Tanaka's flowchart offers an alternative solution that includes a DCCA Ombudsman. Had the Real Estate Commission supported this alternative and the Legislature taken this route, our communities would be better.



A recent article by Civil Beat “It Started With A Messy Front Porch. Now This Elderly Women’s Condo Association May Take Her Home Away” is an example showing this flow chart has made matters worse. Additionally, 514B allows for non-judicial foreclosure facing this elderly woman today over an allege amount of \$300.00 fines and the attorney’s fee of \$3,300.00. The attorney’s fee of \$3,300.00 to collect the \$300.00.

Appendix D

Present Structure
for
Dispute Resolution
1990



RE: Testimony Submission for February 6, 2024
In support of SB 3205

Dear Committee on Consumer Protection & Commerce,

1. Thank you for your service. This is in support of SB 3205 and please support my initiated [HI SB2128 | 2024 | Regular Session | LegiScan](#) that would require 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 associations; cooperative housing corporation to **opt-out of their respective private community.**
2. Please protect condominium homeowners against HOA issues that may include financial statements where management has elected to omit substantially all of the disclosures required by the generally accepted principles as issued by the U.S. Financial Accounting Standards, misappropriation of funds, state law prohibiting wrongful foreclosure, unfair or deceptive acts or practices, violations of the federal fair debt collection practices act, inaccurate records, access to Association records, HRS 514B, and HRS 467-14 violations, proper receipts and invoice keeping, health and safety to avoid danger to life or property, common element and limited common element repairs, transparency issues with Board of Directors and owners, violation of governing documents, breach of contract on performance obligation, breach of fiduciary duty, proper calculation of reserves, proper compliance enforcement actions, and equal treatment.
3. I request an email response from the Committee on Consumer Protection & Commerce to provide documentation and referral to all appropriate agencies for HOA and its agent's investigation for retroactive remedies pursuant to federal, state, and statutory laws.

Respectfully submitted,

Ms. Morrison

SB-3205

Submitted on: 2/3/2024 2:34:52 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Marcia Kimura	Individual	Support	Remotely Via Zoom

Comments:

Dear CPN Committee Members:

Thank you for this hearing of SB3205, a long-awaited overarching measure that would vastly improve condo dispute resolution in Hawaii.

I support SB3205, the measure that proposes an office of the ombudsman in the Department of Commerce and Consumer Affairs. The ombudsman would provide essential services not recently and currently available for effective, dynamic dispute resolution and knowledge to condominium associations and their owners, without burdensome legal fee expenses currently required of both associations and their owners.

Analyses on the effectiveness of current dispute resolutions do not indicate a pattern of mutually satisfactory outcomes to either association management or owners, in over 45% of all mediated cases, while in truth, attorneys, particularly those representing boards or condo industry officials, are most often the beneficiaries of mediation. A significant cause of failure has to be the refusal of boards and management to participate in the process which would be mandated by this measure.

What is lacking is an impartial official or agency that regularly investigates grievances by means of a qualified professional who would receive data from both parties, and render findings, decisions and recommendations resulting from scientific examinations of evidence presented by parties in disputes. In the maintenance of impartiality, there would likely be data presented without apprehensions about manipulative or retaliatory actions by the other parties through use of attorneys.

One of the most significant features of the measures is the massive power of the ombudsman to remove association board members for malfeasance or failure to perform fiduciary obligations. This precludes the current onerous but justifiable board recall procedures which often end in failure, to the detriment of owners victimized by the offending board directors.

I ask that you carefully consider the vast merits of SB3205, and progress this measure to passage.

Respectfully,

Marcia Kimura

Hawaii Condominium Unit Owner

Testimony In Support of SB3205

Submitted for: Commerce and Consumer Protection (CPN) Committee Hearing, scheduled for Tuesday, February 6, 2024 at 9:30 AM.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and members of the committee,

My name is Gregory Misakian, and I currently serve on three Boards in Hawaii:

- 1) Kokua Council, 2nd Vice President
- 2) Waikiki Neighborhood Board, Sub-District 2 Vice Chair
- 3) Keoni Ana AOA, Director

I co-authored SB3205, together with Lila Mower, the President of Kokua Council and Vice Chair of the Condominium Property Regime Task Force. SB3205 places the Ombudsman's Office under the DCCA's Office of Consumer Protection, which has substantial enforcement provisions within Chapter 487.

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 with companion bills). This year Ms. Mower 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-Moiliili, 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).

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 its 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.

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

I ask you to please pass SB3205 and help over 1/3 of the population of Hawaii live better lives within their homes, knowing they have somewhere to turn for help.

I know this is the **Year of the Dragon**, but let it also be the **Year of the Ombudsman**.

And don’t forget ... it’s the **Year of the Elections**, and your constituents are watching.

Mahalo,

Gregory Misakian

To whom it may concern,

I'm writing this testimony in hopes that someone will see the ridiculousness of my situation and add this as yet another example of abusive and irrational behavior on the part of association boards and management companies. They simply can not be trusted to act with common decency or sense or Aloha.

In my situation, someone following my house sitter onto the property did not understand the gate mechanism and followed too closely, accidentally damaging the gate. While there are issues with the posted clarity of instructions on how to properly enter the property, for the sake of simplicity in this letter, I will accept that the fault lay with the person following too closely and I certainly agree that the property should be made whole. The problem lies with how the management company deals with situations like this.

Association bylaws state that in case of gate damage, the "violator" will be charged with making reparations. It states that for an incident that does not involve ongoing threat of property damages, the first offense results in a warning, not a fine. It also states that the homeowner is responsible for the actions of themselves, their guests, agents, contractors, etc. I am happy to agree that I am responsible for my own actions and my personal guests (to an extent) and my agents (should they cause damage at my direction). That's just common sense and decency as a good community member. But there have to be limits and degrees of separation.

Having stated my personal situation and the bylaws of the community, I'd like to know why it is that instead of a letter passing a bill along to the person involved or even calling them directly and giving them the bill seeing as how the person involved had given their contact info to management and agreed to pay for the damages, I was sent a letter threatening criminal prosecution, fined \$100 and informed that I was responsible for the debt. They would not accept direct payment from the individual involved. I needed to pay or else!

My confusion is that I'm not the violator. I wasn't even in town when the incident occurred. This person is unknown to me. I have never met nor spoken to him. I don't even know his name or have his contact information. He was absolutely not my guest nor my agent. Management has his contact information. He has agreed to pay. Why am I involved?! Why am I being threatened with prosecution? Why am I being fined despite association bylaws that state warning only is warranted?

I sent a letter of protest asking for clarification. No answer even though bylaws state the board will respond to written complaints within 3 months. It's been over a year. I did get an answer from the property manager that bottom line, anyone entering the property that can be associated to me is my responsibility. I objected because there's a difference between my personal actions that I am absolutely happy to be responsible for and things out of my control. I asked what if I saw a fire and the fire department caused damage while on property? How about the police? The gas company? Is there a difference between US Postal Service performing daily delivery to the community or if I specifically let them in for after hours package delivery? Food delivery? AAA? American law has always been based on the principle that people are responsible for their own actions. Surely if these people caused damage, it's just common sense to not make me pay and sort it out with the police or fire department, etc? If the Domino's pizza delivery guy hits a pedestrian on the way making my delivery, do I get sued by the injured party or does the driver / Domino's? I'm just asking.

It's a little heavy handed to arbitrarily slap a fine on a homeowner and threaten them the way I have been despite association bylaws. It's a stretch to say that someone I don't know who happens to be following someone I do know makes me responsible for their actions. I'm not involved! And yet the association feels that it's easier to always make the homeowner take responsibility. It's insane. I think it's wrong that I live in fear of calling the police or fire or gas department, having any guests or ordering food delivery in case they cause damages. There should be reasonable limits. And certainly if the bylaws are clear that it's the "violation" that will be fined, I'm already not involved. Same as with the conditions "the homeowner, their guest, their agent, contractor, etc". I don't know this guy and he didn't attempt to enter the property at my invitation?!

Please. All I'm asking for is common sense. Just as noncompetes are not truly legal in many states, it's wrong for associations to go after a homeowner for anything and everything that can be arbitrarily and capriciously tied to them. If my guest shoots someone I'm responsible? How about if they make a \$1,000,000 bet and lose while on property? Some things are just not the responsibility of the homeowner just because a tenuous association can be made to them. There are limits.

