

## Kyle-Lee N. Ladao

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**From:** Aaron Cavagnolo <[REDACTED]>  
**Sent:** Tuesday, November 28, 2023 12:45 PM  
**To:** Kyle-Lee N. Ladao  
**Subject:** [EXTERNAL] Written Testimony Regarding Condo Board Misconduct and Lack of Transparency

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Dear Members of the Condo Property Regime Task Force,

I am reaching out to express my grave concerns and to provide a detailed account of the ongoing issues I have faced with the condo board at the AOA Diamond Head Surf Condominium complex. This includes their lack of transparency, unresponsiveness, and what appears to be retaliatory behavior regarding a spalling issue, drainage problems and concerns about a retaining wall.

Initial Discovery and Reporting of Issues:

May 5, 2023: Identified a spalling issue (hole) in our bedroom load-bearing wall during the final property walkthrough and reported it to the property manager who said he'd discuss how to proceed with the AOA board. As of 11/28/2023 no action has been taken.

Escalating Concerns and Health Implications:

Mid-May: Detected a moldy smell, presumably related to water damage, leading to health concerns.  
July 19: Experienced a significant water pooling behind our bedrooms during a flood event. This led to increased moldy smell within our unit. Provided the board with video of pooling water against our bedrooms and request for action to fix drainage to stop pooling. As of 11/28/2023 we are still dealing with pooling issues next to our bedrooms. Due to what I came to realize were mold allergies, I started sleeping at nearby friends' homes as much as possible - more than half of the days since mid-July.

We arranged for an inspector to examine the drainage and the moldy baseboards in the bedroom affected by the pooling water. The inspector advised against repairing the bedroom until the drainage issue is resolved, we forwarded this information to the board. Following this, we removed the flooring and consulted a mold inspector, who detected elevated mold levels in the air. He attributed our mold issue to excessive moisture seeping through the floor and recommended addressing the water source as a priority. Consequently, we have ceased using one of our bedrooms, awaiting the board's action to remedy the external drainage problem so we can proceed with repairing our daughter's bedroom.

Board's Inadequate Response and Focus on Retaliation:

Despite repeated requests for assistance, the AOA gave no response regarding our concerns about the spalling issue, drainage problem and potential mold.

On August 4th, we initially requested evaluative mediation via email.

The week of August 21<sup>st</sup> we contacted Mediation Center of the Pacific and asked them to try to set up evaluative mediation after learning AOA boards are more likely to respond to this type of request.

August 25: The AOA brought in an engineer to inspect the spalling and a leaning retaining wall above the lanai area behind our unit. Over the time they were there, they seemed focused on the spalling issues on the outside of our unit near our sliding glass door. I had to point out others around the corner and had to ask them (the board member, on-site property manager, and engineer) repeatedly to also inspect the spalling issue on the inside of my unit.

The engineers report of the same date stated, "Until more investigation can be done to determine the actual vertical reinforcing used and the size of the footing, the wall should be braced immediately. No pedestrians or children should be allowed in the back area until the wall is properly braced." As of 11/28/2023 the wall has yet to be braced and there has been no communication about any plan to address the wall. We feel this is a purposeful retaliation by the board so that our kids cannot play in that back lanai area that is around 400 sq ft.

In addition, the AOA instructed the engineer to omit assessments of the spalling issue from his report. This deliberate exclusion raises serious concerns about the board's transparency and the safety risks posed by the spalling issues within the load bearing wall of our unit. During a follow up phone call with the engineer on 9/28/2023, the day I received a copy of the report, he said that if the retaining wall were to fail it could break our sliding glass door. I passed this concern along to the board via email.

September 7: The AOA made their first response to our repeated requests with a letter from their lawyers which was particularly concerning. Instead of addressing the spalling issue, drainage and the retaining wall, they accused us of having unauthorized modifications, specifically referring to a sliding glass door on the back of our unit. This door is included on the official condo map so we still don't understand their statement it was "not authorized by the board." Simultaneously, the board ignored two nearby windows that are not on the condo map and seem to be unpermitted, indicating selective enforcement and possible retaliation.

Additionally, the letter from the lawyers rejected our request for mediation, citing its vagueness and claiming insufficient time had elapsed since our request. By this stage, we had sent numerous detailed emails outlining our concerns, yet we received no response or inquiries from the board regarding our requests or the information we had provided.

**Non-Compliance with Bylaws and State Statutes:**

**Quarterly Meetings:** Our bylaws mandate quarterly regular meetings, yet the board failed to adhere to this requirement. Meetings were held only on 8/10/2022 (while I can't confirm this appears to be the only regular meeting in 2022), 8/24/2023, and 11/09/2023, indicating a significant lapse in governance and resident communication. It appears many of their decisions were being made without legal meetings nor proper documentation.

**Property Management Company:** Dynamic Property Management, the property management company, also exhibits a pattern of non-compliance. They frequently need multiple reminders to post minutes after meetings which is just one example of how they do not follow state statutes in ways that appear to help the board avoid transparency which leads to unit owners like myself needing to persistently remind them to follow our bylaws and state statutes.

Impact on Resident's Well-being and Request for Action:

The ongoing issues have significantly impacted my health and well-being, forcing me to seek alternative accommodations and incurring considerable financial and emotional stress. The board's apparent retaliatory actions, lack of accountability, and disregard for resident safety, (in this case my two young children, wife and myself) underscore the need for regulatory oversight and reforms in condo governance.

Conclusion:

I urge the Task Force to take these issues into account and advocate for measures that ensure accountability, transparency, and safety in Condo Property Regimes. The experiences I have outlined depict a concerning pattern of misconduct by the condo board, which should not be overlooked.

Thank you for your attention to these pressing matters. If you would like more details, please feel free to contact me.

Sincerely,

Aaron Cavagnolo

A black rectangular redaction box covering the signature area.

## Kyle-Lee N. Ladao

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**From:** Aaron Cavagnolo <[REDACTED]>  
**Sent:** Tuesday, November 28, 2023 1:07 PM  
**To:** Kyle-Lee N. Ladao  
**Subject:** [EXTERNAL] Governance and Transparency Challenges in Condo Boards: Personal Observations from Diamond Head Surf

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Dear Members of the Condo Property Regime Task Force,

As a resident of Diamond Head Surf, I am reaching out to share my observations and concerns about issues in condominium board governance and transparency, specifically in the context of an incident at our property. It is important to note that the details I am providing are based on my understanding and observations, and, despite my attempts to seek clarification and response from our Association of Apartment Owners (AOAO) Board, I have yet to receive any acknowledgment or rebuttal to these concerns.

### Background:

My communication with the AOAO Board on October 25, 2023, detailed an alarming situation regarding a tree removal project. This incident, as I understand it, highlighted potential breaches of our community's bylaws and raised significant questions about ethical conduct and legal compliance.

### Incident Description:

A few years ago, our property manager was reportedly instructed to obtain bids for a tree removal project. The board initially selected a company based on these bids. However, as I have come to understand it, the Board President (who still sits on our board) replaced this company at the last minute with a different contractor who allegedly lacked the necessary insurance, a move that appears to contravene our bylaws. This contractor, to my understanding, was not approved by the board. The subsequent dismissal of the on-site property manager, who had expressed concerns about this decision, further adds to my apprehensions.

### Personal Observations and Concerns:

1. **Bylaw Violation (As Understood):** The selection of an uninsured (confirmed by our property management company) and unapproved contractor, as I perceive it, directly violates our AOAO's bylaws, potentially exposing us to legal and financial risks.
2. **Transparency and Ethical Questions:** The manner of the contractor change, based on my understanding, raises serious doubts about transparency and ethical practices within our AOAO.
3. **Inconsistent Adherence to Guidelines:**

This incident reflects, in my observation, a larger issue of inconsistent adherence to state statutes and governing documents, raising concerns about potential systemic governance issues.

Impact and Need for Clarification:

These observations, in the absence of any clarification or response from the board, have contributed to a loss of trust and a sense of uncertainty within our community. The lack of transparency and apparent disregard for procedural integrity is particularly troubling.

Request for Task Force Action:

I urge the CPR Task Force to consider:

- Investigating this incident and the general conduct of condo boards in Hawaii.
- Ensuring adherence to legal and ethical standards by condo boards.
- Recommending stronger oversight and transparency measures.
- Providing better mechanisms for residents to address governance without concerns of large legal fees being passed along by the board.

Conclusion:

My testimony, based on personal observations and a lack of communication from our board, underscores the need for urgent attention to the governance practices of condominiums in Hawaii. I am hopeful that the Task Force will consider these issues seriously and help foster a more transparent and accountable condo board governance framework.

Thank you for your consideration of these matters.

Sincerely,

Aaron Cavagnolo

A black rectangular redaction box covering the signature area.

**From:** [Colonel Mark L. Brown, USA \(Ret.\)](#)  
**To:** [Kyle-Lee N. Ladao](#)  
**Cc:** [Lila Mower](#)  
**Subject:** [EXTERNAL] Written testimony regarding Alternative Dispute Resolution Systems for the CPR Task Force  
**Date:** Sunday, November 12, 2023 6:44:34 PM

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**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Dear Mr. Ladao,

Please provide a copy of my following testimony to the members of the CPR Task Force in advance of the task force's meeting scheduled for 1:30pm, November 30, 2023. My wife (Molly) and I plan to attend the meeting via Zoom and will be available to answer any questions and provide any supplement verbal testimony that may be helpful. Molly is also very knowledgeable about the alternative dispute resolution experiences described in my testimony and is not constrained as I am by a non-disparagement clause that was part of a \$600,000 settlement agreement. My testimony follows:

Dear members of the CPR Task Force,

I have experience working with a four-year Hawaii condo law dispute case, both in mediation (in March 2020) and in the First Circuit Court (from June 2020 to May 2023).

My name is Mark L. Brown and I have been an Oahu resident since 1997. I am a retired colonel in the U.S. Army who formerly served as the Comptroller, U.S. Indo-Pacific Command from 1999 to 2006. In this position, and in my previous financial management assignments over a 30-year career, I supervised and accomplished numerous audits, inspections and investigations.

Beginning in 2017 I served on a condo board where I experienced retaliation for reporting evidence of fraud, embezzlement, and other breaches of fiduciary duty. Some of the fundamentals of my case were reported by Civil Beat in 2023 based on information they obtained from documents available to the public and condo community owners.

The first article was published following the start of the Hawaii First Circuit Court trial on April 24, 2023:

**Prominent Honolulu Condo Board Members Are On Trial For Alleged Retaliation. Here's Why - Honolulu Civil Beat**

<https://www.civilbeat.org/2023/04/prominent-honolulu-condo-board-members-are-on-trial-for-alleged-retaliation-heres-why/>

The second article was published on July 13, 2023, following release of the

settlement agreement to condo association members:

## **Prominent Honolulu Condo Directors Pay \$600,000 To Settle Retaliation Claim - Honolulu Civil Beat**

<https://www.civilbeat.org/2023/07/prominent-honolulu-condo-directors-pay-600000-to-settle-retaliation-claim/>

Both articles include a lot of very supportive reader feedback.

To attempt to resolve the matters at issue, my attorney and I first submitted a mediation demand to opposing counsel in August 2019 which was followed by mediation in March 2020. From the beginning it was obvious that the mediator had no interest in achieving justice but was primarily focused on trying to influence me to drop the claim. Opposing counsel offered only \$32,000 to settle the claim which the mediator strongly recommended that my attorney and I accept. The \$32,000 figure was based on my attorney's estimate of my cumulative legal fees as of March 2020.

Obviously, a \$32,000 offer to drop a claim later indisputably found to merit a \$600,000 settlement was way off the mark. Accordingly, my attorney and I pressed ahead with an expensive three-year effort to progress through the steps leading to a jury trial in Circuit Court. The only value obtained by the mediation was to invoke the provisions of HRS 514B-157(b)(2) which provide that I would not be vulnerable to opposing counsel legal fees should I lose my case, provided that I participated in mediation in good faith prior to the filing of the civil claim in court.

When Civil Beat published their July 2023 article that reported the result of a \$600,000 payment to resolve my retaliation claim, most readers interpreted that outcome as a success story for Hawaii condo owners who had experienced similar abuse. Unfortunately, this outcome was not a genuine success story. Like the \$32,000 offer in March 2020, the \$600,000 settlement barely covered what the cumulative legal fees had grown to three years later. Further, no resolution of the condo law issues was obtained other than the \$600,000 payment and the parties including a non-disparagement clause in the settlement agreement to not criticize each other. Accordingly, I have no such critical comment I can add since it is impossible to describe fraud against an association, breaches of fiduciary duty or retaliation in a way that is complimentary.

Attorneys love the current alternative dispute resolution process because it helps ensure the payment of their considerable fees. The condo industry loves the current alternative dispute resolution process because it makes violations of Hawaii condo law reported by Hawaii consumers go away quietly. All Hawaii consumers are left with is a huge personal expense, the loss of hundreds to thousands of hours of personal time, and considerable aggravation. Obviously, such a process does not serve to protect the Hawaii condo resident and consumer. It only serves special interests. Clearly, such a dispute resolution process needs to be replaced by something that better serves the genuine public interest.

What I believe is needed is a Condo Law Enforcement Agency (COLEA) for the State of Hawaii. Such agencies are commonly described as a condo law “Ombudsman” in other states. For Hawaii, the COLEA should be empowered by the legislature to impartially investigate, and adjudicate, reported violations of Hawaii HRS 514B condo law submitted by Hawaii condo owners and/or residents as well as officials representing condo associations. Further, the COLEA could be established at no expense to Hawaii tax payers. Given the count of 173,036 condo units in the State of Hawaii reported by the DCCA in 2021, a mere \$1 per month per condo fee added to what owners already pay for maintenance and electricity could produce an annual revenue stream of \$2,076,432. This is a sum that should be adequate to staff the COLEA with up to ten qualified specialists to respond to reported violations of HRS 514B in a timely fashion. Obviously, the COLEA should be able to easily improve upon the record of my experience of the four years (from 2019 to 2023) it took for the existing alternative dispute resolution process to address my case.

The fact that my acronym “COLEA” is pronounced the same way as Kolea, the Hawaiian name for the beloved Pacific Golden Plover, is no coincidence. The Kolea has the courage, strength and skill to fly directly from Hawaii to Alaska and back each year. Like the Kolea, Hawaii’s COLEA would need the empowerment, the mission, and the skill to go the distance for complainants within a reasonable time frame (of months rather than years). Unfortunately, given the alternative dispute resolution systems that Hawaii condo residents are currently burdened with, the existing process can best be described as a lethargic turkey that can barely get off the ground.

