

JOSH B. GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



BONNIE KAHAKUI  
ACTING ADMINISTRATOR

STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I  
STATE PROCUREMENT OFFICE

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**LATE**

TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
WAYS AND MEANS  
March 1, 2024, 9:55 a.m.

SENATE BILL 2726 SD1  
RELATING TO CONDOMINIUMS

Chair Dela Cruz, Vice Chair Moriwaki, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 2726 SD1. The State Procurement Office (SPO) understands the intent of the bill, however, we oppose the exemption language on page 4, Section 5, lines 19 to 20, set forth below.

“The contracting of services under this Act shall be exempt from chapter 103D, Hawaii Revised Statutes.”

The SPO objects to the procurement exemption and testifies that contracting of services under this Act should be competitively procured.

**Comments:** Chapter 103D, Hawaii Revised Statutes, Hawaii Public Procurement Code (Code), is the State's single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure, and transparency in the procurement and contracting process vital to good government.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. To legislate that any one entity should be exempt from compliance with both Chapter 103D and 103F, HRS, conveys a sense of disproportionate equality in the law's application.

Exemptions to the Code mean that all procurements made with taxpayer monies will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the code. It means that there is no requirement for due diligence, proper planning, or consideration of protections for the state in contract terms and

conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. As such, Agencies can choose whether to compete any procurement or go directly to one contractor. As a result, leveraging economies of scale and cost savings efficiencies found in the consistent application of the procurement code are lost. It also means Agencies are not required to adhere to the code's procurement integrity laws.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly, while other public bodies, such as agencies with strong legislative influence, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the various jurisdictions and the entire procurement process becomes less efficient and costlier for the state and vendors.

**Recommendation:** There is no justification why the contracting for services cannot be competitively procured. The SPO recommends that the agency must comply with Chapter 103D, HRS, and offers the following revisions:

1. Revising Section 5, page 4, lines 19 to 20 of the bill, set forth below.

“The contracting of services under this Act shall ~~be exempt from~~ comply with chapter 103D, Hawaii Revised Statutes.”

or

2. Deleting the procurement exemption from Section 5, page 4, lines 19 to 20 of the bill, set forth below.

~~“The contracting of services under this Act shall be exempt from chapter 103D, Hawaii Revised Statutes.”~~

Thank you.

**SB-2726-SD-1**

Submitted on: 2/28/2024 3:30:32 PM

Testimony for WAM on 3/1/2024 9:55:00 AM

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

Comments:

Honolulu Tower is a 396 unit condominium built in 1982, located at Beretania and Maunakea Streets. At its meeting on February 5, 2024, the Honolulu Tower Association of Apartment Owners Board of Directors voted unanimously to support SB2726.

Every year there are a hodgepodge of bills which seek to make changes to Section 514B. Some contradict others. SB2726 would be a comprehensive study allowing the legislature to see how condos are managed in other states, what works and what does not.

Idor Harris  
Resident Manager

P.O. Box 976  
Honolulu, Hawaii 96808

February 28, 2024

Senator Donovan M. Dela Cruz  
Senator Sharon Y. Moriwaki  
Committee on Ways and Means  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **SB 2726 SD1 SUPPORT**

Dear Chair Dela Cruz, Vice Chair Moriwaki and Committee Members:

SB 2726 SD1 should be passed because it reflects the unanimous recommendation of the Condominium Property Regime Task Force.

Per Act 189 (2023), the Task Force was tasked to:

- (1) Examine and evaluate issues regarding condominium property regimes governed by chapter 514B, Hawaii Revised Statutes, and conduct an assessment of the alternative dispute resolution systems that have been established by the legislature;
- (2) Investigate whether additional duties and fiduciary responsibilities should be placed on members of the boards of directors of condominium property regimes; and
- (3) Develop any legislation necessary to effectuate the purposes of this subsection.

The need for objective data became evident during Task Force meetings, which I chaired.

Study of prescribed subjects by the Legislative Reference Bureau ("LRB") will provide data to enable the Committee to thereafter consider legislation on an informed and objective basis. The Committee is respectfully requested to await that data before legislating on any subject within the scope of Act 189 tasking.

Senator Donovan M. Dela Cruz  
Senator Sharon Y. Moriwaki  
February 28, 2024  
Page 2 of 3

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.")) ).

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. AAO 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 Clause<sup>1</sup> 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.

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<sup>1</sup> **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)

Senator Donovan M. Dela Cruz  
Senator Sharon Y. Moriwaki  
February 28, 2024  
Page 3 of 3

The Community Associations Institute, therefore, respectfully requests that the Committee pass SB 2726 SD1.

CAI Legislative Action Committee, by

Handwritten signature of Philip Nemey in blue ink.

Its Chair



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**LATE**

The State Legislature  
The Senate Committee on Ways and Means  
Friday, March 1, 2024  
Conference Room 211, 9:55 AM

TO: The Honorable Donovan Dela Cruz, Chair  
FROM: Keali'i S. López, State Director  
RE: Support for S.B. 2726 SD1, Relating to Condominiums

Aloha Chair Dela Cruz and Members of the Committee:

My name is Keali'i Lopez and I am the State Director for AARP Hawai'i. AARP is a nonpartisan, social impact organization that advocates for individuals age 50 and older. We have a membership of nearly 38 million nationwide and nearly 140,000 in Hawai'i. We advocate at the state and federal level for the issues that matter most to older adults and their families. **AARP supports SB2726, SD1 which requires the Legislative Reference Bureau to conduct a study as recommended by the condominium property regime task force established pursuant to Act 189, Session Laws of Hawaii 2023.**

As a member of the condominium property regime task force, I heard from various stakeholders, including several residents, industry professionals and the Department of Commerce and Consumer Affairs. The task forces also received extensive comments, testimony and materials representing diverse perspectives. It is clear the current condominium dispute resolution process and regulatory regime have not effectively address long standing concerns of residents. The study requested of the Legislative Reference Bureau will provide the task force with critical data and best practices.