The management company has also informed me that the monthly dues I have been paying have already been applied to the "debt" that I "owed" and as such, I am actually in arrears on my association dues which makes me at risk of a lien being placed on my home and me being evicted. That's just wrong. Banks are no longer allowed to apply overdraft fees in such a way to maximize overdrafts. And yet Hawaiiana Management is manipulating my payments to make it seem that I am in arrears.

Please pass laws protecting the public from over reach and heavy handed management companies and their policies. Please pass laws strongly enforcing that bylaws can not be written to force people to give up basic rights. Management policies do not supercede state or federal law. Please pass laws making sure that management companies are accountable for following such bylaws. I shouldn't need to argue that I'm not involved in this case and certainly coming after me when the person involved has agreed to pay is ridiculous. I should never have been fined and yet I have. As deterrent, please pass laws punishing management for choosing to be heavy handed and misguidedly insisting on always going after the homeowner as a first resort no matter what. People should be responsible for their own actions and I can not control if a contractor does something outside the scope of what I hired them to do while on property. They have insurance. Why involve me/the homeowner especially as first resort? Please pass laws clarifying that there are obviously exceptions to and limitations to responsibility by tenuous association. If the Uber driver decides to rob a house after dropping me off I'm responsible?! As deterrent, please pass laws that specify that board members that decline to follow bylaws are not indemnified by the association and are personally responsible for damages due to their negligence. I'm not happy that my board members certainly did not read the bylaws and are deferring to the management company that elected to not follow actual bylaws and come after me when this could all have been solved by just sending a bill to the person involved. As per the bylaws none of what is happening should be happening. And yet I'm now in legal proceedings at my own cost and risk to demand that the management company follow their own rules and leave me alone for something I'm clearly not involved in nor responsible for.

If the association and management cared at all that reparations were made, the property made whole, they would have just sent a bill to the person involved and everything would have been settled. I fight because I can't and shouldn't have to live with the fear that something random and capricious may be levied against me again in the future despite common sense or Aloha. Or current association bylaws. I'm out of pocket thousands of dollars defending myself and am in danger of losing my home. People have lost their homes. Please pass laws making sure that what's happening to me never happens to another person. It's wrong.

Sincerely,

Edward Hsu VMD

Owner The Honolulu Pet Clinic

Someone threatened with criminal prosecution for an incident he's not even involved in

Someone wrongly fined despite clear association bylaws

Possibly soon to be evicted home owner due to wrongfully applied debt and accounting trickery methods of Hawaiiana Management Company

A concerned citizen asking for clarification on "responsibility" especially if in the case of calling emergency services or public utility?

Sun, Jan 28, 10:02 AM (7
days ago)

to George, James, Richard, Tisha

From: **Amy Shelby** <ahoyms@gmail.com>

Date: Tue, Jan 23, 2024, 10:08 AM

Subject: 1201A Unit 7A , Lakeview

To: <jason@angelssms.cpm>

Cc: George Schmelzer <keokihi@gmail.com>**Aloha,Resending this updated content,in red**

Update 12/27/2023. Addition. 1) Removal of newly elected Board Member Jerome Adamczyk by the BOD citing his failure to attend board meetings. Mr Adamczyk when elected by us during the previous Annual meeting was residing in Maryland.In this day and age of advanced technology especially during Covid times, radical changes in communication were made, to enable as much " normalcy"as possible during the pandemic. Mr Adamczyk made several requests to the Board to accommodate him by having board meetings available via hybrid and Zoom and to enable more out of town owners including himself to attend. The ousting of Mr. Adamczyk was premeditated and intentional. Once inside and as a Board member, he was trying to "clean up" all the improprieties that he witnessed. .He was getting too close for comfort for the BOD.2) When demolishing work started at the top end of the Cul-de- sac, a Porter Company foreman was surveying my Unit, to give his crew a headsup. In conversation with him from my deck, I was curious as to what kind of work will my deck would need as my unit is on level ground to warrant a \$50K special assessment and for a high powered mainland Construction company to do this job As the foreman , he stated to me all my deck requires is the deck and railing to be replaced. The supporting beams were fine and there are no foundation issues. I informed him that I got a quote from a local handyman and to do the exact same job it would cost me \$5k . I further added ,his Porter Co. charging each owner \$50k, 10 times more is ripping us off and sheer exploitation with greed and corruption.By this abomination \$50 special assessment per owner, someone has received kickbacks. 3) Greg

Bunce was also responsible for paying Shawn Mosely from Trinity ERD \$43K as a Consultant for this project. On researching Mr Mosely's background. he is a graduate of Punahou School and it is humourous to us owners that Shawn Mosely does not have any engineering background nor an engineering degree but possesses a degree in music. Why was a musician paid \$43k for consultant work he was not qualified nor have the credentials for. 4) Now the Porter Company is accelerating their work to justify the additional \$25k demand ,due in Jan 2024. it is heartbreaking to us owners to see our hard earned money subjected to further thievery, when some of our fences and gates were just recently replaced by Alpha Industries , a short lived local company hired to do onsite maintenance. They were doing an excellent job at a fraction of what the Porter Co is charging. I spoke to Jarrett Oura who disclosed to me that the cost of this job is under \$2k.

Those following my emails, wake up and you are welcome to draw your own conclusions.

Respectfully

Ms Shelby..

On Tue, Dec 26, 2023 at 8:44 AM Amy Shelby <ahoyms@gmail.com> wrote:

Aloha, Resending this updated content, in red print and highlighted in light orange.

Respectfully

Ms Shelby..

----- Forwarded message -----

From: **Amy Shelby** <ahoyms@gmail.com>

Date: Wed, Dec 20, 2023 at 11:40 AM.

Hello Jason First and foremost, let me clarify something, re Police being called. I did not call the police. The officer just showed up at my gate. I was surprised myself.

Kindly advise me on the status of my deck. It has been completely demolished but no

reconstruction has been attempted since 1/10/24. According to the schedule taped on gate my deck should have been done by 1/22/24. Kindly advise the status of my deck.

Thank you for your assistance in this matter

Pics to follow

Regards

Amy Shelby

Aloha. Association Attorney Mr. Ekimoto, Mr. Schmelzer and Mr. Redmond.

Yours Truly

Ms. Shelby.

24-01-26 17:01 UTC - You:

Hello Jason Ortiz. I am addressing this text message directly to you as you are the current Lakeview Project Manager Your contact number was provided to me by the previous site manager, Jason Balchunas, which was much appreciated.

Thank you in advance for your help in this abrupt and unfortunate work stoppage of my deck. Unit 7A . Lakeview.

My deck was completely demolished and boarded up on Jan 10 ,2025 and out of bounds since Dec 27, 2023 per Porter Notice. Enclosed is an image of the notice taped on my gate. According to this notice from Porter, my deck should have been completed by Jan 22 2024.Unfortunately, work came to an abrupt halt,without just cause and out of my control. I believe I am a victim of circumstances.

Today is Jan 26, 2024. The crew has moved on and started working on Building 6, which comprises 3 Units. On the morning ofTuesday Jan. 23, 2024 I noticed a Porter supplies truck parked outside my Unit. I was elated and thought work would be resumed on my Unit today. To my dismay, the workers were not heading towards my Unit, but carting the supplies off to Unit 6C and shortly thereafter, hearing construction in progress.

I was kept in the dark since all construction work had ceased since Jan 10 2024, and had I not taken the initiative and reached out to Jason Balchunas, this unfortunate delay on completion of my deck would have been indefinite.

According to the owner of 6C, who with her strong son, had kindly helped me remove all the

stuff on my deck in cooperation and preparation for Porter ,Unit 7B located directly opposite her Unit ,was completed the 3rd week of January as the weather was not cooperating on certain days.

I have been deprived of enjoying the use of my deck since Dec.27,2023. My New Year's entertainment on my lovely spacious deck with my gorgeous lake view has been curtailed since Jan 10 2024 and as a result of this abandonment. Now, Chinese New year is just around the corner. I am Chinese and celebrating the auspicious Chinese new Lunar year is huge with the Chinese.

