

CONDOMINIUM PROPERTY REGIME TASK FORCE
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

Date: September 11, 2023

Time: 1:30 p.m.

In-Person Meeting Location: Queen Liliuokalani Conference Room
HRH King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813

Virtual Participation: Virtual Videoconference Meeting – Zoom Webinar
<https://dcca-hawaii-gov.zoom.us/j/85468546810>

Present: Senator Carol Fukunaga, Member
Dathan Choy, DCCA, Member (Zoom)
Kedin Kleinhans, DCCA, Administrative Staff
Keali'i Lopez, Member (Zoom)
Lila Mower, Member (Zoom)
Philip Nerney, Member
Elaine Panlilio, Member (Zoom)
Raelene Tenno, Member (Zoom)
Pattie Thiele, Member (Zoom)
Shari Wong, Deputy Attorney General (Zoom)
Marc Yoshimura, DCCA, Technical Support

Excused: Representative Sean Quinlan (Member)
Benedyne Stone, DCCA (Member)

Zoom Webinar Guest(s): Sunshine David
Frank Ragozionski
Representative Scott Saiki

Agenda: The agenda for this meeting was posted to the State electronic calendar and filed with the Office of the Lieutenant Governor, as required by Hawaii Revised Statutes ("HRS") section 92-7(b).

Call to Order: The meeting was called to order at 1:38 p.m., at which time quorum was established.

Kedin Kleinhaus welcomed everyone to the meeting and proceeded with a roll call of the Task Force members.

Election of Officers: Ms. Mower nominated Kealii Lopez to be chair, but Ms. Lopez declined. Ms. Tenno moved to vote on electing either Mr. Nerney or Ms. Mower for Chair, which was seconded by Ms. Lopez.

There were four votes for Mr. Nerney (Fukunaga, Nerney, Panillio, and Thiele) and three votes for Ms. Mower (Mower, Lopez, and Tenno). The vote passed with Mr. Nerney as Chair.

Ms. Tenno moved to vote on electing a Vice Chair, which was seconded by Ms. Lopez and unanimously carried.

Chair Nerney opened the floor to nominations for Vice Chair to which he nominated Ms. Thiele and Ms. Tenno nominated Ms. Mower.

The nominations for Vice Chair were closed and a roll call vote took place. With six votes for Ms. Mower (Fukunaga, Lopez, Mower, Panillio, Tenno, and Thiele) and one vote for Ms. Thiele (Nerney), Ms. Mower was elected as Vice Chair.

Overview of
Sunshine Law
Requirements:

Deputy Attorney General (DAG) Wong discussed the permitted interactions between members. Hawaii Revised Statutes chapter 92, commonly known as the Sunshine Law, pertains to open meetings in Hawaii's government. This statute specifies that meetings of government boards or commissions must be open to the public unless authorized to be held in private due to specific exceptions outlined in the law. It ensures transparency and public access to government proceedings, promoting accountability and open decision-making.

Members posed questions to gain more clarity on the permitted types of conversations that can be conducted when not in an open session meeting or what to do should there be possible conflicts with matters outside of the Task Force. Members can also reach out to the DCCA for assistance or if they have legal counsel questions, members are allowed to reach out to DAG Wong.

New Business: Overview Act 189, Session Laws of Hawaii 2023 (HB1509, HD2, SD1, CD2) Relating to Common-Interest Developments

The Task Force will discuss, among other things, the purpose and objectives of the Task Force as referred to Section 3 of Act 189:

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

The Task Force discussed what is the problem to be solved through Act 189.

Ms. Lopez: It was recommended that the Task Force review the current processes in place and discuss the concerns related to the purpose of this task force. Perceived shortfalls of existing mechanisms will need to be discussed.

Ms. Lopez: Some of the current processes in place are not effective and should be reviewed. She was unsure whether they needed to conduct an assessment or whether an assessment had been done and they were to make recommendations based on that assessment.

Chair Nerney: As he understands, the Task Force was created in response to concerns expressed at the Legislature and that they should discuss perceived shortfalls of existing mechanisms and that anything looked at should be on an empirical basis. Then there's the question on the broader, vaguer segment on whether other fiduciary duties that should be looked at.