AARP believes it is important to protect the informed ability of residents to participate meaningfully and affect decision-making in common interest developments (CIDs). Additionally, we believe Hawai'i should have procedures to help ensure residents' rights and protect their home equity during disputes with condominium boards or management. Providing the task force with critical best practices from other jurisdictions will increase the task force's ability to recommend meaningful changes.

Therefore, AARP stands in **strong support of SB2725, SD1.**

**SB-2726-SD-1**

Submitted on: 2/28/2024 3:09:42 PM

Testimony for WAM on 3/1/2024 9:55:00 AM

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

Comments:

I am an owner occupant of a high rise condominium in downtown Honolulu. This bill makes sense. It will give us information on how other states regulate condominiums and foresight into areas we might want to change in 514B and other condo laws here.

We can learn what works and why, what doesn't work and why. This is what we should be doing.

Please move SB2726, which I strongly support, forward.

**SB-2726-SD-1**

Submitted on: 2/28/2024 9:25:57 PM

Testimony for WAM on 3/1/2024 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Marcia Kimura	Individual	Support	Written Testimony Only

Comments:

I support this measure.

**SB-2726-SD-1**

Submitted on: 2/29/2024 6:03:24 AM

Testimony for WAM on 3/1/2024 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jeff Sadino	Individual	Support	Written Testimony Only

Comments:

I strongly support this Bill.

**SB-2726-SD-1**

Submitted on: 2/29/2024 6:05:50 AM

Testimony for WAM on 3/1/2024 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jessica Herzog	Individual	Support	Written Testimony Only

Comments:

To the Esteemed Members of the Hawaii State Legislature:

I am writing to express strong support for SB2726 SD1, legislation that urgently addresses the widespread and repeated abuse of condominium owners by unethical management companies in Hawaii. This issue has escalated to the point of an epidemic, with countless owners losing their homes due to unfair practices and laws, compounded by a lack of accessible, low-cost dispute resolution options.

The adoption of SB2726 SD1 is crucial to providing owners with the protections they desperately need. It represents a vital step toward rectifying a system that has allowed unethical practices to thrive, leaving owners vulnerable to losing their properties and financial stability. This bill not only seeks to curb these abuses but also to introduce a fair and equitable means for dispute resolution that does not place an undue burden on the homeowner.

In light of the historical injustices faced by condominium owners in our state, I urge you to support SB2726 SD1. By doing so, you will be safeguarding the rights and homes of countless citizens, ensuring they are treated with the fairness and respect they deserve.

Thank you for your attention to this critical matter and for considering my support for SB2726 SD1.

Sincerely,

Jessica M Herzog  
AOAO Makaha Sursfide

Lourdes Scheibert  
920 Ward Ave  
Honolulu, Hawaii. 96814  
February 29, 2024

To: Senate Ways and Means Committee: Senator Donovan M. Dela Cruz, Chair and Senator Sharon Y. Moriwaki, Vice Chair

My opinion and comments for SB2726 SD1 for documentation purposes:

Requires the Legislative Reference Bureau to conduct a study on how certain other states approach the following subjects as they relate to condominiums: ombudsman programs, licensing for management, alternative dispute resolution, governmental regulation, owner education, and owner access to documents. Makes an appropriation. Declares that the general fund expenditure ceiling is exceeded. (SD1)"

In January 1991, Gregory K. Tanaka submitted a report titled "Condominium Dispute Resolution – Philosophical Considerations and Structural Alternatives" to the Real Estate Commission. Parts of Tanaka's report were utilized in the development of HRS 514B. Tanaka was specifically tasked with providing alternative solutions for dispute resolution in this report.

Please find attached Tanaka's proposed revision of the flow chart used in 1990. Notably, Tanaka's revised flow chart from 1991 includes the addition of a DCCA Ombudsman. Given that the existing alternative dispute resolution method has remained unchanged since 1990 and has proven ineffective in resolving disputes, it is imperative to adopt a flow chart similar to Tanaka's. This is particularly crucial considering the detrimental effects of non-judicial foreclosures on the resolution process.

The subsequent pages display the 1990 Flow Chart that is currently in use. Additionally, an expedited non-judicial foreclosure process has been incorporated into HRS 514B Condominium Law and is now included in this flow chart.

Also attached is the description of the State of Hawaii Office of the Ombudsman. The establishment of an Ombudsman under chapter 96 was deemed necessary. In my opinion, there is no distinction in implementing a DCCA Condominium Ombudsman for Condominium Self-Governance by following a similar process of implementation as described.

My hope is that the creation of another study is not intended to replicate previous unsuccessful attempts in addressing the condo ombudsman issue or to prolong taking action by conducting additional studies.