I am an elderly widow with disabilities and I appreciate and thank you for your understanding and prompt action .You would feel terrible if a similar but unforeseen situation happened to your mother or grandmother.

I hope with your intervention, my unfortunate situation is remedied and acted upon immediately.

Yours truly

Ms Shelby

Unit 7A.

2024-01-26 17:01 UTC - You:

Image message cc. attorney Richard Ekimoto. Lakeview George Schmelzer President. Jim Redmond. VP.

AS

--

Mon, Jan 29,
6:19 AM (6 days ago)

to George, James, Richard, Tisha, Jason

To whom it may concern.

For your records and necessary action.

Kindly advise on resuming 3rd bullet point on scope of work."Construction of new deck
"revised schedule for Unit 7A. Estimated completion date.

Thank you for your assistance in this matter.

Ms Shelby.

Lakeview Unit 7A.

One attachment • Scanned by Gmail

SB-3205

Submitted on: 2/5/2024 12:46:23 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Steve Glanstein	Individual	Oppose	Remotely Via Zoom

Comments:

This is a large bill and too short a time period to adequately comment. It is just slightly less than 1/2 the size of the entire Chapter 514B!

Page 2, line 3 starts with a “review” of the Department of Commerce and Consumer Affairs (DCCA) and identified “more than 3 out of every 5” mediations as unsuccessful which were “unresolved, mediated or ‘no agreement’.” **Did the legislature do this review?** Did DCCA do it? Where’s the report? Did they consider that the problem was actually resolved? Did they interview the parties? The “finding” is silent on this.

Here’s a reality check from the real world: The governing documents for Crosspoint’s dual associations total **1,275 pages**. The chance of any board member or owner reading all of that is non-existent.

The powers granted to the ombudsman are onerous. It also includes removal from the board. It's hard enough to find good board members these days. If the legislature insists on making it more dangerous and riskier for board members to serve. Perhaps the legislature should consider a penalty option for owners who don't follow their bylaws or disrupt association or board meetings such that the police need to be called.

The bill could be expanded to empower the ombudsman to issue restraining orders or order an owner to sell their property under certain circumstances.

Some owners are abusive to board members, one president wouldn't leave her apartment last month out of fear of the owners who lived on the property. This bill is not well thought out and does a disservice to our community. Please defer it.

SB-3205

Submitted on: 2/3/2024 1:42:08 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Rick Tabor	Individual	Support	Written Testimony Only

Comments:

As First Vice President of Kokua Council since pre-covid, and a 7 year member of KC, I have listened to many hours of Condo Association issues. Reading articles on slippers outside the door resulting in thirty thousands of dollars in fines and evictions. Leaky faucets resulting in heart-wrenching outcomes. Voter supression, black-balled from board postions for opposing the chair's views, unlicensed attorney's gouging innocent condo owners. My ears wring, my eyes cry, my heart goes out to anyone trying to live their dream only to wake up in a nightmare scenario of unjust legal struggles to maintain life's most precious needs: SHELTER. All anyone asks and needs is food & shelter and a feeling of safety, for life to be liveable. I, as an individual retired from 47+ years in Mental Health, as an individual who serves on ten boards, including President of Hawaii Meals on Wheels & The Bobby Benson Center, plus the Rotary Bioard, and much more... I as an individual STRONGLY SUPPORT the Ombudsman Bill, in hopes of it helping the individual owner with Condo Association issues, educating and holding both accountable for laws and reality, just like I do as a Volunteer Hawaii Long-Term Care Ombudsman with every complaint we deal with. The Ombudsman is a neutral service available to help. It's a program that can hopefully help mitigate what's been happening in some condo associations for a very long, frustrating time. I thank you for your time and consideration. Mahalo Nui Loa.

SB-3205

Submitted on: 2/3/2024 1:00:57 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Kate Paine	Individual	Support	Written Testimony Only

Comments:

So very necessary an office to create balance in disputes, now favoring costs and efforts that greatly reduce building viability. Without an omnibus-man, litigation has been negatively impacting investments of ALL residents of condos. This legislation can no longer be stalled by interests that don't protect overall building health and welfare.

SB-3205

Submitted on: 2/3/2024 12:36:49 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Paul B Buist	Individual	Support	Written Testimony Only

Comments:

I fully support this bill. Our HOA board is out of control.

SB-3205

Submitted on: 2/3/2024 5:25:29 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Justin Cunningham	Individual	Support	Written Testimony Only

Comments:

I support this legislation.

TO: Hawaii State Legislators

FROM: Sheldon S Y Lee

Re: My testimony in support of SB3205

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 board 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.

What is happening at condominiums in Hawaii is dirty and our public representatives should do something about it.

There is an anti-corruption statute in Hawaii, HRS §708-880 Commercial bribery.

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.

For instance, SB3205 proposes that an ombudsman “shall investigate acts that may be contrary to the law.”

There are many honest and intelligent citizens who have had issues at their condominiums. I hope that our legislators will start to listen to them.

Thank you.

SB-3205

Submitted on: 2/4/2024 1:07:07 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Jacob Wiencek	Individual	Oppose	Written Testimony Only

Comments:

Aloha Senators,

My name is Jacob Wiencek and I am a condo owner in Hawaii. I strongly oppose SB3205 which threatens a government takeover of condo board elections.

Many of the educational and informational aspects of this bill are positive. It can be challenging as an owner to fully understand complicated condo law. What *gravely* concerns me is the Ombudsman's proposed power to remove elected association board members. This proposed power will be deeply damaging and divisive on communities where this proposed power is exercised. It can also open up association decisions and elections to unending obstruction and potential litigation. Unscrupulous and malign individuals could use this to harm associations or threaten them into inaction.

Removing a duly elected association board member is a very serious affair. Any such process should be a strict judicial function with full due process protections. I will continue to strongly oppose this bill until the proposed power to remove board members is scrapped.

SB-3205

Submitted on: 2/4/2024 8:43:52 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Edwina Spallone	Individual	Support	Written Testimony Only

Comments:

Aloha,

My name is Edwina Spallone an Owner at the Pearl One Condominium in Aiea. Please pass SB3205 Relating to Condominium Association to establish the Ombudsman's Office.

There are many disturbing issues at my association and I have reached out to attorneys who will not take my case, because condo associations are self governing. DCCA regarding a theft by an employee, made very excuse as to how it is not theft when the employee purchased personal goods on our store account. The board president did not bringing this matter to the attention of the board' to decide as a whole what to do, nor call the police to make a theft report. As well as doing nothing when the site manager threatened an owner. With hold documentation (which Owners have a right to see) for costly projects that still remain a problem. Annual audits don't match monthly financial statements. Working with companies whose licenses have been revoked by the DCCA and filed under another business name. Spend \$50,000 for solar panels on our parking garage before getting a 67% vote of the owners. Will Owners get that \$50,000 back if the vote is below a 67% majority? Makes it look suspicious like possible collusion is involved as the president says we don't pay for nothing on the installation of solar panels, and roof deck water seal is included, but has a price tag on the agenda for approximately \$300,000 plus for water sealing our garage. Our board did hire a forensic audit to be done, but it appears it is a conflict of interest. As this forensic auditor received only one years (not even a fiscal year) worth of documents that was provided by a board member. This is only a small preview of what has gone on at my association.

So I humbly ask that SB3205 be passed to help protect all Condominium Owners home and money, or there may possibly be more houseless seniors and those on fixed incomes out of their home.

Mahalo and thank you for this opportunity,

Edwina Spallone (808)255-5203

SB-3205

Submitted on: 2/4/2024 1:20:56 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard S. Ekimoto	Individual	Oppose	Written Testimony Only

Comments:

I oppose SB3205. Last year the legislature appointed a task force to investigate and make recommendations to the legislature on condominium legislation. The task force unanimously voted to ask the legislative reference bureau to provide data to the task force so it can fulfill its mandate. The information sought by the task force includes information about laws in other states about community association governance including information about ombudsman programs. It makes sense for the legislature to allow the task force to obtain the data to report its findings. The LRB study is what is being considered by this Committee in SB2726. For that reason, I opposed SB3205 and support SB2726.

SB-3205

Submitted on: 2/4/2024 1:49:31 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

I oppose this bill.

