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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
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Written Comments

HB1814 **RELATING TO CONDOMINIUMS**

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the House Committee on Consumer Protection & Commerce

Tuesday, January 30, 2024, 2:00 p.m.
Conference Room 329 & Via Videoconference

Chair Nakashima and Members of the Committee:

Good afternoon, Chair Nakashima and members of the Committee. My name is Charlotte Carter-Yamauchi, and I am the Director of the Legislative Reference Bureau (Bureau). Thank you for providing the opportunity to submit written **comments** on H.B. No. 1814, Relating to Condominiums.

The purpose of this measure is to:

- (1) Require the Bureau to study and submit a report on the approaches employed by California, Delaware, Florida, Massachusetts, Nevada, and other relevant jurisdictions regarding the following condominium subjects:
 - (A) A condominium ombudsman or similar position to specifically oversee condominiums;
 - (B) Required licenses for individuals involved in the management of condominiums;
 - (C) The availability of dedicated alternate dispute resolution or similar programs that are specifically for the prevention or resolution of

- condominium-related disputes and are separate from alternate dispute resolution programs available for other disputes;
- (D) Governmental regulation and enforcement of condominium operations and governance that are separate from an ombudsman;
 - (E) Requirements for owner education at the point of sale of a unit; and
 - (F) Requirements for owner access to condominium documents;
- (2) Require that, to the extent feasible, each subject shall include:
 - (A) Descriptive information detailing the approach of each jurisdiction;
 - (B) Identified strengths and weaknesses of each particular approach; and
 - (C) Identified best practices in the jurisdiction;
 - (3) Require the Bureau to submit its report to the Legislature no later than twenty days prior to the convening of the Regular Session of 2026;
 - (4) Appropriate an unspecified sum of moneys from the general fund for the Bureau to conduct the study;
 - (5) Authorize the Bureau to contract the services of a consultant with the funds appropriated; and
 - (6) Exempt the contracting of services under the measure from Chapter 103D, Hawaii Revised Statutes (the Hawaii Public Procurement Code).

The Bureau takes no position on this measure but submits the following comments for your consideration.

If adequate funding is provided for the contracting of services to perform the study, the services of a competent contractor are available, the scope of the measure is not amended, and the exemption from the Hawaii Public Procurement Code remains in the place, then the Bureau believes the project should be manageable, and the Bureau should be able to submit the required report to the Legislature by the measure's deadline. The foregoing is subject to the caveat that the Bureau's interim workload is not adversely impacted by too many additional responsibilities, such as conducting other studies, writing or finalizing other reports, drafting legislation, or any combination of these responsibilities for the Legislature or for other state agencies, task forces, or working groups that may be requested or required of the Bureau under other legislative measures.

The Bureau also notes that page 1, lines 2-4 of the measure refer to "the condominium property regime task force established pursuant to Act 289, Session Laws of Hawaii 2023." This appears to be a typographical error, as Act 189, Session Laws of Hawaii 2023, was the act that actually established the task force, and Act 289, Session Laws of Hawaii 2023, does not exist. The Bureau respectfully suggests correcting the reference to "Act 289" to read as "Act 189" when the measure is amended to make other substantive amendments.

Thank you again for your consideration.



P.O. Box 976
Honolulu, Hawaii 96808

January 27, 2024

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

Re: **HB 1814 SUPPORT**

Dear Chair Nakashima, Vice Chair Sayama and Committee Members:

HB 1814 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.

Chair Mark M. Nakashima
Vice Chair Jackson D. Sayama
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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 Clause¹ 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.

¹ **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)

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The Community Associations Institute, therefore, respectfully requests that the Committee pass HB 1814.

CAI Legislative Action Committee, by

Handwritten signature of Philip Henney in blue ink.

Its Chair

**House of Representatives
The Thirty-Second Legislature
Committee on Consumer Protection and Commerce
Tuesday, January 30, 2024
2:00 p.m.**

To: Representative Mark M. Nakashima, Chair
Re: HB 1814, Relating to Condominiums

Aloha Chair Mark Nakashima, Vice-Chair Jackson Sayama, 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 HB 1814** with the following comments.

I was selected to participate on the Condominium Property Regime 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, which were dismissed by some as "not evidence."

Subsequently, there was a lack of progress by the CPR Task Force whose work should be more consequential 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 earlier testimonies to your Committee and to the CPR Task Force, I referenced studies by the Legislative Reference Bureau (LRB) in 1989¹ and the Real Estate Commission (REC) in 1991² which examined recurring problems with Board Directors' failure to fulfill responsibilities that often resulted in internal strife.

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**.

¹ https://lrb.hawaii.gov/wp-content/uploads/1989_CondominiumGovernance.pdf

² Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives – An Issues Paper for the Hawaii Real Estate Commission, by Gregory K. Tanaka (January 1991).

Enforcement mechanisms were suggested in measures which came before your committee last year, 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.

This legislative session, on behalf of Kokua Council, two measures were introduced, HB 2680 and HB 2681, that provide alternatives to existing ADR mechanisms and include provisions requiring the education and certification of directors and the individuals who serve as community association managers.