I hope you find my testimony to be of assistance. Thank you for your public service and for listening.

Very Respectfully,

MARK L. BROWN  
Colonel, U.S. Army (Retired)  
Honolulu, Hawaii



## Kyle-Lee N. Ladao

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**From:** Dale Head [REDACTED]  
**Sent:** Wednesday, November 22, 2023 11:06 PM  
**To:** Kyle-Lee N. Ladao  
**Subject:** [EXTERNAL] CPR Task Force Mtg for 30 Nov 2023 / Conflict of Interest for Chairman Phil Nerney  
**Attachments:** Nerney bucks.pdf; Dale for HB1509.pdf; Request to serve.pdf

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**Aloha:**

*1. The primary locus of the CPR Task Force is not being addressed by attorney Nerney, "Examine and evaluate issues..", instead, he moves on to the secondary matter of "alternative dispute resolution systems".*

[RELATING TO CONDOMINIUMS BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII SECTION 1. The legislature established a condominium property regime task force within the department of commerce and consumer affairs in 2023, pursuant to Act 189, to:

**(1) Examine and evaluate issues regarding condominium property regimes governed by chapter 514B, Hawaii Revised Statutes, and conduct an assessment of the alternative dispute resolution systems that have been established by the legislature;]**

*2. Attorney Philip Nerney **opposed establishment of the Task Force** under House Bill #1509, in his comments submitted as Testimony in both the House and Senate.*

A major issue he chooses to ignore is deprivation of normal voting rights inflicted upon HOA property owners, taxpayers, via HRS514b-123, blocking members from casting their own vote when they cannot attend a meeting in person. Perhaps, because there are no profits to be gained by HOA attorneys to speak up about this form of racketeering? As licensed management companies are allowed by Hawaii government to funnel Proxies assigned to the Board to candidates of their choosing, owners are ripped off when deprived of their right to choose who becomes a volunteer Board member.

*3. Please note the **1st** attachment, labeled '**Nerney Bucks**', this is from a website, 'Followthemoney.org'. As he opposed the committee being formed, why on earth is Mr. Nerney on it? And, worse, as the Chairman? His gifting **\$26,223** to **19** people running for elective office over **15** years can be seen as 'why' he favored by legislators to be put on the on a Task Force, in my opinion. *Please ask Nerney to resign from the Task Force, and **replace him with Ms. Lila Mower, an advocate for HOA members' due process and voting rights.****

*4. The **2nd** attachment, 'Dale for 2509', is my own support for the Task Force, and, the **3rd** attachment is my request to serve on any Task Force focused on HOA issues.*

*5. Hawaii Senate Committee on Commerce and Consumer Protection held a Hearing on 04/05/2023 at 10:15am, where I spoke for less than a minute, was concise and to the point, timestamp is at **13 minute and 44 seconds**. The link is <https://www.youtube.com/watch?v=reFrgBEYdN0>*

Yet, on the same video, when Senator Keohokalole asks a rather direct question of Mr. Nerney, he goes back in time, decades, to a 'Blue Ribbon' Advisory Recodification Committee, at time stamp **31 minutes and 30 seconds** (well worth watching). Mr. Nerney insists there was participation in it by the consumer protection side, that was "well represented". Hmmmm. well, if you go back to the report provided to the 2004 Legislature, one Committee member raised an "objection" pointing out

*Respectfully, Dale Arthur*



Entity Details

NERNEY, PHILIP

Individual

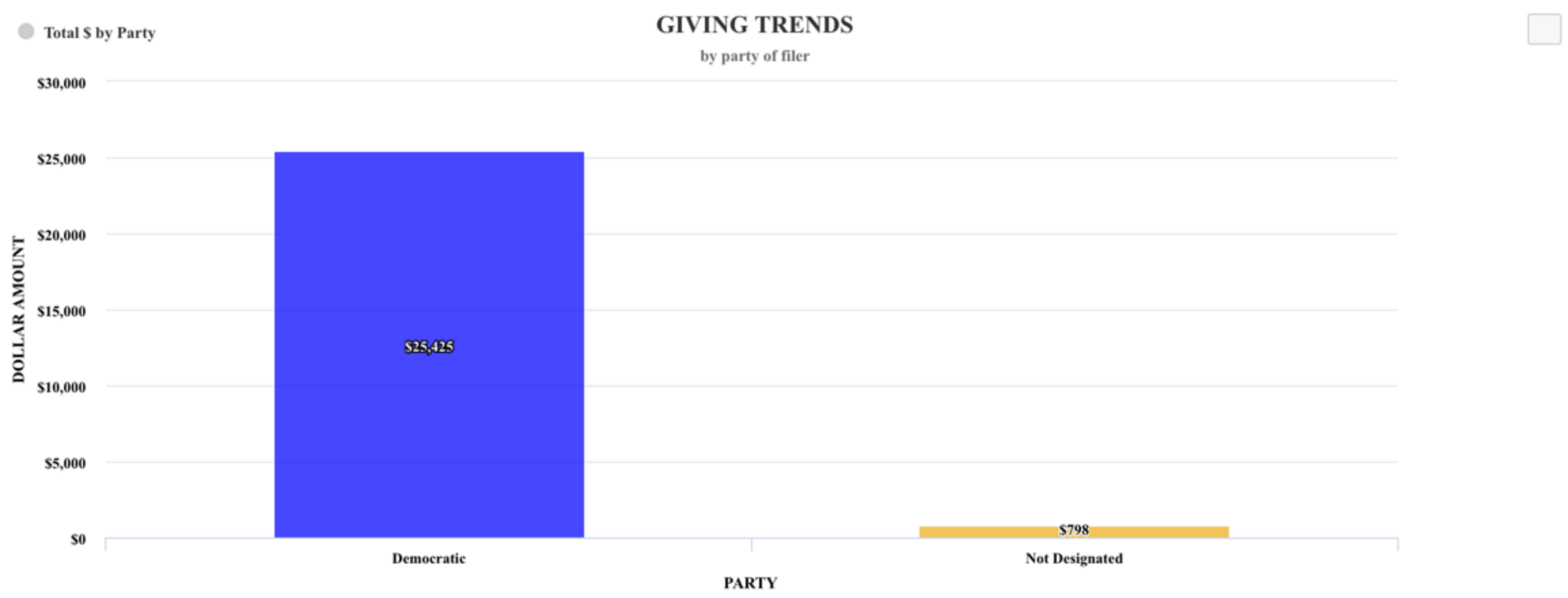
General Data

As a contributor

Overview

- Industry
- Candidates
- Party Committees
- Ballot Measure Committees
- Independent Spenders
- Office Holders
- Giving Trends
- Employers Listed
- Occupations Listed

NERNEY, PHILIP has given **\$26,223** to **19** different filers spanning **15** years.



**HB-1509-HD-2**

Submitted on: 4/4/2023 8:15:55 AM

Testimony for CPN on 4/5/2023 10:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dale A. Head	Individual	Support	Remotely Via Zoom

Comments:

***HB1509 HD2*** Establishes the common-interest development oversight task force to examine the feasibility of bringing the various common-interest developments in the State under the oversight of the department of commerce and consumer affairs and investigate whether additional duties and responsibilities should be placed on members of boards of directors for cooperative housing corporations. Effective 6/30/3000.

***Aloha CPN Chair Jarrett Keohokalole, Vice Chair Carol Fukunaga, and, esteemed members.***

***This worthy Bill should be passed, even though it is a mere shadow of the original. In what I call 'HOA NeverNeverLand', we don't have a 'level playing field' in that with 96% of such developments (of which there are now 2007) under contract management, the companies are free to manipulate elections, which some do, and, Department of Commerce & Consumer Protection NEVER investigates that unethical and dishonest conduct. Which means that HRS514b, as it is not enforced by our own state government, which created it, is in fact aiding and abetting corruption. Very sad, very bad, makes a joke of the term 'Consumer Protection'.***

***Please pass this worthy and very much overdue Bill.***

***Sincerely, Dale A. Head [dale.head@aol.com]***

**PS - I note we don't have the good business practice of prohibiting 'conflicts of interest' in HOA related statutes. This gives a 'green light' to mischief by players seeking profits.**

## Request to serve on any Task Force focused on HOA issues (Submitted Wednesday 1 June 2023)

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From: sunnymakaha@yahoo.com (sunnymakaha@yahoo.com)

To: senkeohokalole@capitol.hawaii.gov; senfukunaga@capitol.hawaii.gov; repnakashima@capitol.hawaii.gov; repsayama@capitol.hawaii.gov; rephashimoto@capitol.hawaii.gov; repaiu@capitol.hawaii.gov

Cc: lila.mower@gmail.com

Date: Wednesday, May 31, 2023 at 06:50 PM HST

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### ***Aloha esteemed Legislators:***

**1.** *After spending about **35** years in a large Home Owners Association (HOA), the Makaha Surfside (454 units in Waianae), and dealing with intrigues from three property management companies, I had little choice but to sell the unit and move out due to never ending predatory management games, to include willful **maladministration** of our elections. As a result of the turmoil inflicted by non-regulated companies, I started making the journey to our Capitol area, the Legislature, and, Real Estate Commission to seek remedies beginning in **2016**. As there is, now perhaps, a possibility of establishing a Task Force to unravel and correct abuse perpetrated by the companies, **I am requesting to be a member of any such group**. Consumer 'Protection' in the realm of HOA members' due process and voting rights is **NOT** being respected. Instead they are trampled to preserve and enhance profits. A situation of 'racketeering', in my opinion. Today perhaps as much as **40%** of Hawaii's population now reside in HOA properties, and yet that sizable well defined group is for the most part ignored by the Legislature. That, as **HRS514b** is not enforced by the state. Today I reside in Moanalua Valley.*

**2.** *First, for some background information, have a look at the first attachment, a pic taken on July 4th, 2008. The woman is **Lois Kwake**, and her friend and former neighbor, **Ronald Van Eykeren**. Ms. Kwake had once told me how her friend Ronald, showing signs of dementia, had remarked to her how our Resident Manager had befriended him providing occasional plates of food. And, that after consuming the free meal, he would be "woozy for 3 to 4 days". Also, one of our Office staff let me know that old Ronald would walk into our HOA Office and ask, "Am I a tenant or an owner". He could not remember. Also, he once inquired, "What did the the Manager do with my money"? Eventually, Ronald disappeared from the complex and Lois asked for me to contact the City of Honolulu and appropriate state agency to investigate. Well, doing so got me sued by the Manager. Belatedly the state had a look into the matter only after another owner wrote a letter about it to **Governor Linda Lingle**. The Manager had moved him into a private care home in Waipahu, and, exercising 'Power of Attorney', which he*

acquired without knowledge of the Board, sold his condo for **\$130,000 cash**. I did not appreciate having to deal with an 'Extortion' attorney, or the state judge who was part of the 'shakedown'. The state had Ronald examined by a psychiatrist who declared him to be mentally incompetent. Then he was moved to Kina Ole commercial care home in Kaneohe by the **Office of Public Guardian**. The state seized the unspent funds the Manager retained from sale of the condominium, to pay for Ronald's care, but did not prosecute the perpetrator for '**Elder financial abuse**'. They forced the manager to give up being a Trustee for his elderly victim. Ronald died in hospice, without any family members or friends being aware of his circumstance.

**3.** Please note these two hyperlinks regarding the former Makaha Surfside manager who had taken advantage of Ronald. The Manager was 'on the lam' from Utah where he had **murdered Ward Wolverton in 1997**. (I could provide the PDF of the Tort he filed against myself, three other people, and the HOA, but, it is **77** pages long, which includes amazing nonsense, like, three doctors he duped into giving him evaluations declaring him to be suffering from 'panic attacks' and PTSD). Let me know if you want to have a look at it. Con-artists love Hawaii. For them it is a 'happy hunting ground' to take financial advantage of elderly people. Did you know the position of HOA manager is not required to have a license, or, any level of education? But, bartenders and beauticians must have a state license. Ditto for **40** other occupations.

<https://www.sltrib.com/news/couenrts/2015/01/30/man-who-admitted-1997-utah-beating-death-robbery-gets-up-to-life-in-prison/>

<https://www.upr.org/utah-news/2019-06-21/man-convicted-in-1997-killing-appears-before-parole-board>

**4.** The above case, which provided employment for five attorneys here in Hawaii, would not have happened if HOA members were allowed to practice true self-government, but that would mean having integrity of election administration and the right to cast their own vote for Boards of Directors. Something which is made 'conditional' by Developers in By-Laws they foist onto buyers of their properties. Amazingly, they got this sleazy trick embedded into state law as **HRS514b-123**.

**5.** I propose and request a meeting between HOA advocates with certain Senate and House Committees. Those being Commerce and Consumer Protection, Consumer Protection and Commerce, and, Housing. The HOA members advocates should come from **Kokua Council and Hui Oia 'I' o** (both groups where **Ms. Lila Mower** is President). Lawyers and lobbyists (both registered and not registered) that derive their income from representing property management companies should be excluded as their presence would be a 'conflict of interest).