SB-3205

Submitted on: 2/4/2024 3:45:27 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Viki Desaulniers	Individual	Support	Written Testimony Only

Comments:

Dear Legislature, I'm writing in support of a Condo Ombudsman in Hawaii for these reasons....

1)Owners need a platform to have a voice/vote with the HOA's BOD when they're not enforcing the Governing Documents Equally &/or Selectively.

2)Fiduciary neglect & lack of oversight, as well as, misuse of HOA funds.

3)Property Management Companies Abuse of Power or Misuse of Funds.

These are the main issues, however, not all.... these are@the heart of most of the issues. Please, as Hawaii, needs more affordable housing & land is@best limited....

Condominiums are the likely housing choice, for the future....

& Condo Owners need an option that is comprehensive... the options existing are insufficient & add only insult to injury. Mahalo, Viki Desaulniers

Makaha Surfside

SB-3205

Submitted on: 2/4/2024 6:14:44 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Julie Wassel	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 3205 for the reasons set forth below.

First, S.B. 3205 is a massive 78-page bill. A bill of this nature and magnitude should not be considered until it has been fully reviewed and evaluated by a task force comprised of competent professionals and other persons fairly representing the community association industry as well as the Hawaii Real Estate Commission.

Second, Section 1 of the bill contains numerous findings by the Legislature with very little facts or data to support those findings. Findings should be based on facts and data, not opinions.

Third, this bill is an extremely bad bill. It will mandate that associations participate in investigations and contested case hearings before an ombudsman, whose decisions are binding, with a limited right to a trial de novo. This bill will deprive condominiums with full access to the Hawaii courts and deprive them of due process. In all likelihood, some aspects of the bill are unconstitutional.

Fourth, given the length of the bill and the short time period to submit testimony, it is impossible to address all objections to the bill. It is only possible to address some major points of concern, as set forth below.

The bill will require the ombudsman to develop educational classes and require certifications for all members of a condominium board even though no need for such has been established.

The new Section 514B-C(a)(22), provides that the ombudsman shall “assist unit owners” with disputes concerning association elections or meetings, including recommending that the department of commerce and consumer affairs pursue an enforcement action in any matter where the ombudsman has reasonable cause to believe that election misconduct has occurred, pursuant to section 514B-I. In other words, it appears that the ombudsman is not to act as a neutral fact finder, but as an advocate for owners.

The new Section 514B-C(a)(23) provides that the ombudsman shall have the authority to remove from the board any board member of an association who is found to have committed wilful misconduct in violation of any laws or the condominium’s governing documents, as provided in section 514B-105(f). This is a drastic remedy to be giving to a single individual, who is not necessarily acting as a neutral fact finder.

The new Section 514B-D provides that a unit owner or association, by its board members, who is a party to a dispute involving the interpretation or enforcement of an association’s governing documents, including the condominium’s declaration, bylaws, and house rules, Chapter 514B, or any other law the association is obligated to follow, may submit to the ombudsman’s office a written request for dispute intervention setting forth the facts forming the basis of the dispute. HRS Section 514B-E provides that upon receipt of a dispute intervention request pursuant to section 514B-D, the complaints and enforcement officer shall open an investigation into the dispute and participation by the complainant, board members, and the board shall be mandatory. No exception is made for matters that are already pending before a court or arbitrator.

The new Section 514B-E further provides that an owner or board member who refuses to participate shall be subject to penalties and fines to be predetermined and published by the ombudsman. Additionally, it provides that if the board determines not to participate, each board member voting not to participate shall be considered in violation of the Act, shall be personally assessed a monetary fine, and may be removed from the board. The change to HRS Section 514B-105(f) provides that any board member who is found to have committed wilful misconduct in violation of any laws or the governing documents shall be removed from the board by the authority of the ombudsman. No right to appeal is afforded, and it is not clear that these types of actions fall under the right to trial de novo provided for in Section 19, because the new Section 514B-C(b) provides that “no proceeding or decision of the ombudsman may be reviewed by any

court unless the proceeding or decision contravenes this chapter.” Unchecked authority given to the ombudsman could lead to abusive practices, especially since Section 514B-C(b) provides that the “ombudsman shall have the same immunities from civil and criminal liability as a judge of the State.”

The new HRS Section 514B-E(f) provides that if the parties are unable to reach an agreement or if a party does not agree with the decision of the complaints and enforcement officer, a party may request a contested case hearing with the ombudsman’s office that shall be presided over by the ombudsman. It provides that participation in a contested case hearing by the complainant, board members, and the board shall be mandatory. Again, no exception is made for instances in which there is already a pending court action or arbitration.

HRS Section 514B-F(b) provides that the ombudsman shall not be bound by the rules of evidence when conducting a hearing to determine whether a violation of this part has occurred. HRS Section 514B-F(f) provides that any final decision made by the ombudsman shall be binding on all parties. In other words, this new law will require associations and board members to participate in contested case hearings, subject them to fines and removal if they refuse, permit hearsay and other inadmissible evidence to be used against them, bind them to the decision of the ombudsman, and deny them the right to appeal to the courts of the State of Hawaii, other than a possible right to file a demand for trial de novo under Section 19 of the bill, but subject to the limitation, if applicable, found in Section 514B-C(b) which permits judicial review only where the decision of the ombudsman “contravenes” HRS Chapter 514B. These provisions are heavy-handed. Any denial of access to the Hawaii courts is likely unconstitutional.

The new Section 514B-G provides that any fine or fees collected pursuant to the provisions of the bill shall be deposited into the ombudsman’s office special fund. This creates an obvious incentive for the Ombudsman to impose fines and fees and invites abuse.

For no good reason, this bill will require associations to hold special meetings to discuss any proposals to borrow funds.

This bill adds a new subsection (f) to HRS Section 514B-105 which states that if the association or the board is involved in a dispute intervention through the ombudsman’s office, no special assessment related to the dispute, including association attorneys’ fees, shall be assessed or collected from unit owners until the ombudsman’s office has completed an investigation and

rendered a final decision. It also states that if the final decision is in favor of the unit owner, any and all assessments, fines, costs, expenses, interest, and legal fees improperly assessed to the unit owner shall be reversed. This provision is poorly drafted and could conceivably be construed as meaning that a complaining owner is released from his obligation to pay his proportionate share of common expenses, including attorneys' fees incurred by the association and charged as a common expense, despite the fact that the law and most governing documents provide that common expenses are to be paid based on common interest.

This bill amends HRS Section 154.5(9) to require associations to provide owners with copies of minutes of executive session voting results regarding the imposition of special assessments, charges, and fines, including legal fees, to owners. This defeats the whole purpose of executive session.

This bill adds a new and confusing section to HRS Section 514B-157 related to attorneys' fees and could be construed by some to mean that certain attorneys' fees may not be charged to the unit owners, even as a common expense, when the association is responding to such things as complaints or requests for dispute intervention by unit owners. If an association cannot charge fees as a common expense, then there would be no funds from which to pay attorneys' fees. This provision should either be deleted or reworded.

This bill strikes and deletes HRS Section 514B-161 related to mediation and HRS Section 514B-162 related to arbitration. These alternative dispute resolution procedures will no longer be available to associations or owners even when no one wishes to submit a claim to the ombudsman. This is very short-sighted.

There are many other objectionable provisions in S.B. 3205. The bill is too massive to address every provision on such short notice.

S.B. 3205 is a bad bill for the above reasons and many more. I strongly urge the Committee to defer S.B. 3205.

Respectfully submitted,

Julie Wassel

SB-3205

Submitted on: 2/4/2024 6:32:45 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 3205 for the reasons set forth below.

First, S.B. 3205 is a massive 78-page bill. A bill of this nature and magnitude should not be considered until it has been fully reviewed and evaluated by a task force comprised of competent professionals and other persons fairly representing the community association industry as well as the Hawaii Real Estate Commission.

Second, Section 1 of the bill contains numerous findings by the Legislature with very little facts or data to support those findings. Findings should be based on facts and data, not opinions.

Third, this bill is an extremely bad bill. It will mandate that associations participate in investigations and contested case hearings before an ombudsman, whose decisions are binding, with a limited right to a trial de novo. This bill will deprive condominiums with full access to the Hawaii courts and deprive them of due process. In all likelihood, some aspects of the bill are unconstitutional.