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 AOUO. These are rough numbers as some of the five or fewer may have merged their AOUOs and would register that AOUO 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 AOUO...There are 13,154 units in 5,512 condominium registrations where each condominium registrations is five or fewer units and individually, are exempted from AOUO 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 (and some, like Pearl Number One, also failed to register in 2021^{3,4}). The DCCA’s 2023 Annual Report of the Real Estate Commission⁵ 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 DCCA’s November 2023 estimate of condominium units is correct, the 243,883 condominium units in 8,923 associations compared against the most recent US Census data⁶ that Hawaii has 568,075 housing units, reveals that **more than 40% of Hawaii’s housing units are condominium units.**

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

³ See Exhibit A and

<https://web.dcca.hawaii.gov/DPR.Net/Public/ShowPublic.aspx?PROJTEXT=%3Ckey%3E%3Ccv%3E%3Cc%3EID%3C/c%3E%3Cv%3E1353%3C/v%3E%3C/cv%3E%3C/key%3E>

⁴ https://hawaii.gov/dcca_condo/reports/0621R.pdf

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

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

⁷ <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^{8,9} and Robin Martin,¹⁰ claim that Hawaii has a greatly disproportionate degree of malfeasance and infidelity to fiduciary duties, including that, **nationally, Hawaii has the most Directors and Officers Insurance claims and among the highest insurance settlements.**

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

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

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

⁹ <https://www.youtube.com/watch?v=8wOM10cgYSO&t=353s>

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

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

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

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

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 CETF subsidized ADR fails its intention.

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, and rather than looking at merely relieving the symptoms (e.g., rising insurance premiums), robust efforts to address the problems that cause these symptoms should be made. There are long overdue improvements to condominium governance that 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 series¹⁴ 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"¹⁵ and "prefers the licensure of individual community association manager practitioners as opposed to licensure of management companies."¹⁶ Licensure will assure greater compliance with applicable

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

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

¹⁶ <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 Commission¹⁷ and the State's Legislative Reference Bureau^{18, 19} 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 similar to Chapter 17D-5²⁰).

- 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.

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

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

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

²⁰ 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,”²¹

“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.”²²

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.

Kokua Council created proposals which were drafted and introduced as HB 2680, HB 2681, and HB 2701 to address many of the concerns mentioned above. Please schedule these measures for hearings. The large community of condominium owners and residents should not have to wait for justice.

Mahalo for the opportunity to testify.

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

²² *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

An example of outdated statutorily mandated biennial registration of an association.²³
(See date and time, bottom right, when screenshot was made.)

web.dcca.hawaii.gov/DPR.Net/Public/Sho...

STATE OF HAWAII
DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS
upholding fairness in the marketplace

DEVELOPER'S PUBLIC REPORT / ASSOCIATION BIENNIAL REGISTRATION

DETAIL

Project #	621
Project Name	PEARL NUMBER ONE INC THE
Address	98-500 KOAUKA LP AIEA, HI 96701
Developer Name	PEARL RIDGE LAND DEV
Zoning	R-4
TMK#	198012050
Total Units	300
Commercial	0
Tool Sheds	0
Buildings	0

Re

Public Report Type / Effective Date (Click on the date to view rep

Preliminary	11/12/1973	Conting
Supplementary 1	12/18/1973	

Extension

Effective 8/16/1975

NOTE: The Extension Number indicates which public report has been exte
has been extended. NX indicates there is no expiration dated for the exten
to determine if the report stands alone or should be read with another put

NOTE: The developer's Preliminary, Final, and Supplemental Public Reports
the Commission issues an order extending the effective date for the report
be extended or renewed.

Disclosure Abstract / Annual Report

Abstract Dated / Annual Report Dated _

Association

Biennial Registration [7/1/2019](#) **Information**

OK

7:18 AM
1/29/2024

23

<https://web.dcca.hawaii.gov/DPR.Net/Public/ShowPublic.aspx?PROJTEXT=%3Ckey%3E%3Ccv%3E%3Cc%3EID%3C/c%3E%3Cv%3E1353%3C/v%3E%3C/cv%3E%3C/key%3E>

Condominium Association Biennial Registration

Department of Commerce & Consumer Affairs



All information provided is public information
(Online application created on April 21, 2019)

1. Project Registration Information

Project Registration Number:
621

Name of Condominium Project:
PEARL NUMBER ONE INC THE

Project Street Address:
98-500 KOAUKA LP

Total # Units:
300

Expiration of bond on file with Commission:
01/15/2020

NOTE: If no information is printed in the "Expiration of bond on file with Commission" field, the AOUC has previously applied for a fidelity bond exemption (all fidelity bond exemptions expire at the conclusion of the biennial registration period). Question #5 of this application allows the AOUC to select a fidelity bond exemption.