**6.** Without exception, every one of our Legislators owe their position to having

*prevailed in a free and fair election. As for property owners in HOAs, their elections are too often manipulated and decided by management companies which also handle monies, which is an obvious conflict of interest situation.*

**7. Please respond within 14 working days, no later than Wednesday 21 June 2023. And, try defending democracy. Please understand that silence condones and enables corruption.**

**Mahalo Nui Loa Dale A. Head** 1637 Ala Mahina Pl Honolulu, HI 96819  
(808) 836-1916

Attachments (on email only) are:

#1 Pic of Lois Kwake, Ronald J. Van Eykeren, and, Dale Head

#2 Letter dated **2/15/2023** to Representatives Troy Hashimoto & Micah Aiu

#3 Blue Ribbon Advisory Committee (page 5) of its members from 2004

#4 Richard Port 'objection' to the 'draft recodification of HRS514a' issued on 31 December 2003

#5 A single page of donations from Aiea attorney, Ms. Y.J. Sugimura, to state politicians. Note - While she is not a registered lobbyist, to my knowledge, such donations may result in influence over legislation she opposes or supports. (While this is legal, it is never revealed in her many appearances at Hearings, nor publicized)



Lois and Ron with Dale.JPG  
340.7kB



HB176TaskForce.pdf  
64.1kB



BRAC-2004.pdf  
148.8kB



Richard Port 12:13:2013.pdf  
501.3kB



Y.J. Sugimura.pdf  
396kB

## Kyle-Lee N. Ladao

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**From:** Dale Head [REDACTED]  
**Sent:** Thursday, November 23, 2023 12:40 PM  
**To:** Kyle-Lee N. Ladao  
**Subject:** [EXTERNAL] For CPR Task Force meeting on November 30, 2023 at 1:30pm  
**Attachments:** Nerney bucks.pdf; Dale for HB1509.pdf; Request to serve.pdf; Richard Port 31 Dec 2003.pdf; R. PortHB35.pdf; Nerney oppose Ombudsman.pdf; Embezzlement '9-19-2023.pdf

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### **Aloha Condominium Property Regime Task Force**

1. *The primary locus of the Condominium Property Regime (CPR) Task Force is not being addressed by **Chairman Philip Nerney**, "Examine and evaluate issues..", instead, he moves on to the secondary matter of "alternative dispute resolution systems".*

*[RELATING TO CONDOMINIUMS BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII SECTION 1. The legislature established a condominium property regime task force within the department of commerce and consumer affairs in 2023, pursuant to Act 189, to: "**Examine the rights afforded to condominium property regime owners under chapter 514B, Hawaii Revised Statutes**, and conduct an assessment of the alternative dispute resolution systems that have been established by the legislature;]*

2. *Attorney Philip Nerney **opposed establishment of the Task Force** under House Bill #1509, in his comments submitted as Testimony in both the House and Senate. A major issue he chooses to ignore is deprivation of normal voting rights inflicted upon HOA property owners, taxpayers, via **HRS514b-123**, blocking members from casting their own vote when they cannot attend a meeting in person. Perhaps, because there are no profits to be gained by HOA attorneys to speak up about this form of racketeering? As licensed management companies are allowed by Hawaii government to funnel Proxies assigned to the Board to candidates of their choosing, owners are ripped off when deprived of their right to choose who becomes a volunteer Board member.*

3. *Please note the **1st** attachment, labeled '**Nerney Bucks**', this is from a website, 'Followthemoney.org'. As he opposed the committee being formed, why on earth is Mr. Nerney on it? And, worse, as the Chairman? His gifting **\$26,223** to **19** people running for elective office over **15** years can be seen as 'why' he was favored by legislators to be put on the on CPR Task Force, in my opinion. Please ask Nerney to resign from the Task Force, and **replace him with Ms. Lila Mower**, an advocate for HOA members' due process and voting rights.*

4. *The **2nd** attachment, 'Dale for HB1509', is my own support for the Task Force, and, the **3rd** attachment is my request to serve on any Task Force focused on HOA issues.*



5. Hawaii Senate Committee on Commerce and Consumer Protection held a Hearing on 04/05/2023 at 10:15am, where I spoke for less than a minute, was concise and to the point, the timestamp is at **13 minute and 44 seconds**. The link is <https://www.youtube.com/watch?v=reFrqBEYdN0>

Yet, on the same video, when Senator Keohokalole asks a rather direct question, at time stamp **31 minutes and 30 seconds** (well worth watching) of Mr. Nerney, he responds by going back in time, decades, to a 'Blue Ribbon' Advisory Recodification Committee, . Mr. Nerney insists there was participation in it by the consumer protection side, that was "**well represented**". Hmm. well, if you go back to the report provided to the 2004 Legislature, one Committee member raised an "objection" pointed out non-participation by most condominium owners groups as they were not informed about the Committee. That was Richard Port. See **4th** attachment. Mr. Port made his written objection on 31 December of **2003**. Then, in **2017**, 14 years later, he favored establishment of an Office of Ombudsman, Please note the **5th** attachment.

6. The **6th** attachment is Mr. Nerney, as usual, opposing fair play for HOA members, this is his screed opposing the **2017 HB35** Office of Ombudsman effort. He actually remarked, "**HB 35 results from the lobbying of an organized group, whose stridency and persistence can only be admired. The essential thesis of the group is that the condominium community is rife with corruption and that owners are oppressed by the overbearing tactics of condominium boards and their minions.**" Uh, well, duh, my HOA which had an unapprehended killer as a Resident Manager, is worth writing a book about. A few years go by and the same HOA, recently, discovers **embezzlement** of **\$339,364.83**. Self government is simply a myth, in my opinion, a cruel joke. Have a look at the **7th** attachment. And, read the article about it in Civil Beat at: <https://www.civilbeat.org/2023/10/this-waianae-condo-development-has-lost-hundreds-of-thousands-of-dollars-to-embezzlement/>

7. Please adjust the statute to eliminate bullying and non-accountability, respect democracy by conferring normal voting rights on HOA members, bar management companies from administering Boards of Directors elections, stop the nonsense of **HRS514B** being something of a '**money tree**' for attorneys, their '**Cash Cow**'. Oh, and as Mr. Nerney opposes an Ombudsman Office for HOA members, remove him from the Task Force. HOA members are taxpayers deserving consumer protection and normal **voting rights** which are withheld by HRS514b, imposing on such property owners a '**2nd**' class citizenship status. This violates our federal constitution **14th** Amendment' **Equal Protection Clause**, which specifies, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Respectfully, Dale Arthur Head

PS - Happy Thanksgiving!! Thursday 23 November 2023



Entity Details

NERNEY, PHILIP

Individual

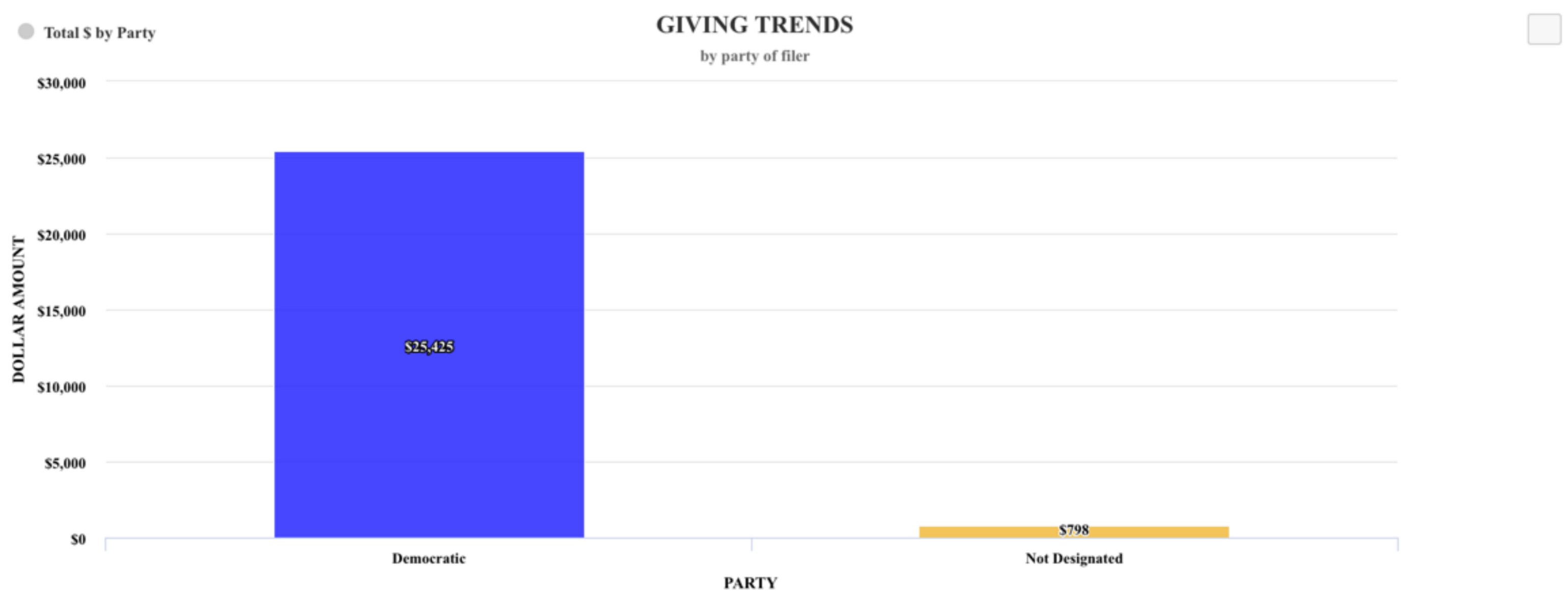
General Data

As a contributor

Overview

- Industry
- Candidates
- Party Committees
- Ballot Measure Committees
- Independent Spenders
- Office Holders
- Giving Trends
- Employers Listed
- Occupations Listed

**NERNEY, PHILIP** has given **\$26,223** to **19** different filers spanning **15** years.



**HB-1509-HD-2**

Submitted on: 4/4/2023 8:15:55 AM

Testimony for CPN on 4/5/2023 10:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dale A. Head	Individual	Support	Remotely Via Zoom

Comments:

***HB1509 HD2*** Establishes the common-interest development oversight task force to examine the feasibility of bringing the various common-interest developments in the State under the oversight of the department of commerce and consumer affairs and investigate whether additional duties and responsibilities should be placed on members of boards of directors for cooperative housing corporations. Effective 6/30/3000.

***Aloha CPN Chair Jarrett Keohokalole, Vice Chair Carol Fukunaga, and, esteemed members.***

***This worthy Bill should be passed, even though it is a mere shadow of the original. In what I call 'HOA NeverNeverLand', we don't have a 'level playing field' in that with 96% of such developments (of which there are now 2007) under contract management, the companies are free to manipulate elections, which some do, and, Department of Commerce & Consumer Protection NEVER investigates that unethical and dishonest conduct. Which means that HRS514b, as it is not enforced by our own state government, which created it, is in fact aiding and abetting corruption. Very sad, very bad, makes a joke of the term 'Consumer Protection'.***

***Please pass this worthy and very much overdue Bill.***

***Sincerely, Dale A. Head [dale.head@aol.com]***

**PS - I note we don't have the good business practice of prohibiting 'conflicts of interest' in HOA related statutes. This gives a 'green light' to mischief by players seeking profits.**

## Request to serve on any Task Force focused on HOA issues (Submitted Wednesday 1 June 2023)

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From: sunnymakaha@yahoo.com (sunnymakaha@yahoo.com)

To: senkeohokalole@capitol.hawaii.gov; senfukunaga@capitol.hawaii.gov; repnakashima@capitol.hawaii.gov; repsayama@capitol.hawaii.gov; rephashimoto@capitol.hawaii.gov; repaiu@capitol.hawaii.gov

Cc: lila.mower@gmail.com

Date: Wednesday, May 31, 2023 at 06:50 PM HST

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### ***Aloha esteemed Legislators:***

**1.** *After spending about **35** years in a large Home Owners Association (HOA), the Makaha Surfside (454 units in Waianae), and dealing with intrigues from three property management companies, I had little choice but to sell the unit and move out due to never ending predatory management games, to include willful **maladministration** of our elections. As a result of the turmoil inflicted by non-regulated companies, I started making the journey to our Capitol area, the Legislature, and, Real Estate Commission to seek remedies beginning in **2016**. As there is, now perhaps, a possibility of establishing a Task Force to unravel and correct abuse perpetrated by the companies, **I am requesting to be a member of any such group**. Consumer 'Protection' in the realm of HOA members' due process and voting rights is **NOT** being respected. Instead they are trampled to preserve and enhance profits. A situation of 'racketeering', in my opinion. Today perhaps as much as **40%** of Hawaii's population now reside in HOA properties, and yet that sizable well defined group is for the most part ignored by the Legislature. That, as **HRS514b** is not enforced by the state. Today I reside in Moanalua Valley.*

**2.** *First, for some background information, have a look at the first attachment, a pic taken on July 4th, 2008. The woman is **Lois Kwake**, and her friend and former neighbor, **Ronald Van Eykeren**. Ms. Kwake had once told me how her friend Ronald, showing signs of dementia, had remarked to her how our Resident Manager had befriended him providing occasional plates of food. And, that after consuming the free meal, he would be "woozy for 3 to 4 days". Also, one of our Office staff let me know that old Ronald would walk into our HOA Office and ask, "Am I a tenant or an owner". He could not remember. Also, he once inquired, "What did the the Manager do with my money"? Eventually, Ronald disappeared from the complex and Lois asked for me to contact the City of Honolulu and appropriate state agency to investigate. Well, doing so got me sued by the Manager. Belatedly the state had a look into the matter only after another owner wrote a letter about it to **Governor Linda Lingle**. The Manager had moved him into a private care home in Waipahu, and, exercising 'Power of Attorney', which he*

acquired without knowledge of the Board, sold his condo for **\$130,000 cash**. I did not appreciate having to deal with an 'Extortion' attorney, or the state judge who was part of the 'shakedown'. The state had Ronald examined by a psychiatrist who declared him to be mentally incompetent. Then he was moved to Kina Ole commercial care home in Kaneohe by the **Office of Public Guardian**. The state seized the unspent funds the Manager retained from sale of the condominium, to pay for Ronald's care, but did not prosecute the perpetrator for '**Elder financial abuse**'. They forced the manager to give up being a Trustee for his elderly victim. Ronald died in hospice, without any family members or friends being aware of his circumstance.

**3.** Please note these two hyperlinks regarding the former Makaha Surfside manager who had taken advantage of Ronald. The Manager was 'on the lam' from Utah where he had **murdered Ward Wolverton in 1997**. (I could provide the PDF of the Tort he filed against myself, three other people, and the HOA, but, it is **77** pages long, which includes amazing nonsense, like, three doctors he duped into giving him evaluations declaring him to be suffering from 'panic attacks' and PTSD). Let me know if you want to have a look at it. Con-artists love Hawaii. For them it is a 'happy hunting ground' to take financial advantage of elderly people. Did you know the position of HOA manager is not required to have a license, or, any level of education? But, bartenders and beauticians must have a state license. Ditto for **40** other occupations.

<https://www.sltrib.com/news/couenrts/2015/01/30/man-who-admitted-1997-utah-beating-death-robbery-gets-up-to-life-in-prison/>

<https://www.upr.org/utah-news/2019-06-21/man-convicted-in-1997-killing-appears-before-parole-board>

**4.** The above case, which provided employment for five attorneys here in Hawaii, would not have happened if HOA members were allowed to practice true self-government, but that would mean having integrity of election administration and the right to cast their own vote for Boards of Directors. Something which is made 'conditional' by Developers in By-Laws they foist onto buyers of their properties. Amazingly, they got this sleazy trick embedded into state law as **HRS514b-123**.