Fourth, given the length of the bill and the short time period to submit testimony, it is impossible to address all objections to the bill. It is only possible to address some major points of concern, as set forth below.

The bill will require the ombudsman to develop educational classes and require certifications for all members of a condominium board even though no need for such has been established.

The new Section 514B-C(a)(22), provides that the ombudsman shall “assist unit owners” with disputes concerning association elections or meetings, including recommending that the department of commerce and consumer affairs pursue an enforcement action in any matter where the ombudsman has reasonable cause to believe that election misconduct has occurred, pursuant to section 514B-I. In other words, it appears that the ombudsman is not to act as a neutral fact finder, but as an advocate for owners.

The new Section 514B-C(a)(23) provides that the ombudsman shall have the authority to remove from the board any board member of an association who is found to have committed wilful

misconduct in violation of any laws or the condominium's governing documents, as provided in section 514B-105(f). This is a drastic remedy to be giving to a single individual, who is not necessarily acting as a neutral fact finder.

The new Section 514B-D provides that a unit owner or association, by its board members, who is a party to a dispute involving the interpretation or enforcement of an association's governing documents, including the condominium's declaration, bylaws, and house rules, Chapter 514B, or any other law the association is obligated to follow, may submit to the ombudsman's office a written request for dispute intervention setting forth the facts forming the basis of the dispute. HRS Section 514B-E provides that upon receipt of a dispute intervention request pursuant to section 514B-D, the complaints and enforcement officer shall open an investigation into the dispute and participation by the complainant, board members, and the board shall be mandatory. No exception is made for matters that are already pending before a court or arbitrator.

The new Section 514B-E further provides that an owner or board member who refuses to participate shall be subject to penalties and fines to be predetermined and published by the ombudsman. Additionally, it provides that if the board determines not to participate, each board member voting not to participate shall be considered in violation of the Act, shall be personally assessed a monetary fine, and may be removed from the board. The change to HRS Section 514B-105(f) provides that any board member who is found to have committed wilful misconduct in violation of any laws or the governing documents shall be removed from the board by the authority of the ombudsman. No right to appeal is afforded, and it is not clear that these types of actions fall under the right to trial de novo provided for in Section 19, because the new Section 514B-C(b) provides that "no proceeding or decision of the ombudsman may be reviewed by any court unless the proceeding or decision contravenes this chapter." Unchecked authority given to the ombudsman could lead to abusive practices, especially since Section 514B-C(b) provides that the "ombudsman shall have the same immunities from civil and criminal liability as a judge of the State."

The new HRS Section 514B-E(f) provides that if the parties are unable to reach an agreement or if a party does not agree with the decision of the complaints and enforcement officer, a party may request a contested case hearing with the ombudsman's office that shall be presided over by the ombudsman. It provides that participation in a contested case hearing by the complainant, board members, and the board shall be mandatory. Again, no exception is made for instances in which there is already a pending court action or arbitration.

HRS Section 514B-F(b) provides that the ombudsman shall not be bound by the rules of evidence when conducting a hearing to determine whether a violation of this part has occurred. HRS Section 514B-F(f) provides that any final decision made by the ombudsman shall be binding on all parties. In other words, this new law will require associations and board members to participate in contested case hearings, subject them to fines and removal if they refuse, permit hearsay and other inadmissible evidence to be used against them, bind them to the decision of the ombudsman, and deny them the right to appeal to the courts of the State of Hawaii, other than a possible right to file a demand for trial de novo under Section 19 of the bill, but subject to the limitation, if applicable, found in Section 514B-C(b) which permits judicial review only where

the decision of the ombudsman “contravenes” HRS Chapter 514B. These provisions are heavy-handed. Any denial of access to the Hawaii courts is likely unconstitutional.

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This bill amends HRS Section 154.5(9) to require associations to provide owners with copies of minutes of executive session voting results regarding the imposition of special assessments, charges, and fines, including legal fees, to owners. This defeats the whole purpose of executive session.

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This bill strikes and deletes HRS Section 514B-161 related to mediation and HRS Section 514B-162 related to arbitration. These alternative dispute resolution procedures will no longer be available to associations or owners even when no one wishes to submit a claim to the ombudsman. This is very short-sighted.

There are many other objectionable provisions in S.B. 3205. The bill is too massive to address every provision on such short notice.

S.B. 3205 is a bad bill for the above reasons and many more. I strongly urge the Committee to defer S.B. 3205.

Respectfully submitted,

M. Anne Anderson

SB-3205

Submitted on: 2/4/2024 6:40:26 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 3205 for the reasons set forth below.

First, S.B. 3205 is a massive 78-page bill. A bill of this nature and magnitude should not be considered until it has been fully reviewed and evaluated by a task force comprised of competent professionals and other persons fairly representing the community association industry as well as the Hawaii Real Estate Commission.

Second, Section 1 of the bill contains numerous findings by the Legislature with very little facts or data to support those findings. Findings should be based on facts and data, not opinions.

Third, this bill is an extremely bad bill. It will mandate that associations participate in investigations and contested case hearings before an ombudsman, whose decisions are binding, with a limited right to a trial de novo. This bill will deprive condominiums with full access to the Hawaii courts and deprive them of due process. In all likelihood, some aspects of the bill are unconstitutional.

Fourth, given the length of the bill and the short time period to submit testimony, it is impossible to address all objections to the bill. It is only possible to address some major points of concern, as set forth below.

The bill will require the ombudsman to develop educational classes and require certifications for all members of a condominium board even though no need for such has been established.

Respectfully Submitted,

Carol Walker

SB-3205

Submitted on: 2/4/2024 7:20:25 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Sharon Heritage	Individual	Oppose	Written Testimony Only

Comments:

Oppose

SB-3205

Submitted on: 2/4/2024 7:44:29 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Aaron Cavagnolo	Individual	Support	Written Testimony Only

Comments:

Dear Committee Members,

I am writing to express my strong support for Bill SB3205, which aims to establish the Ombudsman's Office for condominium associations within the Department of Commerce and Consumer Affairs. Having experienced significant challenges in communication and dispute resolution with the AOA Diamond Head Surf Condominium Board of Directors, I believe that the establishment of such an office is essential for the well-being of all condominium owners.

My situation, detailed below due to issues with our AOA board and Property Management Company underscores the urgent need for an independent and neutral party to facilitate communication, mediate disputes, and ensure fair and just resolutions.

The ongoing property-related disputes, including concerns related to communication breakdown, structural damage, flooding, drainage issues, retaining wall tilting (where an engineer hired by the AOA said the wall needed to be braced immediately yet over 4 month later nothing has happened), moisture, mold, and patio problems, have persisted without adequate response or resolution from the board. Despite our repeated attempts to engage in dialogue, our efforts have been met with a lack of transparency, communication, and action.

The provisions outlined in Bill SB3205, such as requiring condominium association board members to meet educational requirements through classes offered by the Ombudsman and establishing a special fund for the Ombudsman's Office, would greatly enhance the governance and accountability within condominium associations. The integration of the Ombudsman's role into the Condominium Property Act would further ensure that disputes are addressed in a fair and timely manner.

In our case, an ombudsman could have played a crucial role in facilitating evaluative mediation, as mandated by §514B-161 of the Hawaii Revised Statutes, to address the ongoing disputes and breaches of governing documents. We have requested evaluative mediation multiple times and have yet to have the board agree to participate. We were told a \$20K retainer would be required to try to get our board to participate in evaluative mediation while 514B only allows us to recuperate \$1500 for this process.

The proposed bill aligns with the need for an impartial entity to mediate disputes, educate board members, and provide a mechanism for resolution that prioritizes the well-being of condominium owners.

I urge you to support and pass Bill SB3205, recognizing its potential to enhance the governance and accountability of condominium associations, protect the rights of unit owners, and provide a fair and transparent process for dispute resolution. The establishment of the Ombudsman's Office would undoubtedly contribute to fostering a harmonious community and ensuring the safety and well-being of all residents.

Thank you for your attention to this matter, and I trust that you will consider the importance of Bill SB3205 in addressing the challenges faced by condominium owners like myself.

Sincerely

Aaron Cavagnolo

SB-3205

Submitted on: 2/4/2024 7:57:31 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Jillian Anderson	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Keohokalole and members of the committee,

As a member of the Waikiki Neighborhood Board and a 20+ year condominium resident, I am writing in strong support of this bill.

Condominiums operate like mini governments, and unfortunately, many residents do not realize how impacted they might be by the individuals on their board or the rules of their association until they are in a detrimental situation.

Presently, there are limited routes down which to proceed if your fellow owners or association rules do not work in your favor, or even worse, if you are subject to arbitrary or retaliatory conditions.

With ~360,000 residents under the thumb of a condominium association, it is vital that there is an outside resource for owners to consult. An Ombudsman's office would serve an immense service to condominium owners, many of whom struggle to navigate the complexities of their associations.

As cases of corruption and mismanagement become increasingly exposed within our condos, Hawaii must follow in the footsteps of numerous other states who have already established an Ombudsman's office to mitigate concerns.

Viewing this measure from a consumer protection perspective as your subject matter committee dictates, such a proposition is far overdue to protect the hundreds of thousands of residents who may be subjected to the struggle of safeguarding their greatest asset in the face of interpersonal strife.

SB-3205

Submitted on: 2/4/2024 8:22:12 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 3205 for the reasons set forth below.

First, S.B. 3205 is a massive 78-page bill. A bill of this nature and magnitude should not be considered until it has been fully reviewed and evaluated by a task force comprised of competent professionals and other persons fairly representing the community association industry as well as the Hawaii Real Estate Commission.

Second, Section 1 of the bill contains numerous findings by the Legislature with very little facts or data to support those findings. Findings should be based on facts and data, not opinions.

Third, this bill is an extremely bad bill. It will mandate that associations participate in investigations and contested case hearings before an ombudsman, whose decisions are binding, with a limited right to a trial de novo. This bill will deprive condominiums with full access to the Hawaii courts and deprive them of due process. In all likelihood, some aspects of the bill are unconstitutional.

Fourth, given the length of the bill and the short time period to submit testimony, it is impossible to address all objections to the bill. It is only possible to address some major points of concern, as set forth below.

The bill will require the ombudsman to develop educational classes and require certifications for all members of a condominium board even though no need for such has been established.

The new Section 514B-C(a)(22), provides that the ombudsman shall “assist unit owners” with disputes concerning association elections or meetings, including recommending that the department of commerce and consumer affairs pursue an enforcement action in any matter where the ombudsman has reasonable cause to believe that election misconduct has occurred, pursuant to section 514B-I. In other words, it appears that the ombudsman is not to act as a neutral fact finder, but as an advocate for owners.

The new Section 514B-C(a)(23) provides that the ombudsman shall have the authority to remove from the board any board member of an association who is found to have committed wilful misconduct in violation of any laws or the condominium’s governing documents, as provided in section 514B-105(f). This is a drastic remedy to be giving to a single individual, who is not necessarily acting as a neutral fact finder.

The new Section 514B-D provides that a unit owner or association, by its board members, who is a party to a dispute involving the interpretation or enforcement of an association’s governing documents, including the condominium’s declaration, bylaws, and house rules, Chapter 514B, or any other law the association is obligated to follow, may submit to the ombudsman’s office a written request for dispute intervention setting forth the facts forming the basis of the dispute. HRS Section 514B-E provides that upon receipt of a dispute intervention request pursuant to section 514B-D, the complaints and enforcement officer shall open an investigation into the dispute and participation by the complainant, board members, and the board shall be mandatory. No exception is made for matters that are already pending before a court or arbitrator.

The new Section 514B-E further provides that an owner or board member who refuses to participate shall be subject to penalties and fines to be predetermined and published by the ombudsman. Additionally, it provides that if the board determines not to participate, each board member voting not to participate shall be considered in violation of the Act, shall be personally assessed a monetary fine, and may be removed from the board. The change to HRS Section 514B-105(f) provides that any board member who is found to have committed wilful misconduct in violation of any laws or the governing documents shall be removed from the board by the authority of the ombudsman. No right to appeal is afforded, and it is not clear that these types of actions fall under the right to trial de novo provided for in Section 19, because the new Section 514B-C(b) provides that “no proceeding or decision of the ombudsman may be reviewed by any

court unless the proceeding or decision contravenes this chapter.” Unchecked authority given to the ombudsman could lead to abusive practices, especially since Section 514B-C(b) provides that the “ombudsman shall have the same immunities from civil and criminal liability as a judge of the State.”

The new HRS Section 514B-E(f) provides that if the parties are unable to reach an agreement or if a party does not agree with the decision of the complaints and enforcement officer, a party may request a contested case hearing with the ombudsman’s office that shall be presided over by the ombudsman. It provides that participation in a contested case hearing by the complainant, board members, and the board shall be mandatory. Again, no exception is made for instances in which there is already a pending court action or arbitration.

HRS Section 514B-F(b) provides that the ombudsman shall not be bound by the rules of evidence when conducting a hearing to determine whether a violation of this part has occurred. HRS Section 514B-F(f) provides that any final decision made by the ombudsman shall be binding on all parties. In other words, this new law will require associations and board members to participate in contested case hearings, subject them to fines and removal if they refuse, permit hearsay and other inadmissible evidence to be used against them, bind them to the decision of the ombudsman, and deny them the right to appeal to the courts of the State of Hawaii, other than a possible right to file a demand for trial de novo under Section 19 of the bill, but subject to the limitation, if applicable, found in Section 514B-C(b) which permits judicial review only where the decision of the ombudsman “contravenes” HRS Chapter 514B. These provisions are heavy-handed. Any denial of access to the Hawaii courts is likely unconstitutional.

The new Section 514B-G provides that any fine or fees collected pursuant to the provisions of the bill shall be deposited into the ombudsman’s office special fund. This creates an obvious incentive for the Ombudsman to impose fines and fees and invites abuse.

For no good reason, this bill will require associations to hold special meetings to discuss any proposals to borrow funds.

This bill adds a new subsection (f) to HRS Section 514B-105 which states that if the association or the board is involved in a dispute intervention through the ombudsman’s office, no special assessment related to the dispute, including association attorneys’ fees, shall be assessed or collected from unit owners until the ombudsman’s office has completed an investigation and

rendered a final decision. It also states that if the final decision is in favor of the unit owner, any and all assessments, fines, costs, expenses, interest, and legal fees improperly assessed to the unit owner shall be reversed. This provision is poorly drafted and could conceivably be construed as meaning that a complaining owner is released from his obligation to pay his proportionate share of common expenses, including attorneys' fees incurred by the association and charged as a common expense, despite the fact that the law and most governing documents provide that common expenses are to be paid based on common interest.

This bill amends HRS Section 154.5(9) to require associations to provide owners with copies of minutes of executive session voting results regarding the imposition of special assessments, charges, and fines, including legal fees, to owners. This defeats the whole purpose of executive session.

This bill adds a new and confusing section to HRS Section 514B-157 related to attorneys' fees and could be construed by some to mean that certain attorneys' fees may not be charged to the unit owners, even as a common expense, when the association is responding to such things as complaints or requests for dispute intervention by unit owners. If an association cannot charge fees as a common expense, then there would be no funds from which to pay attorneys' fees. This provision should either be deleted or reworded.

This bill strikes and deletes HRS Section 514B-161 related to mediation and HRS Section 514B-162 related to arbitration. These alternative dispute resolution procedures will no longer be available to associations or owners even when no one wishes to submit a claim to the ombudsman. This is very short-sighted.

There are many other objectionable provisions in S.B. 3205. The bill is too massive to address every provision on such short notice.

S.B. 3205 is a bad bill for the above reasons and many more. I strongly urge the Committee to defer S.B. 3205.

Respectfully submitted,

Mary Freeman

Ewa Beach

SB-3205

Submitted on: 2/4/2024 9:24:37 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

I am an owner occupant and board member of a downtown Honolulu high rise condo. When I saw this bill I didn't know whether to laugh, because it was a joke, or to cry, as it would be the death of condos.

Board members are volunteers. Some boards have had open positions for years, because enough owners could not be found to fill positions. Tell a potential candidate or incumbent that they could be fined, removed from office, be forced to participate in hearings, and there will hardly be anyone willing to serve on a board. To say I strongly oppose the bill is an understatement.

SB3205 is a massive 78-page bill. A bill of this nature and magnitude should not be considered until it has been fully reviewed and evaluated by a task force comprised of competent professionals and other persons fairly representing the community association industry as well as the Hawaii Real Estate Commission.

Section 1 of the bill contains numerous findings by the Legislature with very little facts or data to support those findings. Findings should be based on facts and data, not opinions.

This is an extremely bad bill. It will mandate that associations participate in investigations and contested case hearings before an ombudsman, whose decisions are binding, with a limited right to a trial de novo. This bill will deprive condominiums with full access to the Hawaii courts and deprive them of due process. In all likelihood, some aspects of the bill are unconstitutional.

Given the length of the bill and the short time period to submit testimony, it is impossible to address all objections to the bill. It is only possible to address some major points of concern, as set forth below.

The bill will require the ombudsman to develop educational classes and require certifications for all members of a condominium board even though no need for such has been established. Volunteer board members will quit.

The new Section 514B-C(a)(22), provides that the ombudsman shall "assist unit owners" with disputes concerning association elections or meetings, including recommending that the

department of commerce and consumer affairs pursue an enforcement action in any matter where the ombudsman has reasonable cause to believe that election misconduct has occurred, pursuant to section 514B-I. In other words, it appears that the ombudsman is not to act as a neutral fact finder, but as an advocate for owners. Nothing like stacking the deck.

The new Section 514B-C(a)(23) provides that the ombudsman shall have the authority to remove from the board any board member of an association who is found to have committed willful misconduct in violation of any laws or the condominium's governing documents, as provided in section 514B-105(f). This is a drastic remedy to be giving to a single individual, who is not necessarily acting as a neutral fact finder.

The new Section 514B-D provides that a unit owner or association, by its board members, who is a party to a dispute involving the interpretation or enforcement of an association's governing documents, including the condominium's declaration, bylaws, and house rules, Chapter 514B, or any other law the association is obligated to follow, may submit to the ombudsman's office a written request for dispute intervention setting forth the facts forming the basis of the dispute. HRS Section 514B-E provides that upon receipt of a dispute intervention request pursuant to section 514B-D, the complaints and enforcement officer shall open an investigation into the dispute and participation by the complainant, board members, and the board shall be mandatory. No exception is made for matters that are already pending before a court or arbitrator.

The new Section 514B-E further provides that an owner or board member who refuses to participate shall be subject to penalties and fines to be predetermined and published by the ombudsman. Additionally, it provides that if the board determines not to participate, each board member voting not to participate shall be considered in violation of the Act, shall be personally assessed a monetary fine, and may be removed from the board.

The change to HRS Section 514B-105(f) provides that any board member who is found to have committed willful misconduct in violation of any laws or the governing documents shall be removed from the board by the authority of the ombudsman. No right to appeal is afforded, and it is not clear that these types of actions fall under the right to trial de novo provided for in Section 19, because the new Section 514B-C(b) provides that "no proceeding or decision of the ombudsman may be reviewed by any court unless the proceeding or decision contravenes this chapter."

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This bill amends HRS Section 154.5(9) to require associations to provide owners with copies of minutes of executive session voting results regarding the imposition of special assessments,

charges, and fines, including legal fees, to owners. This defeats the whole purpose of executive session.

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This bill strikes and deletes HRS Section 514B-161 related to mediation and HRS Section 514B-162 related to arbitration. These alternative dispute resolution procedures will no longer be available to associations or owners even when no one wishes to submit a claim to the ombudsman. This is very short-sighted.

There are many other objectionable provisions in S.B. 3205. The bill is too massive to address every provision on such short notice.

SB3205 is a bad bill for the above reasons and many more. Its true title should be Ombudsman, judge, jury, and executioner. **I strongly urge the Committee to defer SB3205.**

SB-3205

Submitted on: 2/5/2024 6:00:37 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 3205 for the reasons set forth below.

First, S.B. 3205 is a massive 78-page bill. A bill of this nature and magnitude should not be considered until it has been fully reviewed and evaluated by a task force comprised of competent professionals and other persons fairly representing the community association industry as well as the Hawaii Real Estate Commission.

Second, Section 1 of the bill contains numerous findings by the Legislature with very little facts or data to support those findings. Findings should be based on facts and data, not opinions.

Third, this bill is an extremely bad bill. It will mandate that associations participate in investigations and contested case hearings before an ombudsman, whose decisions are binding, with a limited right to a trial de novo. This bill will deprive condominiums with full access to the Hawaii courts and deprive them of due process. In all likelihood, some aspects of the bill are unconstitutional.

Fourth, given the length of the bill and the short time period to submit testimony, it is impossible to address all objections to the bill. It is only possible to address some major points of concern, as set forth below.

The bill will require the ombudsman to develop educational classes and require certifications for all members of a condominium board even though no need for such has been established.

The new Section 514B-C(a)(22), provides that the ombudsman shall “assist unit owners” with disputes concerning association elections or meetings, including recommending that the Department of Commerce and Consumer Affairs pursue an enforcement action in any matter where the ombudsman has reasonable cause to believe that election misconduct has occurred, pursuant to section 514B-I. In other words, it appears that the ombudsman is not to act as a neutral fact finder, but as an advocate for owners.

The new Section 514B-C(a)(23) provides that the ombudsman shall have the authority to remove from the board any board member of an association who is found to have committed wilful misconduct in violation of any laws or the condominium’s governing documents, as provided in section 514B-105(f). This is a drastic remedy to be giving to a single individual, who is not necessarily acting as a neutral fact finder.

The new Section 514B-D provides that a unit owner or association, by its board members, who is a party to a dispute involving the interpretation or enforcement of an association’s governing documents, including the condominium’s declaration, bylaws, and house rules, Chapter 514B, or any other law the association is obligated to follow, may submit to the ombudsman’s office a written request for dispute intervention setting forth the facts forming the basis of the dispute. HRS Section 514B-E provides that upon receipt of a dispute intervention request pursuant to section 514B-D, the complaints and enforcement officer shall open an investigation into the dispute and participation by the complainant, board members, and the board shall be mandatory. No exception is made for matters that are already pending before a court or arbitrator.

The new Section 514B-E further provides that an owner or board member who refuses to participate shall be subject to penalties and fines to be predetermined and published by the ombudsman. Additionally, it provides that if the board determines not to participate, each board member voting not to participate shall be considered in violation of the Act, shall be personally assessed a monetary fine, and may be removed from the board. The change to HRS Section 514B-105(f) provides that any board member who is found to have committed wilful misconduct in violation of any laws or the governing documents shall be removed from the board by the authority of the ombudsman. No right to appeal is afforded, and it is not clear that these types of actions fall under the right to trial de novo provided for in Section 19, because the new Section 514B-C(b) provides that “no proceeding or decision of the ombudsman may be reviewed by any court unless the proceeding or decision contravenes this chapter.” Unchecked authority given to the ombudsman could lead to abusive practices, especially since Section 514B-C(b) provides that

the “ombudsman shall have the same immunities from civil and criminal liability as a judge of the State.”

The new HRS Section 514B-E(f) provides that if the parties are unable to reach an agreement or if a party does not agree with the decision of the complaints and enforcement officer, a party may request a contested case hearing with the ombudsman’s office that shall be presided over by the ombudsman. It provides that participation in a contested case hearing by the complainant, board members, and the board shall be mandatory. Again, no exception is made for instances in which there is already a pending court action or arbitration.

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There are many other objectionable provisions in S.B. 3205. The bill is too massive to address every provision on such short notice.

S.B. 3205 is a bad bill for the above reasons and many more. I strongly urge the Committee to defer S.B. 3205.

Respectfully submitted,

Paul A. Ireland Koftinow

SB-3205

Submitted on: 2/5/2024 7:22:47 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

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There are many other objectionable provisions in S.B. 3205. The bill is too massive to address every provision on such short notice.

S.B. 3205 is a bad bill for the above reasons and many more. I strongly urge the Committee to defer S.B. 3205.

Respectfully submitted,

Lance Fujisaki

SB-3205

Submitted on: 2/5/2024 8:36:57 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

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Laura Bearden

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This bill strikes and deletes HRS Section 514B-161 related to mediation and HRS Section 514B-162 related to arbitration. These alternative dispute resolution procedures will no longer be available to associations or owners even when no one wishes to submit a claim to the ombudsman. This is very short-sighted.