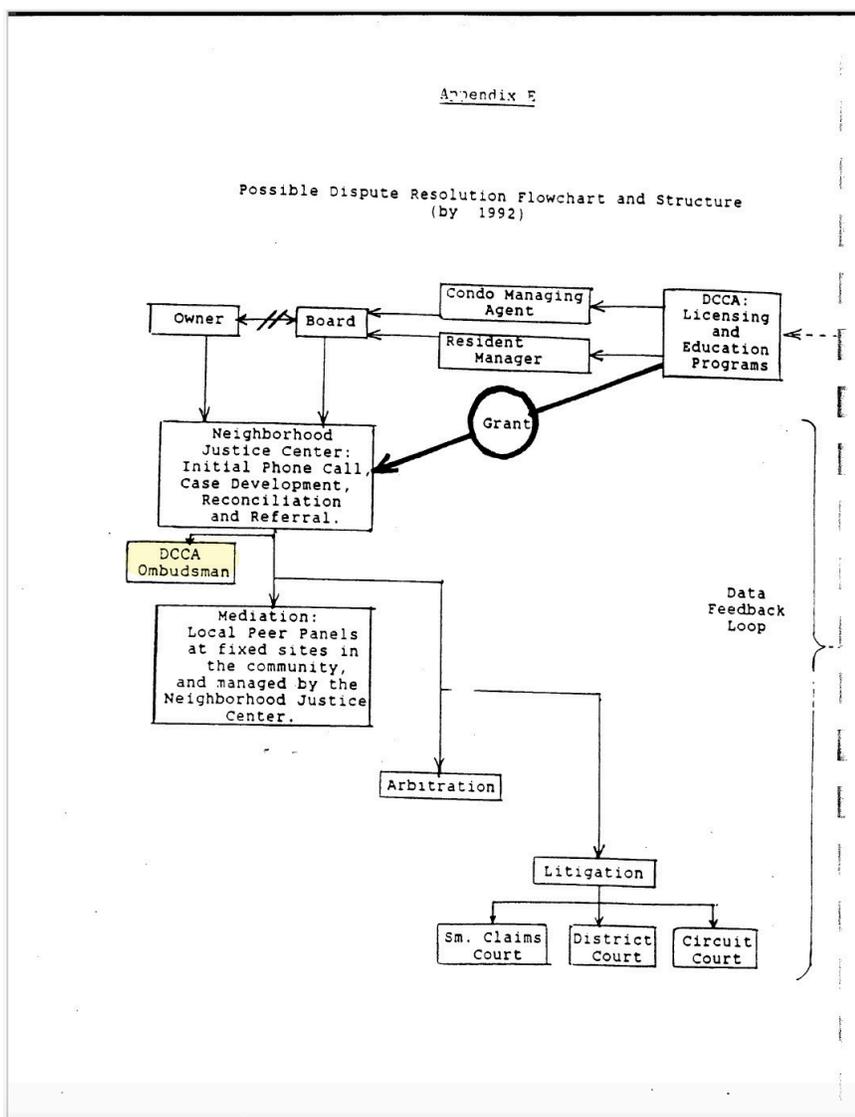
Thank-you,  
Lourdes Scheibert  
Condominium Owner

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

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

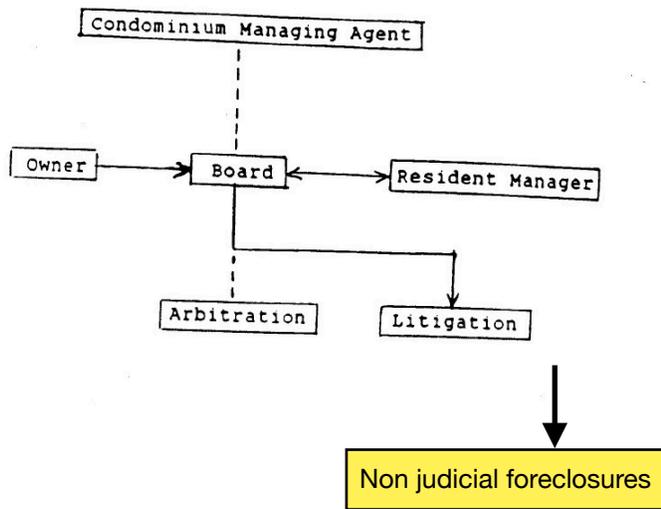
Arising primarily between the condominium owner and the association's board. These disputes have more often than not traveled a very bumpy road with litigation as the only commonly recognized means of settling disputes, there has been a growing need for speedier, less expensive and less traumatic means 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 off.



Appendix D

Present Structure  
for  
Dispute Resolution  
1990



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## ABOUT US

### WHAT IS THE OFFICE OF THE OMBUDSMAN?

The Office of the Ombudsman is an independent agency of the Hawaii State Legislature that investigates complaints about actions of executive branch agencies of the state and county governments in Hawaii. Our office has the power to obtain necessary information for an investigation and to recommend corrective action if a complaint is found to be substantiated.

The Ombudsman serves as a neutral, independent intermediary between the citizen and the agency. We conduct our investigations in a fair and impartial manner. We do not provide legal advice, nor do we serve as an advocate or representative of any person or agency.

### WHAT CAN THE OMBUDSMAN DO?

- \* Independently and impartially investigate your complaint against state and county agencies.
- \* If our investigation reveals that the complaint is substantiated, we can attempt to resolve the problem with the agency.

We determine whether a complaint is substantiated by comparing an agency's actions against what the law requires as well as the principles of sound, fair, and reasonable administrative practice. We do not have the power to compel or reverse administrative actions but instead try to resolve substantiated complaints through recommendations and reasoned persuasion.