Association Information

2. Officers & direct contact

2a. AOUC Officers: (public information)

President:
SUGIMURA, JANE

V. President:
BONFIGLIO, JOEL

Secretary:
SOTERO, KAREN

Treasurer:
MIYAKAWA, JOSEPHINE

EXHIBIT B
TALLY OF MEDIATION CASES REPORTED IN HAWAII CONDOMINIUM BULLETIN
SINCE JULY, 2015 INCEPTION OF CETF FUNDED EVALUATIVE MEDIATION PROGRAM^{24,25}

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											

²⁴ <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2016-2020/>, <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2021-2025/>

²⁵ <https://cca.hawaii.gov/reb/files/2015/03/cb1503.pdf>

HB-1814

Submitted on: 1/26/2024 5:07:01 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

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

Comments:

Fully support.

HB-1814

Submitted on: 1/26/2024 9:28:16 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lisa Cano	Individual	Support	Written Testimony Only

Comments:

I support Bill HB1814

Lisa J Cano

HB-1814

Submitted on: 1/27/2024 2:10:35 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
B.A. McClintock	Individual	Support	Written Testimony Only

Comments:

Condo owners in Hawaii need help. Some buildings have rouge boards that are retaliating against owners who dare to ask questions. If studying another state's laws helps then please do it. Please support this bill. Mahalo.

HB-1814

Submitted on: 1/28/2024 3:47:28 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

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

Comments:

Lasy year the Legislture establised a task force consisting of a broad diverse group of participants to address improvements to association management. This information will be valuable to the discussion. The task force is due to make a final reporrt in 2025.

HB-1814

Submitted on: 1/28/2024 8:58:58 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jeff Sadino	Individual	Support	Remotely Via Zoom

Comments:

Committee on Consumer Protection & Commerce

HB 1814

Tuesday, January 30, 2024 @ 2:00 PM

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

The improvement of governance is a journey, not a destination. For too long, we have been standing still on this journey. This incredibly important Bill will get us restarted to learn about the many, many problems that exist in condo governance and the solutions to those problems.

Many members of the Legislature, industry, and community have invested a tremendous amount of time to get this Bill introduced and it would be extremely contrary to all those peoples' wishes to not pass this Bill.

REQUEST 1

In addition to the 5 States selected for study, I would request the following State to be added:

1. Hawaii

It seems like it would be helpful to know the current status of these subjects in Hawai'i in order to deepen our understanding of the comparisons that we will be making to other States.

REQUEST 2

In addition to the 6 subjects this Bill identifies for study, I would request the following subjects also be added:

1. Debt Collection Practices
2. Election Integrity

Many people have suffered wildly disproportionate debt collection expenses. It is not unusual for the AOA to charge an owner more in debt collection expenses (sometimes 10x) than the original amount of the debt.

Election integrity is a perennial issue that offers some very simple fixes. Elections are the most fundamental principle in condo governance. If the elections are not ran correctly, the entire system of condo governance crumbles.

REQUEST 3

Page 3, lines 12 – 14 state that this report will be delivered prior to the 2026 session. I understand that this report will take time, but I request that an interim report be provided prior to the 2025 session. The Condominium Task Force met 4 times in 4 months. I think the Task Force would benefit by having some feedback from the Legislative Reference Bureau available to them during their meetings in 2024 and 2025.

Thank you for the opportunity to testify,

Jeff Sadino

HB-1814

Submitted on: 1/29/2024 9:12:25 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

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

Comments:

Dear Chair Nakashima and members of the Committee:

I am in support of HB1814. Last year, the legislature created a Condominium Property Task Force to consider possible changes to the law. The Task Force unanimous recommended that the LRB study and provide the Task Force with the data needed to make recommendations to the legislature.

It makes sense for the Task Force and the legislature to have relevant data before it alters the condominium statutes that affect so many people in the state of Hawaii. For that reason, I support HB1814.

Testimony for HB1814

COMMENTS ONLY

Submitted for: Consumer Protection & Commerce (CPC) Committee Hearing, scheduled for January 30, 2024 at 2:00 PM.

Aloha Chair Nakashima, Vice Chair Sayama, 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

The Kokua Council proposed four measures last year for better consumer protections for condominium owners, which were introduced as six bills (two with companion bills). I, along with Kokua Council President Lila Mower, drafted two of them which became HB178 and HB1501. Ms. Mower drafted the others (HB176, HB1297, SB1201, and SB1202). 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-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 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 testimony.

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*

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).

HB1814

(Good intentions, but too little, too late, and other reports are available.)

While I support 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 will forward to the Chair of CPC to share with the committee members. 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.

Hawaii 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 Gregory's ... Gregory Tanaka, and Gregory Misakian.

I ask you to please schedule committee hearings for the bills mentioned above, and other condominium consumer protection measures (carry-overs from 2023 and new measures from this year).

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

HB-1814

Submitted on: 1/29/2024 11:29:21 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

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

Comments:

Support the efforts of this Task Force

LATE

HB-1814

Submitted on: 1/29/2024 4:24:04 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dallas Walker	Individual	Support	Written Testimony Only

Comments:

I support this bill. Thank you.