**5.** I propose and request a meeting between HOA advocates with certain Senate and House Committees. Those being Commerce and Consumer Protection, Consumer Protection and Commerce, and, Housing. The HOA members advocates should come from **Kokua Council and Hui Oia 'I' o** (both groups where **Ms. Lila Mower** is President). Lawyers and lobbyists (both registered and not registered) that derive their income from representing property management companies should be excluded as their presence would be a 'conflict of interest).

**6.** Without exception, every one of our Legislators owe their position to having

*prevailed in a free and fair election. As for property owners in HOAs, their elections are too often manipulated and decided by management companies which also handle monies, which is an obvious conflict of interest situation.*

**7. Please respond within 14 working days, no later than Wednesday 21 June 2023. And, try defending democracy. Please understand that silence condones and enables corruption.**

**Mahalo Nui Loa Dale A. Head** 1637 Ala Mahina Pl Honolulu, HI 96819  
(808) 836-1916

Attachments (on email only) are:

#1 Pic of Lois Kwake, Ronald J. Van Eykeren, and, Dale Head

#2 Letter dated **2/15/2023** to Representatives Troy Hashimoto & Micah Aiu

#3 Blue Ribbon Advisory Committee (page 5) of its members from 2004

#4 Richard Port 'objection' to the 'draft recodification of HRS514a' issued on 31 December 2003

#5 A single page of donations from Aiea attorney, Ms. Y.J. Sugimura, to state politicians. Note - While she is not a registered lobbyist, to my knowledge, such donations may result in influence over legislation she opposes or supports. (While this is legal, it is never revealed in her many appearances at Hearings, nor publicized)



Lois and Ron with Dale.JPG  
340.7kB



HB176TaskForce.pdf  
64.1kB



BRAC-2004.pdf  
148.8kB



Richard Port 12:13:2013.pdf  
501.3kB



Y.J. Sugimura.pdf  
396kB

## STATEMENT OBJECTING TO THE DRAFT RECODIFICATION

By

**Richard Port, Member, Blue Ribbon Recodification Advisory Committee**

The purpose of this statement is to outline concerns regarding the process used in developing the revision of the Condominium Property Regime and the product being transmitted to the Hawaii State Legislature. The changes which are being proposed to the current law, Chapter 514A, are of such great import that it makes it unlikely that anyone fully understands the implications and impact these changes will have on the owners of condominiums in the state of Hawaii.

Background - Condominiums function in many ways like small cities or towns. Some condominiums, e.g. the Marco Polo (with over 500 units), are larger than some of our island communities, e.g. Hawi, Keanae, Kilohana, etc. On Oahu, it is estimated that one of every four residents lives in a condominium.

Condominiums are supervised by Boards of Directors that are generally composed of between five and nine members. These Boards have extraordinary executive, legislative, and judicial powers. They devise and approve condominium house rules, determine whether the house rules, the condominium by-laws and/or declaration have been violated and determine what fines or penalties shall be assessed to owners for violations. Boards also have significant control of the media through letters and newsletters that they send to condominium owners at owners' expense.

The Hawaii State Legislature has approved several laws over the last two decades which have responded to criticisms raised by owners regarding the abuse of powers by some Boards of Directors, sometimes with the approval of their management companies. Unfortunately, this revised draft of the condominium property regime eliminates some of the laws that have been enacted to protect owners from the excesses of their Boards of Directors and managing agents.

Concern 1 - The Blue Ribbon Recodification Advisory Committee consisted of attorneys who represent developers and attorneys and employees of condominium management companies, but failed to include representatives from groups that protect condominium owners' interests. In as much as condominium consumer groups testify

every year during hearings at the State Legislature, the failure to include these groups appeared to be deliberate and, in fact, I was informed by a Real Estate Commission staff member that a recommendation had been made to include consumer groups but that this recommendation was not followed.

Concern 2 - The 2003 Hawaii State Legislature insisted that consumer groups be added to the BRRAC and representatives of the Hawaii Council of Associations of Apartment Owners (HCAAO) and the Hawaii Independent Condominium and Co-op Owners (HICCO) were added to the BRRAC. However, the BRRAC and staff refused to allow significant changes to be made to the draft prepared for public hearing. I was told that changes I proposed would have to await the result of the testimony at the public hearings. Consequently, the revised draft of the Condominium Property Regime submitted for public hearing consisted of at least fourteen (14) sections in which owner rights were reduced and board authority was expanded. It is unlikely that any legislator intended such a massive increase of authority be granted to boards of directors, decreasing the rights of owners, when additional funding was provided by the legislature for the recodification in 2003. In fact, the Hawaii State Legislature has approved substantive legislation to protect the rights of condominium owners over the last two decades.

Concern 3 - The testimony at the public hearings indicated that there was broad agreement that owner protections contained in Chapter 514A needed to be preserved and that there is a need for a faster resolution of disputes between owners and their boards of directors and between owners and their management companies. Many testifiers recommended the establishment of a condo court which would be the one and only addition to the recodification that adds protection to owners. This testimony was ignored even though it was delivered by condo presidents, former presidents, board members, former board members and owners. These board presidents and board members, unlike the members of the BRRAC who work for management companies and boards of directors, have no conflict of interest in wanting to reduce their own authority.

Concern 4 - Much of the testimony delivered at the public hearings was ignored in the draft that was prepared and circulate subsequent to the public hearings. Recent meetings of the BRRAC have resulted in compromises for some of the less contentious



issues. However, at least two issues that would dramatically increase the power of boards are still included in the draft:

1) Currently, the law requires boards to amend their by-laws to grant boards the power to assess fines on owners for violations (alleged or real) of the house rules and by-laws. The revised draft would give boards, by their own resolution and without any authorization from the association owners, the power to meet out virtually unlimited fines for house rule and by-law violations. It has the potential to turn a condominium into a prison, with the board of directors as law makers, judges, and juries, and the resident manager as the warden. All of the testimony offered at the public hearing opposed this change;

2) The one recourse an owner currently has to make changes in a condominium is the association's annual meeting. When controversies occur, absentee owners, who sometimes live thousands of miles away, are urged to take sides through their proxies. The absentee owners often do not want to take sides because they are uncertain as to which side is right in a dispute. The boards and management companies write letters telling absentee owners if they don't turn in their proxies a meeting cannot be held, and there will be additional expenses to setting up a subsequent meeting, and they will be paying for these expenses. Under current law, owners can submit their proxies for "quorum purposes only". The recodification draft would remove this option in spite of the fact that all but one of the testifiers opposed this change. The result would be a dramatic increase in the power of boards and all but eliminate the ability of owners to stand up to a dictatorial board of directors. Moreover, no data has been presented to the BRRAC that demonstrate that this change is needed in spite of a specific request made to the BRRAC representative of one of the largest management companies who, of course, favors the elimination of the quorum option. What is not in the draft is the one consumer protection measure that would help condo owners, namely a condo court. The testimony on this issue has so far been ignored.

Concern 5 - Many changes are still being made to the draft recodification even as this minority report is being submitted. In effect, no one knows what is in the document. In as much as the recodification is a work in progress, it is critical that the condo public be informed what changes are in store for them. A survey to obtain the reactions of a sample of condo owners would provide the legislature with additional information on which to base its final decision in the 2005 legislature. The results of such a survey, I believe, would be very revealing.

Conclusion - I have additional concerns regarding the draft as an original member of Hawaii's Civil Rights Commission and someone who frequently receives calls from owners asking for help when their rights as owners are being denied by their boards and/or management companies, I am very aware of the consequences of approving this document as now drafted. The changes that have been made to Chapter 514A are massive. It is critical that the entire document be reviewed, not only by members of the BRRAC, but also by others, including condominium apartment owners, who may not have had the opportunity to participate in the review process.

**Richard J. Port**  
1600 Ala Moana Blvd. #3100  
Honolulu, Hawaii 96815  
Tel 808-941-9624  
e-mail: [portr001@hawaii.rr.com](mailto:portr001@hawaii.rr.com)

**Measure:** HB 35 Relating to Condominiums

**Date and Time of Hearing:** 2:00 p.m. Tuesday, January 31, 2017

**Committee:** Committee on Consumer Protection & Commerce

Aloha Rep. McKelvey and Members of the Committee,

I believe the Department of the Attorney General will express strong disapproval of placing an Office of Condominium Complaints and Enforcement within the Department of the Attorney General. Therefore, I expect that your committee will be very reluctant to move HB 35 forward.

Having said that, I would ask your committee to consider HB 35 as a cry for help for 30% of our population who reside in condominiums. In that spirit, I ask that your Committee consider the concerns of the many condo owners in other condominium bills you will be considering.

More specifically, you need to know that condominium Boards have extraordinary powers over their owners. Boards have executive, legislative, and judicial powers over owners in their condos and control the media through their newsletters. Owners have very few opportunities to express their concern or dissent regarding condo Board decisions.

I speak to you with a lot of experience, having been president and/or a member of a condo Board for more than 35 years and have helped, and tried to help, Owners in other condos at their request. I know first hand where the problems exist. Although I have been less active in recent years, I have seen Boards able to get around various provisions of Chapter 514B. In this Legislative session, you have several bills that will help close some of the loopholes that currently exist and your committee can bring greater justice to condo owners by approving many of these bills.

Thank you for this opportunity to testify,

*Richard Port*

Richard Port



P.O. Box 976  
Honolulu, Hawaii 96808

January 28, 2017

Honorable Angus L.K. McKelvey  
Honorable Linda Ichiyama  
Committee on Consumer Protection & Commerce  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: HB 35-OPPOSED

Dear Chair McKelvey, Vice-Chair Ichiyama and Committee Members:

I am a member of the Community Associations Institute Legislative Action Committee. CAI opposes HB35.

CAI supports condominium self-governance. If the legislature no longer does, however, it is still true that HB 35 should be amended.

HB 35 results from the lobbying of an organized group, whose stridency and persistence can only be admired. The essential thesis of the group is that the condominium community is rife with corruption and that owners are oppressed by the overbearing tactics of condominium boards and their minions.

The legislature is asked to respond forcefully to these *anecdotes*, and to enshrine the tyranny of the minority. That is unfortunate, both because the group's narrative is false and because abandonment of the principle of self-governance is unwarranted.

One question for *this committee in particular* is: *which consumers does the committee seek to protect?* As of 2015, there were over 160,000 condominium units in Hawaii. Those who are satisfied with condominium living do not rise up and demand change, so the voices of the vast majority of condominium owners, for whom condominium living works well, are unheard.

Honorable Angus L.K. McKelvey  
Honorable Linda Ichiyama  
January 28, 2017  
Page 2 of 6

A good starting point for the review of HB 35 is Hawaii Revised Statutes ("HRS") §514B-4(a), that provides as follows:

**[§514B-4] Separate titles and taxation.** (a) Each unit that has been created, together with its appurtenant interest in the common elements, constitutes, for all purposes, a separate parcel of real estate.

Passage of HB 35 would render that notion untrue, because HB 35 would be a governmental *taking* of precious property rights.

HB 35 would turn condominiums into a species of *public* housing, and that would substantially undermine the investment backed expectations of some 160,000 plus owners. There is no evident basis for discriminating against condominium owners in this way.

There are certainly less intrusive measures that the legislature might consider to address the perceived grievances of HB 35's proponents. HB 242, for example, would establish a condominium unit owner hotline to provide unit owners with legal information relating to disputes with a condominium's board of directors. HB 405 and HB 406 would also require ethics training for condominium board members. CAI supports promoting education and facilitating access to legal information.

CAI also supports mediation. HB 200 would truly and effectively mandate mediation. Surprisingly, HB 35 does not even require mediation prior to government intervention.

New and expensive bureaucracy that effectively establishes executive branch control over a substantial portion of the private housing stock raises a menacing prospect. CAI hopes that the legislature will carefully consider the implications of that course of action.

HB 35 should at least be substantially amended if the committee moves it forward. For one thing, government should not explicitly side with one party to a dispute involving private property rights.

Honorable Angus L.K. McKelvey  
Honorable Linda Ichiyama  
January 28, 2017  
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HB 35 does not treat all condominium owners in a fair and balanced manner. Instead, it is explicitly designed to favor and to advocate for the interests of a complainant against the other owners. This is so, because the membership of a condominium association "shall consist exclusively of all the unit owners." HRS §514B-102(b), and associations are targeted by HB 35.

Government should at least be neutral.

The design of HB 35 is to provide a government attorney to represent an individual in a private civil matter. The legislature should consider that provision carefully.

The same department of government that is to advocate in favor of one party to a private civil matter is then to also judge disputes and determine outcomes. That is manifestly unfair.

The advocate in a dispute should not also be the decision maker. That is fundamental.

Further, HB 35 effectively eliminates any meaningful judicial review. The legislature should consider why discriminating against one class of real property owners in terms of access to the courts is appropriate.

A contested case hearing is not equivalent to a trial. It is also fair to note that there is a constitutional right to trial by jury in suits at common law. HB 35 should take that into account.

Even if the legislature decides that government attorneys should be supplied to advocate on behalf of one party in a private civil matter, the dispute itself should be decided in the courts. There is no reasonable basis whatever for depriving a single class of real property owners from direct access to the courts.

The mixed role of advocate and adjudicator inheres in HB 35. For example, proposed §514B-E enables the "complaints and enforcement officer" to issue an "advisory opinion" but to also "determine[] an association or board is at fault" and that it "shall be responsible for any legal fees incurred or fines levied against the unit owner involved in the dispute." (Emphasis added)

Again, the advocacy role cannot reasonably be mixed with the fact-finding or adjudication role. Government should be neutral towards all parties.

All persons are constitutionally entitled to equal protection of the law. HB 35 involves *state action* and involves the government in taking sides with respect to private disputes.

Even if HB 35 might be constitutional, it is worth considering that individuals are constitutionally equal in their inherent and inalienable constitutional rights to acquire and possess property, per Article I, §2, of Hawaii's Constitution. It is reasonable to ask that the legislature carefully balance the substantial constitutionally protected rights at issue here.

To the extent that the legislature holds to the view that government should have *investigatory and enforcement powers*, to preserve and to protect *governmental* (as opposed to *private*) interests, it is worth noting that current condominium law already provides government with substantial investigatory and enforcement powers. See, e.g., HRS §§514B-65-68. If the legislature determines that such power should be shifted to a different *department*, that can be accomplished without enacting HB 35 in its current form.

HB 35 also contains the requirement that condominium board members file "a financial disclosure form" with government. Service on a condominium board is not service in government.

This provision is designed to deter volunteer service on condominium boards by qualified persons, or can at least be expected to have that effect. If a provision of this sort is to be considered at all, it would be more appropriate to provide that narrowly tailored and relevant disclosures might be required in connection with certain established investigations after a showing of need is made and subject to due process protections.

HB 35 further provides that owners must approve "a major expenditure in excess of \$10,000 per unit owner". The first point to note is that association directors pay assessments just like all other owners, so directors have the same financial incentive as other owners to avoid large assessments.

If the legislature is concerned about large assessments for *optional or non-essential matters*, then HB 35 should be amended to specify the scope of its concern. This is particularly so because public health and safety can be implicated.

The legislature would be facilitating the neglect and deterioration of the housing stock by the current form of this provision. Onerous assessments of the referenced magnitude usually relate to essential maintenance or repair requirements.

The legislature should promote the maintenance and repair of essential infrastructure. The budget function is properly allocated to fiduciaries rather than to individuals who are free to vote their immediate financial self-interest.

This provision exemplifies why the subject matter of HB 35 should be studied. Condominium governance deserves careful consideration. It is appropriate to note, in that connection, that condominium governance was carefully studied in the recodification process that resulted in the enactment of Chapter 514B and nothing like what HB 35 proposes resulted from that process.

HB 35 goes on to require the disclosure of records "including executive session records of voting results regarding the imposition of special assessments, charges, and fines, including legal fees". That is antithetical to the notion and purpose of executive session. A more careful and refined approach is appropriate.

Taken in context, what HB 35 fundamentally promotes is the idea of governance by plebiscite. It reflects a rejection of representative democracy, and can reasonably be expected to lead to dysfunction as well as increased costs to consumers.

With respect to HB 35's proposed revisions to HRS §514B-157, those will, at minimum, oblige consumers to pay more for living in a condominium. **It is essential to recognize that condominium owners pay 100% of their association's expenses.** So, if one zealous owner chooses to constantly make demands upon an association then HB 35 will assure that the expense of meeting those demands will be at the expense of the association's other owners. Such a provision is not protective of consumers.



Honorable Angus L.K. McKelvey  
Honorable Linda Ichiyama  
January 28, 2017  
Page 6 of 6

HB 35 also has the odd provision of injecting the complaints and enforcement officer into mediation processes. Although mediation is not required as a predicate to initiating a complaint for that officer to investigate, the complaints and enforcement officer is apparently going to somehow be advocating for an owner within that process and then *adjudicating* the outcome of what, *by definition*, is not an adjudicatory process.

Thus, for a variety of reasons, CAI respectfully requests that the Committee hold HB 35, in favor of alternative legislation that promotes education and facilitates access to information.

Community Associations Institute, by

*Philip Nerney*

For its Legislative Action Committee

Enclosure

Hawaii Community Associations: Facts and Figures  
(<https://www.caionline.org/Advocacy/Resources/Pages/State-Facts-Figures.aspx>)

# Hawaii Community Associations facts & figures

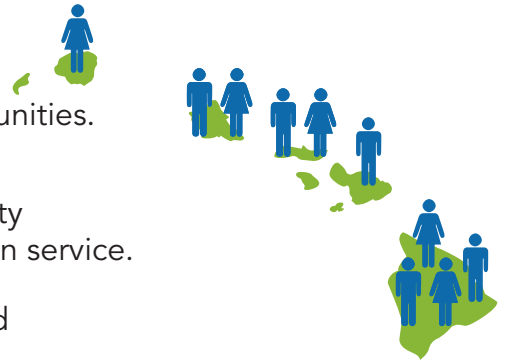
» Approximately **370,000** Hawaii residents live in **142,500** homes in nearly **2,000** community associations.

» These residents pay **\$400 million** a year to maintain their communities. These costs would otherwise fall to the local government.



» **13,000** Hawaii residents are elected to their community association boards each year, providing over **\$400,000** in service.


» Homes in community associations are generally valued at least **5-6%\*** more than other homes.




**66** » percent of residents feel that the rules protect and enhance property values. (5% disagree and the remainder are neutral).

**74** » percent of residents oppose additional regulation of community associations.

**87** » percent of residents rate their community association experience as positive (65%) or neutral (22%).

 Community associations are private entities, not governments. Residents vote for fellow homeowners to provide leadership—making decisions about operation, administration and governance of the community.

 Assessments paid by association members cover the costs of conducting association business—such as common area maintenance, repair and replacement, essential services, routine operations, insurance, landscaping, facilities maintenance as well as savings for future needs.

CAI supports public policy that recognizes the rights of homeowners and promotes the self-governance of community associations—affording associations the ability to operate efficiently and protect the investment owners make in their homes and communities.

When state legislatures consider amending the laws governing community associations, CAI recommends consideration is first given to well-drafted model statutes that are the product of non-partisan, thoughtful deliberation. These statutes are developed and promoted by the Uniform Law Commission—the Uniform Condominium Act and Uniform Common Interest Ownership Act, also known as UCIOA.

SOURCES  
*Community Associations Fact Book 2015.*

*Verdict, Americans Grade Their Associations, Board Members and Community Managers.*

[www.cairf.org](http://www.cairf.org)

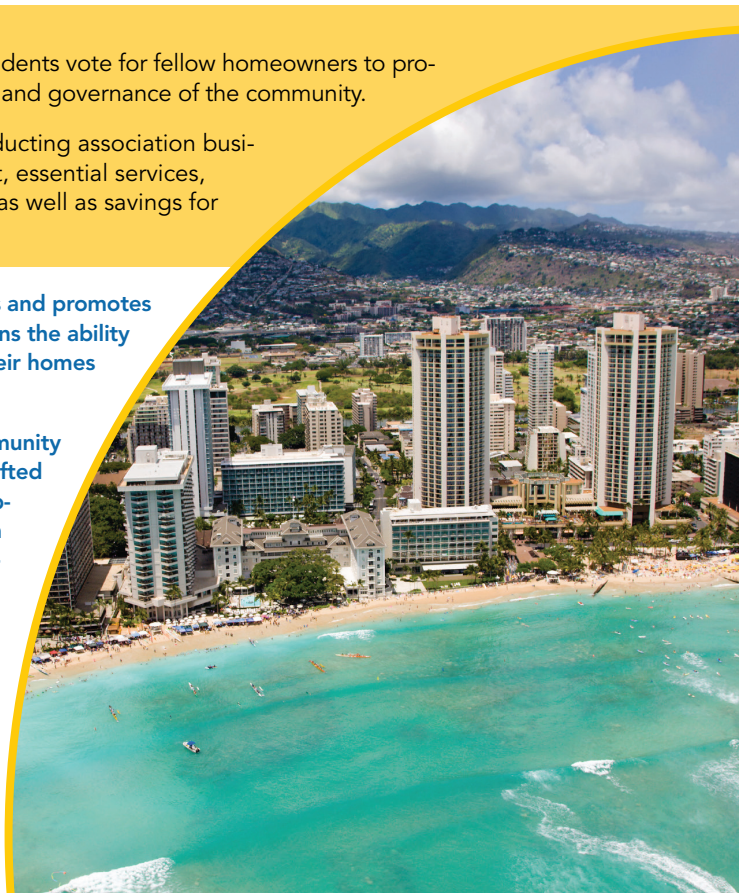
\*Agan, A. & Tabarrok, A. (2005). What are private governments worth. *Regulation*, 28 (3), 14-17.



[www.caionline.org](http://www.caionline.org)

(888) 224-4321

 @CAIAdvocacy



**Association of Apartment Owners - Makaha Surfside  
Board of Directors**

Date: September 19, 2023

Subject: Uncovering and Addressing Financial Discrepancies

Dear Makaha Surfside (MSS) Owners,

We are bringing to your attention a major development regarding our association's financial matters. The board's commitment to transparency and accountability has prompted us to take significant steps in response.

In March 2023, during a routine financial audit, the board discovered a discrepancy of \$32,041.87 that had been invoiced and distributed as an unauthorized payment for an unexecuted project. This initial discovery prompted further investigation by the board, revealing an additional paid invoice for \$43,455.48.

This led us to raise the matter directly with the president of Hawaiian Properties (HP) for a more comprehensive investigation. HP's thorough examination unearthed an additional series of discrepancies totaling \$231,121.94.

In response, the board took proactive steps to ensure a meticulous and impartial investigation. An independent forensic auditor, chosen by MSS and funded by HP, was engaged. Our appointed forensic accountant's extensive and diligent work identified an additional sum of \$32,745.54, which had been raised to him by HP to investigate.

We are pleased to report that this matter was promptly resolved with reimbursement for a total of \$339,364.83 from HP. Furthermore, HP graciously also assumed the expenses associated with legal guidance for MSS throughout this process.

Since the board's initial findings, rigorous checks and balances have been promptly implemented, closely aligned with the recommendations of our independent forensic auditor. Our association's financial stability is now reinforced by comprehensive safeguards and new operational protocols. These measures are not only designed to meet industry standards but also tailored to address the unique needs of MSS.

We want to assure you that our commitment to transparency, integrity, and sound financial management remains unwavering. The ongoing cooperation between MSS staff, the board, and HP is a testament to our collective determination to address challenges head-on and uphold the highest standards of accountability.

HP has advised the board that it has filed a complaint with the Department of the Prosecuting Attorney against the parties suspected of the improper taking of the funds from the Association and requested that the identities of the suspected parties be kept confidential. The board has also inquired with an attorney with the Department of Prosecuting Attorney and been advised that information related to any complaint filed with them should be kept confidential, because the disclosure of that information will hamper their investigation. If the suspected parties are warned that they are being investigated, they may destroy or alter relevant evidence. Additionally, if the Association disclosed that information, it may expose the Association to liability for libel and slander. Consequently, we are unable to disclose the names of the suspected parties or vendors at this time.

We've scheduled a Zoom meeting on October 10, 2023, at 6:00 p.m. HST to discuss missing funds and reimbursement. Details are available at [makahasurfside.net/calendar](https://makahasurfside.net/calendar) (or) <https://us02web.zoom.us/j/87324588031?pwd=a250a0dyU1NveTFYRkhucE5FNINKUT09> Meeting ID: 873 2458 8031, Passcode: 486320.

Warm regards,

Board of Directors  
Mahaka Surfside

## Kyle-Lee N. Ladao

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**From:** [REDACTED]  
**Sent:** Monday, November 27, 2023 11:45 PM  
**To:** Kyle-Lee N. Ladao  
**Subject:** [EXTERNAL] Complaint against abusive community boards and management  
**Attachments:** Complaint.pdf

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Hi there,

Greg Misakian has referred me to you. Here is my written complaint regarding abuses by my community board and management company. I'm hoping to make it to the meeting this Thursday whether in person or virtually, but in case I am unable, I am hoping my voice still be heard.

Ed Hsu VMD

To whom it may concern,

I was hoping to have my voice heard and be a part of some change so that no one who ever lives in a cooperative has to ever deal with unreasonable and frankly abusive behavior on the part of the association or its management in the future.

It seems everyone has a horror story about associations. This is mine. It results from what at worst can be considered an innocent accident involving the gate arm into the complex. It is a known faulty swing arm that has been known to drop suddenly on people as they have tried to pass through - so much so that it is now a foam arm to minimize damage. Signage is also unclear regarding proper entry. It appears that a guest of a guest (my house sitter while I was out of town) did not understand proper protocol for being buzzed in and followed too closely resulting in swing arm damage when it came down on his car as he attempted to pass under. It was an accident and the involved party was more than willing to compensate the association for repairs. You would think that would be the end of it, but then we wouldn't be here would we?

I as the property owner of record was held responsible for the accident. In principle, I understand, but I wasn't just given the bill to facilitate payment for the damages. The letter I was sent held me personally responsible, threatened criminal prosecution and fined me for the accident. I immediately protested to management that it seemed heavy handed and certainly excessive. I attempted dialogue to discuss that our bylaws are quite clear and specific. The "violation" will be held responsible. I'm not the violator. First time events that occur that damage association property are supposed to result in a warning. Not a fine. Why am I being fined? The board is supposed to respond to inquiries within 3 months of protest. It's been 10 months and I have not been given a reply that my complaint has been heard. Just more letters piling on "interest" and demanding payment. They've even mentioned that while I continue to pay my monthly association dues, they've chosen to apply my payments towards the damages and fine first so that on paper it looks like I am many months behind on paying dues. At some point the association will presumably place a lien on my home. I am not OK with this. It's not right.

I object that traditionally management places the onus for any damage on the homeowner with closest proximity. Even if they are not directly involved. That's not fair. I believe people are responsible for their own actions. I did not cause the accident. My guest did not cause the accident. The accident did not occur at our direction. Why am I being held responsible? If you don't pay your taxes does the government come after the nearest relative they can find and just empty their bank account? If you commit a burglary but the police can't find you do they arrest your brother and put him in jail? The actions of management companies can not be allowed to continue with their mafia like behavior. In this case the person involved has admitted fault and is willing to take responsibility so why am I being involved? Why am I being fined? Especially even if it's specifically against bylaws? Management insists that anyone that can be associated with you in any way entering the property is completely your responsibility. The pizza delivery guy. Uber. AAA. Even if you call the police or fire department or ambulance, they hold you accountable. Honestly it sounds like if I smell a gas leak I am better off not saying anything because if I let the gas company in, but damage occurs, I am the one they will hold responsible. That's insane. I shouldn't be afraid to do the right thing in my own home and I'm certain the gas company has insurance so there's absolutely no reason to involve me. And yet that's how associations work. It's easier for them to go after the home owner. I think that's wrong. A law should be passed to preempt the laziness on the part of associations.

My understanding is that many association bylaws include a clause that says any legal action against the association comes at the risk that the homeowner is responsible for the association legal fees also. I don't think that's right either. I understand as a hedge against frivolous lawsuits that makes sense, but if there is a legitimate disagreement that requires a legal opinion, just like any other issue in the court system, each party should be responsible for their own legal fees. Otherwise it is an unfair deterrent for a majority without the means to stand up for their rights.

If we could trust cooperatives, associations and management to do the right thing we wouldn't be here. There would not be so many horror stories about abusive HOAs and arbitrary / illegitimate policies that destroy a person's dream of home ownership and the peace that one should be able to expect in their own home.

To that end, I am hoping for laws that protect the rights of homeowners and make it clear that being a part of a cooperative does not mean that we lose our rights. Associations should not be able to make it policy to hold homeowner's responsible for actions that are not their own, simply because it's convenient. As with anything else, whoever causes the damage should be held responsible. It must be made clearer that associations must deal in good faith and not be able to arbitrarily place fines and liens against homeowners without adequate recourse. And should it come to requiring legal intervention, it should not be legal to insist that a person with a legitimate complaint would be expected to be financially responsible for the legal fees of their adversary.

My name is Edward Hsu. I am a veterinarian. I have devoted my life to fighting for those who can not speak for themselves. And this is no different. Someone needs to take a stand.

Sincerely,



Edward Hsu VMD

Owner The Honolulu Pet Clinic

# **Testimony Submitted For The Condominium Property Regime Task Force Meeting**

**Department of Commerce and Consumer Affairs  
State of Hawaii**

**Date: October 30, 2023**

**Time: 1:30 PM**

Virtual Videoconference Meeting: Zoom Webinar and In-Person:  
Queen Liliuokalani Conference Room  
King Kalakaua Building  
335 Merchant Street, 1st Floor  
Honolulu, Hawaii 96813

## **Testimony In Support of:**

- 1) **Condominium Owner's Rights.**
- 2) **The need for a State Ombudsman's Office** to address owner complaints of misconduct and malfeasance by condominium Association Board members, Management Companies and their agents, Site Managers, Resident Managers, General Managers, Attorneys, and others. And to address complaints owners have regarding the Department of Commerce and Consumer Affairs, the Regulated Complaints Industry Office, and others who engage in any improper acts or actions, fail to take complaints, or fail to address concerns or administer proper investigations with fair and equitable resolutions. And to require proper enforcement actions and accountability for misconduct by Board members, Management Companies and their Agents, and others.
- 3) **The need for HRS 514B reforms**, including in the areas of voting rights, Board member qualifications, education and training, Community Manager licensing and/or certification, and numerous other areas identified via the Task Force and past legislative testimony for condominium related bills (and future testimony).
- 4) **The need for a two-sided communication flow of "accurate" information to condominium owners**, and not a one-sided viewpoint tainted with conflict of interest (i.e., with all of the messaging coming from the condominium trade industry and attorneys who represent Management Companies and Association Boards).

Aloha Task Force Members,

My name is Gregory Misakian and I live in Waikiki in a high-rise condominium. As I previously informed the Task Force in my testimony submitted on October 27, 2023, I currently serve on three Boards in the State of Hawaii: 1) 2nd Vice President of the Kokua Council, an elder advocacy organization that works with State Legislators and other groups and agencies on behalf of our kupuna, 2) Subdistrict 2 Vice Chair of the Waikiki Neighborhood Board, and 3) Treasurer of my condominium Association, the Keoni Ana AOA.

**As I previously stated in my October 27<sup>th</sup> testimony:**

**I am dealing with serious misconduct at my condominium association, and the number of issues and concerns and the abuse of power is literally overwhelming.**

I summarized some of the issues and concerns in my previous testimony, but there are many more, and recently the abuse of power and misconduct from our Board President has gotten much worse. Below are just some of the things that happened at the most recent Keoni Ana AOA Board meeting on November 20, 2023.

- 1) The meeting notice/agenda was never sent to owners via TownSQ/Email, so many owners who do not live in the building were not aware of the Board meeting. Our Board President posted a TownSQ notice at 5:20 PM, just 25 minutes prior to the meeting, and with the wrong start time (6:00 PM noticed, vs, 5:45 PM when the Owner's Forum began). Our Board President has chosen to not properly notice Board meetings, and is disenfranchising the owners from participating in the meetings and in the Owner's Forum.
- 2) The Board President, Daniel Jacob (an attorney and public employee who works for the City and County of Honolulu, Corporation Counsel), took control of the Zoom meeting by locking the option to "unmute." When the first item on the agenda came up, I could not unmute myself to speak and raise an objection to adopt the agenda (as I wanted to motion to add items to the agenda). I also raised my hand and was not recognized. This is a serious abuse of power and is unlawful, and is also retaliation in violation of HRS 514B-191. When I was finally able to speak to give my Treasurers report and raised concerns about what was done, and ask Mr. Jacob to stop muting me, he ignored my concerns, was argumentative, and said he can do whatever he wants. He continued to mute me numerous times when I was speaking or trying to speak during the meeting. He also did this in Executive Session. To highlight just one example and reason why a State Ombudsman is needed, this is it. This is a violation of HRS 514B-125 (seen further below, with the section highlighted). And to address this one issue alone, do I have to file for a mediation, and then litigate this in court? And how long does the Task Force think this issue might take to resolve? And at what cost financially?



- 3) The meeting agenda was not followed (the Board President skipped agenda items without stating he was doing so, and numerous agenda items were not discussed).
- 4) The Board Packet for the meeting was missing a great deal of information needed for decision making and voting. It was missing previous meeting minutes (regular board meeting and the executive session). Also missing were bids and proposals needed for decision making. In one example no bids/proposals were included for a structural engineering firm and only one proposal was verbally mentioned for a vote. I requested that the vote not be taken, as the Board had no written proposal to review, in addition to not having multiple bids/proposals (and it was verbally stated there was a second one). Our Board President still motioned for a vote and the Board majority approved the engineering firm. I am aware of other misconduct related to this and concerns of kickbacks and other improper actions.
- 5) I motioned for a Budget Committee to be formed (something I had been trying to get the Board to act on since the late summer with no success). I received no 2<sup>nd</sup> from any other Board member. The Board was already non-compliant to our governing documents regarding the budget, and Associa Hawaii had misinformed the owners regarding the Board meeting to discuss the budget (via a USPS mailing they sent). Later in the meeting our Board President motioned to form a Budget Committee (the very thing I motioned for with no 2<sup>nd</sup>). He included names of Board members and said owners could also be part of the Committee. I, the Treasurer of the Association, was excluded from the Committee. The level of retaliation I have received, both as an owner and now as a Board member, is something that no homeowner should ever have to experience.

**§514B-125 Board meetings.** (a) All meetings of the board, other than executive sessions, shall be open to all members of the association, and association members who are not on the board shall be permitted to participate in any deliberation or discussion, other than executive sessions, pursuant to owner participation rules adopted by the board.

(b) The board may establish rules for owner participation in any deliberation or discussion at board meetings, other than executive sessions. A board that establishes such rules pursuant to this subsection:

- (1) Shall notify all owners of these rules; and
- (2) May amend these rules at any regular or duly noticed special meeting of the board; provided that all owners shall be notified of any adopted amendments.

The board may make the rules available to owners on an association website.

(c) The board, by majority vote, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters:

- (1) Concerning personnel;
- (2) Concerning litigation in which the association is or may become involved;
- (3) Necessary to protect the attorney-client privilege of the association; or

- (4) Necessary to protect the interests of the association while negotiating contracts, leases, and other commercial transactions.

The general nature of any business to be considered in executive session shall first be announced in open session.

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

(e) The board shall meet at least once a year. Notice of all board meetings shall be posted by the managing agent, resident manager, or a member of the board, in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board. The notice shall include a list of business items expected to be on the meeting agenda.

(f) A director shall not vote by proxy at board meetings.

(g) A director shall not vote at any board meeting on any issue in which the director has a conflict of interest. A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

"Conflict of interest", as used in this subsection, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the association. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2017, c 81, §3; am L 2022, c 62, §7]

**To elaborate further, and to give the Task Force a glimpse into what is going on behind the curtain at the Keoni Ana AOA, I am including a recent email I sent to owners, just prior to our 11/20/23 Board meeting (with some personal information redacted).**

Keoni Ana AOA - Update and Concerns Re. Budget - Misconduct - Petitions to Remove Board Members

Greg Misakian <[REDACTED]>

Bcc:

Sun, Nov 19 at 7:53 PM

Aloha Owners,

I'm updating you regarding concerns from last month's Board meeting and ongoing issues and concerns leading up to tomorrow's Board meeting. I will only focus on three major issues in this email, which all owners need to be aware of.

Also attached are two petitions to remove Board members.

**The next Board meeting is tomorrow, Monday, 11/20/23 at 5:45 PM**

**(Zoom ID: 822 918 9151 Passcode: XXXXX).**

## **BUDGET**

For all those who received a green card in the mail from Associa Hawaii with information regarding the Keoni Ana AOA Budget, please be advised:

**The Board of Directors of the Keoni Ana AOA has never met to discuss the Keoni Ana Budget.** The information which states "Your Board of Directors are working diligently to finalize and approve your association's next fiscal year's budget" was and is a false statement.

**I have been trying to get a Finance & Budget Committee formed since the summer, and repeatedly requested it be on the agenda.** Our Board President, Daniel Jacob, ignored my requests each time. At the October Board meeting I motioned for a Finance & Budget Committee to be added to the agenda and a separate motion for the formation of the Committee. When the 2<sup>nd</sup> motion came up, not one Board member gave it a second so it could be discussed and voted on. Clearly none of the Board members want to discuss the Budget or look at our financials together in detail (as all Boards are supposed to do to prepare a budget). Do they fear something?

**Our bylaws clearly state on page 10-11 that the Board of Directors shall prepare a proposed budget (and schedule of assessments) at least 60 days prior to the next fiscal year.** Our Board is "obligated" to meet to review our financials and to prepare a budget, and the proper way to do this is via a Budget Committee. This Committee should also meet at least two or three times to ensure that the financials, reserve study, known and anticipated litigation costs, and other unplanned events (like the suspension of our Maintenance Manager and possible unplanned legal costs), are reviewed properly. This is "standard protocol" for associations regarding their budgets. These proposed budgets should also be sent to the owners with plenty of time to review before decision making and adoption (typically up to 30 days).

**The Board meeting scheduled for tomorrow** (Monday, 11/20/23) is overloaded with agenda items that our Board President placed on agenda unilaterally, without even forwarding a draft copy for review by the Board. It is not possible to properly review the budget at a Board meeting, and especially not one so full of agenda items. If there is a motion to vote for the Associa Hawaii proposed

budget at the 11/20/23 Board meeting, any Board member that votes to adopt it, in my opinion will be in violation of their fiduciary duty to the Association.

## **RERSERVE STUDY**

On numerous occasions in the past months, I requested a revised Reserve Study for this year and was ignored. Finally, our Community Manager responded last month with the 2022 Reserve Study (originally dated January 2023) by redating it to the future (January 1, 2024). The most important thing to know is that there was no formal Reserve Study done this year. The Reserve study that was done in 2022 also has numerous errors and concerns. What is also very clear is that the word **deferred** is used often in the report, and this is what has been done often at the Keoni Ana, by Board members who do not know what they are doing and who are mismanaging the association.

## **ASSOCIA HAWAII**

**As most of you know, Associa Hawaii was voted out in 2022** by the majority of the owners and should have been replaced a long time ago. They were also operating unlicensed from January 1, 2023 until April 10, 2023.

None of my questions have been answered by Associa Hawaii regarding financial line items that are incorrect and other concerns, and the person at Associa Hawaii who prepared a budget without the Board or the Boards input, will not even reply to my emails or return my calls.

I have reported numerous concerns to the Real Estate Brokers who oversee Associa Hawaii, and who are both fully responsible for addressing all of the misconduct and bad acts, and neither has responded to my emails or calls. Honest and ethical companies would immediately respond to concerns of misconduct or improper actions by their staff, especially when being reported by an Officer and Treasurer of the Association. Unfortunately, it appears the Brokers (who also were unlicensed along with their company from January through April), are behaving badly and I will be addressing this.

## **SUMMARY**

The serious misconduct by Board members, Associa Hawaii, and others, continues to undermine the Keoni Ana AOA and threatens our future in many ways: our finances, maintenance fees, insurance costs, building projects, health and safety, and the value and saleability of our homes.

I appreciate all of the owners who have contacted me to offer their support and help, and those that also offered to serve on the Board if we are successful with the petitions and can hold a proper election to seat new Board members.

**I respectfully ask all who have not signed yet to please sign the two attached petitions**, and return to me by either scanning and emailing, slipping under my door, or by mailing.

We need a Board of Directors who will be ethical, honest, and responsible to the association and the owners.

Mahalo,

Greg

Greg Misakian  
Keoni Ana AOA, Treasurer

Attachments:

*Keoni Ana AOA – Petition for a Special Meeting of the Association to Remove Board Member Daniel Jacob.pdf*

*Keoni Ana AOA – Petition for a Special Meeting of the Association to Remove Board Members.pdf*

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## **CONFLICT OF INTEREST & CONCERNS WITH THE TASK FORCE**

There are those on the Task Force and those that participate in the meetings, who all appear to have a clear conflict of interest. Some guests are allowed to speak freely, as if they are on the Task Force. It is clear to me, and it should be clear to the those on the Task Force and those that oversee the Task Force.

### **Mr. Philip Nerney**

The first and most obvious is the Chair of the Task Force, Mr. Philip Nerney. I previously raised this concern of conflict of interest in my testimony submitted for the 10/27/23 Task Force meeting. At that meeting Mr. Nerney was not calling me when I had my hand raised for a long time, and was also rude in his exchange with me, when I stated that someone should raise a point of order regarding Mr. Richard Emery being allowed to speak whenever and however he wanted to.

Mr. Nerney has hundreds of lawsuits against condominium owners. His numerous testimony and comments provided to the State Legislature, regarding opposing better consumer protection bills for condominium owners, makes his position clear.

### **Mr. Richard Emery**

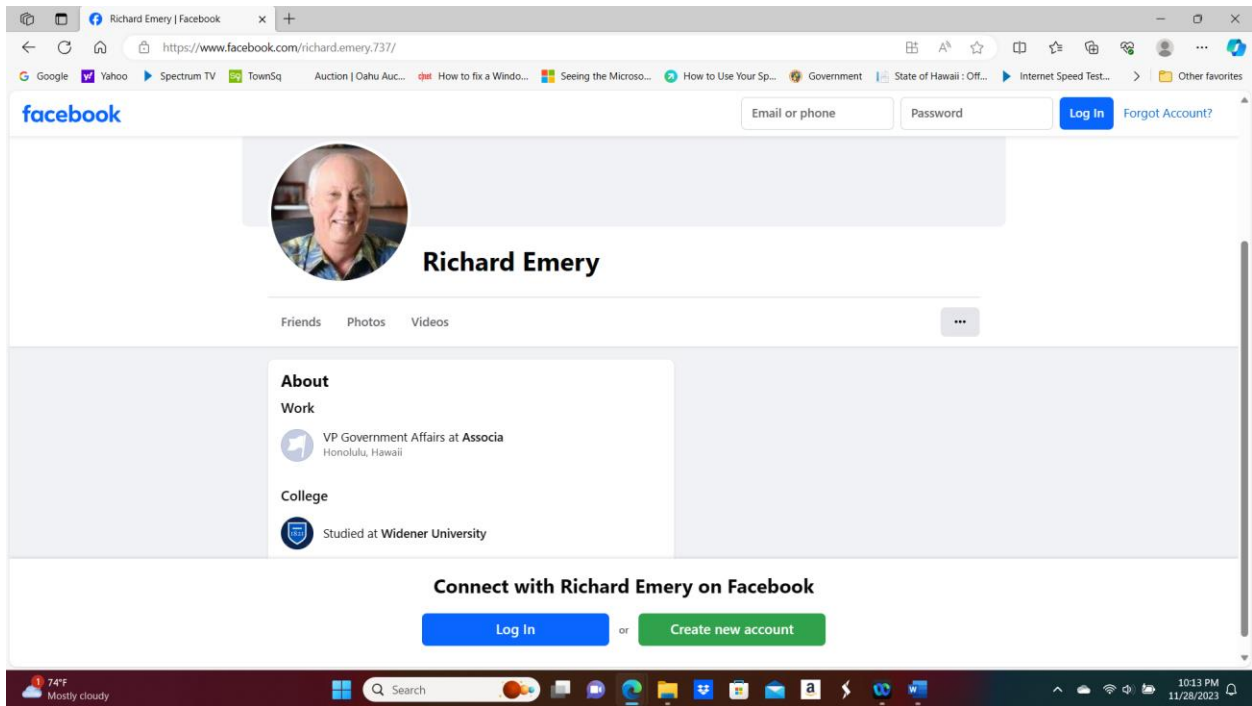
Mr. Richard Emery has numerous conflicts of interest, but the most telling one is that he represents Associa Hawaii, a Management Company with a vested interest against better consumer protections for condominium owners. He is also on the Real Estate Commission, which makes decisions and imposes fines and penalties on companies such as Associa Hawaii.

The insightful article at the link below makes Mr. Emery's position clear - that Board members, some who oversee millions of dollars in budgets, and tens of millions of dollars in property value for all condos in the project, should not be required to take mandatory training (to educate them on their Board duties, responsibilities, fiduciary duty, and HRS 514B).

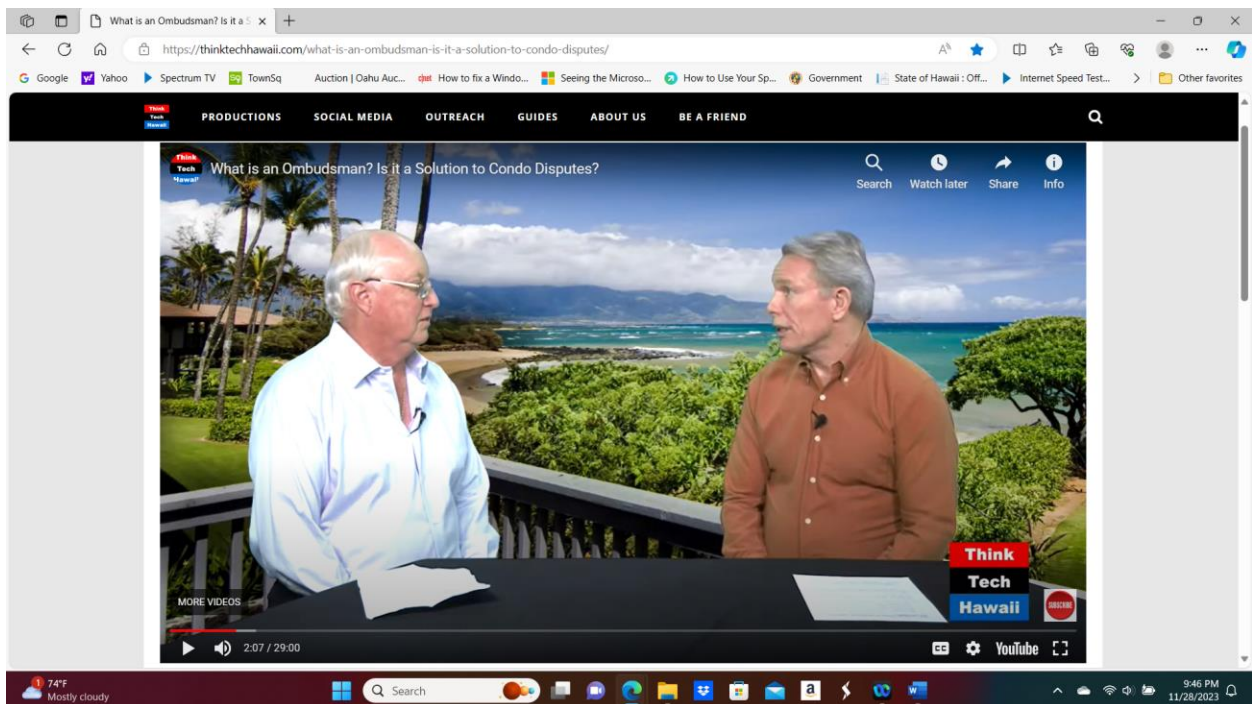
[Bill Might Require Training for Volunteers Who Serve on Condo Boards - Hawaii Business Magazine](https://www.hawaiibusinessmagazine.com/2023/11/28/bill-might-require-training-for-volunteers-who-serve-on-condo-boards/)

Some more background information regarding Mr. Emery:

The screenshot shows a web browser window with the URL <https://www.caihawaii.org/Member/249~3410877>. The page is for the Hawaii Chapter Community Associations Institute. The header includes a navigation menu with links for Home, Contacts, Chapter News, Events Calendar, Member Services, Resource Center, and Contact. Below the header, there is a search bar and a "Directory Search" button. The main content area displays the profile for Richard Emery, including his address (737 Bishop Street, Suite 3100, Honolulu, HI 96813-3285), mailing address, phone number (808-282-8051), and website (www.AssociaHawaii.com). There is also a "Contacts" section listing Richard B. Emery as the Community Association Manager with his email (Richard.Emery@Associa.us) and work phone (808-282-8051). An "Emergency Contacts" section is also visible. The footer contains contact information for the institute, a privacy policy link, and a note about the software used (FRONTSTEPS).



Mr. Emery and Mr. Nerney – ThinkTech Hawaii, Condo Insider (where condominium owner’s opinions aren’t heard):



[What is an Ombudsman? Is it a Solution to Condo Disputes? | ThinkTech \(thinktechhawaii.com\)](https://thinktechhawaii.com/what-is-an-ombudsman-is-it-a-solution-to-condo-disputes/)

Mr. Richard Emery and Mr. Phil Nerney discussing that 400-pound gorilla in the room (the State Ombudsman for condominium associations). And the verdict, and why neither should be involved with the Task Force is ... they both are clearly biased against an Ombudsman, and make numerous unsubstantiated statements without factual data or supporting evidence. They are also very critical of condominium owners (further bias). This video is a must-see for the Task Force, and all should watch it on their own time and provide a summary report for the public with their takeaways. Watching Mr. Emery discuss \$3 per condominium going into the condominium education fund annually vs. biannually, as if it is such a substantial amount of money and some type of hardship, is the gamesmanship that our Legislators need to put a stop to. Our Legislators speak with both Mr. Emery and Mr. Nerney on a regular basis, and it's time for fairness and honesty in all messaging related to condominium associations and proposed legislation in Hawaii.

**Ms. Yuriko (Jane) Sugimura, Mr. Steve Glanstein, Ms. Rachel Glanstein, Mr. Richard Emery, Trade Industry**

Please see my previous testimonies submitted to the State Legislature regarding HB726, SB1201, and other bills (further below).



**PREVIOUS TESTIMONY SUBMITTED TO THE STATE LEGISLATURE**

**Testimony In Support of HCR99**

**Submitted for:** Consumer Protection & Commerce Committee Hearing, scheduled to be heard on Wednesday, 3/29/23 at 2:10 PM.

Aloha Chair Nakashima, Vice Chair, Sayama, and Members of the Committee,

My name is Greg Misakian and I am submitting testimony as an individual in support of HCR99.

While it is appreciated that there is a formal statement by resolution, your Committee and others within the Legislature had many opportunities to pass numerous bills that would have afforded better consumer protections to condominium owners throughout Hawaii. Words are words, and even the statutes within HRS 514B are only words, unless there is a substantive process of enforcement behind these words. The words of one well connected group, who often oppose these common-sense bills in written and oral testimony, seem to be the only words that are heard when decision making takes place. Most are Attorneys, Parliamentarians, Management Company Representative, or others in the Condominium Trade Industry.

I currently sit on three Boards, which can be seen at the end of my testimony, but the most recent Board I was elected to, and the one of most importance, is my condominium Association Board. As an owner and a former Building Committee member I did my best to inform the Board and Management Company whenever they were doing something improperly, in violation of our governing documents, in violation of HRS 514B statutes, or other federal, state, or local regulations, ordinances, or codes. Unfortunately this was often, and has resulted in many issues and problems that I now have a fiduciary duty and a duty of care to try to resolve as a Director and Officer of my association.

My personal experience with the DCCA Real Estate Branch and RICO, are that they are not helpful, and do not seem focused on properly investigating and helping to resolve issues. I have numerous examples of this and would be happy to share with our Legislators.

Regarding HCR99, I'll focus on two sections which contain statements that need further clarification, or additional wording to better explain the ramifications or to be accurate.

WHEREAS, the imposition of increased maintenance fees and special assessments can create discord and conflict between the association unit owners and their boards and managing agents, resulting in frustration, hostility, and dissension; and

Aside from the likelihood of discord, conflict, frustration, hostility, and dissension, there are the real world issues of: 1) kupuna who are on fixed budgets, 2) owners and families who are on fixed budgets, 3) unlawful or improper activities sometimes resulting in increased maintenance fees, 4) improper deferred maintenance resulting in large and unfair maintenance fee increases to mitigate additional damage to the building, or to complete many projects all at once, 5) forced sales or foreclosures due to the inability to make higher payments.

WHEREAS, section 514B-71, HRS, requires the Real Estate Commission--a commission administratively attached to the Department of Commerce and Consumer Affairs that has oversight of condominiums--to establish the Condominium Education Trust Fund to promote, among other things, education and research in condominium management, the improvement and more efficient administration of associations, and the expeditious and inexpensive resolution of association disputes; now, therefore,

Too many Legislators say “condominium associations are self-governed,” while simultaneously discussing bills or statutes that govern these associations. HRS 514B is in place because the residents of Hawaii need laws where there is a high probability that malfeasance can occur, and so much money and property is at stake. If 514B-71 requires the Real Estate Commission to promote the expeditious and inexpensive resolution of association disputes, why has my experience been the opposite. I have experience with the DCCA, RICO, and mediation, and there is nothing expeditious or inexpensive in my experience, and most importantly there is no resolution. Factual data previously presented in testimony has shown that the majority of mediations are not resolved, in addition to the many issues and concerns that never get reported or filed, as it costs \$375 just to file for a mediation.

To highlight just how bad things are:

As I write this today, the Management Company that oversees my association and many associations throughout Hawaii, and a company that oversees billions of dollars of property value, has a license that is “INACTIVE.” At the DCCA licensing portal for this Management Company it says: “LICENSE IS INACTIVE UNABLE TO PRACTICE.” I just found out it has been inactive since January of this year (and not from the Management Company, our Board, or anyone at my Association). The DCCA and RICO have both confirmed the license is inactive.

It is now my fiduciary duty to act, and I have begun that process. I hope our Legislators will act, and begin the much-needed reform needed to protect condominium owners throughout Hawaii.

I ask the Committee and all State Legislators to **please support HCR99**.

And I ask you to support and act on HB178 and HB1501 in the 2024 Legislative Session, which will provide for an Ombudsman’s Office to oversee and resolve the many valid complaints and concerns homeowners have with their Boards and Management Companies.

Mahalo,

Greg Misakian

2<sup>nd</sup> Vice President, Kokua Council  
Board Member, Waikiki Neighborhood Board  
Treasurer, Keoni Ana AOAO

## Testimony In Support of SB729 HD1 HSCR1302

**Submitted for:** Consumer Protection & Commerce Committee Hearing, scheduled to be heard on Tuesday, 3/21/23 at 2:00 PM.

Aloha Chair Nakashima, Vice Chair, Sayama, and Members of the Committee,

**SB729 HD1 HSCR1302 will provide much needed Board of Directors training and certification** and will eliminate the “excuses” often made by Directors when they improperly conduct Association business, “that they are just volunteers.” A seat on any Board of Directors must be filled by qualified candidates, and the “volunteer” excuse was and is unacceptable. The results can clearly be seen in the many mismanaged Associations throughout Hawaii. All Board Members need to be required to complete mandatory training and certification, so they know what is expected of them and their fiduciary duty.

My personal experience at my Association has confirmed what every legislator should know, that there are many unqualified Directors on the Board, and this is negatively impacting my Association. This is repeated across Associations throughout Hawaii, and I have heard this from many concerned condominium owners. The result is abuse of power and malfeasance, and the solution begins with SB729 HD1 HSCR1302, followed by an Ombudsman’s Office to oversee condominiums and HOAs.

Directors on Association Boards need to know their responsibilities and duties, and read and understand HRS 514B, other applicable Statutes, and their Governing Documents. Abuse of their positions also needs to result in oversight and enforcement by the Hawaii Attorney General’s Office, until an Ombudsman is in place.

It is also very concerning to continue to see testimony opposing this measure and others meant to provide better consumer protections, from the same group who profits when there is more conflict at Associations. This group includes Attorneys, Parliamentarians, and Management Companies. Decision making should always consider motive.

I ask the Committee and all State Legislators to please support SB729 HD1 HSCR1302.