In addition to the resolution of individual complaints, if we find possible areas for improvement to make government work better, we will make recommendations for changes to the law, administrative rules, or operating procedures.

### WHAT IS THE OMBUDSMAN'S JURISDICTION?

By law, the Ombudsman is authorized to investigate the administrative actions of state and county agencies. We cannot investigate complaints about the governor and lieutenant governor and their personal staff; the legislature and its staff; the judiciary and its staff; the various county mayors and councils; the federal government; a multistate governmental entity; or a nongovernmental entity. We also cannot investigate public employee grievances covered by collective bargaining agreements.

The Office of the Ombudsman is established by Chapter 96 of the Hawaii Revised Statutes. To view the law, please click [chapter 96](#).

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**The Senate  
The Thirty-Second Legislature  
Committee on Ways and Means  
Friday, March 1, 2024  
9:55 a.m.**

To: Senator Donovan Dela Cruz, Chair  
Re: **SB 2726 SD 1**, Relating to Condominiums

Aloha Chair Dela Cruz, Vice-Chair Moriwaki, 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 served as an officer on three condominium associations' boards.

Mahalo for allowing me to submit testimony in **support of SB 2726 SD 1 with the following comments.**

I was selected to participate on the Condominium Property Regime (CPR) Task Force and attended all four meetings in 2023. Throughout, I was disappointed in the lack of urgency and care, especially when we read and heard testimonies from condominium owners who had been through or attempted to participate in ADR, testimonies which were denounced by the Task Force Chair as "not empirical data [or evidence]," contrary to scientific definitions of "empirical data"<sup>1</sup> or "empirical evidence."<sup>2</sup>

Consequently, there was a lack of progress by the CPR Task Force whose work should be more substantial because the State government is focused on building more "affordable homes," which implies more development of this higher-density, comparatively-lower-cost housing model, the condominium.

**The State's housing goals magnify the importance of improving condominium association governance and enhancing community harmony through education.**

In testimonies to the CPR Task Force, I referenced studies by the Legislative Reference Bureau (LRB) in 1989<sup>3</sup> and the Real Estate Commission (REC) in 1991<sup>4</sup> which examined recurring

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<sup>1</sup> <https://courses.lumenlearning.com/wm-introductiontosociology/chapter/sociological-research/#:~:text=empirical%20evidence%3A%20evidence%20that%20comes,on%20hypothesis%20testing%2C%20but%20is>

<sup>2</sup> <https://sociologydictionary.org/empirical-evidence/>

<sup>3</sup> [https://lrh.hawaii.gov/wp-content/uploads/1989\\_CondominiumGovernance.pdf](https://lrh.hawaii.gov/wp-content/uploads/1989_CondominiumGovernance.pdf)

<sup>4</sup> Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives – An Issues Paper for the Hawaii Real Estate Commission, by Gregory K. Tanaka (January 1991).

problems with Directors' failure to fulfill responsibilities that often resulted in internal strife. Gregory Tanaka's work for the REC included diagrams of the then-existing ADR scheme and his proposed alternative dispute resolution that included an ombudsman. See Exhibit A.

Since the decades old LRB and REC studies, it appears that **not much has improved** in condo governance, including the understanding of duties and responsibilities of owners and directors, despite the DCCA's attempts, conceivably **because there was no enforcement mechanism**.

Enforcement mechanisms were suggested in measures which came before the legislature as SB 3205 (companion HB 2680) and SB 3206 (companion HB 2681) and included provisions that directors should provide certification to assure that they have read their governing documents and other documents pertinent to the governance of their associations and that they are prepared for the managerial, financial, and legal responsibilities necessary to properly govern.

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

*"Per our records as of today, there are **230,729 units in 3,411 condominium registrations** with six units or more which would generally be required to register their AOOU. These are rough numbers as some of the five or fewer may have merged their AOUs and would register that AOOU and some condominium registrations have not triggered the 365 day requirement after first sale or held their first association meeting that would then require them 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."*

As of the date of this testimony, many associations that had registered in prior years failed to register by July 1, 2023, as required by HRS 514B.

The DCCA's 2023 Annual Report of the Real Estate Commission<sup>5</sup> reported registrations from only 1644 associations, representing 167,412 units, revealing that roughly half the associations that are statutorily required to register failed to do so. These unregistered associations presumably failed to pay their registration fees, including mandatory contributions to the Condominium Education Trust Fund, even though owners of those units paid their associations these mandated fees.

If the Condo Specialist's November 2023 estimate of condominium units is correct, the 243,883 condominium units in **8,923 associations** compared against the most recent US Census data<sup>6</sup> that Hawaii has 568,075 housing units, reveals that **more than 40% of Hawaii's current housing units are condominium units**.

Compared to Hawaii, the 2023 *U.S. National and State Statistical Review for Community Association Data*<sup>7</sup> shows that California leads the nation with 50,700 associations, which are

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

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

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

homes to 14.4 million residents. Florida has the second-most associations with 49,800, followed by Texas (22,300), Illinois (19,550), North Carolina (14,900), and New York (14,400).

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

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

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 B.

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

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

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

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

In earlier legislative sessions, mediation and arbitration were promoted as inexpensive avenues to dispute resolution, however, owners’ experiences contradict that assertion. The cost of

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

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

<sup>10</sup> April 5, 2023, AOA O Nauru Tower Board Special Meeting

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

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

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

mediation and arbitration, even when subsidized, is beyond the means of many condo owners already burdened with increased insurance costs, increased maintenance fees, special assessments, and increased property taxes.