Vice Chair Mower: She conducted her own assessment based on her review of the Hawaii Condominium Bulletin from September 2015 to present. During this time, there were 350 mediation cases. Of these cases, 279 were owners filing against their association/board. 124 cases were mediated to agreement which means the balance of cases were mediated without agreement or mediation was declined. Problems with mediation is that mediators are not necessarily trained in condominium law and that there are no professional standards. She reported that condo court was ineffective due to the lack of publication and owners not being able to afford an attorney. Ms. Mower also reported that condo owners who cannot afford current ADR methods does not have access to justice.

Ms. Tenno: Agreed with Vice Chair's comments on a condo owner who cannot afford current ADR methods. There is no equal balance because an owner may request mediation and the board can refuse even if participation is mandatory. This leaves the owner with retaining an attorney and filing suit to settle the dispute which contradicts the intent of mediation.

Senator Fukunaga: Requested that the DCCA provide an overview of past and current ADR processes to review and find ways to improve these programs. Senator Fukunaga also stated that the legislature has interest in how best to settle disputes because the current mechanisms are not working to everyone's satisfaction.

Ms. Tenno: Suggested that the DCCA note the subject matter of mediations, if owners are represented by attorneys, and the outcomes of those who are represented.

Vice Chair Mower: Added that 514B-146(g) disincentives boards from participating in mediations.

Ms. Lopez: Raised a question on how this is a disincentive for board members to participate? An example about a dispute on assessment and if the board does not convene, they pay the assessment and the owner is not able to dispute this.

Ms. Tenno: When common assessment, pay first and mediate later.

Chair Nerney: Case law says otherwise; breach of fiduciary duty if they refuse a request for mediation. So, if an owner can prove that mediation was requested and refused, the board will have breached their fiduciary duties.

Vice Chair Mower: There are contradictions in 514B that must be clarified. Ms. Mower also added that attorneys' fees are not common expense assessment for all so these attorney fees should be disputable before payment is required.

Chair Nerney: Focus on mechanisms on collections relating to 514B.

Vice Chair Mower: The legislature created condominium form of ownership. 514B has dispute resolution mechanisms in place but we may be looking for other mechanisms that are fair and equitable to the majority of condo owners that cannot afford fees to enter into ADR.

Chair Nerney: Mediation, arbitration, and litigation are adequate and another mechanism that is essentially of no cost or consequence to owners is favorable.

Vice Chair Mower: Shared that personal examples of retaliation and that ADR should also address instances of retaliation.

Ms. Lopez: There should be focus on the consumer side of condominium ownership. We understand that owners relinquish autonomy to a board and we need to find ways to establish effect framework to mitigate certain issues.

Chair Nerney: Asked for a review "Final Report to the Legislature" that was created by a blue-ribbon committee" and why choices were made.

Ms. Tenno: From a consumer standpoint, if the initiative is done to take care of dispute, the board does not respond, and mediation is raised but not effective.

Chair: Mediation does not have a ruling but tries to reach a resolution between contending parties.

Vice Chair Mower: The cost for owners to go to court is not feasible with a high cost of a retainer for lawyers.

Ms. Tenno: Lawsuits are affecting insurance premiums.

The Task Force further discussed topics of discussion for upcoming meetings:

- 1) Collections and Dispute Resolution Mechanisms.
- 2) Identify data and resources needed to make informed decisions.
Requested an overview from DCCA on processes used previously to address ADR. Understanding the volume and understanding how significant a problem we are addressing.
- 3) Suggested that there might be a need for funding to conduct a full study and independent assessment on the efficacy of these programs.
- 4) Focus on ADR, including past and/or legislative attempts, e.g. condo court, ombudsman.
- 5) Request mediation centers to provide more data on what the disputes are about such as topics such as architectural disputes, deferred maintenance, insurance issues, etc.

Next Meeting: TBD

Adjournment: The meeting adjourned at 3:32 p.m.

Reviewed and approved by:

/s/ Philip Nerney

Taken and recorded by:

/s/ Kyle-Lee Ladao

(Mr.) Philip Nerney
Task Force Chairman

(Mr.) Kyle-Lee Ladao
Administrative Assistant

KNL
10/03/23

() Minutes approved as is.

() Minutes approved with changes: