

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

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

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

December 5, 2023

TRANSMITTED VIA LEGISLATIVE WEBSITE

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

Enclosed is a copy of the 2023 Annual Report of the Real Estate Commission, as required by section 467-4(5), Hawaii Revised Statutes (HRS). This report includes fund information pertaining to the Condominium Education Trust Fund, as required by section 514B-73(d), HRS.

In accordance with section 93-16(a), HRS, a copy of this report will be transmitted to the Legislative Reference Bureau Library and viewable electronically at cca.hawaii.gov/reb/reports/. Copies will also be transmitted to the State Publications Distribution Center and the University of Hawaii pursuant to section 93-3, HRS.

Sincerely,

NADINE Y. ANDO
Director

Enclosure

- c: Legislative Reference Bureau Library (1 hard copy)
State Publications Distribution Center (2 hard copies, 1 electronic copy)
University of Hawaii (1 hard copy)



2023 Annual Report

Real Estate Commission

Real Estate Branch
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

The 2023 Hawaii Real Estate Commission

Derrick Yamane
Chair
Honolulu, Real Estate Broker

Nikki Senter
Vice Chair
Chair, Laws and Rules Review Committee
Honolulu, Public Member

Sean S. Ginoza
Vice Chair, Laws and Rules Review Committee
Hawaii Island, Real Estate Broker

Audrey Abe
Chair, Education Review Committee
Oahu, Real Estate Broker

Russell Kyono
Vice Chair, Education Review Committee
Kauai, Real Estate Broker

John Love
Chair, Condominium Review Committee
Public Member

P. Denise La Costa
Vice Chair, Condominium Review Committee
Maui, Real Estate Broker

Richard Emery
Honolulu, Real Estate Broker

Jennifer Andrews
Honolulu, Real Estate Broker

The purposes of the Commission are to:

- Protect the general public in its real estate transactions;
- Promote the advancement of education and research in the field of real estate for the benefit of the public and those licensed under Hawaii Revised Statutes (HRS) chapter 467 and the improvement and more efficient administration of the real estate industry; and
- Promote education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public and those required to be registered under HRS chapter 514B.



The Honorable Josh Green, Governor, State of Hawaii, Members of the Thirty-Second State Legislature and Nadine Ando, Director, Department of Commerce and Consumer Affairs (DCCA):

What a difference a year makes, or, more appropriately, what a difference the evolution of a pandemic makes. Clearly, the onset of the COVID-19 pandemic dramatically affected the normal workings of the Real Estate Branch. For fiscal year (“FY”) 2022, the staff implemented a rotating schedule with staff members alternating working in the office and teleworking. Staff adapted well to this alternating schedule with no drop off in work product, therefore, it remained in place for FY 2023. Similarly, in FY 2022, the monthly in-person Real Estate Commission Meeting as well as the monthly in-person standing committee meetings were combined into one comprehensive monthly hybrid (both virtual and in-person) meeting. Public attendance increased and agenda items were addressed effectively and efficiently so this, too, remained in place for FY 2023.

As our society started to get the COVID-19 pandemic under control and life slowly returned to normalcy, so, too, did the daily operations at the Real Estate Branch. The public access hours to the Real Estate Branch office are back to normal: Monday – Friday, 7:45 am – 4:30 pm. The Real Estate Branch (“REB”) is up and running like the “good old days” – as in pre-pandemic times – handling even more responsibilities. Real estate licenses continue to be issued. In-person license testing has resumed. One positive, progressive outcome of the pandemic was that the REB became technologically proficient. License testing as well as continuing education can now be done virtually. The public now has options which previously did not exist. Routine REB activities and responsibilities have returned. The REB’s publications have gone out to all members without missing any deadlines. The Real Estate Commission Bulletin, the School Files (for real estate educators), and the Condominium Bulletins were all distributed to all recipients on schedule. For all of the adjustments and adaptations that the REB had to endure with the pandemic, they performed exceptionally, and I commend them.

Historically, the Real Estate Commission is one of the most active commissions in the State. It demands much time from its members, but these dedicated volunteers give unselfishly of themselves to protect the public and enrich our local real estate industry. This past year was no different and I respectfully present to you the Annual Report of the Real Estate Commission (“Commission”) for FY 2023.

The Commission currently oversees 18,806 licenses statewide of which 14,794 are active. This is a 5.5% decrease in total licensees from a year ago. Additionally, the Commission oversees approximately 1,644 registered condominium associations and 31 condominium hotel operators. There were 110 new conversion project filings for FY 2023.

The Commission is a nine-member, Governor nominated and Governor appointed quasi-judicial body. Presently, it is comprised of seven industry members and two public members. If confirmed by the Senate, they serve a four-year term. The main purpose of the Commission is the “protection of the general public in its real estate transactions” (HRS § 467-4(2)). The Commission oversees the licensing of real estate salespersons and brokers, including brokerages, and the maintenance and renewal of these licenses every two years.

The Commission is responsible for the Real Estate Recovery Fund. As its trustee, the Commission has a fiduciary duty and obligation to administer the trust properly and with transparency. There were no payments made from the fund for FY 2023. Other state agencies work closely with the Commission such as the Regulated Industries Complaints Office (“RICO”). The Commission reviews and approves settlement agreements involving real estate licensees who have been investigated and who have been found to be in violation of real estate licensing laws and/or rules by RICO.

The Commission is comprised of three standing committees:

- (1) The Laws and Rules Review Committee;
- (2) The Education Review Committee; and
- (3) The Condominium Review Committee.

The three committees are working committees where commissioners take on leadership roles and work towards accomplishing the goals set forth in those specific areas. Funding for these programs is crucial for the Commission. Funding the Commission is of utmost importance. Proper funding allows the Commission to achieve its objectives and reach its goals as set forth by law.

The Commission certifies pre-license education schools and instructors and is responsible for developing the pre-licensing curriculum for salespersons and brokers. The Commission also registers continuing education (“CE”) providers and certifies CE courses.

The Education Review Committee, under the leadership of Audrey Abe, Oahu Commissioner, and Vice Chair Russell Kyono, Kauai Commissioner, worked closely with an Ad Hoc Committee on Education. This committee, comprised of veteran industry volunteers, collaborated and created the Commission’s 2023 - 2024 mandatory core course, Part A – “3D Rules: Disclose, Disclose, Disclose!”. This committee will create a core course, part B, this upcoming fiscal year.

Regarding condominiums, the Commission registers condominium projects, condominium associations, condominium hotel operations (“CHO”), and condominium managing agents. Throughout the year, the Commission’s Outreach Program provides information and education on general condominium topics for all interested condominium unit owners and condominium board members. This program services all islands and is an excellent reference resource for any condominium homeowner.

The Condominium Review Committee, under the leadership of John Love, Esq., Honolulu Public Commissioner and Vice Chair of the Committee, P. Denise La Costa, Maui Commissioner, oversaw the activities of Commission staff relating to condominium project development, condominium governance, and condominium education. Under their guidance, the Commission staff created and updated informational brochures and FAQs for condominium owners and developers. Their focus was to educate the condominium community. Informational materials were also made available on the REB website. This committee successfully put together well-received informational events – Condorama IX and Condorama X. The events provided valuable information to condominium owners. The Commission looks forward to participating in future community events. Most recently, an Ad Hoc Committee has been convened to discover and address the concerns of condominium owners. For the upcoming year, this committee has a lot on their plate, but I am confident they are up for the challenge.

While the Commission is a state body, it does not limit its awareness to a local level. To maintain high standards of excellence for Hawaii’s real estate industry, the Laws and Rules Review Committee keeps abreast with matters of importance outside of our state. In addition to local information, this committee keeps the Commission aware of national activities – national law changes or anticipated new rules. This invaluable Laws and Rules Review Committee is headed by Nikki Senter, Esq., Honolulu Public Commissioner and supported by Vice Chair Sean Ginoza, Hawaii Island Commissioner. This committee has worked tirelessly to address national and state issues that may impact Hawaii’s real estate industry. They kept a keen eye out for any legislation that could affect our licensees, either positively or negatively. In addition, they are active and committed members of the Association of Real Estate License Law Officials (“ARELLO”). They keep abreast and take note of what concerning items are erupting in other states and report their findings to the Commission. This information keeps Hawaii ahead of the curve and out of trouble-an ounce of prevention is worth a pound of cure.

In closing, I would like to congratulate the Real Estate Branch for a job well done this past fiscal year. No doubt, it was another busy year as staff had outstanding issues to resolve, new assignments to address, and a constant influx of daily work that needed to be promptly completed. With their focused work ethic, their enduring persistence, and their positive “can do” attitude, they were able to accomplish all that was required. Bravo, staff!

As of May 5, 2023, COVID-19 was downgraded from a global health emergency (pandemic) but its residual effects on our local society remain. In challenging times leadership must be decisive yet understanding. Concurrently, staff must be flexible and adaptable. At REB, this dynamic working environment is evident via the leadership of Supervising Executive Officer, Neil Fujitani. Mr. Fujitani makes timely decisions that are clearly understood and carried out by his adaptable staff. Everyone works well together which is important and rare. REB is a well-managed branch. Kudos to Mr. Neil Fujitani!

Last but not least, I would like to thank my fellow Commissioners for serving on the Commission and for giving so freely of their valuable time. These individuals are all busy people but they are committed to protecting the people of Hawaii. Through their dedication and unselfishness, the Commission addressed all mandates and reached their annual goals. The State of Hawaii, as well as the people of Hawaii, are fortunate to have this hard-working, committed group of upstanding individuals working relentlessly on their behalf.

This new year will bring more work and new challenges and I can confidently exclaim, the Real Estate Commission of the State of Hawaii is prepared and ready – “Bring It!” With continued kokua and support from DCCA Director, Nadine Ando, Licensing Administrator, Ahlani Quiogue, RICO, the Attorney General’s Office, Supervising Executive Officer, Neil Fujitani, and the dedicated REB staff, the Commission will continuously improve the professionalism, competency, and integrity of Hawaii’s real estate industry. The public will be protected.

Respectfully submitted,

A handwritten signature in black ink, reading "Derrick T. Yamane". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Derrick T. Yamane
Chairperson, State of Hawaii Real Estate Commission

Real Estate Commission
Real Estate Branch
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii



Nadine Ando, Director
Dean Hazama, Deputy Director
Ahlani K. Quiogue, Licensing Administrator

Real Estate Branch:

Neil K. Fujitani, Supervising Executive Officer
Miles Ino, Executive Officer
Lessie-Mae De Ramos, Secretary
Kristen Kekoa, Senior Real Estate Specialist
Amy Endo, Real Estate Specialist
Nohelani Jackson, Real Estate Specialist
Vacant, Office Assistant
Charisa Flores, Office Assistant
Kedin Kleinhans, Senior Condominium Specialist
Benedyne Stone, Condominium Specialist
Dathan Choy, Condominium Specialist
Lorie Sides, Condominium Education Specialist
Tammy Norton, Secretary
Jon Gasper, Office Assistant
Torrie Primacio, Office Assistant
Dorothy Aquino, Office Assistant

335 Merchant Street, Room 333
Honolulu, Hawaii 96813
Telephone: (808) 586-2643
Web: <https://www.hawaii.gov/hirec>
Email: hirec@dcca.hawaii.gov

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This material can be made available for individuals with special needs. Please call the Senior Real Estate Specialist at (808) 586-2643 to submit your request.

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LAWS AND RULES REVIEW COMMITTEE REPORT

For FY 2023, the Laws and Rules Review Committee, led by Chair Nikki Senter and Vice Chair Sean Ginoza, continued with actively reacting to and monitoring the legislative process, licensing programs, and recovery fund administration.

LEGISLATIVE

Act 019 – Requires a Public Agency Board to report any discussion or final action taken during an executive meeting; provided that such disclosure is not be inconsistent with the purpose of convening the executive meeting, but giving the Board discretion to maintain confidentiality.

Act 021 – Reduces the period for which an application shall be considered abandoned from two years to one year. Specifies the conditions under which applications for licenses and examinations will be deemed abandoned. Provides that the one-year period after which an application is considered abandoned cannot be extended. Provides that a licensing authority shall not be required to act on any abandoned application and that the licensing authority may destroy abandoned applications. Clarifies that an application submitted after an abandoned application shall be treated as a new application and that the applicant shall comply with any new licensing requirements in effect at the time of the new application.

Act 125 – Encourages boards to maintain recordings of board meetings on the board's website regardless of whether the written minutes of the meeting have been posted. Requires boards to provide the State Archives with a copy of any recording of a board meeting before removing the recording from the board's website. Requires the written minutes of board meetings to include a link to the electronic audio or video recording, if available online. Effective 10/1/2023.

Act 149 – Requires the real estate commission to develop a curriculum for leadership training to be made available to board members of a condominium association and submit a progress report to the legislature.

Act 231 – Requires disclosure of all existing permitted and unpermitted erosion control structures on the parcel in real estate transactions when residential real property lies adjacent to the shoreline. Effective 11/1/2023.

Act 261 – Prohibits under certain circumstances state employees from appointing, hiring, promoting, or retaining relatives and household members and from making or participating in certain other employment-related decisions and from awarding a contract to or otherwise taking official action on a contract with a business if the employee's relative or household member is an executive officer of or holds a substantial ownership interest in that business. Imposes administrative fines for violations.

SCR 124 – Urging the Real Estate Commission to develop policies and programs to inform and educate condominium association owners and board members of certain matters to promote the efficient administration of condominium associations.

LICENSING

For FY 2023, the total number of licensees was 18,806 compared to 19,904 in FY 2022. This represents a decrease of 5.5% from the previous FY. The number of real estate licensees has always been cyclical, with the all-time high of 26,090 licensees in 1990 and the lowest count in the past 24 years of 13,033 licensees in 1999.

FY 2023 PROGRAM OF WORK

Real Estate Recovery Fund (RERF) – The Commission administered the statutory requirements, contracts with consultant attorneys, notice of claims, court orders for payouts, dissemination of information, financial responsibilities of the RERF, records management, and the development of reports.

The Commission is the trustee of the RERF, which is intended to provide a measure of compensation to consumers injured by the fraud, misrepresentation, or deceit of real estate licensees. One of the primary statutory requirements for obtaining payment from the fund is notifying the Commission of the filing of a court action that may result in payment from the RERF.

During FY 2023, the Commission did not receive any notification for claims on the fund (see Chart 1) nor was there any payments out of the recovery fund for FY 2023. Since its inception in 1967, the RERF has paid out over two million dollars (see Chart 2).

CHART 1. RECOVERY FUND NOTICES

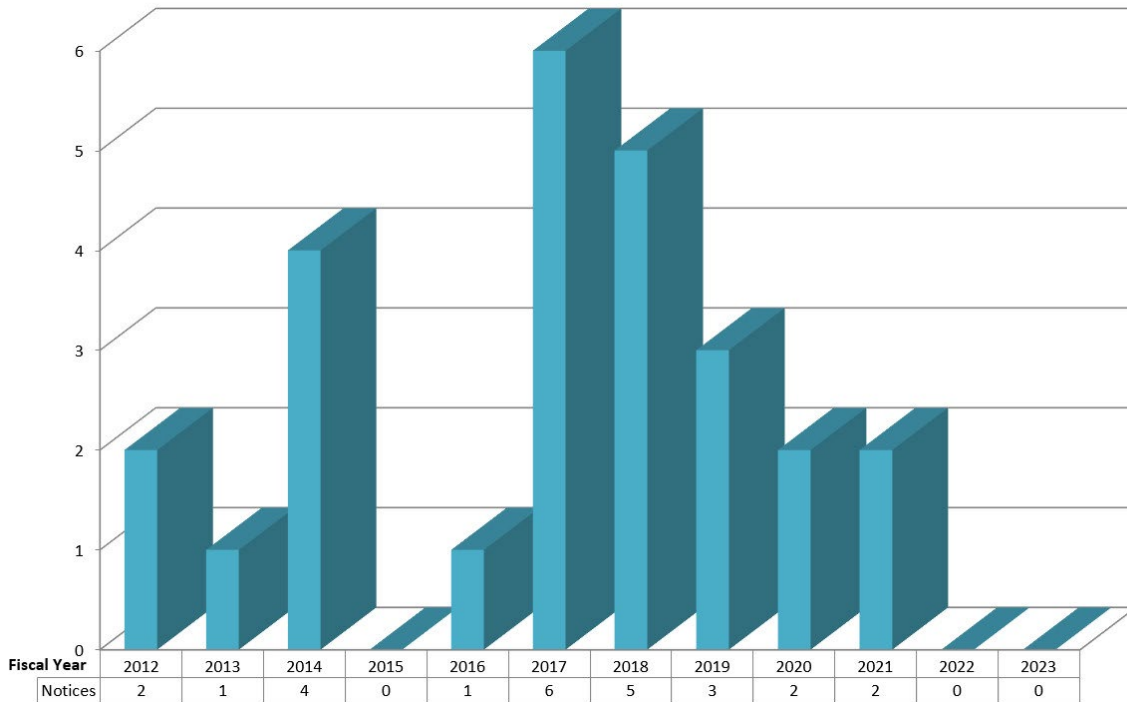
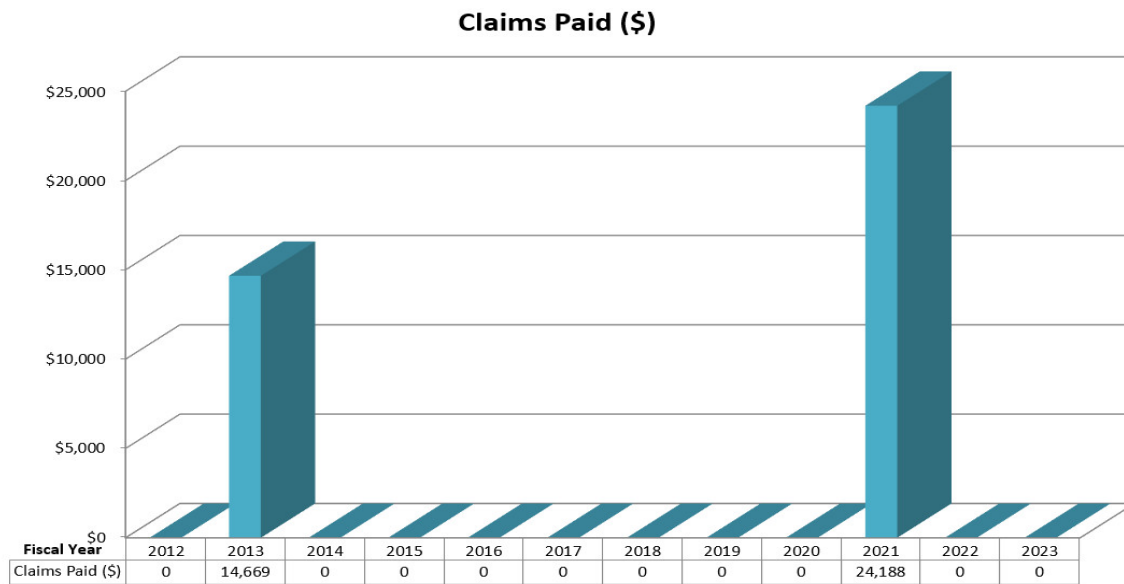


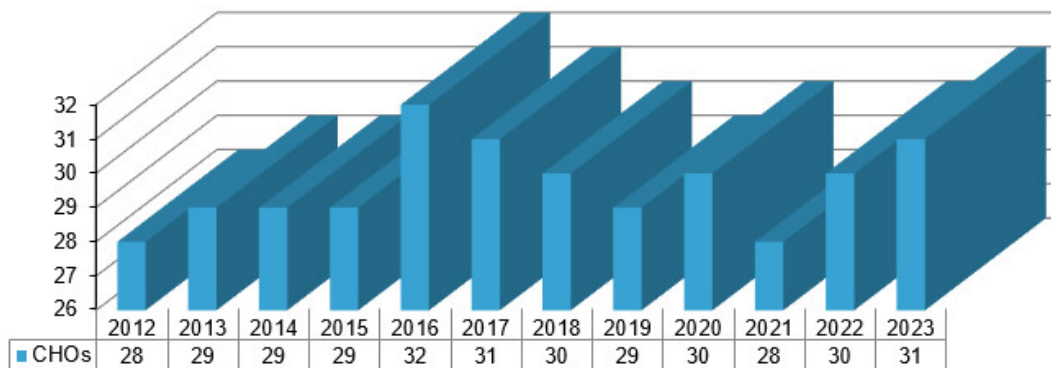
CHART 2. RECOVERY FUND- CLAIMS PAID



Real Estate Licensing Registration, and Certification – The Commission administered the licensing, registration, and certification requirements, including applications review and updates, policies, procedures, appeals, subpoenas, and requests for records under the Uniform Information Practice Act (UIPA), laws, rules, and procedures.

CHO Registration – Staff administered the licensing, registration, and certification requirements, including applications review, policies, procedures, appeals, subpoenas, and requests for records under the UIPA. Staff continued the administration of the registration program with the Licensing Branch since active real estate brokers are exempt from registration and fidelity bond requirements. This FY, the Commission registered 31 CHOs (see Chart 3).

CHART 3. CHO REGISTRATION



Advice, Education, and Referral – Staff responded and provided information to inquiries received via telephone, walk-ins, faxes, written correspondence, emails, and the Commission’s website; printed and distributed Commission developed information; and responded to inquiries from government officials and the media.

Rulemaking, Hawaii Administrative Rules (HAR) Chapter 99 – The Commission studied, evaluated, researched, and developed rule amendments for submission to the formal rule-making process. The Commission is proceeding with the Legislative Reference Bureau’s recommendation to separate the rules into three separate chapters. To address strong concerns raised by industry stakeholders, amendments to certain advertising rules are being developed and reviewed separately.

Meetings – The Commission, with support from staff, administered LRRC committee meetings as part of its monthly Commission meeting, as well as subcommittee and ad hoc committee meetings virtually.

Licensing Renewals – Staff continued implementation of the paperless renewal system and worked closely with the Licensing Branch to ensure its continued success.

Legislative and Government Participation – The Commission participated in the legislative session, provided briefings, and acted as a resource to legislators, government officials, and staff; researched and submitted testimony on bills and resolutions, including oral testimony; and assisted legislators and government officials in responding to the community.

Interactive Participation with Organizations – The Commission, as well as staff, actively participated with the Association of Real Estate License Law Officials (ARELLO) and local, Pacific Rim, national, and international organizations, and government agencies to exchange information and concerns, as well as share educational and research efforts, joint projects of mutual concern, and training.

Legislative Acts and Resolutions – The Commission reviewed, reported, and developed summaries of all related Acts and resolutions and implemented requirements of directly related Acts and resolutions.

Neighbor Island Outreach – Unfortunately, due to the COVID-19 pandemic and the associated travel related complications, in-person meetings to the neighbor islands were canceled. Neighbor island interested parties were afforded the opportunity to attend and participate in the virtual meetings held in conjunction with the Commission meetings.

Review of Services and Organization – Staff analyzed and initiated steps to improve services, provided for effectiveness and efficiency, amended laws, rules, forms, and systems, and improved staffing, equipment, and organization. Staff also conducted meetings and exchanges with Licensing Branch personnel.

Application Processing and Forms – Staff studied and evaluated the processing of applications, evaluated, and amended forms and instructions, and assisted in mainframe computer programming issues. Staff also studied, reported on, and continued researching other electronic or computerized methods to improve application processing.

ARELLO National Disciplinary Action Data Bank – Staff continued participating in the ARELLO National Disciplinary Action Data Bank to assist in the background review of applicants and consumer protection in other jurisdictions.

Case Law Review Program – The Commission monitored, collected, and reported on case law, disciplinary actions, judgments, and decisions in Hawaii court cases, federal court cases, and other state court cases. The Commission further studied material cases to be considered for the Real Estate Commission Bulletin and the Commission website.

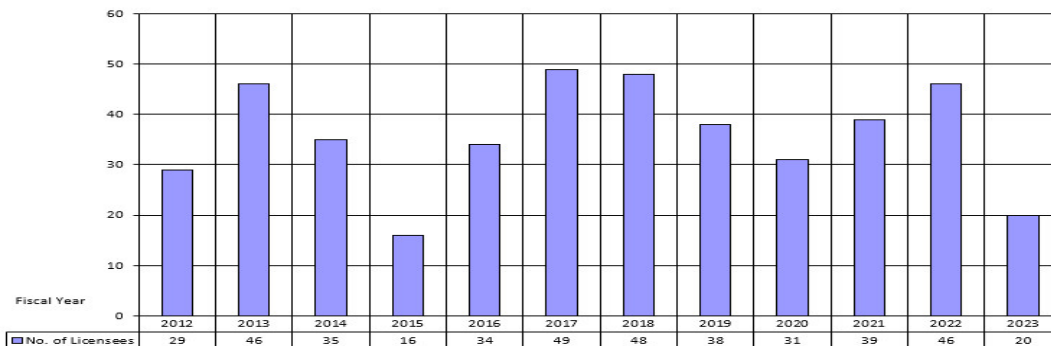
Commissioners Education Program – Staff researched and provided reference materials to commissioners and conducted periodic workshops for all commissioners.

Division and Department Programs – The Commission coordinated and worked with the Professional and Vocational Licensing Division (PVL), the DCCA, and others on programs of mutual concern through a joint program with the Education Review Committee and the Condominium Review Committee.

ADMINISTRATIVE ACTIONS

Disciplinary Actions – The Commission took disciplinary action against 20 licensees from July 2022 to June 2023. This is a 56.5% decrease over the 46 licensees disciplined in FY 2022. Chart 4 provides historical information on the number of licensees disciplined by the Commission.

CHART 4. DISCIPLINARY ACTIONS

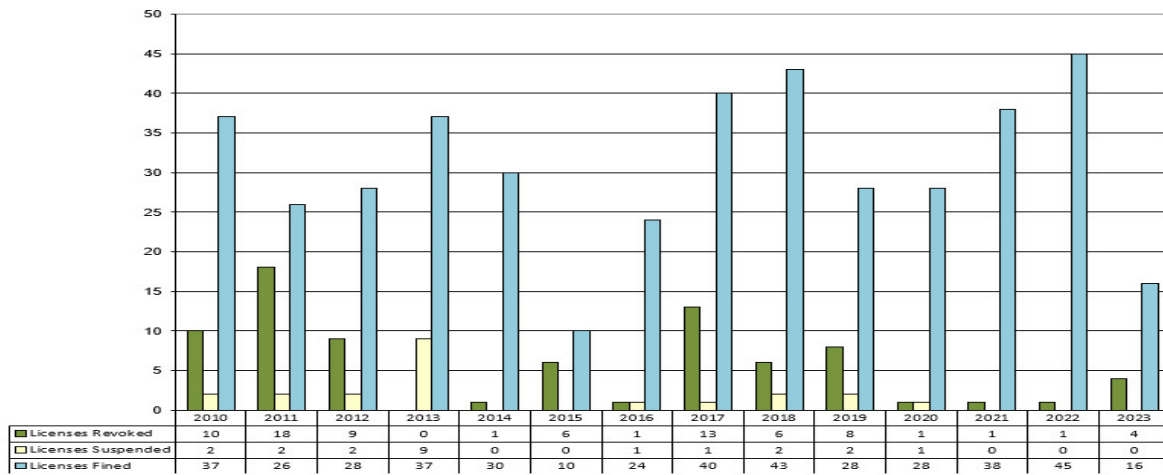


Fines totaling \$53,850 were assessed against 16 licensees. There were four revocations this FY. (See Table 1 and Chart 5)

Table 1 - Administrative Actions - FY 2023

No. of Licensees Disciplined	20
Licenses Revoked	4
Licenses Suspended	0
Licenses Fined	16
Total fines	\$53,850

CHART 5. ADMINISTRATIVE ACTIONS - SANCTIONS



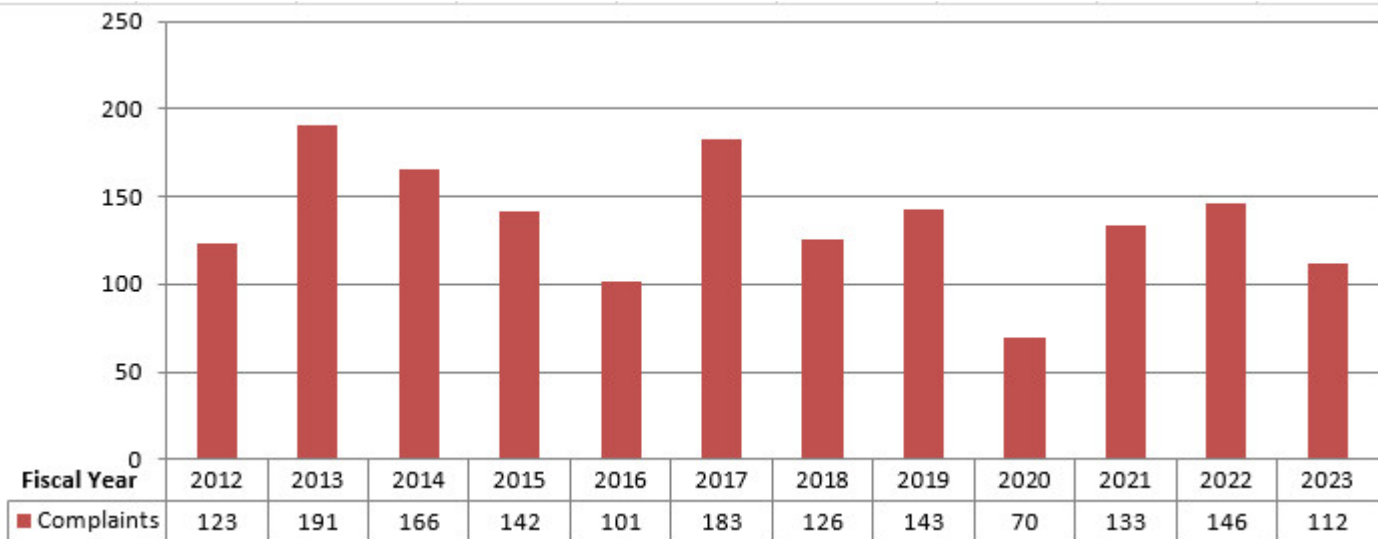
REGULATED INDUSTRIES COMPLAINTS OFFICE (RICO)

RICO receives, investigates, and prosecutes complaints against real estate licensees for violations of laws and rules. Complaints have fluctuated over the past 10 years with a 23.3% decrease in FY 2023. RICO received 112 real estate complaints in FY 2023, compared to 146 in FY 2022 (see Chart 6).

Thirty-Seven complaints are pending, and seventy- five complaints were closed as follows:

- 21 Warning Letters
- 27 Insufficient Evidence
- 5 Legal Action
- 7 Resolved
- 2 Retained for Records Only
- 3 No Violations
- 5 Education Contact
- 1 Withdrawn
- 2 Unable to Proceed
(Respondent is deceased or unlocatable)
- 2 Prior Action Taken

CHART 6. RICO COMPLAINTS (REAL ESTATE)



The top 5 alleged HRS Chapter 467 violations in RICO complaints:

1. §467-14(13) - Violating chapter 467; chapters 484, 514B, 514E, or 515; §516-71; or the rules adopted pursuant thereto.
2. §467-1.6(a) - The principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees.
3. §467-7- No person within the purview of this chapter shall act as real estate broker or real estate salesperson, or shall advertise, or assume to act as real estate broker or real estate salesperson without a license previously obtained under and in compliance with this chapter and the rules and regulations of the real estate commission.
4. §467-14(1) - Making any misrepresentation concerning any real estate transaction.
5. §467-14(7) - Failing, within a reasonable time, to account for any moneys belonging to others that may be in the possession or under the control of the licensee.

The top 5 alleged HAR Chapter 99 violations in RICO complaints:

1. §16-99-3(b) - Licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field.
2. §16-99-3(f) - The licensee, for the protection of all parties with whom the licensee deals, shall see that financial obligations and commitments regarding real estate transactions, including real property rental management agreements, are in writing, express the exact agreements of the parties, and set forth essential terms and conditions, and that copies of those agreements, at the time they are executed, are placed in the hands of all parties involved.
3. §16-99-3(o) – Prior to the time the principal broker or the broker in charge is absent from the principal place of business for more than thirty calendar days, and no other broker in charge is registered for the principal place of business,

the principal broker shall submit to the commission a signed, written notification of the absence designating a temporary principal broker or temporary broker in charge, who shall acknowledge the temporary designation by signing the notification.

4. §16-99-11(a) - All real estate advertising and promotional materials shall include the legal name of the brokerage firm or a trade name previously registered by the brokerage firm with the business registration division and with the commission.
5. §16-99-4(f) -The principal broker or broker in charge shall retain for at least three years records of all personal property other than trust funds coming into the possession of the principal broker or broker in charge as trustee.

FY 2024 PROGRAM OF WORK

- Real Estate Recovery Fund
- Real Estate Licensing, Registration & Certification Administration
- CHO Registration
- Education and Referral
- Rulemaking, HAR Chapter 99
- Subcommittees
- Meetings
- Licensing Renewals
- Legislative and Government Participation
- Interactive Participation with Organizations
- Legislative Acts and Resolutions
- Neighbor Island Outreach
- Review of Services and Organization
- Application Processing and Forms
- ARELLO National Disciplinary Action Data Bank
- Case Law Review Program
- Rulemaking, HAR Chapter 53
- Commissioners Education Program
- Division and Department Programs
- Housing and Urban Development/ ARELLO Fair Housing Agreement

EDUCATION REVIEW COMMITTEE REPORT

The Education Review Committee, for FY 2023, under the leadership of Chair Audrey Abe and Vice Chair Russell Kyono, continued to address important and varied education issues.

FY 2023 PROGRAM OF WORK

Continuing Education (CE) Core Course – The Commission researched and developed its core course on legislative updates, Core A – “3-D Rules: Disclose, Disclose, Disclose!” for the first year of the licensing biennium. Licensees have the option to take the core course in a traditional classroom format or a “remote/live” format, where the instructor teaches the course in real time via webinar-type platforms.

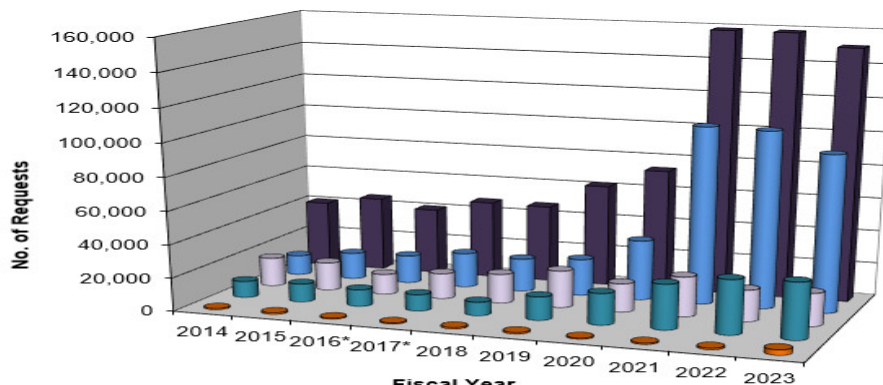
Salesperson Curriculum and Resources – The newly updated curriculum which went into effective January 1, 2021, continued to be offered in the live classroom, remote/live, and independent study/online format.

Broker Curriculum and Resources – The broker’s curriculum continued to be offered in the live classroom, remote/live, and independent study/online format.

Advice, Education, and Referral – Staff continued to provide advice, education, and referral to applicants, licensees, government officials, consumers, public, and organizations, including the research, reproduction of materials, and mailings. It developed a distribution system of educational and informational products for each principal broker and broker-in-charge. Staff also published and distributed educational and informational materials through the Commission’s website.

Staff continued to field a high number of telephone calls, walk-ins, written inquiries, faxes, and emails. For real estate, the FY produced 3,219 walk-in inquiries; 33,766 applications and written inquiries/requests; 19,748 telephone inquiries; and 94,235 emails (see Chart 7).

CHART 7. INQUIRES AND APPLICATIONS



	2014	2015	2016*	2017*	2018	2019	2020	2021	2022	2023
■ Walk-ins	852	1,031	727	784	941	984	720	818	1,016	3,219
■ Applications / written requests	10,007	11,073	10,209	9,953	8,171	14,166	18,968	27,138	32,560	33,766
■ Telephone calls	17,486	17,067	12,410	15,463	17,701	22,329	17,249	23,999	18,918	19,748
■ E-mail	12,233	16,225	17,060	21,074	20,053	22,332	36,319	106,652	105,961	94,235
■ Total	(*Corrected Total) 40,578	45,396	40,406	47,274	46,866	61,830	73,256	158,607	158,455	150,968

Administration of Prelicense Education Program, Schools, and Instructors – The Commission provided administrative review and an approval process for applications, disseminated information regarding renewals and certification, and provided appropriate records management. It coordinated the instructor’s examination program with its test administrator, PSI. Since the launch of the new Education System in March 2021, challenges regarding the new database continued this FY. However, those issues are being tweaked to address all education issues that impact real estate licensees and real estate candidates, as well as the Prelicense Schools and Continuing Education Providers. The Education System provides electronic access to student registration, course completions, course schedules, and the ability to issue electronic School Completion Certificates.

Staff researched, developed, printed, and distributed School Files, a quarterly newsletter for educators. It provided schools, instructors, and CE providers’ information on administrative procedures, changes in licensing laws, and other articles relevant to the delivery of real estate education. As with the Real Estate Commission Bulletin, School Files was published in print and electronic format. This was a joint program with the CE Program.

Administration of Examinations – The Commission administered the real estate licensing examination program, including contract administration with its test administrator, PSI, and provided information regarding the exam process, reviewed amendments to test candidate booklets, evaluated periodic examinations and reports and kept abreast of daily exams.

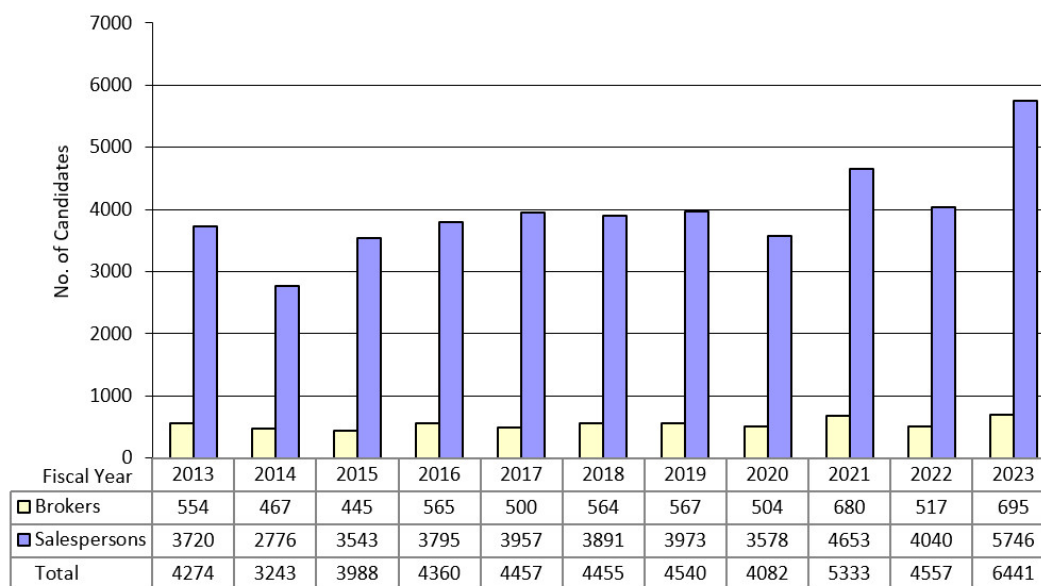
The annual PSI Industry Day will take place on November 1, 2023.

The Commission approved remote proctoring or remote testing and it successfully launched on January 21, 2021. Although the State COVID restrictions have eased, remote proctoring has continued. The availability of remote proctoring was beneficial for license candidates, as testing could be accomplished in the candidates’ own home, assuming the technology available was compatible with the PSI testing requirements. This FY, we saw an increase of about 41.3% of candidates who took the examination compared to last fiscal year as shown in Table 2 and Chart 8 (see page 16).

TABLE 2. REAL ESTATE LICENSING EXAMINATIONS

	FY 2022	FY 2023	% Change
Brokers Tested*	517	695	34.0%
Salespersons Tested*	4040	5746	42.2%
Total Tested	4557	6441	41.3%
Brokers Passed**	309	305	-1.3%
Salespersons Passed**	2155	1802	-16.4%
Total Passed	2464	2107	-14.5%
% Brokers Pass*	59.8%	43.9%	
% Salespersons Pass*	53.3%	31.4%	
*First time and Retakers			
**National and/or State Portion			

CHART 8. LICENSING EXAMINATION CANDIDATES



Staff periodically monitors the examination administration on each island to assure facilities and procedures comply with PSI and Commission policies.

Two hundred thirty-nine applications were approved for equivalency to the uniform section of the examination based on passage of the uniform section of another state's exam. This represents a 23.6% decrease from last FY's total of 313 approvals.