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

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

**Thus, current CETF subsidized ADR fails its intent.**

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

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

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

- AN INVESTIGATION OF AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM THAT WILL:
  - Not use taxpayer general funds;
  - Not inhibit the ability of an association to govern the community;
  - Not create more government bureaucracy or entity but build upon that which already exists;
  - Not deny an owner or the association the right to a court or other legal action in problem resolution;
  - Not interfere or attempt to invalidate or circumvent any local, State, or Federal laws and/or regulations;
  - Enforce existing State common interest community association laws and rules immediately;
  - Allow owners to pursue their rights under the law that they would otherwise not do so because of costs;
  - Not result in material increases in owner assessments or any measurable increase in operating costs on associations, owners, or association management companies;
  - Have the authority to invoke penalties on parties including the removal of an association Board member(s), suspend the association's authority to impose fines, liens or pursue foreclosures, and other penalties as deemed appropriate;

- Reduce the millions of dollars spent in legal costs between disputing owners and associations; and
  - Ease the burden upon Courts to litigate minor violations of association laws and rules.
- An investigation of the success or failure of subsidized mediation and arbitration under HRS 514B, including:
  - Whether parties who participated without legal representation were familiarized by the mediation centers or mediators with the mediation process;
  - Whether parties were apprised of any conflict of interest before the mediator was selected and before the mediation was initiated;
  - The various causes of these disputes including whether they were based on violations of HRS 514B (e.g., common expense assessments, enforcement of access to records, retaliation), HRS 414D (e.g., directors' duties, conflict of interest, etc.), the association's governing documents (e.g., fees, fines, and penalties; allocation of expenses; limitations of authority; House Rules violations), or other violations (e.g., theft, embezzlement, fraud, intentional damage); and
  - If those violations were resolved or terminated pre-ADR, when submitted to ADR, or through ADR.
- An investigation of subsidized cases that included participation by legal counsel or representation for just one party, for both parties, or none at all, and
  - The proportion or number of cases settled as a result of mediation if legal counsel or representation were involved, and if no legal counsel or representation occurred;
  - The proportion or number of cases brought by owners and of those,
    - how many included legal counsel or representation for these owners, and
    - how many cases were mediated to an agreement through subsidized ADR;
  - The proportion or number of cases brought by the association (or its board), and of those,
    - how many included legal counsel for the association or board, and of those,
    - how many were mediated to an agreement through subsidized ADR;
  - Whether attorneys' fees and late fees exceeded the value of the original penalty fine or amounts owed;
  - If the association's management company was included in the dispute, examine whether
    - the association paid for the management company's legal fees, and
    - the dispute was mediated to an agreement.
- An investigation whether the following statute was enforced, and if so, how often:

*HRS514B-146(g) The mediation shall be completed within sixty days of the unit owner's request for mediation; provided that if the mediation is not completed within sixty days or the parties are unable to resolve the dispute by mediation, the association may proceed with collection of all amounts due from the unit owner for attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense.*

- An investigation whether retaliation, intimidation, harassment, and/or discrimination were alleged, and whether these acts were the results of other disagreements or challenges (e.g., House Rules violations, contest between election candidates).
- An investigation of the lack of enforcement or the unequal enforcement of HRS 514B, HRS 414D, the governing documents, or other laws and rules and if they were significant components of the dispute.
- LEGAL FEES. While the legal industry appears to believe that disputes and challenges may be handled through attorneys and the Court system, owners do not have that same confidence.

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

- Examine the effect of litigation upon association insurance costs, particularly Directors and Officers Insurance;
  - Examine the proportion of legal fees and costs associated with dispute resolution to the amount awarded;
  - Examine the proportion of legal fees and costs associated with foreclosures with the delinquent common expense assessment amount;
  - Examine the legality of association attorneys or associations levying individual owners with non-commonly assessed legal fees although the assessed owners did not request or demand legal advice from that attorney or otherwise caused legal fees to be charged. Examples of legal fees charged to individual owners for services requested by a party other than the owners are: legal fees caused by an association or its directors that demand that the owner “cease and desist” for unstated or unsubstantiated violations, fees caused by an association or its directors that serve to silence or intimidate dissenting owners; and
  - Examine whether detailed legal billing is provided to owners upon request.
- FINES AND FEES. Examine the possibility of reforming fines and fees so that they do not disproportionately burden vulnerable residents and set off a cycle of inescapable consequences (e.g., they may rely on debt mechanisms such as loans or credit cards which can cause a worsened credit rating that can impair their employment opportunities that can affect their income which causes increased economic distress, etc.) and investigate the use and efficacy of repayment programs.
- EDUCATION. The education of owners and directors can reduce the burden of condo-related disputes which has the positive consequence of mitigating rising association insurance costs. States like Florida require that Board Directors must be certified to demonstrate their knowledge of their governing documents and other documents essential to good governance and they offer many **free** classes which are convenient in time and location for owners and directors alike:

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

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

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

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

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

The DCCA should be encouraged to produce such classes without the added expense of a third-party vendor. This belief is supported by the Real Estate Branch's free Condorama series<sup>14</sup> which has been more successful in reaching owners than the classes conducted by that vendor, while presenting the same or similar speakers and topics without the vendor's exorbitant class fees and inconveniently scheduled midweek, midday classes.