There are many other objectionable provisions in S.B. 3205. The bill is too massive to address every provision on such short notice.

S.B. 3205 is a bad bill for the above reasons and many more. I strongly urge the Committee to defer S.B. 3205.

Respectfully submitted,

Pamela J. Schell

SB-3205

Submitted on: 2/5/2024 10:56:34 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Testify
Diann Karin Lynn	Individual	Support	Written Testimony Only

Comments:

Please support this bill to establish and fund an Ombudsman Office for condo associations.

LATE

SB-3205

Submitted on: 2/5/2024 1:02:02 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Primrose	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 3205 for the reasons set forth below.

First, S.B. 3205 is a massive 78-page bill. A bill of this nature and magnitude should not be considered until it has been fully reviewed and evaluated by a task force comprised of competent professionals and other persons fairly representing the community association industry as well as the Hawaii Real Estate Commission.

Second, Section 1 of the bill contains numerous findings by the Legislature with very little facts or data to support those findings. Findings should be based on facts and data, not opinions.

Third, this bill is an extremely bad bill. It will mandate that associations participate in investigations and contested case hearings before an ombudsman, whose decisions are binding, with a limited right to a trial de novo. This bill will deprive condominiums with full access to the Hawaii courts and deprive them of due process. In all likelihood, some aspects of the bill are unconstitutional.

Fourth, given the length of the bill and the short time period to submit testimony, it is impossible to address all objections to the bill. It is only possible to address some major points of concern, as set forth below.

Respectfully submitted,

Primrose K. Leong-Nakamoto (S)

SB-3205

Submitted on: 2/5/2024 2:48:19 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

LATE

LATE

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

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Fourth, given the length of the bill and the short time period to submit testimony, it is impossible to address all objections to the bill. It is only possible to address some major points of concern, as set forth below.

The bill will require the ombudsman to develop educational classes and require certifications for all members of a condominium board even though no need for such has been established.

The new Section 514B-C(a)(22), provides that the ombudsman shall “assist unit owners” with disputes concerning association elections or meetings, including recommending that the department of commerce and consumer affairs pursue an enforcement action in any matter where the ombudsman has reasonable cause to believe that election misconduct has occurred, pursuant to section 514B-I. In other words, it appears that the ombudsman is not to act as a neutral fact finder, but as an advocate for owners.

1. new Section 514B-C(a)(23) provides that the ombudsman shall have the authority to remove from the board any board member of an association who is found to have

committed wilful misconduct in violation of any laws or the condominium's governing documents, as provided in section 514B-105(f). This is a drastic remedy to be giving to a single individual, who is not necessarily acting as a neutral fact finder.

The new Section 514B-D provides that a unit owner or association, by its board members, who is a party to a dispute involving the interpretation or enforcement of an association's governing documents, including the condominium's declaration, bylaws, and house rules, Chapter 514B, or any other law the association is obligated to follow, may submit to the ombudsman's office a written request for dispute intervention setting forth the facts forming the basis of the dispute. HRS Section 514B-E provides that upon receipt of a dispute intervention request pursuant to section 514B-D, the complaints and enforcement officer shall open an investigation into the dispute and participation by the complainant, board members, and the board shall be mandatory. No exception is made for matters that are already pending before a court or arbitrator.

The new Section 514B-E further provides that an owner or board member who refuses to participate shall be subject to penalties and fines to be predetermined and published by the ombudsman. Additionally, it provides that if the board determines not to participate, each board member voting not to participate shall be considered in violation of the Act, shall be personally assessed a monetary fine, and may be removed from the board. The change to HRS Section 514B-105(f) provides that any board member who is found to have committed wilful misconduct in violation of any laws or the governing documents shall be removed from the board by the authority of the ombudsman. No right to appeal is afforded, and it is not clear that these types of actions fall under the right to trial de novo provided for in Section 19, because the new Section 514B-C(b) provides that "no proceeding or decision of the ombudsman may be reviewed by any court unless the proceeding or decision contravenes this chapter." Unchecked authority given to the ombudsman could lead to abusive practices, especially since Section 514B-C(b) provides that the "ombudsman shall have the same immunities from civil and criminal liability as a judge of the State."

The new HRS Section 514B-E(f) provides that if the parties are unable to reach an agreement or if a party does not agree with the decision of the complaints and enforcement officer, a party may request a contested case hearing with the ombudsman's office that shall be presided over by the ombudsman. It provides that participation in a contested case hearing by the complainant, board members, and the board shall be mandatory. Again, no exception is made for instances in which there is already a pending court action or arbitration.

HRS Section 514B-F(b) provides that the ombudsman shall not be bound by the rules of evidence when conducting a hearing to determine whether a violation of this part has occurred. HRS Section 514B-F(f) provides that any final decision made by the ombudsman shall be binding on all parties. In other words, this new law will require associations and board members to participate in contested case hearings, subject them to fines and removal if they refuse, permit hearsay and other inadmissible evidence to be used against them, bind them to the decision of the ombudsman, and deny them the right to appeal to the courts of the State of Hawaii, other than a possible right to file a demand for trial de novo under Section 19 of the bill, but subject to the

limitation, if applicable, found in Section 514B-C(b) which permits judicial review only where the decision of the ombudsman “contravenes” HRS Chapter 514B. These provisions are heavy-handed. Any denial of access to the Hawaii courts is likely unconstitutional.

The new Section 514B-G provides that any fine or fees collected pursuant to the provisions of the bill shall be deposited into the ombudsman’s office special fund. This creates an obvious incentive for the Ombudsman to impose fines and fees and invites abuse.

For no good reason, this bill will require associations to hold special meetings to discuss any proposals to borrow funds.

This bill adds a new subsection (f) to HRS Section 514B-105 which states that if the association or the board is involved in a dispute intervention through the ombudsman’s office, no special assessment related to the dispute, including association attorneys’ fees, shall be assessed or collected from unit owners until the ombudsman’s office has completed an investigation and rendered a final decision. It also states that if the final decision is in favor of the unit owner, any and all assessments, fines, costs, expenses, interest, and legal fees improperly assessed to the unit owner shall be reversed. This provision is poorly drafted and could conceivably be construed as meaning that a complaining owner is released from his obligation to pay his proportionate share of common expenses, including attorneys’ fees incurred by the association and charged as a common expense, despite the fact that the law and most governing documents provide that common expenses are to be paid based on common interest.

This bill amends HRS Section 154.5(9) to require associations to provide owners with copies of minutes of executive session voting results regarding the imposition of special assessments, charges, and fines, including legal fees, to owners. This defeats the whole purpose of executive session.

This bill adds a new and confusing section to HRS Section 514B-157 related to attorneys' fees and could be construed by some to mean that certain attorneys’ fees may not be charged to the unit owners, even as a common expense, when the association is responding to such things as complaints or requests for dispute intervention by unit owners. If an association cannot charge fees as a common expense, then there would be no funds from which to pay attorneys’ fees. This provision should either be deleted or reworded.

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There are many other objectionable provisions in S.B. 3205. The bill is too massive to address every provision on such short notice.

S.B. 3205 is a bad bill for the above reasons and many more. I strongly urge the Committee to defer S.B. 3205.

Respectfully submitted,

Laurie Sokach AMS, PCAM

Senior Community Portfolio Manager

LATE

LATE

SB-3205

Submitted on: 2/5/2024 6:07:30 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Allison Pettersson	Individual	Support	Written Testimony Only

Comments:

Dear Senators,

My testimony is in STRONG SUPPORT of

SB 3205 (Condominium Ombudsman)

I am a resident in a highrise condo which went through an extended period with a Board, which was heavily influenced by the President, that was responsible for making decisions and negotiating multi-million dollar contracts through means that were not always transparent and in keeping with the by-laws. Unilateral decisions were sometimes also made without the benefit of proper due diligence. This resulted in costs being considerably higher despite sound alternative options being presented by residents. Unfortunately, the property management company was complicit and concerned residents had nowhere to turn without incurring costly attorneys fees.

Please endorse this bill so it can continue it's legislative path for future hearings and, hopefully, passage by this year's legislature.

Much Mahalo