Administration of CE Program, Providers, and Courses – The Commission administered the CE program, including the registration of providers and certification of courses, and provided timely information and records management, as appropriate. The Commission also published a quarterly newsletter, School Files, exclusively for the real estate education community. It provided schools, instructors, and CE providers information on administrative procedures, changes in licensing laws, and other articles relevant to the delivery of real estate education. As with the Real Estate Commission Bulletin, School Files was published in print and electronic format.

Administration of CE Elective Courses – As a result of the COVID-19 pandemic, many previously approved classroom CE courses switched to a live webinar-based platform which was welcomed with much success. In addition, as restrictions eased up this fiscal year, CE Providers were able to resume with in-person classroom offerings of CE courses.

The Commission provided administrative information to elective course providers and licensees, assisted providers in submissions, reviewed submitted applications, reviewed submitted curriculum, made recommendations, and assisted with records management. The new Education System continues to provide real estate licensees with the ability to view the number of CE hours required and earned for the current licensing period, their CE history, and the ability to search for future CE courses offered by approved CE providers. However, as stated above, the Education System continues to deal with issues in delivery of information. Real estate licensees are also

able to access and reprint their own course completion certificates for the current and previous biennium. Additionally, real estate principal brokers and brokers-in-charge can monitor and view current CE hours, CE history, and the license status of all licensees associated with the brokerage. This system is updated daily and allows principal brokers to stay accountable for their associated licensees.

Ad Hoc Committee on Education (ACE) – The Commission’s ACE reviewed, recommended, assisted in developing, updating, and administering education-related projects and CE. There were three ACE meetings during the fiscal year: February 8, April 12, and May 22, 2023. ACE assisted in developing the topic for the Commission’s 2023-2024 Core Course, Part A, “3-D Rules: Disclose, Disclose, Disclose!”. All meetings were held via Zoom.

Meetings and Symposium – The Education Review Committee (ERC) did not meet as a separate standing committee from April 2020 through the end of the fiscal year. Instead, ERC matters are included as an agenda item at monthly Commission meetings and will continue while the Commission meets via hybrid format.

Annual Report and Quarterly Bulletin – Staff researched, developed, and distributed the Commission’s Annual Report and quarterly Real Estate Commission Bulletin and continued contract administration with consultant and procurement code management.

The Commission continued to publish the Real Estate Commission Bulletin in a traditional newsletter format that was mailed to all current licensees, legislators, government officials, ARELLO jurisdictions, and other interested parties. It was also available in electronic format on the Commission’s website at <https://cca.hawaii.gov/reb/>. In contrast to the Real Estate Commission Bulletin, the Commission’s Annual Report is primarily an electronic publication. A limited number of printed copies were distributed to the Legislature and to the Governor. Interested licensees and members of the public can download and print the report from the Commission’s website.

Real Estate Education Fund – The Commission maintained and reviewed the budget, finance, and records for the Real Estate Education Fund; prepared quarterly and annual financial statements; prepared annual and biennial budgets; and administered fund investment programs, including contract administration and procurement code management.

Neighbor Island Outreach – The Commission continued to meet via hybrid format, and in-person Neighbor Island Outreach has not occurred this fiscal year. Staff is exploring the option of a virtual outreach meeting.

Interactive Participation with Other Organizations – The Commission continued its participation in events sponsored by local and national organizations. On a national level, the Commission continued its active participation with ARELLO and the Real Estate Educators Association (REEA). Participation in local, national, and international organizations offers an opportunity to learn about the latest issues, trends, and solutions in the industry, exchange information and concerns, share education and research efforts, joint projects of mutual concern, and training. The Commission participated in both the 2022 ARELLO Annual Conference and 2023 ARELLO Annual Mid-Year Conference.

Instructors Development Workshops – The Hawaii Association of REALTORS® sponsored “Instructor’s PowerUp,” as an Instructor’s Development Workshop (IDW) course option for the 2025-2026 biennium. The IDW was led by instructor Robert Morris, Jr., and was held on March 13, 2023, via Zoom.

Legislative Participation, Research, and Report – The Commission researched, participated, and reported on requests by the Legislature, including resolutions, agreements, and issues of mutual concern.

Evaluation and Education System for CE and Prelicensing Instructors, Courses, Providers, and Schools – Currently, course and instructor evaluations are the responsibility of each CE Provider and Prelicense School. Record-keeping is required by each CE Provider and Prelicense School. As the new licensing education system continues to be developed, the hope is that the new system will allow for the evaluations to be electronically submitted.

Real Estate Specialists’ Office for the Day – The Real Estate Specialists’ Office for the Day provides staff the opportunity to meet in person with licensees, applicants, prospective licensees, and members of the public. In conjunction with the Neighbor Island Outreach, the Specialists’ Office for the Day was not held this fiscal year. Staff is exploring the option of a virtual meeting.

Real Estate Speakership Program – Subject to state government approvals and priorities, the Commission and staff honored requests to provide a speaker, a resource person, or an active participant in functions related to real estate education.

Prelicensing Education Equivalency Administration – The Commission administered applications for prelicensing education equivalencies, including consultation with ARELLO.

Uniform Section Equivalency for Licensing Examination – The Commission administered applications for equivalency to the uniform part of the examination based on passage of the uniform part of another state’s exam.

Technology and Website – Staff maintains the design and content of the Hawaii Real Estate Branch’s website (<https://cca.hawaii.gov/reb/>). The website is updated frequently to provide both licensees and the public the most current real estate information. The Commission’s website is available 7 days a week, 24 hours each day for information, forms, and applications.

Records Management – Staff evaluated, planned, reorganized, and implemented a computerized glossary of existing and future records and files that is centralized, consistent, and user-friendly.

Information Distribution System – Staff researched, developed, and implemented a centralized information distribution system for all education products produced by the Commission. Staff standardized policies and procedures for distribution, purchasing, copyright, specific permission copying, and generic permission copying of brochures, reports, and videotapes.

Cooperative Education, Research, and Administration Program – The Commission actively participated in and sponsored cooperative education, research, and administrative programs for branches and divisions and the Department of the Attorney General, all of which provided direct or indirect services to the Commission or were part of a real estate-related program.

Division and Department Programs – The Commission coordinated activities and programs of mutual concern with the PVL and DCCA.

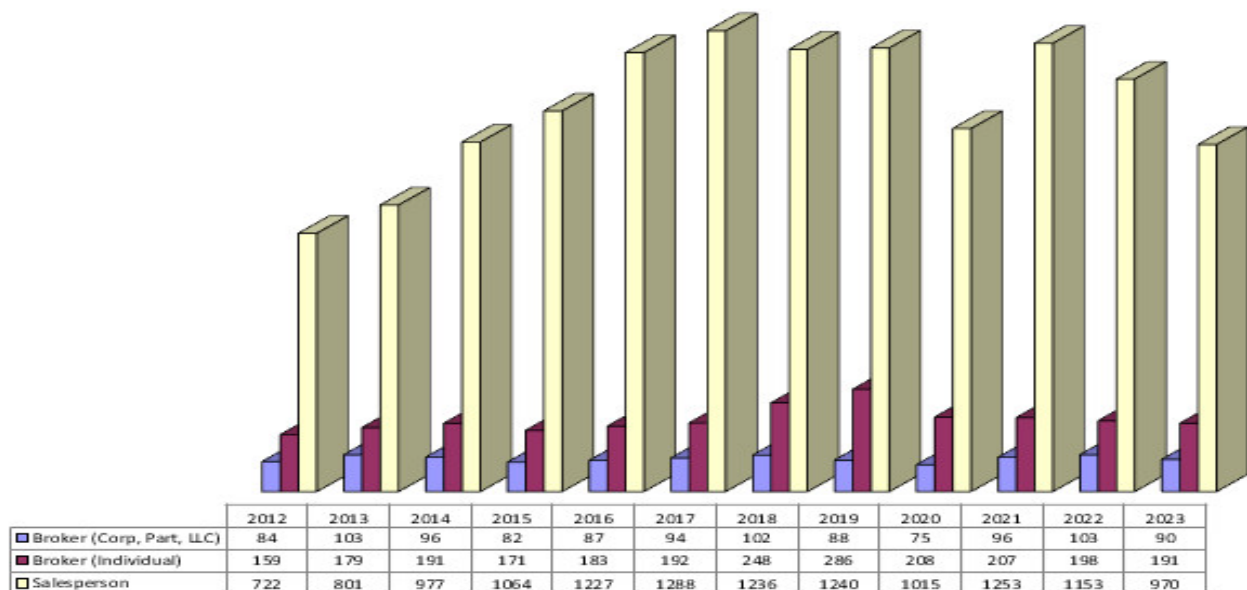
Staff and Commissioners Development – Staff developed and trained both staff and commissioners for better administration of the real estate programs. Commissioners and staff participated in training and educational opportunities provided by the REEA, ARELLO, Condominium Associations Institute, Council on Licensure, Enforcement and Regulation, and other organizations.

Real Estate Reference Library – The Commission subscribed and purchased real estate reference materials for public review.

LICENSEES

New Licenses – During FY 2023, 1,275 new licenses were issued, representing a decrease of 12.3% over the prior FY. New individual broker licenses decreased by 3.5%, new salesperson licenses decreased by 15.9%, and new entity licenses decreased by 12.6% (see Chart 9).

CHART 9. NEW REAL ESTATE LICENSES ISSUED



Current Licenses – The overall number of current real estate licenses decreased by 5.2% by the end of FY 2023. Similarly, the number of active licenses decreased by 2.6% and inactive licenses decreased by 13.9% in comparison to last FY. (See Chart 10, Table 3, and Chart 11).

CHART 10. TOTAL REAL ESTATE LICENSEES

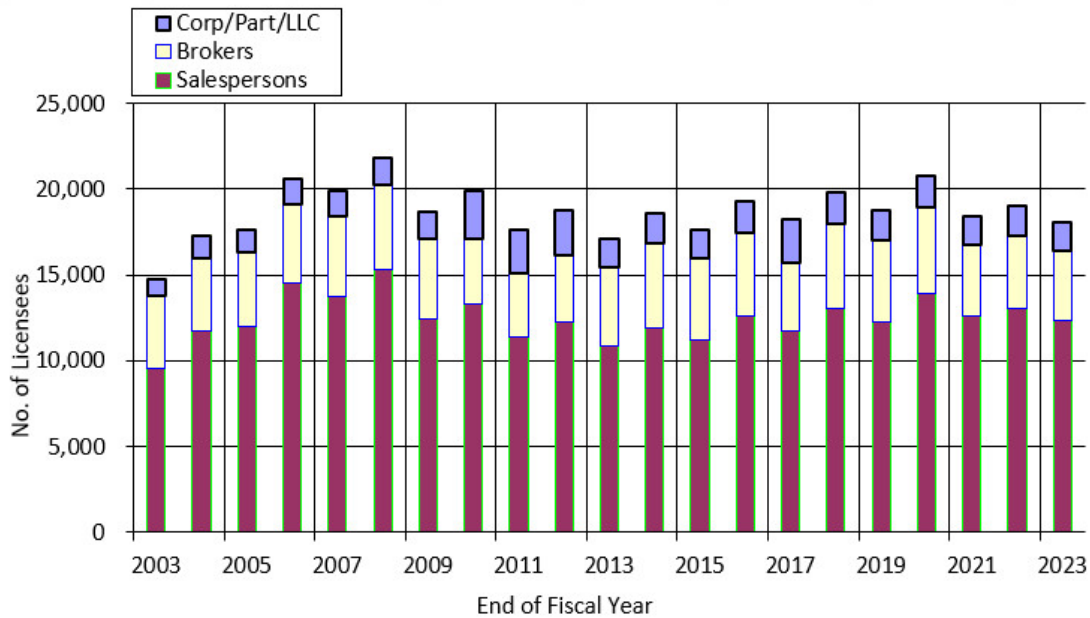
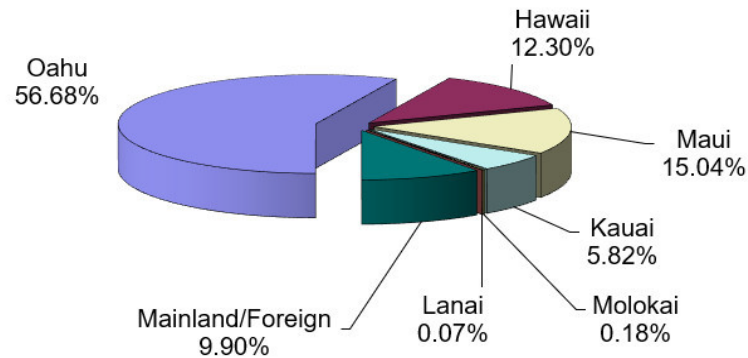


TABLE 3. CURRENT REAL ESTATE LICENSEES BY TYPE AND ISLAND

	Oahu	Hawaii	Maui	Kauai	Molokai	Lanai	Other	Total
Active								
Broker	1,988	486	518	210	8	3	350	3,563
Salesperson	5,253	1,178	1,549	491	14	6	464	8,955
Sole Proprietor	394	99	73	45	3	0	69	683
Corporation, Partnership, LLC	931	210	216	88	5	2	141	1,593
Total Active	8,566	1,973	2,356	834	30	11	1,024	14,794
Inactive								
Broker	214	33	29	20	1	0	237	534
Salesperson	1,829	301	435	237	3	3	584	3,392
Sole Proprietor	17	4	2	1	0	0	5	29
Corporation, Partnership, LLC	33	3	7	3	0	0	11	57
Total Inactive	2,093	341	473	261	4	3	837	4,012
Active and Inactive								
Broker	2,202	519	547	230	9	3	587	4,097
Salesperson	7,082	1,479	1,984	728	17	9	1,048	12,347
Sole Proprietor	411	103	75	46	3	0	74	712
Corporation, Partnership, LLC	964	213	223	91	5	2	152	1,650
Total	10,659	2,314	2,829	1,095	34	14	1,861	18,806

CHART 11. REAL ESTATE LICENSEES BY ISLAND



FY 24 PROGRAM OF WORK EDUCATION REVIEW COMMITTEE

- CE Core Course
- Salesperson Curriculum and Resources
- Broker Curriculum and Resources
- Education and Referral
- Administration or Prelicense Education Program, Schools, and Instructors
- Administration of Exams
- Administration of CE Elective Courses
- Ad Hoc Committee on Education
- Meetings and Symposium
- Annual Report and Quarterly Bulletin
- Real Estate Education Fund
- Neighbor Island Outreach
- Interactive Participation with Organizations
- Real Estate Seminars
- Legislative Participation, Research, and Report
- Instructor's Development Workshop
- Evaluation and Education System for CE and Prelicensing instructors, courses, providers, and schools
- Real Estate Specialists' Office for the Day
- Real Estate Speakership Program
- Prelicensing Education Equivalency Administration
- Uniform Section Equivalency of Prelicensing Examination
- Technology and Website
- Records Management
- Information Distribution System
- Cooperative Education, Research and Administration Program
- Division and Department Programs
- Staff and Commissioner Development
- Real Estate Reference Library

CONDOMINIUM REVIEW COMMITTEE REPORT

Under the leadership of Chair John Love and Vice Chair P. Denise La Costa, the Condominium Review Committee (CRC) oversaw the jurisdiction of condominiums governed by HRS chapter 514B, and the administration of condominium-related Programs of Work.

The CRC is a standing committee that holds monthly public meetings in which condominium issues are presented, discussed, examined, and considered. It is a working committee that handles “nuts-and-bolts” issues affecting condominium living in Hawaii, ranging from the proper registration of condominium projects and sale of units by developers, condominium association registration, the self-governing philosophy of condominium associations, and the ongoing education of owners.

Members of the condominium community participate in CRC meetings, including unit owners, board members, condominium managing agents, developers, attorneys, educators, government officials, and others with condominium concerns. Since the COVID-19 pandemic, the CRC meeting has been held jointly with the monthly Commission meeting, and all condominium issues are considered at that time.

The Commission is required to submit to the Legislature annually: (1) a summary of the programs funded during the prior fiscal year with monies from the Condominium Education Trust Fund (CETF) and the amount of money in the CETF, including a statement of which programs were directed specifically at the education of condominium owners; and (2) a copy of the budget for the current fiscal year, including summary information on programs that were funded or will be funded and the target audience for each program and a line item reflecting the total amount collected from condominium associations.

Pursuant to HRS §514B-71, monies may be expended from the CETF for educational purposes, including financing or promoting:

1. Education and research in condominium management, condominium project registration, and real estate, to benefit the public and those required to be registered under this chapter;
2. The improvement and more efficient administration of associations;
3. Expedient and inexpensive procedures for resolving association disputes;
4. Support for mediation of condominium-related disputes; and
5. Support for voluntary binding arbitration between parties in condominium-related disputes, pursuant to HRS §514B-162.5.

FY 2023 PROGRAM OF WORK

Condominium Laws and Education – The effects of the pandemic required the Commission to reevaluate the delivery of its educational programs. With the assistance of stakeholder organizations, procured providers, and volunteers Statewide, educational programs will continue to be provided on electronic platforms to allow remote participation by residents of all islands. The Commission continued the statewide promotion and delivery of Commission-subsidized and procured seminars through electronic platforms. Videos of the Commission’s past Condorama events were also posted on its website for convenient viewing.

The Commission’s newest offerings are 15 brief educational videos on a variety of topics important to condominium unit owners and prospective purchasers. With increased sales of condominiums in the current real estate sales market, these videos provide unit owners and prospective purchasers an overview of communal condominium living. The videos, collectively titled the “Hawaii Condo Living Guide”, are available on YouTube and the Commission’s website.

To keep current with new laws and policies, the Commission updated its existing educational materials, modified existing forms as necessary, reviewed instructions, informational sheets, procedures, evaluative processes, created new forms and brochures, and made improvements to instruction, curriculum, and other materials related to all aspects of condominiums.

In the implementation of HRS chapter 514B, the CRC appreciates the continuing support of the condominium governance and development communities, practicing condominium attorneys, the Hawaii State Bar Association – Real Property Section, and members of the real estate industry. To these committed organizations and groups, the Commission extends a sincere mahalo.

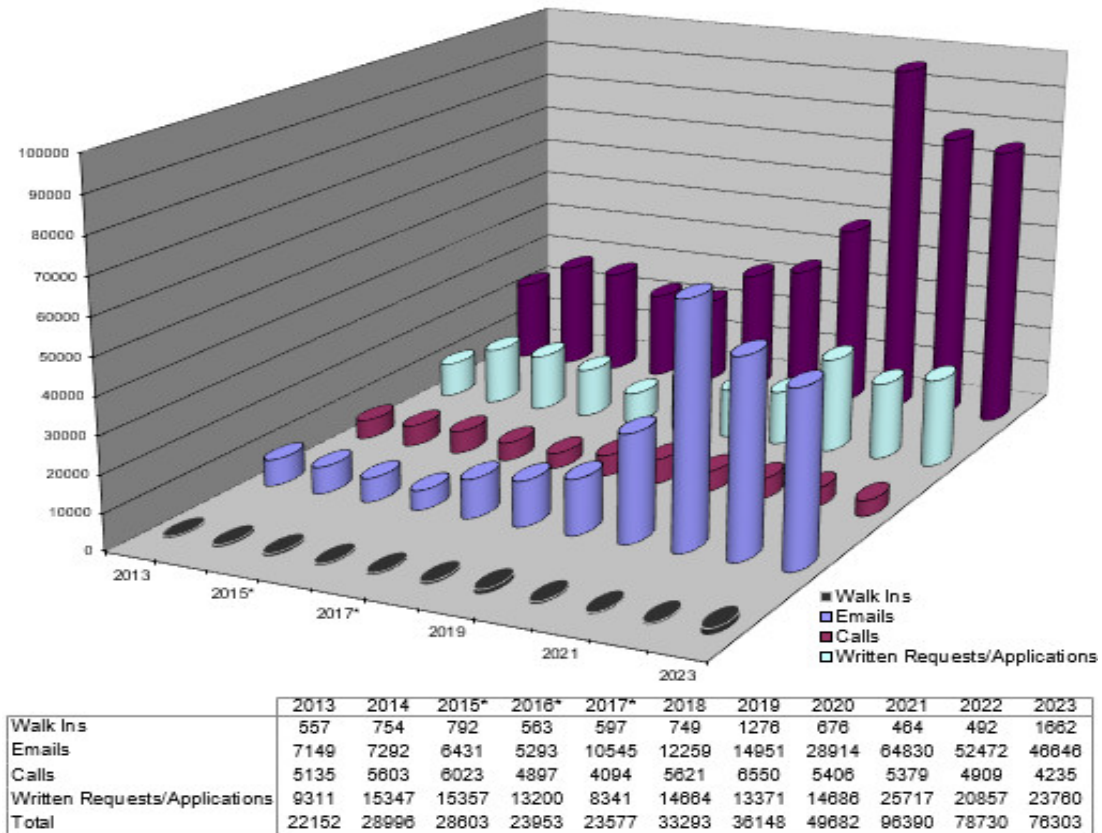
Hawaii Condominium Bulletin – The Commission publishes a quarterly online bulletin for the condominium community. Through the procurement process, staff contracted for the design and online layout of the bulletin. This FY, the bulletin offered valuable information on topics, such as the self-governance basis of the condominium law as it relates to dispute resolution, mediation, mandated fire safety improvements, and an added regular feature with tips for prospective purchasers. In addition, the bulletin offered current reporting from the CRC chair, legislative updates, a calendar of upcoming meetings, and a quarterly summary of condominium mediations and arbitrations conducted.

Education and Referral – The Commission provided educational information to inquirers via telephone, in-person office visits, electronic communications, the Hawaii Condominium Bulletin, a variety of educational materials on the Commission’s website, quarterly email subscriptions, procured seminars, and virtual community outreach. Targeted recipients of educational efforts were condominium unit owners and prospective owners, developers, prospective purchasers, real estate licensees, government officials, and other interested parties.

Condominium specialists respond to thousands of requests for information, advice, and referral every year. In FY 2023, Chart No. 12 shows the number of requests to be

76,303 for assistance from condominium owners and interested persons handled by the condominium specialists.

CHART 12. CONDOMINIUM ADVICE, EDUCATION, AND REFERRAL



Condominium Project and Developer’s Public Reports – Staff implemented and administered the condominium project registration program pursuant to HRS chapter 514B. With the assistance of its procured consultants, stakeholder organizations, volunteers, State and County agencies, and interested attorneys, the Commission evaluated and developed new processes, records, forms, informational documents, and considered rules relevant to the condominium project registration process. Commission staff assisted its consultants with condominium project registration issues and related tasks. Developer’s public reports were made available for public viewing and copying via the Commission’s website.

In FY 2023, the condominium consultants reviewed 199 condominium project files for issuance of effective dates for a developer’s public report.

Staff planned for the electronic management of condominium project files, including the scanning of documents. The Commission worked alongside the condominium consultants to oversee the registration of condominium projects and issuance of effective dates for developer’s public reports, which are mandated for public sales of condominium units (see Charts 13 through 15 and Table 4).

CHART 13. DEVELOPER'S PUBLIC REPORTS EFFECTIVE DATES ISSUED

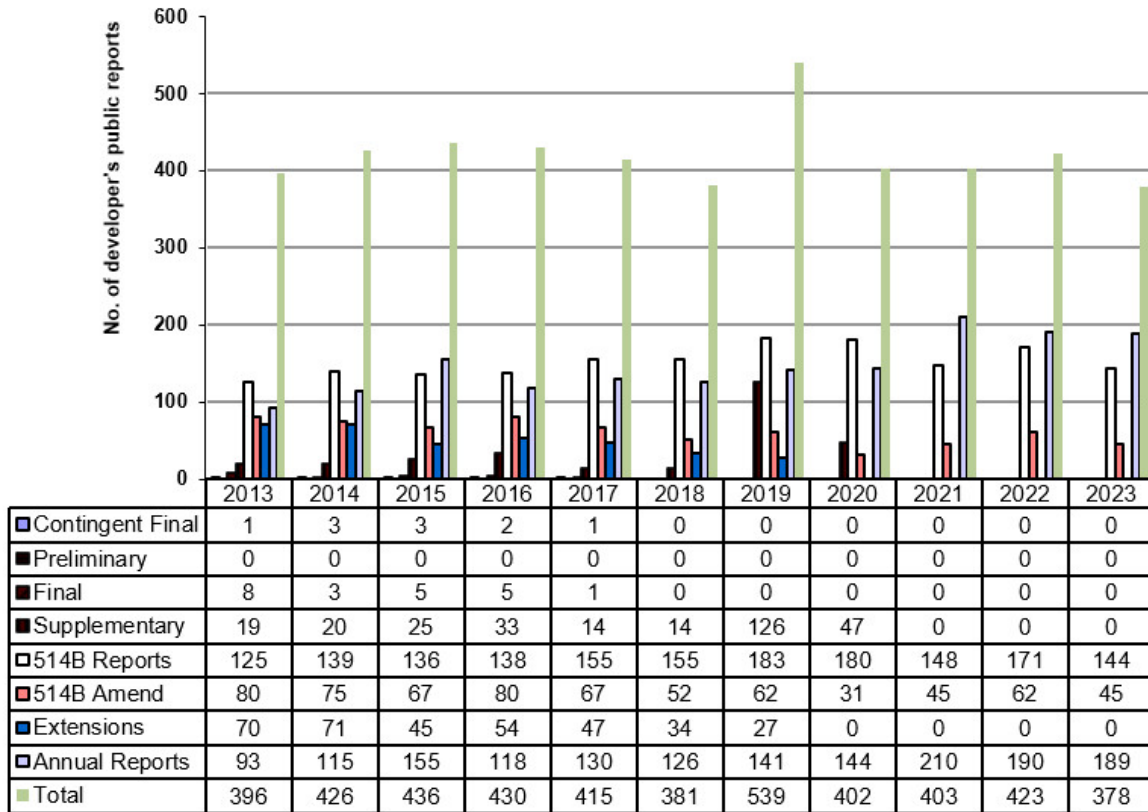


CHART 14. NEW AND CONVERSION PROJECT FILINGS OF DEVELOPER

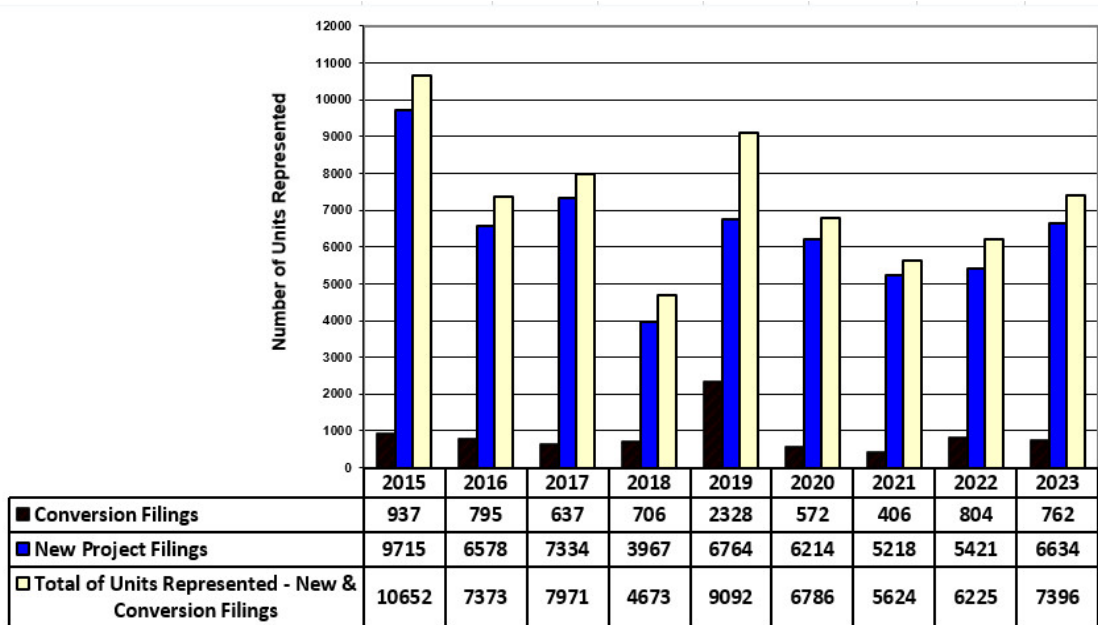


CHART 15. NEW RESIDENTIAL PROJECT BY SIZE

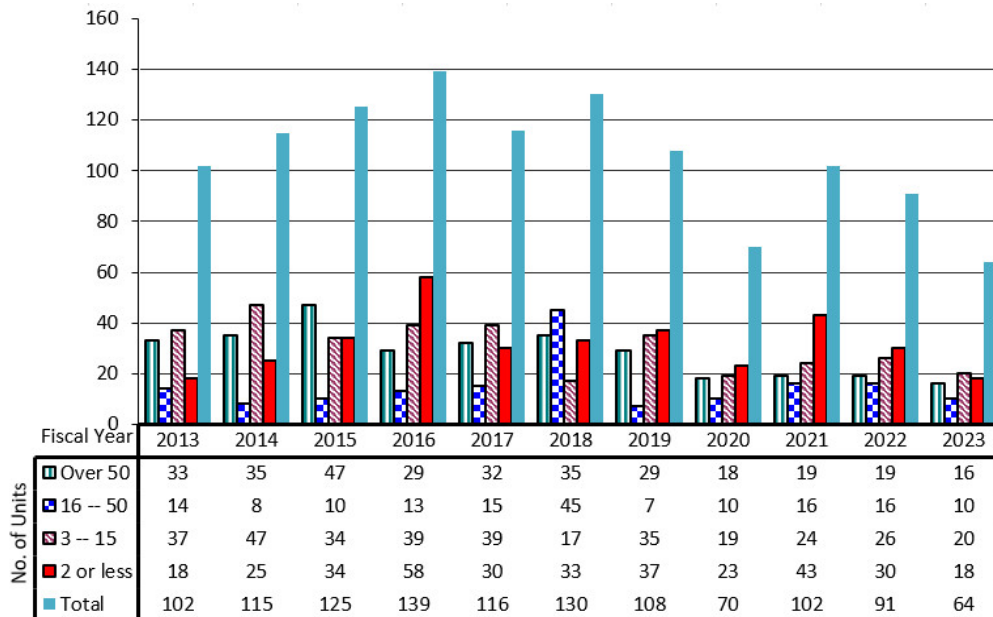


TABLE 4. CONDOMINIUM PROJECT FILINGS

New Projects	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Residential	121	125	139**	116	110	108	74	102	92	63
No. of Units Represented	4,933	8,175	5,374	6,978	3,583	5,629	5,417	4,885	4,547	6,081
Commercial and Other	9	9	4	4	4	9	7	4	8	5
No. of Units Represented	881	1,485	1,030	145	232	833	674	148	506	328
Agricultural	23	26	20	19	27	58	44	27	38	42
No. of Units Represented	85	55	123	211	152	302	123	185	368	225
Total New Projects	153	160	163	139	141	175	125	133	138	110
Total No. of Units Represented	5,899	9,715	6,527	7,334	3,967	6,764	6,214	5,218	5,421	6,634
Conversions										
Residential	75	71	76	62	91	110	75	59	68	58
No. of Units Represented	633	596	365	332	481	1,532	386	331	456	244
Commercial and Other	4	3	4	4	4	4	2	1	3	3
No. of Units Represented	88	264	320	247	192	570	48	2	284	448
Agricultural	29	19	34	27	15	70	53	31	26	28
No. of Units Represented	95	77	110	58	33	226	138	73	64	70
Total Conversion Projects	108	93	114	93	110	184	130	91	97	89
Total No. of Units Represented	816	937	795	637	706	2,328	572	406	804	762
Combined New & Converted Project Filings	261	253	277	232	251	359	255	244	235	199
Combined No. of Units Represented	6,715	10,652	7,322	7,971	4,673	9,092	6,786	5,624	6,225	7,396

* Total includes one (1) project that was either withdrawn or returned.

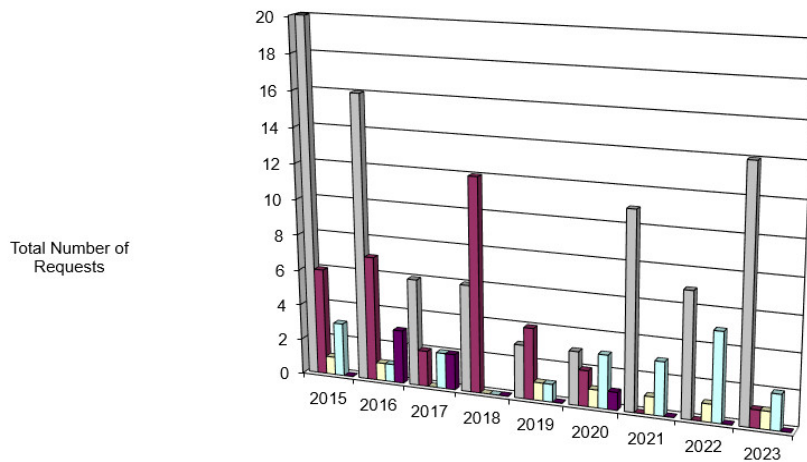
** Correction to the 2016 Annual Report

Note 1: Numbers and totals may differ from those reported in prior annual reports due in part to the change in the database management software.

Note 2: In mixed use condominium projects, the predominant use is reported. This is done to prevent the multiple counting of a project filing.

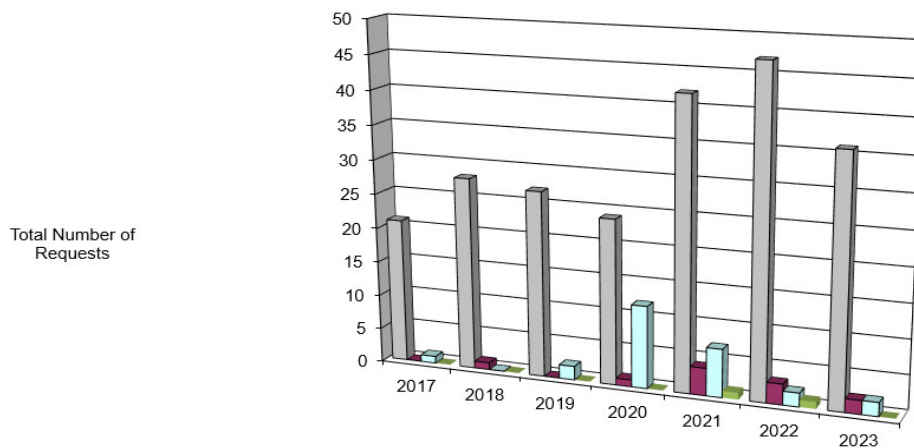
Condominium Mediation and Arbitration Program – Through the CETF, the Commission subsidizes mediation and voluntary binding arbitration programs on all islands for registered condominium associations and works with the various mediation and arbitration providers to provide information on alternative dispute resolution and mediation for unit owners, boards of directors, and condominium managing agents (see Charts 16 and 17). Brochures describing the types of mediation and arbitration, including provider contact information are available on the Commission’s website. Each mediation or arbitration conducted provides disputing parties a neutral perspective on the issues in dispute, which parties do not receive through the adversarial process of litigation.

CHART 16. FACILITATIVE MEDIATIONS



	2015	2016	2017	2018	2019	2020	2021	2022	2023
Mediation Center of the Pacific Inc.	20	16	6	6	3	3	11	7	14
Mediation Services of Maui Inc.	6	7	2	12	4	2	0	0	1
Kauai Economic Opportunity Inc.	1	1	0	0	1	1	1	1	1
Big Island Mediation Inc. dba West Hawaii Mediation Services	3	1	2	0	1	3	3	5	2
Ku'ikahi Mediation Center	0	3	2	0	0	1	0	0	0

CHART 17. EVALUATIVE MEDIATIONS



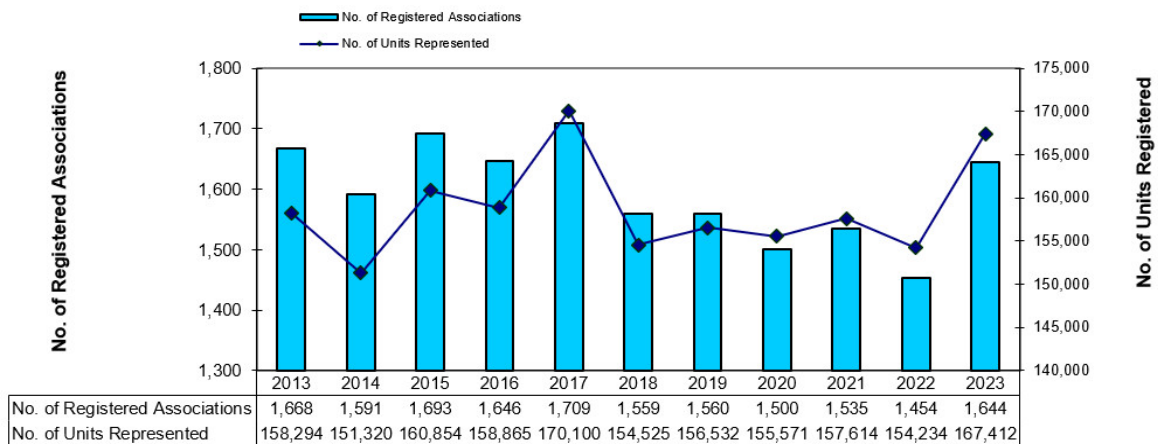
	2017	2018	2019	2020	2021	2022	2023
Dispute Prevention and Resolution	21	28	27	24	42	47	36
Lou Chang, A Law Corporation	0	1	0	1	4	3	2
Mediation Center Of The Pacific, Inc	1	0	2	12	7	2	2
Charles Crompton, Crompton Collaborative Solutions LLC	0	0	0	0	1	1	0

Condominium Association Registration – The Commission conducted the condominium association registration program pursuant to HRS §514B-103, which involves the review of submitted applications for compliance with statutory requirements and Commission registration policies and procedures. Registration requirements apply to condominium associations with six or more units. The Commission also considered appeals, subpoenas, and requests for records and copies of association registrations pursuant to HRS chapter 92F, and the Office of Information Practices’ (OIP) rules and procedures.

FY 2023 saw Real Estate Branch staff cure association registration deficiencies and contact those condominium associations that remained unregistered to assist in completing the registration process.

Chart 18, representing more than 167,000 condominium units and their owners, shows the total number of current registered associations and the number of units represented. In addition, the Commission continues to administer its online association registration process and compiled a list of all public contact information for registered associations available on the Commission website. The Commission responded to requests for registration lists, including neighbor island and/or zip code-specific requests, from various government agencies, industry groups and private companies and individuals. Targeted lists were also provided to the Department of Health for their tobacco education program.

CHART 18. CONDOMINIUM ASSOCIATION REGISTRATION



Condominium Seminars and Symposiums – The Commission subsidized seminars for the condominium community using Commission staff, procured providers, and volunteer professionals from the condominium governance, development, and real estate community. For FY 2023, the Commission used CETF subsidies on:

- September 2022 – Show me the Money – Delinquency Collections
- October 2022 – What Board Members Should Know About Condominium Unit Renovation Projects

- January 2023 – What’s New in the World of Condominium and Planned Community Associations
- February 2023 – Owners’ and Board Members’ Rights and Wrongs – Bringing Peace to the Promised Land
- March 2023 – Fortifying the Fortress – Security, Preparing for the Elderly and Privacy
- May 2023 – Finances – Budgets and Reserves, Inflation, and Insurance
- June 2023 – Board Leadership Development Workshop.

In November 2022, Condorama IX was held virtually for all interested owners in registered condominium associations. Over 500 persons registered for this free educational event, and an additional number of viewers watched the video of the event after its online posting. The featured topics for Condorama IX were: “Contractors’ Insurance,” “Basics of Covenants Enforcement,” “Association Annual Operating Budgets,” “Reserves in the Time of Uncertainty,” and “Tips on Avoiding and Defending Lawsuits.”

Furthermore, in April 2023, Condorama X was held virtually for all interested owners in registered condominium associations. Approximately 800 persons registered for this free educational event, and an additional number of viewers watched the video of the event after its online posting. The featured topics for Condorama X were: “Who Got Sued and Why,” “Why is Your Maintenance Fee Increasing,” “Golden Rule: Rules That Make Rather Than Break a Community,” and “The Fundamentals of EV Charging Stations: the Growing Need for all Condos.” Videos and handouts for these topics, including past Condoramas, remain on the Commission website for handy review or printing.

Condorama presenters are individuals recognized in the condominium community for their expertise in condominium law, property management, dispute resolution, parliamentary procedure, and condominium association insurance. Videos and handouts for these events, including past Condoramas, remain on the Commission website for handy review or printing.

Ad Hoc Committee on Condominium Education and Research – The CRC administers this informal group of recognized condominium professionals for the review, recommendation, and assistance in the review, development, and administration of condominium educational projects on an as-needed basis.

Condominium Managing Agent Registration – Staff continued to implement and update policies and procedures for condominium managing agent registration, pursuant to HRS §514B-132.

Rulemaking, HAR Chapters 107 and 119 - The Commission’s draft rules were reviewed by the Department of the Attorney General for substance and form, and the Legislative Reference Bureau for format. The review process will continue with the Small Business Regulatory Review Board.

Meetings – The Commission plans, coordinates, and conducts CRC meetings as a part of its monthly Commission meetings. All meetings and agendas are posted at the Commission’s website. Meetings are open to public participation via electronic platforms and provide a forum for the condominium community to bring issues before the Commission and CRC, as well as to learn about the variety of issues affecting condominium living in Hawaii.

Government and Legislative Participation and Report – The Commission participated in all aspects of the legislative process, including the review and research of proposed legislation and resolutions relevant to condominium association governance and condominium project development; responding to, and meeting with legislators; and attending hearings and providing testimony, as appropriate. Staff also monitored and tracked all condominium-related bills for report to the Commission.

The Commission distributed its Annual Report to the Legislature on CETF programs and funds and posted the report to the Commission’s website.

Senate Resolution 41 (2019) - In May 2022, a procured report initiated by Senate Resolution 41, (2019) (“SR41”) was produced for the Commission by attorney John Morris of Ekimoto and Morris (“Morris Report”).

SR 41 requested the Commission conduct a study on whether, and to what degree, the findings and recommendations found in the 1989 report from the Legislative Reference Bureau, entitled “*Condominium Governance – An Examination of Some Issues*” (“1989 LRB Report”), have been implemented (“Study”). The resolution specifically asked for an assessment of the following issues:

- (1) Whether the developer’s public report required under existing law provides adequate and understandable disclosures to prospective purchasers of new and converted condominium projects, and if not, any potential methods that could be used to further educate prospective purchasers;
- (2) Whether the current financial reserves study and funding requirements completed by registered associations of unit owners are sufficient; and
- (3) Whether the use of the current voting process is appropriate, whether the proxy voting process provides an advantage or disadvantage in the governing process, and whether there are inherent conflicts between owner-occupants, investor owners, and commercial owners.

Furthermore, SR 41 asked for the Study to address any further action that may be needed to fulfill unresolved findings and recommendations of the 1989 LRB Report, as well as other comments and concerns interested parties may provide. The Morris Report determined the following outstanding issues of the 1989 LRB Report:

- (1) The extent to which there are inconsistencies between the financial control requirements of HRS §514B-149 and HRS chapter 467;
- (2) The extent to which condominium boards of directors should be required to participate in the actual handling and disbursement of association funds;

- (3) The thoroughness of audits under HRS §514B-150 considering the recent changes to the peer review process for CPAs;
- (4) Evaluation of the dispute resolution effectiveness of evaluative mediation;
- (5) Evaluation of the education effectiveness of an annual legislative update and/or free Condorama seminar on every island;
- (6) Development of a short summary of the realities of condominium living for both boards and owners to be provided especially to new owners to augment available Real Estate Branch educational materials;
- (7) Whether boards use executive sessions to keep information from owners;
- (8) Whether managing agents should undergo mandatory training as a condition of acting in the capacity of a managing agent.

In short summary, the conclusion reached was that those problems “to a large extent have been resolved.” The Morris Report includes an appendix to the Final Report, which proposes for the Commission to highlight condominium governance information either on a separate page of the current Developer’s Public Report, or to revise the Real Estate Branch website to include a separate page listing all condominium governance educational materials.

The Morris Report is attached to the end of the Annual Report and is available on the Commission’s website for further reading.

Legislative Acts and Resolutions – The enactment of Acts pertaining to condominiums impact the CRC’s Advice, Education, and Referral Program of Work. The 2023 legislative session adjourned with several condominium bills enacted into law:

Act 29 – Clarifies that a condominium associations’ legal right of action against its developer cannot be terminated sooner than two years after the developer transfers power to the association.

Act 97 – Establishes a 99-year low-cost leasehold residential condominium program near transit stations on State land to alleviate the housing crisis.

Act 149 – Requires the Commission to develop a curriculum for board member leadership training, to include pertinent sections of HRS chapter 514B, association governing documents, and fiduciary duties of board members of a condominium association.

Act 189 – Establishes two Planned Community Development Task Forces to: (1) examine the efficacy of alternative dispute resolution systems that were established by the Legislature; and (2) determine the feasibility of extending the rights currently afforded condominium owners to members of planned community associations.

Act 199 – Expands the information regarding association budgets and replacement reserves provided to owners by mandating a summary detailing the cash or accrual basis, the estimated cost of fire safety equipment, the estimated reserve replacement assessments, and an explanation of how those estimated reserve replacement assessments are computed following four detailed guidelines.

SCR 48, SD1 – Requesting the DCCA compile pertinent data to determine the appropriate scope of a study analyzing whether implementation in this State of laws

similar to captive insurance laws of Massachusetts would address this State's residential condominium property insurance needs.

The Commission prepared revised, unofficial copies of HRS chapter 514B, as amended, and related administrative rules for posting on its website. A limited number of hard copies of the statute and rules were printed for distribution.

Interactive Participation with Organizations – The Commission participated in education and research efforts with local and national organizations, and government agencies through joint training and meetings with condominium groups including the Hawaii State Bar Association, CAI Hawaii, CAI National, the Hawaii Council of Community Associations, and property management companies. Participation with agencies and organizations helped to disseminate information to unit owners about the Commission's educational programs, as well as directly educating the condominium community on HRS chapter 514B.

Neighbor Island Outreach – The switch to remote training events due to the pandemic allowed every interested neighbor islander the opportunity to participate in all meetings and educational offerings sponsored by the Commission and outside condominium groups.

CETF – This FY, the Commission administered the CETF for educational purposes, pursuant to HRS §514B-71. The Commission prepared, maintained, and reviewed quarterly and annual financial statements, budget and finance reports of the CETF, and administered the fund's investments.

Consumer Education – The education of prospective purchasers, new unit owners, and existing unit owners of condominiums is an ongoing priority for the Commission. To provide education to these groups, the Commission posted on its website informational videos, subject-specific brochures, owner and board member handbooks, the quarterly Hawaii Condominium Bulletin, a quarterly newsletter emailed to subscribers, and a link to frequently asked questions.

For additional outreach, the Commission also reached out to the real estate industry and property management companies for additional outreach. This FY, Commission staff also participated in virtual outreach events before condominium industry groups, property management firms, and the Hawai'i State Bar Association. Appearances included panel and solo presentations on topics such as condo governance, encouraging owner participation, board training, managing disputes, and legislative updates.

The Commission's statutory mandate is primarily focused on educating consumers on condominium self-governance issues, which is the basis of the Hawai'i condominium law. The Commission accomplishes this by procuring presenters for Commission-sponsored seminars, creating educational materials such as short informative videos, quick-read brochures for online and hardcopy availability, and producing no-fee educational seminars. Additionally, the Commission responds to telephone, email, and written inquiries from the public and the Legislature on behalf of their constituents.

The Commission continues to provide quality condominium-related education and outreach consistent with current public health guidelines.

Rulemaking, HAR Chapter 53 – The Commission is working with the PVL Licensing Administrator in the review and update of HAR chapter 53 fees relating to condominium project registration, condominium association registration, and the CETF.

Condominium Property Regime Project Workshop and Meetings – Through individual meetings with Commission staff, memoranda, and individual conferences, the condominium consultants are kept current with laws and Commission policies. The consultants assist the Commission in reviewing condominium project registration documents for Commission issuance of an effective date for a public report at which time developer sales to the public may begin. Consultants also share and discuss with Commission staff about common issues they face in their document review and in their dealings with the various counties.

Condominium Specialists' Office for the Day - In the post-pandemic environment, Condominium Specialists continue to make their selves available for discussions with owners and owners' groups through remote appearances or via telephone and email. With the lifting of State travel restrictions, the Commission is re-examining specialists' attendance in the neighbor islands.

Condominium Speakership Program – Subject to administrative approvals and priorities, the Commission honors requests to provide a speaker, resource person, or participant in a function related to condominium education in the areas of condominium governance or condominium project registration in compliance with all health and safety protocols in place during the pandemic. This FY, Real Estate Branch staff made virtual appearances at diverse condominium forums to discuss topics related to HRS chapter 514B.

Technology and Website – The Commission maintained its website for public interaction and education, which remains vital in a post-pandemic environment. The website is regularly updated for ease of navigation and to include up-to-date information.

The Commission's email subscription service was created in 2015 and has over 1,500 subscribers at this time. Each quarter, the service provides consumers with current information on the condominium law, legislative updates, links to educational materials, events in the condominium community, and other pertinent news on the Commission website.

The Commission also maintained and updated the electronic storage of materials, which provides online access to the developer's public reports, condominium association registration data, and other information. The Commission uploads electronic and fillable forms on its website for condominium developers, association registration, condominium hotel operator and condominium managing agent registration to complete. These forms are evaluated and amended to meet current statutory requirements.

To accomplish the Commission's long-range goal of providing all condominium information online, staff continues to study the feasibility of establishing a central depository for all association governing documents on the Commission's website, including minutes of association meetings.

Case Law Review Program – The Commission monitors, collects, and reports on relevant state and federal case law, administrative decisions, policies and procedures. Staff reports to the Commission on relevant governance and project development case law affecting the condominium community.

Start-up Kit for New Association of Unit Owners and New Condominium Managing Agents – Newly registered Associations of Unit Owners received start-up kits developed by Commission staff. The kits include unofficial copies of HRS chapter 514B, administrative rules, and guides on topics pertinent to the condominium community, such as the importance of having sufficient reserves and the rights and obligations of board members and condominium owners.

Records Management – Commission staff evaluated, planned, and implemented a centralized electronic glossary of existing and future educational materials, records, developer's public reports, and related files. Staff continues to maintain and update the scanning and electronic storage of records.

Cooperative Education Research and Administrative Program – The Commission considered requests to participate in, or sponsor, joint educational research and outreach with persons or groups providing direct or indirect services to the Commission's condominium association governance and project registration programs.

Division and Department Program – The Commission participated and helped coordinate activities and programs of mutual concern with the DCCA Director's Office, PVL, and RICO.

Staff and Commissioners Development – Materials were developed to train Commissioners and staff in the administration of the Commission's ongoing condominium programs. Training and educational opportunities were provided by Commission staff, local condominium and real estate industry groups, and their national counterparts.

Condominium Reference Library – Staff maintained at the Real Estate Branch office and on the Commission's website a catalog of reference materials provided to the Hawaii State Public Library System in areas with a high concentration of condominiums.

NOTE: This fiscal year, the following previously summarized programs benefited condominium owners and/or educated condominium owners:

- Condominium Laws and Education
- Advice, Education, and Referral
- Hawaii Condominium Bulletin
- Rulemaking, Chapters 107 and 119
- Meetings
- Government and Legislative Participation and Report
- Legislative Acts and Resolutions
- Interactive Participation with Organizations
- Neighbor Island Outreach
- CETF
- Consumer Education
- Condominium Specialists' Office for the Day

- Technology and Website
- Start-up Kit for New Association of Unit Owners and New Condominium Managing Agents
- Cooperative Education, Research, and Administrative Program
- Condominium Reference Library
- Condominium Mediation and Arbitration Program
- Condominium Association Registration
- Condominium Seminars and Symposiums

FY 2024 PROGRAM OF WORK

Condominium Laws and Education – The Commission will continue to offer its educational programs and events through electronic platforms providing residents of all islands opportunities to learn and participate in a safe environment.

The Commission will continue to update the condominium community on relevant changes to the condominium law through its educational programs and post information on its website, quarterly email notices, and in the Condominium and Real Estate Bulletins on current events affecting the condominium community. With input from stakeholder organizations and volunteers, the Commission will also revise its forms, instructional and informational sheets, and educational materials, as appropriate.

Education and Referral – On behalf of the Commission, staff will provide educational information to the condominium community via telephone, in-person office visits, email and written correspondence, the Hawaii Condominium Bulletin, quarterly subscriber emails, and educational videos and materials on the Commission's website. Through procured providers delivering education remotely, the Commission will continue educating condominium consumers. With these ongoing efforts, the Commission will maintain its educational emphasis on the condominium law and the law's guiding philosophy of self-governance and majority rule by the owners.

Condominium Project and Developer's Public Reports – The Commission will assist developers and the condominium development community in processing documents for the issuance of effective dates on public reports so units may be legally sold to the public, pursuant to HRS chapter 514B. With input from stakeholders and other government agencies, staff will refine the electronic fillable developer's public report forms and develop new processes, records, forms, information documents, and rules relating to condominium project registrations, as appropriate. Where necessary, the Commission will procure additional condominium consultants to assist with the review of documents and information submitted to the Commission in conjunction with condominium project registration requirements. Staff will conduct orientation sessions for all new consultants, including yearly informational meetings for all consultants. The Commission will monitor consultants' performance under their contracts.

Staff will make developer's public reports available for public viewing and copying via the Commission's website. Commission decisions related to developer's public reports and condominium project development issues will continue to be made available to the public, consultants, and other interested persons. Staff will respond to subpoenas and requests for viewing condominium project files in accordance with HRS chapter 92F. For condominium project registrations, the Commission will study and research an evaluation and review process that includes the electronic administration of developer's public reports and scanning of documents. The Commission will monitor all legislation relevant to condominium project registration, including regulations of land and agricultural use on neighbor islands for any potential impact upon condominium developers and the public report process.

Hawaii Condominium Bulletin – The Commission will continue the online publication of its quarterly bulletin dedicated to educating condominium owners and interested persons on current issues relevant to condominium living in Hawaii. Staff will continue the management and administration of this program with a procured independent contractor assisting in the layout and design of the bulletin.

Condominium Mediation and Voluntary Binding Arbitration Program – Through the CETF, the Commission will subsidize and monitor the ongoing delivery of its mediation and voluntary binding arbitration programs by private providers. Staff will monitor the contracted mediation and arbitration providers and collect statistics on its use for educational and annual report purposes. The Commission will promote mediation and voluntary binding arbitration as a primary means of dispute resolution.

Condominium Association Registration – Staff will process deficiencies and incomplete applications from the 2023-2025 registration period and administer the online registration of condominium associations. In preparation for the 2025-2027 biennial registration period, staff will review registration policies, procedures, forms, and appeals for appropriate updates. The Commission will respond to subpoenas and requests for records relating to association registration, consistent with OIP laws, rules, and procedures. The Commission will continue to respond to requests for data-specific lists of association registrations.

All public association registration and appropriate contact information will continue to be posted on the Commission’s website, with pre-printed lists available upon request.

Condominium Seminars and Symposiums – The Commission will produce seminars for the condominium community through procured contracts with various providers and will procure additional providers on timely and relevant topics as needed. Presentations will be provided on electronic video platforms for neighbor island accessibility. Where funds are available, the Commission will continue to administer CETF subsidies for Commission-approved seminars, provided public health requirements can be met. The Commission will consult with its CRC educational ad hoc advisory group to provide recommendations and input on CRC educational programs as needed.

Ad Hoc Committee on Condominium Education and Research – The Commission will continue to administer and consult with this group, on an as-needed basis, for recommendations and input to create new CRC educational materials and programs.

Ad Hoc Committee on Condominium Association and Board Education – The Commission will continue to administer and consult with this group, on an as-needed basis, for recommendations on educational course topics for targeted education, including the development and administration of course curricula.

Condominium Managing Agents Registration – Pursuant to HRS §514B-132, the Commission will administer the registration requirements for condominium managing agents and evaluate its policies and procedures for appropriate updates.

Rulemaking, HAR Chapters 107 and 119 – The draft rules will be reviewed by the Small Business Regulatory Review Board, Department of Budget and Finance, Department of Business, Economic Development and Tourism; and accordingly, scheduled for public hearing.

Meetings – With support from staff, the Commission will plan, coordinate, and conduct virtual monthly meetings to allow interested persons, including neighbor island residents, to participate at their choosing. The schedule of meetings and agendas will be posted on the Commission’s website, and meeting minutes will be stored as a searchable PDF format.

Government and Legislative Participation and Report – The Commission will participate in all aspects of the legislative process, including the review and research of proposed legislation and resolutions relevant to condominium association governance and condominium project development; responding to, and meeting with legislators; and attending hearings and providing testimony, as appropriate.

Act 149 (2023) – The Commission will work with its Ad Hoc Committee on Condominium Association and Board Education to develop and administer an educational curriculum for leadership training to condominium board members.

Act 189 (2023) – Assigned Commission staff will participate in the Planned Community Association Oversight Task Force and Condominium Property Regime Task Force as established by this Act.

SCR 48, SD1 (2023) – The Commission will survey and compile data from registered condominium associations subject to Honolulu Ordinances Nos. 10-4 and 22-2 for review and evaluation by DCCA.

Legislative Acts and Resolutions – The Commission will review, report, and develop summaries on all relevant legislation proposed in the 2024 legislative session and implement any required changes to the Commission’s policies and procedures as a result of new legislation.

Interactive Participation with Organizations – The Commission and staff will participate with local and national organizations and government agencies to exchange and share information, research, and educational efforts, including joint projects, of mutual concern. Staff will attend in-person and virtual meetings with organizations, including ARELLO, CAI National, CAI Hawaii, HCCA, the Hawaii State Bar Association, property management companies, and other state agencies, as funding allows.

Neighbor Island Outreach – All interested persons on the neighbor islands will be able to participate in Commission meetings of their choosing. Meetings will continue to be held virtual via electronic platforms as the Commission conducts its business mindful of the health and safety of all participants.

CETF – Pursuant to HRS §514B-71, the Commission will administer the funds for educationally defined purposes. The Commission prepares, maintains, and reviews quarterly and annual financial statements, budget and finance records for the CETF, and administers fund investment.

Consumer Education – In addition to its existing focus on condominium governance issues, the Commission will work to strengthen a consumer education program about initial project sales and re-sales targeting prospective purchasers of condominium units. The Commission will maintain and update its existing educational materials online at its website. As appropriate, educational seminars will be administered virtually using electronic platforms to consider the health and safety of all participants.

Rulemaking, HAR Chapter 53 – The Commission will monitor, review, research, and make recommendations on rule amendments for fees through coordination with the DCCA and the Licensing Administrator.

Condominium Property Regime Project Workshop and Meetings – This FY, staff will conduct sessions and forums for condominium consultants for the purposes of orientation and information, including a review of issues presented in project file reviews. Forums will be conducted in hybrid format (virtual and in-person), and will cover issues raised by developers, attorneys, and condominium consultants regarding the ongoing implementation of HRS chapter 514B, relating to the issuance of developer's public reports.

Condominium Specialists' Office for the Day – Condominium Specialists will maintain their contact with neighbor island condominium owners and respective RICO staff through telephone and electronic mail, and remote appearance in virtual Commission meetings. Commission meetings are open to all residents, regardless of island of residence; however, in consideration of the lifting of State travel restrictions, the Commission will re-examine specialists' physical attendance in the neighbor islands.

Condominium Speakership Program – The Commission honors requests to provide a speaker or resource person, or to participate in a function related to condominium education in accordance with HRS chapter 514B. Through the Condominium Education Specialist position, the Commission has the ability to reach more condominium community members and groups in fulfillment of its educational mandate.

Technology and Website – The Commission will maintain and update its website for public interaction and education, including the electronic storage and public availability of developer's public reports and condominium association registration data.

Staff will post and make the developer's public report form and other related forms electronically downloadable and fillable. The forms will be evaluated and amended throughout this FY to meet implementation challenges that may arise. The Commission will assess its long-range goal of providing all public condominium information online and the feasibility of providing associations with a central depository for all governing documents on the Commission's website, including minutes of association meetings.

The Commission will continue to post all completed association registrations at its site for public viewing and provide quarterly condominium updates through its online email subscription service to maintain the educational focus of its website.

Case Law Review Program – The Commission will monitor relevant state and federal case law and administrative decisions, policies, and procedures, including relevant governance and project development case law.

Start-up Kit for New Association of Unit Owners and New Condominium

Managing Agents – Staff will distribute start-up kits to newly registered Association of Unit Owners and Condominium Managing Agents, including unofficial copies of HRS chapter 514B, administrative rules, and guides pertaining to owner rights and responsibilities, board of directors and budgets and reserves.

Records Management – Staff will evaluate, plan, reorganize, and implement a centralized, consistent, user-friendly, and computerized glossary of existing and future educational materials, records, developer’s public reports, and project files. Meeting minutes and developer’s public reports will be electronically scanned and stored.

Cooperative Education, Research, and Administrative Program – The Commission will actively participate and sponsor cooperative education, research, and administrative programs for the DCCA and the Department of the Attorney General, all of which provide direct and indirect services to the Commission, its CETF, or condominium project registration responsibilities.

Division and Department Program – The Commission will coordinate activities and programs of mutual concern within DCCA for the PVL, RICO, and the Director’s Office, including positions on HRS chapters 436B, 467, and 514B, and monitor the interaction and effect of other regulatory laws and rules on HRS chapter 514B.

Staff and Commissioners Development – Training for staff and commissioners will be conducted as funds and health and safety protocols allow to maintain the efficient provision of services to the condominium community. Staff and commissioners will take advantage of virtual training and educational opportunities provided by the Real Estate Educators Association, ARELLO, CAI Hawaii, HCCA, and Council of Licensure, Enforcement, and Regulation, and other organizations.

Condominium Reference Library – Staff will maintain and update the Commission’s website catalog of all public reference materials. As appropriate, the Commission will provide relevant materials to the State Library System when materials are available (especially in highly concentrated condominium property regime areas), at mediation provider offices, and at the Real Estate Branch office. Where feasible, the Commission will provide information in conjunction with condominium law educational programs.

Staff will research and study the cost of updating and maintaining all condominium library reference materials, and also consider including these updates as part of any five-year strategic educational plan for condominium education.

REAL ESTATE EDUCATION FUND			
Fund Balance			
As of June 30, 2023			
(Estimated)			
ASSETS			
Cash			
In State Treasury			\$2,613,258
Short term cash investments			
Total Assets			\$2,613,258
LIABILITIES AND FUND BALANCE			
Liabilities			
Payables			
Fund Balance			
Reserve for Encumbrances			\$17,361
Unreserved			\$2,595,897
Fund Balance			\$2,613,258
Total Liabilities and Fund Balance			\$2,613,258
REAL ESTATE EDUCATION FUND			
Revenues and Expenditures			
For the Month Ending June 30, 2023			
(Estimated)			
Revenues			
Fees			\$1,423,807
Interest			\$0
Total Revenues			\$1,423,807
Expenditures			\$497,891
Excess (Deficit) of revenues over expenditures			\$925,915
Fund Balance			
Beginning of Year			\$1,687,343
Year to Date			<u>\$2,613,258</u>

REAL ESTATE RECOVERY FUND			
Fund Balance			
As of June 30, 2023			
(Estimated)			
ASSETS			
Cash			
In State Treasury			1,026,473
Short term cash investments			
Total Assets			\$1,026,473
LIABILITIES AND FUND BALANCE			
Liabilities			
Payables			\$0
Investment income due to Real Estate Education Fund			0
Total Liabilities			0
Fund Balance			
Reserve for encumbrances			1,062
Unreserved			1,025,412
Total Fund Balance			1,026,473
Total Liabilities and Fund Balance			\$1,026,473
REAL ESTATE RECOVERY FUND			
Revenues and Expenditures			
For the month ending 6/30/2023			
(Estimated)			
Revenues			
Fees			\$124,810
Expenditures			
Operations			45,505
Legal Services			16,373
Claims			0
Total Expenditures			61,878
Excess (deficiency) of revenues over expenditures			62,932
Fund Balance			
Beginning of year			963,541
Year to Date			\$1,026,473

CONDOMINIUM EDUCATION FUND			
Fund Balance			
As of June 30, 2023			
(Estimated)			
ASSETS			
Cash			
In State Treasury			\$1,544,066
Cash Invested			
Total Assets			\$1,544,066
LIABILITIES AND FUND BALANCE			
Liabilities			
Payables			
Fund Balance			
Reserve for Encumbrances			13,336
Unreserved			1,530,730
Fund Balance			1,544,066
Total Liabilities and Fund Balance			\$1,544,066
CONDOMINIUM EDUCATION FUND			
Revenues and Expenditures			
For the Month Ending June 30, 2023			
(Estimated)			
Revenues			
Fees			1,189,484
Interest			25,925
Total Revenues			1,215,409
Expenditures			
Excess (Deficit) of revenues over expenditures			407,490
Fund Balance			
Beginning of Year			1,136,576.57
Year to Date			<u>\$1,544,066</u>

**REPORT TO THE
HAWAII REAL ESTATE COMMISSION
ON CURRENT ISSUES IN
CONDOMINIUM GOVERNANCE**

Prepared by John A. Morris, Esq.
Ekimoto & Morris, LLC
May 9, 2022

888 Mililani Street ♦ Second Floor ♦ Honolulu, Hawaii 96813-3410
Tel (808) 523-0702 ♦ Fax (808) 538-1927
jmorris@hawaiicondolaw.com ♦ www.hawaiicondolaw.com

REPORT TO THE REAL ESTATE COMMISSION ON CURRENT ISSUES IN CONDOMINIUM GOVERNANCE

This study is funded by function of the Condominium Education Trust Fund (“CETF”), the Hawaii Real Estate Commission (“Commission”), Professional and Vocational Licensing Division, Department Of Commerce And Consumer Affairs, State Of Hawaii, for education and research in the field of condominium management, condominium project registration, and real estate, for the benefit of the public and those required to be registered under chapter 514B, Hawaii Revised Statutes.

The material and information provided in this study are intended to provide general education and information and are not a substitute for obtaining legal advice or other competent professional assistance to address specific circumstances. The information contained in this study is not an official or binding interpretation, opinion, or decision of the Commission or the Department of Commerce and Consumer Affairs.

In addition, the Commission’s CETF funding of this study shall not be construed to constitute the Commission's approval or disapproval of the information and materials discussed in this study nor the Commission’s warrant or representation of the accuracy, adequacy, completeness, and appropriateness for any particular purpose of the information included in this study effort nor the judgment of the value or merits of this study.

BACKGROUND

This report delivers a follow-up study responsive to the 1989 Legislative Reference Bureau (“LRB”) Report “Condominium Governance – An Examination of Some Issues” pursuant to the Hawaii legislature’s 2019 mandate in Senate Resolution 41, SD 1. The purpose is to assist the Commission with research in the field of condominium management, project registration, and real estate for the public and for condominium associations of unit owners and managing agents.

The first objective of the study is to respond to Senate Resolution 41, SD 1 which asked the Commission to conduct a study on whether and to what degree the findings and recommendations found in the 1989 LRB report have been implemented. The resolution stated that this study should address any further action that may be needed to fulfill unresolved findings and recommendations in the 1989 study and other comments and concerns garnered from interested parties. In addition, the resolution specifically asked for assessment of the following questions:

- (1) Whether the developer’s public report required under existing law provides adequate and understandable disclosures to prospective purchasers of new and converted condominium projects, and if not, any potential methods that could be used to further educate prospective purchasers;
- (2) Whether the current financial reserves study and funding requirements completed

by registered associations of apartment [sic] [nka unit] owners are sufficient; and

- (3) Whether the use of the current voting process is appropriate, whether the proxy voting process provides an advantage or disadvantage in the governing process, and whether there are inherent conflicts between owner-occupants, investor owners, and commercial owners.

The second objective of the study is to address the following issues and to report on possible issues not yet discovered:

- (1) The extent to which there are inconsistencies between the financial control requirements of Hawaii Revised Statutes (“HRS”) section 514B-149 and HRS chapter 467.
- (2) The extent to which condominium boards of directors should be required to participate in the actual handling and disbursement of association funds, is appropriate to govern how associations operate – e.g., signing checks for large disbursements of association funds.
- (3) The thoroughness of audits under HRS section 514B-150 considering the recent changes to the peer review process for CPAs.
- (4) Evaluation of the dispute resolution effectiveness of evaluative mediation.
- (5) Evaluation of the educational effectiveness of an annual legislative update and/or Condorama (free) seminar on every main island.
- (6) Development of a short summary of the realities of condominium living for both boards and owners to be provided especially to new owners to augment available REB educational materials.
- (7) Whether boards use executive sessions to keep information from owners.
- (8) Whether managing agents should undergo mandatory training as a condition of acting as a managing agent.

ANALYSIS

Have problems outlined in the 1989 LRB report been resolved or at least addressed? As outlined in more detail in the main part of this response, to a large extent, those issues have been resolved.

In the original 1989 study, this category included whether there was sufficient information available to condominium boards and unit owners about the condominium law, rules, and related matters. Since 1989, the Commission has undertaken a broad effort to educate and inform unit owners and boards of their rights and responsibilities. In fact, there is considerable

information available – in the form of the Commission’s online and written materials – for those owners who wish to take the time to find the information. (Those efforts are outlined in more detail in the responses to the specific questions in the main body of this response.)

A second issue was whether unit owners are being adequately informed about the use of their maintenance fees. Again, the current provisions in the condominium law confirming the right of owners to access financial information about their project means this information is available to owners who take the time to request it. Over the years, the legislature has expanded and made more specific the provisions in the condominium law about access to records, making it harder for associations to refuse to provide information. Moreover, the Regulated Industries Complaints Office (“RICO”) has the authority to enforce the rights of owners to access records. Therefore, RICO can assist if necessary.

Owners are entitled to notice of board meetings, which have to be posted at the project. The law has also been expanded to allow owners to participate directly in board meetings, except for executive sessions. Therefore, the board can adopt rules to control owner participation but not prohibit it outright. This allows owners to seek information while the board meeting is progressing. Other issues relating to board meetings are outlined below in the main body of this response.

The third issue was whether there were adequate checks and balances to prevent the abuse of power by board members, managing agents, and managers. To this day, there are still complaints from owners about this issue. Nevertheless, the options for dispute resolution on such issues have been expanded considerably. The Commission even subsidizes mediation and mandatory arbitration using funds collected from condominium associations’ biennial registration. Thus, the legislature and the Commission have taken significant steps to promote mediation as a relatively low-cost way of resolving disputes about board, managing agent, and manager abuse of power, as well as many other issues.

As to whether there should be state enforcement of the rules, the Commission has the authority to enforce certain rules, primarily relating to availability of information and handling of association funds. A “condo court” – using DCCA hearings officers – was created in the mid-2000’s but it was not a success and was eventually terminated. There was also a proposal for a condominium “czar” that was not passed by the legislature.

Regardless, the problem of the disputes between unit owners and condominium boards, managing agents, and managers can never be eliminated because of the nature of the operation and management of a condominium. Boards, managing agents, and managers have a certain amount of control over the owners to be able to do their jobs under the provisions of the condominium law and the project’s declaration and bylaws. Sometimes boards, managing agents, and managers may abuse this authority. In many cases, however, owners perceive the simple exercise of that authority against them as “harassment” or “abuse,” even though the action is within the authority of the board, managing agents and managers. In other words, it is not abuse of power to ask owners to comply with the law and the governing documents they agreed to comply with when they purchased their unit, but many owners perceive that to be the case.

The issues concerning controls on the handling of association funds are outlined in more detail

in the body of this report below. Similarly, issues relating to audits are also discussed below.

1) Whether The Developer's Public Report Provides Adequate And Understandable Disclosures To Prospective Purchasers.

The current condominium public report provides considerable information to a prospective purchaser of a unit in a new condominium project. The public report provides considerably less information on the consequences of owning the unit after the purchase.

The public report has been developed over the decades -- since 1961 -- to provide very detailed factual information about the condominium project being offered for sale in the public report. It seems to work well.

While each public report is tailored to the particular condominium project being offered, much of the report comprises standardized disclosures that have been developed in the almost six decades since public reports were first provided to prospective purchasers of condominiums. The purpose of those disclosures is to fulfill the intent of the law that every initial purchaser of a condominium project receives sufficient information to make an informed decision on whether to purchase a unit in the project.

Originally, public reports were issued by the Commission but later became documents prepared by the developer of the condominium project described in the public report. As a result, the current public reports take pains to explain to prospective purchasers, at the very beginning of the reports, the Commission's involvement in the process. The explanation confirms that the reports are not intended to indicate that the Commission: 1) is in any way approving or disapproving of the project; 2) believes that all the relevant information about the project has been fully disclosed in the public report; or 3) is passing judgment on the value or merit of the project.

Nevertheless, the Commission goes to great lengths to ensure that the reports do adequately disclose the material facts about the condominium projects that are the subject of the reports. The Commission does this through the use of independent consultants, who are hired to carefully review the developers' public reports and ensure that the necessary disclosures are made.

Moreover, as issues arise about the disclosures provided by the basic public report form, the Commission indicates that it periodically holds forums with its independent consultants to receive feedback on how the public report form can be improved. In that way, the Commission works to ensure that the form of the public report does make the necessary disclosures to prospective purchasers of a new condominium project.

The Commission also takes input from developers on issues. Developers benefit from full disclosure in the public reports, thereby avoiding claims that they failed to disclose all material facts about their project. That provides them with an incentive to ensure that the public reports include all relevant and material information about the proposed project.

As a result, the Commission indicates that it receives little adverse feedback from buyers on the lack of disclosure of all the material facts in a public report. Given the high level of detail provided in each public report, it is not surprising that few buyers complain about lack of

disclosure of material facts.

That level of detail also has a downside. More specifically, as a result of the significant amount of information included in each public report, they cannot be characterized as light reading. In other words, they are not something that the prospective purchaser is likely to read cover to cover, in a single sitting. Instead, they are more in the nature of a reference for prospective purchasers, in case they have questions about specific issues. In that situation, the public report provides information to prospective purchasers on most of the issues on which they are likely to need information prior to signing a sales contract to purchase a unit in the project.

A lawsuit was filed by a project on Ward Avenue about the inadequacy of the budget prepared for the public report – i.e., the association had to increase assessments because the original budget was not sufficient to pay for the operation of the project. That may be more a matter of arithmetic, not lack of disclosure, but the suit does indicate the importance of developers establishing realistic budgets for new associations.

Where disclosure could be improved relates to the consequences of owning a condominium unit, that is, providing information to a prospective purchaser on: (i) the management and operation of the condominium project after the purchase, and (ii) the purchaser's role in that process.

On that issue, the current public report provides one page -- approximately half a page of "General Information on Condominiums" and another half a page on the "Operation of the Condominium Project." Certainly, those two half pages provide a very succinct summary of the issues that owners should know on how their lives will be affected by condominium governance principles once the project is operational. Nevertheless, as complaints to the legislature suggest, condominium governance is the issue that will arguably impact a prospective purchaser the most in the long term. Therefore, it seems to be worthwhile providing prospective purchasers with more information on that issue as part of the disclosure process before they buy.

Fortunately, the Commission already has that information available, so it seems to be more a matter of conveying that information to a prospective purchaser of a condominium unit. Admittedly, the last paragraph of the section entitled General Information on Condominiums encourages prospective purchasers to contact the Commission and includes the Commission's website and contact information. Nevertheless, the lack of specifics may cause prospective purchasers to overlook those brief references. Therefore, given the long-term impact of condominium governance on the lives of the prospective purchasers, the link to the Commission's website should be given more emphasis. Then, the Commission's educational materials can better benefit prospective purchasers after they complete their purchase.

For example, going to the Commission's website allows access to a section entitled "RESOURCES FOR CONDOMINIUM OWNERS, BOARD OF DIRECTORS & ASSOCIATIONS." That section includes topics ranging from board of directors, fiduciary duty and business judgment rule, to budgeting and condominium governance and information. Other topics include the condominium law, rules and legislative updates, and mediation of condominium disputes. For those who prefer videos to reading materials, the Commission also provides a number of short but helpful video presentations on topics that are likely to be of use to both board members and individual owners.

In summary, the issue is not so much that the Commission does not have resources available to inform prospective purchasers of the issues they are likely to face after they purchase their unit. Instead, the issue seems to be that the current public report form does not convey the breadth and quality of those resources by the brief reference to the Commission's website and contact information. Therefore, it seems worthwhile for the public report to devote more than a single page to the ramifications of living in a condominium as part of the disclosure of the material information to prospective purchasers.

That change could be as simple as including more detailed information in the report on what the Commission has produced to help condominium owners be more fully informed about the ramifications of living in a condominium. In that way, the public report will not only focus on the physical aspects of the project but on the human or political aspects that may eventually have a greater impact on the prospective purchaser.

More information and suggestions on this issue are offered in an appendix to this report.

2) Whether The Financial Reserve Study And Funding Of Reserves Requirements Are Sufficient.

The law requiring a budget and reserve study and the collection of reserves for large, long-term anticipated expenses was passed in the late 1980s and early 1990s. The law resulted from concerns that boards of directors were not adequately funding the reserves of condominium associations. That lack of funding was, in turn, leading to large special assessments on condominium owners when "big ticket" items -- reroofing, painting and spalling, parking lot repaving -- came due.

Even under the best of circumstances, collecting reserves is a prediction and unexpected issues may arise. Basically, the current law requires an association to make a list of big-ticket items and begin collecting reserves for those items once the anticipated remaining useful life of the items is less than 20 years. The stated purpose of that requirement is to spread the cost of replacing those items to all of the owners, based on their period of ownership. For example, if an item has a remaining useful life of 20 years and an owner owns a unit in the condominium project for eight years, that owner should contribute 8/20ths of the cost of replacing that item.

Discussions with property managers indicate that compliance with the reserves law ranges from strict compliance to lax compliance and fudging on the details. For example, some boards hire a professional reserve study preparer and follow the preparer's recommendations strictly. Other boards -- although a much smaller percentage -- reportedly fail to include some big-ticket items in the reserve study or simply fail to collect sufficient funds.

Fortunately, property managers indicate that the bulk of boards seem to be following the basic reserve process but, not surprisingly, are sometimes reluctant to increase assessments sufficiently to fully fund reserves. There have also been problems with unexpected expenses that were not factored into the reserve study, such as replacing cast iron pipes -- see below. Those types of issues, rather than any defects in the reserves law, itself, seem to be the main problem.

The initial reserves law required 100% funding of reserves. Unfortunately, misunderstandings about the time frame for collecting reserves to comply with the new law resulted in widespread complaints about the burden of the law. For example, although the initial law gave associations up to five years from the passage of the law to adequately fund their reserves, some associations misinterpreted the intent of the law and believed they had to collect 100% of their reserves by the end of the first year. As a result, in the year following the initial passage of the reserves law, the legislature reduced the reserve funding requirement to 50% of the needed reserves and extended the time frame to collect that amount of reserves for existing projects from five years to seven years.

The original law indicated that an association was not required to hire a professional reserve study preparer. Instead, the law provided, and still provides, that if a board makes a good faith effort to calculate the estimated replacement reserves for its association, the board cannot be held liable if the board's calculation subsequently proves incorrect (section 514B-148 (d)). Part of the reason for this provision was a concern by the legislature that they would otherwise be forcing associations to participate in a brand-new industry of reserve study preparers.

The state imposes no specific licensing or testing requirements for reserve study preparers, anyway. Therefore, it is not clear whether changing the law to mandate that every association hire a reserve study preparer will necessarily be worthwhile.

Sometimes, an association's managing agent prepares the reserve study. There has been some suggestion that the managing agent may be pressured by the board, because of the pre-existing business relationship, to reduce the association's reserve requirements but that is not clearly a problem.

When the reserves law was first passed, because of concerns (and lack of knowledge) about determining the precise details of the collection of reserves, the law included broad authority for the Commission to adopt rules to implement those details. Those rules were finally adopted, with an effective date of January 1995.

The initial law provided for what was commonly called the "percent funded" calculation of reserves. Under that process, associations had to: 1) calculate the anticipated remaining life of each part or area of the project that would require large future expenses; 2) add those amounts together and then 3) collect a percentage of that amount each year. In that way, at the time the large expense came due, the association would have at least 50% of that amount on hand and could then borrow or specially assess for the remainder.

Subsequently, in 1997, the legislature approved a change in the law to allow the adoption of what is commonly called the "cash flow" method of funding reserves. The theory behind the cash flow method of calculating reserves was to allow associations to collect fewer reserves than required under the percent funded method and yet still be deemed fully funded. The change was recommended by reserve study preparers as a more efficient and sophisticated means of calculating reserves.

Under the cash flow method of funding reserves, the association follows a similar process to the percent funded process. The difference is that, instead of calculating each major expense

separately and keeping the funds for that expense in a separate category, the reserve expenses are viewed as a single expense and collected together on a bulk basis. Reserve funds are then used as necessary, rather than being held for a specific item. The ultimate goal was to ensure that, instead of having separately allocated reserves for each part of the property, the association (i) would have a single reserve and that (ii) reserve would be calculated to ensure that the association had on hand, in any one year, sufficient reserves to fund whatever expenses were due in that year.

The Commission rules were not revised to reflect the cash flow method of funding reserves but are deemed to apply to both the cash flow and the percent funded methods of calculating reserves, with appropriate changes to accommodate the cash flow method. Therefore, it seems that the lack of rules focusing on the cash flow method has not created major problems and the Commission is working to revise the reserve rules.

Enforcement

In discussions with property managers and in personal experience, the problem is not the law and the rules, but the issues faced by boards of directors in funding reserves. Most boards are well aware that increasing the maintenance fees to fund additional reserve contributions is unpopular, particularly if the increase is significant in any particular year.