- Examine existing educational programs through the DCCA's use of the owner-funded Condominium Education Trust (CETF) whether they require additional funds from attendees, are open to the public, are scheduled at convenient time, day, and location for the public, and are unbiased and apolitical.
- Examine existing for-fee educational programs subsidized through the DCCA CETF and, of the attendees, quantify how many were industry-related (e.g., employees of management companies, association attorneys, parliamentarians, and other vendors), association board members, owners who are not directors, and the public. Also quantify which of the attendees' fees were waived, paid by their employers, paid by their associations, and paid by the attendees themselves.
- Also quantify attendance relative to class topic(s) to ascertain interest or necessity.
- Investigate the dependence of DCCA on parties with conflicts of interest to provide the education that is mandated by HRS 514B;
- Currently, education is voluntary for owners, directors, and management. Examine whether mandating education should be implemented. Because a director's position is voluntary, examine if the education of directors can be required, evidenced by qualified certification, and enforced by the possible revocation of that certification if the director fails education or fails certain ethical standards.
- Currently, education is voluntary for those who participate in the management of condominium associations, therefore, examine the mandating of education of those involved in the management of associations, coupled with mandating licensure of those involved in management, not as real estate licensees, but in line with Community Associations Institute that "opposes the licensing of community association managers as real estate brokers, agents or property managers"<sup>15</sup> and "prefers the licensure of individual community association manager practitioners as opposed to licensure of management companies."<sup>16</sup> Licensure will assure greater compliance with applicable

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<sup>14</sup> <https://cca.hawaii.gov/reb/files/2022/12/CB2212.pdf>

<sup>15</sup> <https://www.caionline.org/Advocacy/PublicPolicies/Pages/Community-Association-Manager-Licensing-Policy.aspx>

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

laws and rules, and violations of those laws and rules are enforceable with suspension or revocation of that license.

- **ACCESS TO INFORMATION.** Associations operate as self-governing entities. Although democratic representative self-governance is predicated on its members' access to information and the accountability that transparency encourages, and decades-old studies by the Hawaii Real Estate Commission<sup>17</sup> and the State's Legislative Reference Bureau<sup>18,19</sup> confirmed that access to information, including open communication and education, need improvement, these deficiencies still exist despite improved ease, speed, delivery costs, and ubiquity of technological enhancements to communication.

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

- including whether the enforcement provisions regarding document access/delivery are adequate to ensure that those who control access and delivery feel compelled to provide those documents;
  - including the cost of those documents, especially those charged for "electronic" documents;
  - including the ease or difficulty of accessibility or other hurdles that may impact some parties unfairly;
  - whether the requirement for an affidavit is necessary for owners to have access to documents (vis a vis, prospective buyers, their lenders, and their insurers are not required to complete affidavits to examine those documents);
  - whether eight "free" hours of examination per association is adequate;
  - if an online platform such as that used by eCourt Kokua can be utilized to maximize access, lower costs (\$3 per electronic document), handle data, and maintain timeliness;
  - or if an alternative is the expansion of the State's registration of condominium associations to provide a central online publicly accessible registry of information and documentation (similar to Miami-Dade, Florida's Code of Ordinances Chapter sections 17D-3 and 17D-4, and with enforcement provisions like Chapter 17D-5<sup>20</sup>).
- **DISTRIBUTION AND DISSEMINATION OF INFORMATION**
    - An investigation into the efficacy of DCCA's dependence on management companies to disseminate information about classes and online education;
    - An investigation into whether owners' email addresses should be provided to other owners under HRS 514B-154.5.

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<sup>17</sup> Gregory Tanaka, "Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives," Hawaii Real Estate Commission, 1991.

<sup>18</sup> Charlotte A. Carter-Yamauchi, "Condominium Governance – An Examination of Some Issues," Hawaii Legislative Reference Bureau, 1989.

<sup>19</sup> Pamela Martin, "Fighting Battles in Modern American Castles: Condominium Dispute Resolution," Hawaii Legislative Reference Bureau, 1996.

<sup>20</sup> [https://library.municode.com/fl/miami\\_dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTIIICOR\\_CH17DRECOAS\\_S17D-1SHTIAP](https://library.municode.com/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTIIICOR_CH17DRECOAS_S17D-1SHTIAP)

- CLEAN ELECTIONS: Delve into the election process to eliminate opportunities for fraud and electoral misconduct, including that election facilitators (usually management) have provided incumbent directors access to email addresses unavailable to other candidates or owners and control association communication, have notified incumbent directors as to proxy assignments, and other unfair election practices.
- Then, there was a comment from a reader of Civil Beat who responded to the article, “Condo Task Force Facing Deadline May Punt to State Auditor Instead,”<sup>21</sup>

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

The above list of needed investigations to develop improvements in condominium association governance is incomplete.

“Hawaii was the first state to enact a statute for the creation of horizontal property regimes.”<sup>22</sup>

We should not be among the last to improve condominium association governance while waiting for studies that will only replicate the findings of previous LRB and REC studies.

**Instead, Hawaii should be the first in the nation to create livable and fair condominium statutes.**

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

Mahalo for the opportunity to testify.

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<sup>21</sup> <https://www.civilbeat.org/2023/12/condo-task-force-facing-deadline-may-punt-to-state-auditor-instead/>

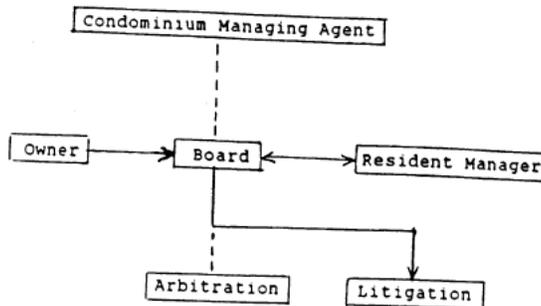
<sup>22</sup> *State Savings and Loan Ass'n v. Kauaian Development Co., Inc.*, 50 Haw. 540, 546 n. 8, 445 P.2d 109, 115 n. 8 (1968)

### Exhibit A

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

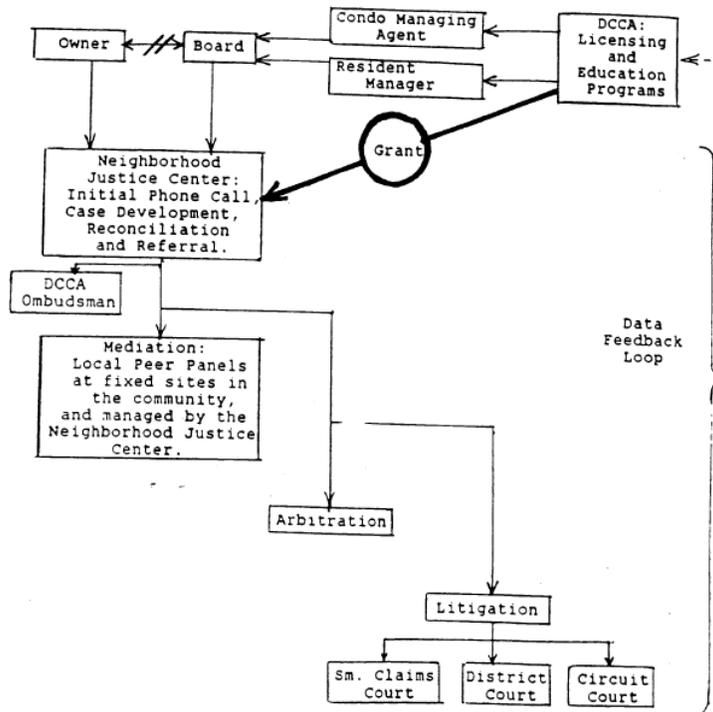
#### Appendix D

Present Structure for Dispute Resolution 1990



#### Appendix E

Possible Dispute Resolution Flowchart and Structure (by 1992)



**EXHIBIT B**  
**TALLY OF MEDIATION CASES REPORTED IN HAWAII CONDOMINIUM BULLETIN**  
**SINCE JULY, 2015 INCEPTION OF CETF FUNDED EVALUATIVE MEDIATION PROGRAM<sup>23,24</sup>**

CONDO EDUCATION TRUST FUND SUBSIDIZED MEDIATION CASES											
HI Condo Bulletin ISSUE MONTH	AOAO/BOD V OWNER	OWNER V AOAO/BOD	OWNER V OWNER	OWNER V CAM	TOTAL CASES	mediated to agreemnt	mediated w/o agreemnt	assn did not mediate*	owner did not mediate**	resolution outside medtr	elevated 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											

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

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

## Testimony for SB2726 SD1

**Submitted for:** Ways and Means Committee Hearing, scheduled for Friday, March 1, 2024 at 9:55 AM.

Aloha Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee,

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

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

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

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

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

## What is Needed

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

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

## What was Done

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

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

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

<b>What is Not Needed</b>
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Our legislators need to be aware of the misinformation campaign, collusion, and conflict of interest, by many in opposition of better consumer protections for condominium owners.

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

**Richard Emery** - Current Real Estate Commissioner & V.P. of Government Affairs for Associa Hawaii.

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

**Philip Nerney** - Condominium Property Regime Task Force Chair and Attorney who sues condominium owners often.

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

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

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

**Anne Anderson** - Attorney

**Paul A. Ireland Koftinow** - Attorney representing condominium associations.

**Laurie Sokach** - Management Company Representative

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

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

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

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

**Here is a snapshot of some campaign contributions:**

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

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

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

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

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

**News Headlines**

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

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

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

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

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

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

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

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

### **Violations of the Laws Our Legislature Enacts**

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

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

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

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

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

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

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

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

**Excerpts From Testimony I Submitted to the Condominium Property Regime Task Force (Act 189, 2023), for the Nov. 30<sup>th</sup> and Dec. 14<sup>th</sup>, 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 27<sup>th</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup>). He included names of Board members and said owners could also be part of the Committee. I, the Treasurer of the Association, was excluded from the Committee. The level of retaliation I have received, both as an owner and now as a Board member, is something that no homeowner should ever have to experience.

### **§514B-125 Board meetings.**

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

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

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

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

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

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

**At timestamp 23:03**, Ms. Sugimura says:

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

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

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

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

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

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

### **Abuse of Proxies**

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

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

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

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

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

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

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

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

**What I Am Requesting**

**Because time is of the essence**, and there is no more time to sit around waiting for another report, I am requesting that you amend this bill to:

- 1) Request that both Task Forces, that were established by Act 189, have members of the public on them who are condominium owners and who have first-hand knowledge and experience with the problems being discussed. As I have extensive experience, as noted in my testimony, I am offering my service.

- 2) Remove all attorneys who are known to sue condominium owners in court, from both Task Forces.
- 3) Replace current Task Force DCCA representatives, who have a clear conflict-of-interest as their jobs may be impacted, with a high-level DCCA Director who has knowledge of the condominium issues being discussed. It should also be noted that the DCCA representatives are paid to be helping the public and should be responding to the public's concerns, not sitting at Task Force meetings (and writing and giving testimony at legislative committee hearings).
- 4) Change the due date of the LRB report to November 1, 2024, and make that report available to the public, which will provide sufficient time for our legislators and the public to review and propose new legislation for the 2025 legislative session.
- 5) Ensure that any LRB report contracted with any third party(s) be fully vetted, and ensure that those providing input to the report are not attorneys who sue condominium owners or trade industry representatives (i.e., any person or group who is known to have opposed better consumer protection measures for condominium owners, or voiced opposition in any manner).

**I ask you to please amend SB2726 SD1**, and I ask you to please help over 1/3 of the population of Hawaii, by taking this issue more seriously and not kicking the can down the road. In this case the “can” is over 1/3 of the population of Hawaii who desperately need your help.

Mahalo,

Gregory Misakian

**LATE**

**SB-2726-SD-1**

Submitted on: 2/29/2024 10:46:09 AM

Testimony for WAM on 3/1/2024 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Meira Leonard	Individual	Support	Written Testimony Only

Comments:

I purchased my first home, a condo, here in Hawaii less than 2 years ago and have been utterly appalled at the behavior of the property management company. More than 3 board members have resigned while I've lived here due to how dysfunctional the meetings are. The management company's manager often bullies the owners, refuses to answer questions, and is unwilling to disclose non-sensitive information. Board members have been legally threatened by the property management company when trying to communicate with other owners. When I ran for the board, I lost by less than 1 vote, only to later find out that the property manager did not account for all the proxy votes which were votes in my favor. When this was exposed, the property manager decided on a revote which all but ensured I would not win a second time due to how the proxy votes are weighted. This is the 3rd time I've heard of votes not being counted accurately and only because the property management company will not confirm proxies before the vote occurs. Another former board member and owner who is very active requested documents from the property manager and was told he'd need to pay a \$15 fee and complete an affidavit with a notarized signature. This is clearly a tactic to prevent owners from having any knowledge of what is going on, or to be able to hold the property management companies accountable. I submitted a 42-page RICO report detailing ongoing violations and manipulative behavior. I received a letter less than 7 days later stating that they were not going to investigate further. There was an article written last year on Honolulu Civil Beat detailing the same issues with over 80 comments from others confirming similar experiences:

**[Oahu Condo Board Members Feel 'Muzzled' By Management Companies](#)**

We need to curb the excessive power these companies hold over owners and provide methods for better accountability.

**LATE**

**SB-2726-SD-1**

Submitted on: 2/29/2024 11:20:04 AM

Testimony for WAM on 3/1/2024 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dallas Walker	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Dela Cruz, Vice Chair Moriwaki and Committee Members,

I support this measure.

Thank you,

Dallas Walker

**LATE**

**SB-2726-SD-1**

Submitted on: 2/29/2024 4:28:22 PM

Testimony for WAM on 3/1/2024 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Anne Wheelock	Individual	Support	Written Testimony Only

Comments:

To the Honorable Members of the Hawai‘i Senate Ways and Means Committee,

I am asking you to support SB 2726 - relating to condominiums. If my condo’s Board of Directors is any indication, condo residents need tools to help keep rogue Boards in check, have access to pertinent documents, and help to ensure transparency. Condominium Boards of Directors should have residents’ best interests at heart.

Mahalo nui,

Anne Wheelock

**LATE**

**SB-2726-SD-1**

Submitted on: 2/29/2024 4:32:28 PM

Testimony for WAM on 3/1/2024 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Margaret Murchie	Individual	Support	Written Testimony Only

Comments:

I, amongst others, have concerns about the property management associations. As a real estate agent, we are compelled to order condo documents on each and every sale and oftentimes they are inaccurate or missing in spite of the fact that we have requested specific documentation. They are often not delivered in a timely fashion. In my specific case, our board, on the advice of a now current Real Estate Commissioner, whose own company (since sold) used to manage our building, the Parkview, still uses this attorney recommended and who oftentimes, has been cited in recent Civil Beat articles as incredibly litigious, unfairly penalizing condo owners. Our Board is adversarial with retired non professionals, so it doesn't make for a good experience. Last week, our annual homeowner's meeting was only held on zoom. I was traveling and hoped it would be recorded. The president, an older retired CPA from Omaha, told me that on the advice of this attorney, it was privileged and would not be recorded. When I ordered and paid \$376.43 for a complete set of documents last week, they came piecemeal from a company, I had never heard of Homewise docs. I would suggest that most all condo docs other than the RR105C be posted on an easily accessible website. Their RR105C, pertinent to the specific property was a joke with basic information requested listed as NTMK (not to my knowledge) for almost everything. This can get us all into trouble. Our management companies leave a lot to be desired and the rules have been crafted in favor of these larger companies. We really need to come together with some simple sensible regs for home owners who are now being taken advantage of. with time consuming and confusing, expensive procedures that only appear to benefit the attorneys and management companies, who are not always aligned. Both of my sisters are professional mediators in Canada but here in Honolulu most of the mediators are attorneys and/or retired judges and not always on the same page as they are used to being advocates for one side. When my tenant was 6 months delinquent during the pandemic and I couldn't evict her, I had to sell my unit to a buyer, who was willing to follow our governor's extra rules "tenant could only be given notice on day of closing by buyer" We need to be extra careful with these tweaks and I knew better than to go to mediation as it would just drag things out with no resolution. .