For example, in a recent situation, a board was faced with a reserve study preparer's recommendation to increase the monthly assessments by 12% to fund the reserves. The board was having problems reaching a consensus because some of the directors preferred to increase the monthly assessment by only 6%.

Of course, in theory, if the boards and their predecessors have been properly funding the reserves for the last 20 years, large increases should not be necessary in most cases. Nevertheless, funding reserves is not necessarily a science because of the many variables that go into creating a reserve study. As a result, even if the association hires a professional reserve study preparer, there could still be issues.

Another recent example involves the need of older associations to replace cast iron drainpipes. Reportedly, on the mainland, cast iron pipes were found to last 70 or 80 years. In Hawaii, it has now been found that cast iron pipes will sometimes only last 45 to 55 years. Hawaii's reserves law does not require a reserve item to be brought into the reserve study until its remaining useful life is approximately 20 years. This meant that some older condominium associations built in the 60s and 70s were under the impression that their cast iron pipes would last another 20 years or more. That turned out not to be the case, leading to large special assessments or loans for some of those buildings.

Penalizing boards of those projects under those circumstances would not be fair or appropriate (and there could be similar issues for other unexpected expenses faced by condominium projects in the future). Nevertheless, in an appropriate case, the reserves law is set up in such a way that boards who intentionally fail to fully fund reserves can be penalized.

The reserve rules deal specifically with enforcement by following the standard condominium

principles of self-governance and owner enforcement. Rule 16-107-75 tries to make that process easier for an owner by making it clear that an owner enforcing the requirements of the reserves law can collect the cost of enforcement.

More specifically, the rule provides that if an arbitrator or judge determines that a board or board member breached the board member's fiduciary duty by intentionally ignoring the requirements of the reserves law, the judge or arbitrator can award the owners fees and costs against the board or board members, individually, rather than against the association. Therefore, one possibility for more effective enforcement would be to emphasize the provision for individual liability outlined in Rule 16-107-75.

This possibility should provide a significant incentive for boards and board members to comply with the reserves law. Nevertheless, it is not completely clear that most board members are aware of the consequences outlined in Rule 16-107-75.

Of course, the other problem is that the consequences of a board decision on funding reserves may take years to show up, by which time, the same board members may no longer be serving. Blaming "innocent" board members who had no hand in the underfunding of the reserves would be hard to justify.

The law could be changed to require the Commission to enforce the reserves law. On the other hand, given the number of condominiums in the state, changing the law in that way could impose a significant burden on the Commission, as would any departure from the self-governance theory of the condominium law.

As part of the Commission's biennial registration of associations, it could be required that a condominium association must submit a copy of its reserve study as part of the registration with the Commission. Nevertheless, it is not clear whether a reserve study will necessarily be obviously incorrect when the Commission receives it. Certainly, running a detailed analysis of every reserve study received by the Commission could be very time-consuming.

In summary, there have been situations where boards have underfunded reserves, sometimes with justification and sometimes without justification. Regardless, the time and expense of supervising every board of directors could be considerable. Fortunately, complete disregard of the reserves law does not seem to be a common problem based on conversations with property managers and others.

3) Whether The Current Voting And Proxy Procedures Result In A Fair Voting Process And Whether There Are Inherent Conflicts When A Project Includes Owner Occupants, Investor Owners, And Commercial Owners.

The current law seems to provide reasonably fair processes for voting and proxy solicitation. Changing the law may have little direct effect on voting and proxy solicitation because of the numerous, non-legal variables that can affect the results. The one exception may be that now that the law allows voting by mail ballot, the law may have to be changed to establish some basic requirements for mail ballots, similar to those that exist for proxies.

Over the years, the legislature has made an effort to “level the playing field” between owners and the board when it comes to participation in annual meetings and elections. For example, if the board is proposing to mail out proxies at association expense with the annual meeting notice, the board has to post notice at the project informing every owner of that intention. The notice must inform each owner that the owner has a right to submit a one-page statement outlining the reasons the owner wants to solicit proxies or run for the board. The association is then obligated to send out those statements, at association expense, when it mails out the proxies and the notice of the annual meeting to the association members.

While every owner has a right to solicit proxies at his or her own expense, in a large building that can be a considerable expense. Therefore, the practice of allowing owners to solicit proxies at association expense provides a considerable benefit to the owners.

The law is also clear that board members who wish to solicit proxies at association expense have no special privileges and must follow the standard procedure referenced in the prior paragraphs.

The current voting and proxy procedures probably work as well as they can, given the very broad range of variables encountered as part of the voting process. For example, there are associations that have not been able to achieve quorum in their annual meetings for several years, to the point that they have not elected a new board of directors for some time. In contrast, some associations have been controlled by the same group of directors for many years, despite efforts by some of the owners to make changes.

On the other hand, if a group of owners is determined to change the board, they are quite often successful as long as their concerns about the current board are the same as those of a majority (or significant percentage) of the other owners. In that case, the group of owners is simply helping other owners find a way to express those concerns. As a result, if a determined group of owners makes the effort, they often find the support to get themselves elected to the board and address the issues of concern for a majority of the owners.

Of course, the opposite can also be true: a determined group of owners may have concerns that are not the same as those of a majority of their fellow owners and may therefore be unsuccessful in changing the board. Unfortunately, those owners will sometimes claim that the board is “entrenched” when, in fact, the board is simply representing a majority of the owners and receiving their support.

Similarly, a determined group of board members may be able to use the process to remain in power despite the efforts of owners representing a significant portion of the membership of the association to replace them. That can often be a result of the inability of the owners who oppose the board to use the voting and proxy process in a way that allows them to take control.

It is also true that the situation can be complicated when there is a mix of owner occupants, investor owners, and commercial owners. Having various groups of owners can fragment the voters so that the situation is not simply owners against the board but groups of owners against other groups of owners, one group of which may be in control of the board.

Certainly, a small group of owner occupants may find it very difficult to take any effective action

if the project has a high number of transient/short-term rentals. The common interests of those engaged in short-term rentals will often bring them together as a group to combat any attempt by the owner occupants to use the voting and proxy process to achieve their goals.

Similarly, even owners who rent their units on a long-term basis may be focused primarily on collecting their rent. As a result, those who rent out their units may be reluctant to spend money to improve facilities used by owner occupants of the building.

Having a significant portion of the building owned by commercial owners, in particular by a single commercial owner, can also present problems for the voting and proxy process. This can occur when the commercial owner or owners control a block of votes. If the commercial owner or owners represent a significant portion of the votes at the project, they may have the ability to obtain sufficient other votes to allow them to control the association.

The law permitting owners to give “quorum only” proxies can make the situation worse. More specifically, quorum only proxies present two potential problems for voting and proxy procedures. First, they allow owners to simply opt out of any real involvement in the management and operation of their association. In other words, owners who submit a quorum only proxy are making no effort to determine whether the board is doing a good job. Instead, those owners are, in effect, not bothering to participate in the governance of their association at all (except to allow others -- including serving board members -- to make those decisions).

The second problem will often be that if a significant number of owners submit quorum only proxies, that will allow the owners (or board members) who do participate in the voting and proxy process to control the process more effectively. For example, if uninvolved owners submit a quorum only proxy, doing so will allow those who have a block of votes to control the meeting more effectively.

This can mean that if 55% of the owners are present in person or by proxy at an annual meeting and 15% of the proxies are quorum only proxies, the other 40% will have greater influence on the outcome of the votes. Someone with a block of only 20% of the votes will only have to persuade another 8% of those present at the meeting to vote with that person to control the meeting.

The problem will be worse if the association follows the Robert’s Rules practice of majority vote – i.e., motions can be passed by a majority of those present and voting -- not a majority of those present in person or by proxy. In that case, controlling a block of 20% of the votes will be even more effective because if only 40% of those present can even vote (because of the 15% quorum only proxies), a person with 20% of the vote will only need the support of 1% of the other owners present at the meeting to control the voting.

Cumulative voting can also influence the outcome of an election. Under ordinary, “non-cumulative” voting, voters representing a majority of those present may control the result. In contrast, under cumulative voting, a smaller but organized group of voters may be able to take control from the majority.

For example, if a group of owners needs to elect only a single director to (i) maintain control of or (ii) take control of the board, cumulative voting may allow that group of owners to do so, even

if they do not represent the majority of the votes at the association meeting. More specifically, the group might already control four of nine seats on a board and two of those seats may be up for election. If there are four candidates running for the two seats, under cumulative voting, there will be two votes available. This means that the organized group can cumulate its two votes and vote them for a single director.

If the majority of the other voters are not organized and split their votes between the remaining three candidates, only a single one of those candidates may be elected, giving the smaller but organized group of voters control of the board. In other words, even if the remaining voters at the association meeting hold more votes in total than the organized group, unless they are organized into a single block, they may fragment their votes among the three directors and only elect a single director.

In summary, the current voting and proxy process gives everyone a reasonable opportunity, if they care to take it, to participate in the annual meeting and the election of directors. Unfortunately, the wide range of non-legal variables that can affect the outcome of any election make it difficult to make the process any “fairer” by amending the law.

Finally, Act 83 (SLH 2021) permits the use of mail ballots for voting for the election of directors and other issues. Despite that, the condominium law includes virtually no specifics on the requirements relating to the validity of a mail ballot or a statement on its essential terms. The specifics include the contents of a mail ballot and the time by which it must be submitted to be considered a valid mail ballot. Fortunately, many of the requirements in the current laws relating to proxies can be translated over to mail ballots, thereby correcting that issue. In addition, the nonprofit corporations law, section 414 D-104.5, includes requirements for mail ballots that can be adapted for mail ballots under the condominium law.

Act 83 also authorizes virtual meetings if a condominium association amends its bylaws to specifically permit virtual meetings. Certain companies have developed methods for electronic voting at virtual meetings, so the law may have to be amended to recognize that possibility.

4) The Extent To Which The Current Financial Controls Of The Condominium Law And The Real Estate Licensing Law Contradict Or Are Inconsistent.

The real estate licensing law and rules focus on putting the real estate broker in charge of any funds held by the broker for its clients. In contrast, the condominium law focuses on the board of directors, although the condominium law certainly acknowledges that the managing agent will be involved in the process of handling association funds.

Moreover, the real estate licensing law and rules, together with the condominium law, seem to include sufficient authority to allow associations to establish a process in which (i) the board of directors of the condominium can be involved in and (ii) have the ultimate control over the handling of association funds.

In the mid-1980s -- after some problems with the handling of condominium association funds by several condominium managing agents -- the condominium law was changed to require every condominium managing agent to have a real estate broker’s license under the real estate licensing

law, chapter 467. This was made a condition of operating as a condominium managing agent (see section 514B-132). (The only exception is if the managing agent is registered as a trust company.)

This change in the law allowed the Commission to control the conduct of managing agents through the real estate licensing law. The change gave the Commission the ability to at least ensure that every managing agent met the requirements of the real estate licensing law or risked losing the managing agent's legal authority to act as a managing agent.

In addition, sections 514B-65 (Investigative powers), 514B-66 (Cease and desist orders), 514B-68 (Power to enjoin), and 514B-69 (Penalties) of the condominium law also allow the Commission to investigate and enforce the requirements of section 514B-149. That section establishes standards for the handling and disbursement of condominium association funds.

Essentially, that section of the condominium law states: (i) the institutions and entities in which an association can place or hold its funds (section 514B-149 (c)); and (ii) the types of investments in which an association can invest its funds. The section is less clear on the procedures for handling and disbursing association funds. Section 514B-149 (e) of the condominium law states:

- (e) *A managing agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, chapter 467, the rules of the commission, and all other applicable laws.*

Thus, the standards for handling funds are to be established by the association and the managing agent. Section 514B-149 (c) also states with respect to association accounts:

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board.

Section 514B-149 does include one specific statement on how association funds can/cannot be transferred:

- (d) *A managing agent or board shall not, by oral instructions over the telephone, transfer association funds between accounts, including but not limited to the general operating account and reserve fund account.*

Reportedly, this restriction was put in the law because of the conduct of certain managing agents who misappropriated funds in the mid-1980s. It was found that those managing agents would: (i) deplete the funds in one association's account but then, (ii) if anyone was checking on that account, call and transfer funds from another association's account to make up the deficiency in the first account.

In addition to the authority in the condominium law, the real estate licensing law has detailed restrictions on client funds. Moreover, while the real estate licensing law makes a principal broker responsible for client funds, that law seems to include more than sufficient authority to allow a board of directors to control the handling and disbursement of association funds by agreement.

Section 467-1.6 includes the following provisions:

§467-1.6 Principal brokers. (a) The principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees.

(b) The principal broker shall be responsible for:

(1) The client trust accounts, disbursements from those accounts, and the brokerage firm's accounting practices;

(2) The brokerage firm's records, contracts, and documents;

** * **

(5) Developing policies and procedures for the brokerage firm concerning the handling of real estate transactions and the conduct of the associated real estate licensees and other staff, including education and enforcement of the policies and procedures;

** * **

(c) The principal broker may delegate management and supervision duties to one or more brokers in charge subject to the principal broker's written policies and procedures. The principal broker shall be responsible for the education, enforcement, and records required of such policies and procedures.

Commission rule 16-99-3 states as follows:

§16-99-3 Conduct. (a) To fully protect the general public in its real estate transactions, every licensee shall conduct business, including the licensee's own personal real estate transactions, in accordance with this section.

** * **

(e) The broker shall keep in special bank accounts, separated from the broker's own funds, moneys coming into the broker's possession in trust for other persons, such as escrow funds, trust funds, clients' moneys, rental deposits, rental receipts, and other like items.

(f) The licensee, for the protection of all parties with whom the licensee deals, shall see that financial obligations and commitments regarding real estate transactions, including real property rental management agreements, are in writing, express the exact agreements of the parties, and set forth essential terms and conditions, and that copies of

those agreements, at the time they are executed, are placed in the hands of all parties involved.

* * *

(m) There shall be a principal broker or one or more brokers in charge, or both, at the principal place of business, and one or more brokers in charge at a branch office who shall be immediately responsible for the real estate operations conducted at that place of business.

Commission rule 16-99-4 states:

§16-99-4 Client's account; trust funds; properties other than funds. (a) Every brokerage firm that does not immediately place all funds entrusted to the brokerage firm in a neutral escrow depository, shall maintain a trust fund account in this State with some bank or recognized depository, which is federally insured, and place all entrusted funds therein. The trust fund account shall designate the principal broker as trustee and all trust fund accounts, including interest bearing accounts, shall provide for payment of the funds upon demand.

(b) Every brokerage firm shall retain for at least three years records of all trust funds which the brokerage firm has received. All records and funds shall be subject to inspection by the commission or its representative. The three-year requirement shall be for real estate license law purposes only. The brokerage firm may be required to keep records for a longer period of time for other purposes. The records shall be kept in Hawaii in accordance with standard accounting principles and shall clearly indicate the following:

- (1) Names of the persons from whom funds are received, for whom deposited, and to whom disbursed;
- (2) Dates of receipt, deposit, withdrawal, and disbursements, and amounts received, deposited, withdrawn, and disbursed;
- (3) Description of the trust fund and the purpose for its establishment;
- (4) Purposes for the money; and
- (5) Other pertinent information concerning the trust fund transactions.

* * *

(i) A salesperson, broker-salesperson, or employee shall not handle trust properties in any way without the express written authorization of the person's principal broker or broker in charge. A principal broker or broker in charge may authorize a salesperson, broker-salesperson, or employee, in writing, to place trust properties on behalf of the brokerage firm anywhere the principal broker or broker in charge could place them, but shall not authorize any other disposition. A principal broker or broker in

charge shall be held responsible for any trust properties the principal broker or broker in charge authorizes a salesperson, broker salesperson, or employee to handle.

(j) A principal broker or broker in charge shall not allow any person to have custody or control of trust properties held by the principal broker or broker in charge except as provided in chapter 467, HRS, and this chapter.

Section 467-14 includes the following provisions:

§467-14 Revocation, suspension, and fine. *In addition to any other actions authorized by law, the commission may revoke any license issued under this chapter, suspend the right of the licensee to use the license, fine any person holding a license, registration, or certificate issued under this chapter, or terminate any registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following:*

* * *

(7) Failing, within a reasonable time, to account for any moneys belonging to others that may be in the possession or under the control of the licensee;

(8) Any other conduct constituting fraudulent or dishonest dealings;

* * *

(13) Violating this chapter; chapter 484, 514B, 514E, or 515; section 516-71; or the rules adopted pursuant thereto;

* * *

(15) Commingling the money or other property of the licensee's principal with the licensee's own;

(16) Converting other people's moneys to the licensee's own use;

* * *

In summary, while the condominium law does not include a lot of detail on how association funds are to be controlled, the provisions of the real estate licensing law and rules are sufficiently broad to allow the managing agent and the association to develop procedures to create checks and balances on how association funds are handled and disbursed. Therefore, there seems to be nothing in either law that would prevent the managing agent and the association from agreeing to those checks and balances.

This could include requiring any disbursements from a reserve account of the association to be signed by both the managing agent and the association president or a member of the board. This could include provisions authorizing managing agents to only pay regular monthly bills from the operating account and obtain the approval of the board for any nonregular payments.

Of course, any such checks and balances have to take into account the realities of how associations operate and the feasibility of having board members directly involved in the process of disbursing association funds. Nevertheless, nothing in the condominium law or the real estate licensing law seems to preclude those checks and balances from being agreed to.

5) The Extent To Which Condominium Boards Should Be Required To Participate In The Actual Handling And Disbursement Of Association Funds As Part Of The Operations Of The Association.

In the past, there have been suggestions that it is probably not feasible for board members to be directly involved in the day-to-day handling and disbursement of association operating funds. In contrast, it has been suggested that board members should be involved in the transfer of large amounts of money from reserve accounts for their designated purposes.

Property managers indicate that, typically, they simply pay the monthly bills of the association on a regular basis. If large operating expenses arise – such as a contract to perform significant repairs and maintenance of the building – that contract will be approved and presented to the board before the work commences. The board will then authorize the property manager to make payments under the contract as needed. In other words, the board will be involved in the process of authorizing large, non-standard operating expenses, although it may not actually sign the checks to disburse those funds.

Reserve accounts may hold hundreds of thousands of dollars and are not typically disbursed frequently or on a regular basis. Therefore, from a practical point of view, it might be feasible to have, for example, a requirement that a board member – not just the property manager or managing agent – must sign a check to disburse funds from the reserve account. This would put large accumulations of association funds under the direct control of both the property manager and the board.

The software of certain managing agents allows the board members to be “approvers” of transactions. This means that the software can be set up so that there can be no disbursements of association funds from the operating account without board approval.

For example, the software can be set up so that when an invoice comes in, it will first be coded and then it will need approval by at least the community manager. If the board wants to be involved in the process, the process can be set up so that a board member must also approve the payment before the property management company can issue the check.

The software as currently set up, however, does not allow board approval of just some of the operating account invoices – it is an all or nothing process. In other words, if the software is set up to require board member approval of payments, all payments – large and small and regular or one-time – will require board member approval.

Reserve and operating accounts can be treated differently. The process for reserves can be subject to even more checks and balances under the “strongroom” process. For example, there can be a requirement that the minutes must reflect the approval of the payment before processing of the

payment can start.

There can also be additional controls on reserve disbursements such as:

- A board member must sign on disbursements from any reserve account.
- The reserve account signature required can be either an electronic or a physical signature.
- Once a board member signs for a disbursement from a reserve account, several senior managing agent personnel must also sign off before the disbursements can occur.

It is possible to have this stricter standard for reserve accounts and a lesser standard for operating accounts, to avoid the complexities of having board members involved in even the smallest monthly transactions.

The software also allows board members to see what is happening with association accounts in real time. For example, a board member can log into the association account and view – but not in any way change or affect – the transactions being processed from the association’s accounts.

For example, the board members can see invoices being submitted and the same invoices being coded for approval. Board members can then see who approved the invoices and when each invoice was approved. The board member can even see the check number when the payment is made. All that information can be tracked. In addition, the same information can be made available to the association’s auditors.

Essentially, it is a policy decision for the legislature to decide on the level of board involvement needed in the handling and disbursement of association funds. Part of that analysis would include a determination of risk. For example, how often in recent years have there been any claims or evidence of misappropriation of association funds?

Moreover, for more than 30 years, the condominium law has required both managing agents and condominium associations to have a fidelity or employee dishonesty bond covering those who handle association funds. Discussions with managing agents and insurance agents indicate that bonding companies do not necessarily require evidence of particular practices for the handling and disbursement of association funds as a condition of issuing the bond. Therefore, it is not clear that the bonding companies will necessarily require practices that impose cross checks and controls on the handling and disbursement of association funds.

Regardless, the condominium law does state certain specific requirements for managing agent and association bonds. For example, section 514B-132 states that the managing agent shall:

* * *

(3) Obtain and keep current a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of units of the association managed by the managing agent; provided that the amount of the fidelity bond shall not be less than \$20,000 nor greater than \$500,000. Upon request by the commission, the managing agent shall

provide evidence of a current fidelity bond or a certification statement from an insurance company authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirements of this section and the rules adopted by the commission. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any association funds, except any principals of the managing agent that cannot be covered by the fidelity bond. The fidelity bond shall protect the managing agent against the loss of any association's moneys, securities, or other properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide evidence of the fidelity bond coverage in a timely manner to the commission, shall result in nonregistration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission;

(4) Act promptly and diligently to recover from the fidelity bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association, and apply the fidelity bond proceeds, if any, to reduce the association's loss. If more than one association suffers a loss, the managing agent shall divide the proceeds among the associations in proportion to each association's loss. An association may request a court order requiring the managing agent to act promptly and diligently to recover from the fidelity bond. If an association cannot recover its loss from the fidelity bond proceeds of the managing agent, the association may recover by court order from the real estate recovery fund established under section 467-16, provided that:

- (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;*
- (B) The managing agent is a licensed real estate broker; and*
- (C) The association fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission;*

* * *

(Emphasis added.)

That section acknowledges that the principals of the managing agent may not be able to be covered by the bond, but that the managing agent must have a bond that covers everyone else who handles association funds. In addition, the section further provides that if the bond does not cover a particular loss, the association may recover by court order from the real estate recovery fund established under chapter 467, HRS.

Section 514B-103 imposes similar requirements for the condominium association bond, requiring that every association with more than five units must:

- (1) Secure and maintain a fidelity bond in an amount for the coverage and terms*

as required by section 514B-143(a)(3). An association shall act promptly and diligently to recover from the fidelity bond required by this section. An association that is unable to obtain a fidelity bond may seek approval for an exemption, a deductible, or a bond alternative from the commission. Current evidence of a fidelity bond includes a certification statement from an insurance company registered with the department of commerce and consumer affairs certifying that the bond is in effect and meets the requirement of this section and the rules adopted by the commission;

Section 514B-143 (a) (3) requires the association to obtain a bond that meets the following requirements:

- (A) *An association with more than five dwelling units shall obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the association, in an amount equal to \$500 multiplied by the number of units; provided that the amount of the fidelity bond required by this paragraph shall not be less than \$20,000 nor greater than \$200,000; and*
- (B) *All management companies that are responsible for the funds held or administered by the association shall be covered by a fidelity bond as provided in section 514B-132 (a) (3). The association shall have standing to make a loss claim against the bond of the managing agent as a party covered under the bond.*

Therefore, any analysis of whether to impose additional requirements for the handling and disbursement of association funds should take into account the feasibility of imposing more controls and the need for more controls. The need primarily depends on the risk – how many incidents of misappropriation of association funds have occurred in the recent past – and the protections already in place in the form of the bond requirements for both managing agents and the association.

6) The Thoroughness Of Audits Under Section 514B-150 In Light Of The Recent Changes To The Peer Review Process For CPAs.

Auditors are subject to a peer review every three years. The peer review is conducted by other CPAs. Typically, the CPA conducting the peer review will review the work of the CPA who is subject to the peer review for compliance with AICPA standards and acknowledged standards for CPAs in Hawaii. This typically involves checking several audits to see if these standards are being met.

Failing a peer review may require the CPA to take continuing education courses in the following year and then resubmit to the peer review in the second year. It is possible that if a CPA fails the peer review too many times, the CPA may put his or her license in jeopardy.

There can be differences between the AICPA standards because the AICPA focuses on the accrual standard of accounting, whereas many condominiums prefer and only really understand the cash standard. As a result, Hawaii CPAs often have to have their own quality control standards to conduct audits under the cash method.

Regardless, the consensus of CPAs who regularly perform condominium audits is that the peer review process has improved the standards for audits. Prior to the peer review process, some auditors were charging as little as \$1,000 to conduct what might be characterized as a “rubber-stamp” audit of a condominium.

Arguably, conducting an audit for that price was not possible because of the need to review documents, read minutes, interview association representatives, etc. Reportedly, these auditors stopped conducting condominium audits because they knew that the audits they were conducting would not pass the peer review process.

A condominium audit can take up to 50 to 60 hours. A small project might be charged \$3,000-\$4,000, a medium size project \$5,000-\$6,000, and some larger projects can be \$15,000.

On a related issue, auditors without much experience with condominium issues also stopped doing condominium audits. Reportedly, the auditors were concerned that if the audits were not done well, the audits could jeopardize their peer reviews. The end result seems to be that there are fewer but more qualified auditors performing condominium audits.

Auditors who are still conducting condominium audits indicate that they picked up new condominium clients as a result of these changes and sometimes found issues that had not been properly addressed.

There is some suggestion that the peer review process has also had negative effects. The peer review system began as a professional self-evaluation process through which CPA firms would help one another improve. Now, for some auditors, the focus is on passing the peer review. As a result, some audit firms are said to spend more time ensuring their files pass peer review instead of actually spending that time on the audit, itself. Reportedly, this can mean spending (i) less time looking for real issues and helping clients improve their practices and (ii) more time documenting to pass peer review while doing the minimum fieldwork.

Finally, some auditors indicated that not every condominium association is being audited because there is no real enforcement of the requirement for an audit under section 514B-150. That is not one of the sections the Commission can enforce under sections 514B-65, 514B-66, 514B-68, and 514B-69 of the condominium law.

7) Evaluation Of The Dispute Resolution Process Of Evaluative Mediation Under The Commission’s Program.

The evaluative mediation process, established in 2013 and fully implemented by the Commission in 2015, seems to have been a success. Facilitative mediation, whereby the mediator simply tried to assist the parties in reaching an agreement to resolve the dispute, had been in existence for approximately 25 years prior to 2015. The evaluative process, in which the mediator has a certain amount of subject matter experience and can advise not only on the facts but the law, seems to have improved the process and the results.

Of course, the evaluative mediator still cannot make a decision and impose a result on the parties.

Therefore, not every dispute can be resolved by evaluative mediation. Nevertheless, having a mediator – such as a retired judge or experienced attorney – help the parties evaluate both the factual and legal strength of their claims often succeeds in helping the parties to reach a decision.

This has occurred because evaluative mediators are more willing and better equipped than facilitative mediators to give opinions on the strengths and weaknesses of the cases of the participants in the mediation. This, in turn, can help promote a settlement more effectively. Even if the dispute is not resolved through mediation, the willingness of evaluative mediators to give an honest opinion of the strengths and weaknesses of the association's case can help boards of directors decide how or whether to pursue a particular matter. The same is true for individual owners.

One problem with evaluative mediation is the initial cost of \$375 for each participant. While that does not seem excessive – given the Commission's subsidy of \$3,000 for evaluative mediation – sometimes, participants state they cannot afford that amount. Therefore, even though the Commission subsidizes evaluative mediation for an additional \$3,000, certain parties will argue that they cannot participate because of the initial cost. This can force the parties back into facilitative mediation which costs \$60-\$70, one fifth to one sixth the cost of evaluative mediation.

The law does allow a participant to require all parties to participate in evaluative, as opposed to facilitative mediation. Nevertheless, forcing that participation requires a party to file an additional motion to compel evaluative mediation, which adds another layer of complexity to the process.

Another complication of the current statute is the parties who are allowed to participate in evaluative mediation. More specifically, section 514B-161 (a) states:

(a) The mediation of a dispute between a unit owner and the board, unit owner and the managing agent, board members and the board, or directors and managing agents and the board shall be mandatory upon written request to the other party when . . .

In other words, the current law does not allow two owners who have a dispute to use the evaluative mediation process. Of course, if the association agrees to be a nominal party to the evaluative mediation between two owners, the evaluative mediation can move forward because the evaluative mediation will then meet the definition stated above. Nevertheless, it can be difficult for an association to become involved in a mediation in which it has no real interest because the dispute is really between two individual owners.

Of course, owners with a dispute can always participate in a facilitative mediation but that will not necessarily provide them with the benefits of the evaluative mediation outlined above.

The Commission records for fiscal year 2021 indicate there were 15 facilitative mediations conducted through five approved providers. In contrast, the Commission records indicate 47 evaluative mediations were conducted through four approved providers. This resulted in payments to five facilitative providers of approximately \$3,400. The corresponding payment for evaluative mediation was approximately \$102,000 paid to the four providers.

8) Evaluation Of The Educational Effectiveness Of The Annual Legislative Update And The Condorama Seminars On Every Main Island.

The annual legislative updates and condominium seminars presented by the Commission serve two purposes: (i) to educate condominium boards (and, to a lesser extent, owners); and (ii) to “show the flag” -- i.e., remind condominium boards and owners of the existence of the Commission and the valuable resources it has developed for condominium boards and owners.

Providing updates and seminars does present certain problems. For example, low turnouts on some of the neighbor islands can make it difficult to justify the time and expense of presenting seminars on those islands. For example, Hilo has very few condominiums and Lanai and Molokai have even fewer. Therefore, even though the Commission has proposed seminars in those locations, the low level of interest and sign up for those seminars make it difficult to justify the time and expense of traveling to those islands. As a result, the Commission has not presented seminars in those locations.

The Commission has faced similar problems in Kona on Hawaii and, to a lesser extent on Maui. Fortunately, Oahu has seen high turnouts for both Commission-sponsored seminars and seminars presented directly by the Commission.

In addition, the move towards virtual meetings has allowed the Commission to overcome some of the difficulties of presenting seminars in those areas where interest is minimal. In addition, the Commission has developed its website to the point that the website makes available, virtually, the Commission’s “*Condorama*” seminars presented on Oahu and Maui and recorded by the Commission. Those seminars are available on the Commission’s website and can be reviewed by anyone with a connection to that website.

In addition, the Commission also presents “mini” (3-5 minute) seminars on specific topics that may be of interest to both board members and owners. Those mini seminars avoid the possibility that boards and owners may be reluctant to spend time reading the written word on a website. The seminars do so by having virtual presenters outline the basic principles of the topics covered by the mini seminars.

The topics of these professionally produced videos range from: purchasing a condominium, becoming a new condominium owner, common governance issues, budgeting and reserve funding, leaks and water damage, to many other topics of potential interest to owners and boards. They can be viewed at <https://cca.hawaii.gov/reb/hawaii-condo-living-guide/> . The seminars are also available on the real estate branch’s YouTube channel.

Fortunately, the pandemic has created a strong focus on virtual presentations. Therefore, the Commission has the opportunity to use virtual seminars to reach those board members and owners who live in locations that may not be feasible for an in-person seminar. In short, the Commission seems to have used technology effectively to provide online seminars that might have been difficult to present prior to the pandemic.

9) Develop A Short Summary Of The Realities Of Condominium Living For Boards And Owners.

As noted in the preceding section, the Commission's website -- [Real Estate Branch | Resources for Condominium Owners, Boards of Directors & Associations \(cca.hawaii.gov\)](http://cca.hawaii.gov) -- contains considerable information, in the form of video and in-person seminars and written documentation, as well as the condominium law, and the Commission rules on condominiums. Therefore, every owner and board member with a connection to the Internet has the opportunity to use this information to obtain summaries of condominium living and much more. In light of that, the only information needed is to ensure that every board member and owner who wishes to access that information is aware of its existence.

10) Whether Boards Use Executive Sessions To Keep Information From Owners.

In 2017, the condominium law was changed to remove the provision in the law which previously had allowed the board to vote to exclude any owner participation in discussion at a board meeting. (Prior to that time, owners could not be excluded from the board meeting, itself (except executive sessions), but could be excluded from participating in the board's discussion of a particular issue at the board meeting.) The 2017 change essentially allowed owners to participate in the board's discussion as the board meeting progressed, subject to the board's authority to adopt rules on owner participation in the board meetings.

The ability to adopt rules means that while a board can no longer prohibit owners from participating in the board's discussion of issues -- except in executive session -- the board can control owner participation. For example, some boards have a rule that allows owners to participate in board discussion once every board member has had an opportunity to discuss a particular issue.

Allowing owners to be excluded from participation in a board meeting if the board moves into executive session has resulted in owner complaints. The current law, section 514B-125, allows a board to go into executive session to discuss four categories of information: personnel, litigation, attorney-client privileged information, and negotiating contracts and other commercial transactions.

These four categories are fairly broad and open to interpretation. This, in turn, has fueled claims that the board is abusing the executive session privilege, but that is not necessarily the case.

As an example, the definition of "personnel" in the dictionary indicates that in a volunteer organization (such as a condominium association), the term "personnel" can include volunteers, not just employees, contractors, etc. As a result, boards may go into executive session to discuss appointing new board members, committee members, etc. -- i.e., volunteers who will provide service or support to the association. The purpose of that discussion is the same as the purpose of the discussion of employees -- i.e., to have a full and frank discussion of the qualifications of a volunteer.

Owners may dispute that volunteers of the association can be considered "personnel" under the executive session provision of the condominium law. Nevertheless, this is not necessarily

abusing the executive session privilege but simply interpreting it based on the dictionary definition of “personnel.”

On the other hand, the 2017 right for owner participation in board meetings can lead to contentious meetings, as well as long, drawn-out meetings. This can, in turn, lead to boards trying to interpret the executive session privilege as broadly as possible to exclude owners from that portion of the board meeting.

This problem does not arise at all associations. In some associations, owners are so disinterested in the governance of their association that they do not even bother to show up to board meetings or even participate virtually. (Of course, that can all change if a contentious issue arises, such as a significant increase in maintenance fees or insurance deductible.) Therefore, not every association is experiencing owner complaints about abuse of the executive session privilege. That is because many owners really do not even care about what the board is doing, unless, again, it significantly impacts the owners.

Finding a solution to the complaint about the abuse of the executive session privilege is not simple. For example, a board does not necessarily want every owner listening in on the board’s discussion of the merits of the association’s legal claim against a third party or a member of the association. Allowing every owner to sit in on such a discussion can compromise the association’s ability to pursue or defend that claim.

Similarly, Hawaii’s law on unemployment practices is such that the board would not want to discuss the work, conduct, etc., of an association employee in open session, with all the owners present. Even when entering into contracts, a board member may have information on a potential association contractor which, if repeated in open session, might be considered business defamation. Nevertheless, that information might still be information the board should hear before deciding whether to enter into a contract with that contractor.

In summary, some boards undoubtedly do test the limits of the executive session privilege for the wrong reasons, or reasons as simple as reducing the contentious tone or length of a board meeting. Nevertheless, executive sessions serve a worthwhile purpose. As a result, it may be difficult for the legislature to adopt a rule that will protect that purpose while still preventing abuse of the executive session privilege.

11) Whether Managing Agents Should Undergo Training As A Condition Of Acting As A Managing Agent.

There are no educational requirements for employees of managing agent companies. Instead, someone can walk in off the street and become a manager of multiple condominiums with no training or qualifications at all.

That certainly does not mean that those managing condominiums for management companies have no training. In fact, it is in the interests of management companies to hire those with training or encourage (or require) those without training to take appropriate courses to improve their skills. In many cases, this does occur, either before or after the management company hires the individual. In addition, the condominium management industry has a long tradition of on-the-

job training, in which condominium managers with experience are available and willing to provide advice to those who are just beginning the work.

It is also the case that managing condominiums depends heavily on people skills and organizational ability. In other words, those with an ability to manage people can be effective managers because that is a large part of their responsibility – dealing with boards, processing owner complaints, asking owners to follow the rules, etc.

Similarly, those with the ability to organize can be effective managers of associations. For example, even if new managers do not have a deep understanding of scheduling and conducting board and association meetings, that information is available from the management company and often provided by others in the company who do have those skills. In addition, new managers can (and should) consult with contractors, consultants, and other qualified individuals about the maintenance, repair, and restoration of a condominium project. Most condominium associations also have an attorney to advise them on the legal aspects of running an association, so managers can consult with the association attorney on the law.

Over the years, there have been attempts to impose a requirement that condominium managers must have some training before they begin work. More than two decades ago, a bill was introduced that would have required a new managing agent to at least have undertaken basic training in condominium management before starting work. The bill was presented on the basis that trained managers could more effectively assist untrained, volunteer board members in fulfilling their responsibilities.

In other words, the bill acknowledged that the possibility of training thousands of volunteer board members was unlikely to be successful. Therefore, it was better to concentrate on training 400 or 500 property managers so they could advise those volunteer board members. At the hearing in the house, virtually everyone testified against the bill. Although it was still passed by the house, the bill died in the senate and nothing similar has been attempted since.

In summary, condominium property managers are not required to have any formal training in condominium management before beginning their work as condominium managers. Nevertheless, for the reasons outlined above, the impact of that lack of formal training is not necessarily as significant a problem as it otherwise might be.

APPENDIX
DISCLOSURE OF INFORMATION TO PROSPECTIVE PURCHASERS

Currently, on page 2 of the public report, there are two sections entitled “General Information On Condominiums” and “Operation Of The Condominium Project.” The information in those sections is not unhelpful. Nevertheless, the public report should include more information on the resources that the Commission has developed over the years relating to condominium governance.

Originally, the focus of the public report was disclosure – disclosing all relevant information to a prospective purchaser of a condominium about the project described in the public report. That is still a valid and worthwhile function, especially for those condominium projects being offered for sale before they have been fully developed and completed. The detailed information in the public report helps prospective purchasers make an informed decision about the purchase.

Although the primary focus of the condominium law in the beginning was disclosure about the physical aspects of the project, experience has shown that the long-term issue for owners relates to condominium governance and operation. In other words, long after an owner has purchased a condominium unit (after being fully informed of the physical details of the project), that owner will continue to be impacted by the principles of condominium governance and operation.

The periodic articles and letters in the newspaper about oppressive boards, etc., only serve to confirm perceptions about the long-term impact of living in a condominium. Those articles and letters frequently overstate their case and contain inaccuracies, plus many of those involved in the industry would argue that owners, not boards, are the problem! Nevertheless, the discussion certainly indicates that it will be helpful for the public report to provide more information to prospective purchasers of a condominium on the governance and operation of the project.

Therefore, while the information on page 2 of the current public report form is certainly not unhelpful, it does not alert a prospective purchaser to the long-term impact of purchasing and living in a condominium. Moreover, while a single paragraph in the middle of page 2 mentions the Commission’s website and telephone number, that reference could be expanded and emphasized to include more detail on the information the Commission can provide.

The section on the Real Estate Branch website entitled “Resources For Condominium Owners, Boards Of Directors And Associations” includes useful and helpful information for prospective purchasers of a condominium. Just clicking on the link entitled “Frequently Asked Questions” also provides a lot of very useful background for owners.

Admittedly, the volume of information and the range of topics exceed what could reasonably be included in the public report. Moreover, developers may also be concerned that the governance information provided might dissuade owners from buying into the project! Nevertheless, those concerns can be balanced with a “just the facts” approach without presenting a negative impression of condominium living. The primary purpose would be to include information in the public report that will encourage a prospective purchaser to become better informed about not just the physical aspects of the project but condominium governance – i.e., encourage prospective purchasers to take the time to either call the Commission or go to the Commission website and

review the information available there.

Therefore, one suggestion would be to: (i) revise page 2 of the public report form or (ii) add an additional page of information that lists some of the topics available from the Commission, on the Real Estate Branch website. The additional information added to the current public report form could read as follows:

Once You Purchase Your Condominium, What Do You Need To Know?

The Real Estate Branch website (cca.hawaii.gov/reb/resources-for-condominium-owners/) includes information for owners on the management and operation of a condominium project. Topics include the following and more:

- *The law and rules governing condominiums and the role of the declaration, bylaws, and house rules in the management and operation of the project.*
- *The respective roles of the owners and the board of directors in managing and operating the project.*
- *The rights and responsibilities of owners and the board.*
- *The role of the Real Estate Commission in condominium governance.*
- *Access to information and documents concerning the management and operation of the project.*
- *Budgets and the role of maintenance fees and reserves in the maintenance and repair of the project.*
- *Participating in board and association meetings.*
- *Procedures available for resolving disputes.*
- *Access to educational seminars sponsored by the Real Estate Commission and other organizations.*

More topics (or fewer topics) could be included and finding the right balance may be a matter of judgment. Nevertheless, given the long-term impact of condominium governance on prospective purchasers who review the public report, it certainly seems worth encouraging them to take advantage of the resources the Real Estate Commission has developed relating to condominium governance. Therefore, expanding page 2 of the public report form to include additional information, such as outlined above, seems worthwhile.