And I ask you to support and act on HB178 and HB1501 in the 2024 Legislative Session, which will provide for an Ombudsman’s Office to oversee and resolve the many valid complaints and concerns homeowners have with their Boards and Management Companies, due to mismanagement and malfeasance.

Mahalo,  
Greg Misakian  
2<sup>nd</sup> Vice President, Kokua Council  
Board Member, Waikiki Neighborhood Board

## **Testimony In Support of SB593**

**Submitted for:** Commerce and Consumer Protection (CCP) Committee Hearing, scheduled to be heard on Tuesday, 2/28/23 at 9:45 AM.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee,

**I support SB593.**

At my association there have been numerous projects and work done without required permits, and numerous violations of ordinances, regulations and/or codes. The building has not been maintained properly for many years, and this negligence by the Board and Management Companies has resulted in numerous notices of violations by the Department of Planning and Permitting (DPP) and other agencies.

I support SB593, but think an amendment regarding enforcement or referral to the proper enforcement agency would help to strengthen the measure.

**I ask the Committee to please pass SB593.**

Mahalo,

Gregory Misakian

2nd Vice President, Kokua Council  
Board Member, Waikiki Neighborhood Board

## Testimony In Support of SB1201

**Submitted for:** Commerce and Consumer Protection (CCP) Committee Hearing, scheduled to be heard on Tuesday, 2/28/23 at 9:45 AM.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee,

My name is Greg Misakian and I am the 2<sup>nd</sup> Vice President of the Kokua Council, one of Hawaii's oldest elder advocacy groups. The Kokua Council sponsored SB1201 on behalf of its membership and kupuna throughout Hawaii.

I am also a Board Member of the Waikiki Neighborhood Board, which adopted a resolution at the February 2023 Board Meeting to support Bills related to better consumer protections for condominium owners.

**I speak on behalf of both groups to say, I strongly support SB1201.**

**The reasons why are as follows:**

- 1) Currently registration for condominiums is done biennially. This poses issues when associations do not update information as required, including Directors names and titles, and management company agents. As an example, the registration information found online for my association, the Keoni Ana, has incorrect information including; the wrong Board President, incorrect Directors, incorrect officer titles, incorrect mailing address, incorrect contact information, incorrect Community Manager, incorrect reserve information, and incorrect answer to the mediation/arbitration question. To summarize, almost all of the information is incorrect. This has also caused problems when others were trying to contact the correct managing agent. As associations have annual meetings and elect new Directors each year, requiring the registration to be annual makes more sense, and will help to ensure that data is more current and up-to-date.
- 2) When the information is incorrect, as stated above in my first example, then any prospective buyers will also have this "incorrect" information when making purchasing decisions. If they rely on this information to make their purchase, then that poses a potential liability to both the seller and the association. Knowing if there is a mediation at an association and how much the reserves are funded are extremely important pieces of information.
- 3) Having the registration done annually will also provide an efficient process for submitting and making available documents published annually, including; Financials, Insurance, Reserve Study, Annual Meeting Minutes, as well as contracts and other documents. Owners have a right to access these documents and not have to jump through hoops to do so, by sending written requests, signing affidavits, paying high costs, or denied access. My management company, Associa, has been trying to charge me \$1/page for electronic

copies of documents, on top of hours of administrative time charged to the 8 hours of free time allocated annually. This practice needs to stop.


- 4) There needs to be transparency and accountability at associations, and disclosure of documents is paramount to ensuring the association is being managed properly, the building is being maintained properly, and the finances are being spent properly.
- 5) There is no cost to the State, and the proposed cost to each owner is just \$1.50/year.

SB1201 and other condominium bills introduced this year are urgently needed to protect all owners of condominiums from the predatory practices of rogue; Directors, Boards, Attorneys, Management Companies, Community Managers, and others overseeing or managing associations or their meetings.

There is also one group of people who regularly testify against many of the most common-sense bills that would provide better consumer protections to condominium owners. Some of them make large donations to the campaigns of many legislators and the decision makers who chair committees, and some of them meet regularly and spread their narrative wherever they present.



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**Steve Glanstein**  
Professional Registered Parliamentarian

ThinkTech Hawaii


1:02 / 29:25

The Perks of Parliamentarians - Steve Glanstein

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Downtown Honolulu

**Jane Sugimura**  
Host, Condo Insider

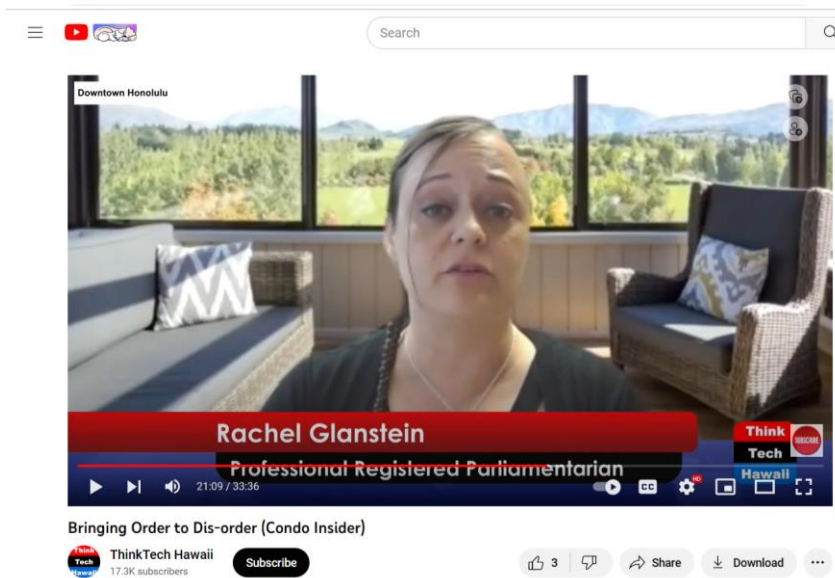
ThinkTech Hawaii

0:49 / 33:36

Bringing Order to Dis-order (Condo Insider)

ThinkTech Hawaii 17.3K subscribers

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**Because there are those who testify that do not always provide full disclosure:**

**Richard Emery** is currently on the Real Estate Commission. He previously owned Hawaii First Inc., which he sold to Associa in 2011. Certified Management Inc., dba Associa Hawaii, is where the merger rolled into. He is also currently employed by Associa Hawaii as their V.P. of Governance, which in my opinion I see as a conflict of interest. Mr. Emery has been a Director of the Hawaii Council of Community Associations (HCCA) and may still currently be. Mr. Emery often testifies in opposition of condominium related measures which would provide better consumer protections for owners.

**Yuriko Sugimura (aka Jane Sugimura)** is an attorney. She states she is the president of the Hawaii Council of Associations of Apartment Owners (HCAAO), dba Hawaii Council of Community Associations (HCCA). She does not speak on my behalf or my association's behalf.



Ms. Sugimura often testifies in opposition of condominium related measures which would provide better consumer protections for owners.

**Steve Glanstein** is a Professional Registered Parliamentarian (PRP) with the National Association of Parliamentarians (NAP), who often testifies in opposition of condominium related measures which would provide better consumer protections for owners.

**Rachel Glanstein** identifies herself as a Professional Registered Parliamentarian (PRP), (although I could not find her listed at the NAP website). Ms. Glanstein often testifies in opposition of condominium related measures which would provide better consumer protections for owners.

My understanding is that parliamentarians are supposed to be “unbiased” professionals, and I truly do not understand how parliamentarians are providing testimony related to condominium measures in front of our State Legislators. Especially since; when there is more conflict within associations, parliamentarians have more opportunity to profit.

**Some additional facts:**

- 1) Parliamentarians are not licensed in the State of Hawaii, which is something that I think should be required.
- 2) One or two parliamentarians seem to have a great deal of influence. Their testimony, which often opposes condominium bills, is frequently seen at the top of the published testimony.

When consumer protections are weak, attorneys also profit more, as mediation, arbitration, and litigation are the only ways to address violations of laws and governing documents. With less regulations and consumer protections, association Boards can use their power, association attorneys, and association funds against owners. If the action against an owner is unwarranted, unfair, or the result of a rogue; Director, Board, Attorney, Management Company Agent, Resident Manager or Site Manager, then the owner will suffer the consequences. These consequences are real, and often in the form of retaliation, adverse actions, fines, collections activities, and emotional and financial abuse. Many lead to litigation and claims against the D&O insurance policy, leading to increased costs to the association and sometimes special assessments to pay legal costs not covered by the D&O policy. Other serious concerns, including kickbacks, embezzlement, misappropriation of association funds, violations of HRS 514B, violations of the governing documents, and breach of fiduciary duty, need strong consumer protection laws and enforcement.

**Some questions the committee members and every legislator need to ask.:**

- 1) Why are Senior Staff from the Real Estate Commission, the Regulated Industries Complaints Office (RICO), and the Department of Commerce and Consumer Affairs

(DCCA), often seen opposing measures that are meant to help consumers and condominium owners?

- 2) Why are so many Attorneys showing up to testify? And who is paying them?
- 3) Why is a Site Manager or Resident Manager testifying? They are not stakeholders and should be focused on their job of managing and maintaining the property they oversee.
- 4) And who are the others who testify to oppose many of these measures? Just look at the names and you will see they are often the same group over and over.

When you dig a little deeper, as I have done, you will see some of them are also attorneys who do not disclose this. And others are on their boards in positions of power, or manage and oversee associations. Many know each other and work together in a coordinated effort to oppose these measures.

I respectfully ask the committee members and legislators that accept testimony from those on behalf of condominium owners or condominium associations, whether from a Council, Group, Association, National Association, or other organization, to please confirm that they are authorized to speak on others behalf. They do not speak on my behalf or my condominium association's behalf.

### **Management Company Concerns**

One of the big complaints repeated year after year is that Management Companies are not properly overseeing Associations. Community Managers are not licensed or required to be, and are often not qualified or experienced enough to be a Community Manager. There have also been numerous cases of improprieties and unlawful acts by Community Managers, including a very prominent one in the news in 2014 where the former CEO of Certified Hawaii (now Associa Hawaii) was charged with 14 felony counts of theft, involving numerous associations. She was later convicted and served jail time. At my association we also have concerns with Associa Hawaii, who was voted out last year at our Annual Meeting in March, yet our Board has done nothing to replace them and our 2023 Annual Meeting and Election is only weeks away. A management company that our membership has voted out, will be overseeing our annual election.

**Further, I would like to provide additional and relevant testimony on behalf of myself a condominium owner, and other owners at my association who have shared their concerns with me (some who are kupuna):**

There is serious malfeasance at my association, including; numerous violations of Hawaii Revised Statutes 514B, our Governing Documents, Federal, State, and City laws, ordinances, and/or codes. Required Department of Planning and Permitting (DPP) permits for building projects and work requiring permits are not being obtained. Numerous notices of violation have been issued to my association by DPP and other agencies. Adverse actions and improper

collections activities are being directed towards owners and kupuna. I have extensive evidence to support this, and would be happy to provide some to the Committee and others in the State Legislature. A public official on the Board of Directors is involved. That public official is a former Deputy Attorney General for the State of Hawaii, and is currently Corporation Counsel for the City and County of Honolulu. That same public official recently impeded the investigation of a Federal EPA Investigator related to lead paint. I ask Senator Moriwaki, my District Senator, to assist me in opening an investigation into the misconduct of this public official and others who colluded with him.

To further highlight just how bad things are at my association, our previous management company, Hawaiiana and our previous association attorney, Milton Motooka, both quit us due to concerns they had with Directors on the Board (from what I have been told).

When our Legislators see what is really going on, which is being repeated often in associations throughout Hawaii, you will have the proper knowledge and understanding to make decisions that will help the people who are counting on you, and not help the people who are counting their profits.

I respectfully ask the Committee and all Legislators to please do what is right for the “people,” and not the “profit” of others who appear to be self-serving and not acting in the best interest of owners, many of which are kupuna. **And I respectfully ask the Committee and all State Legislators to please enact SB1201.**

Mahalo,

Gregory Misakian

2<sup>nd</sup> Vice President, Kokua Council  
Board Member, Waikiki Neighborhood Board

*The Kokua Council is one of Hawaii’s oldest elder advocacy groups. We advocate for issues, policies, and legislation that impact the well-being of seniors and our community.*

## Testimony In Support of HB176

**Submitted for:** Housing (HSG) Committee Hearing, scheduled to be heard on Wednesday, 2/15/23 at 9:30 AM.

Aloha Chair Hashimoto, Vice Chair Aiu, and Members of the Committee,

**I strongly support HB176.**

I would like to point out that the first committee referral for HB176 should have been to the “subject matter committee,” which is Consumer Protection & Commerce (CPC). The referral to the Housing Committee was not necessary, and as such HB176 should be properly referred to CPC and a hearing scheduled ASAP.

**HB176 will provide fair and honest Association elections and take away the abuse of proxies, which is prevalent throughout Hawaii in many Associations.** I know this all too well, as there is a serious abuse of proxy solicitation and proxy hoarding by Directors on the Board at my AOA. This is done to retain power and keep others off the Board. Certain Directors are also abusing the use of owner emails to solicit proxies, as they have access to the full list of owner email addresses. This is yet another unfair advantage that by itself, should make it 100% clear that the solicitation of proxies and their use needs to be replaced by election ballots and fair elections.

Malfeasance by Board Members, Boards, and Management Companies has become a common occurrence, and homeowners need their State Legislators to enact laws that will better protect them. Whoever came up with the idea of giving your proxy to the “Board as a Whole” or “Directors Present,” was misguided, and our Legislators that previously followed along were taken down a path that only leads to abuse of power and corruption.

Other elements of this carefully thought-out Bill are intended to further ensure fair elections, and provide better oversight and enforcement.

**Fair elections are expected by all Hawaii residents, and no abuse of the election process should ever be allowed.**

**I ask the Committee and all State Legislators to please support HB176.**

**And I ask you to support and act on HB1297, which was also introduced by the Kokua Council on behalf of our kupuna and all residents of Hawaii.**

Mahalo,

Gregory Misakian

2<sup>nd</sup> Vice President, Kokua Council  
Board Member, Waikiki Neighborhood Board

*The Kokua Council is one of Hawaii's oldest elder advocacy groups. We advocate for issues, policies, and legislation that impact the well-being of seniors and our community.*

## Testimony in Support of HB726

**Submitted for:** Judiciary & Hawaiian Affairs Committee Hearing, scheduled to be heard on Wednesday, 2/22/23 at 2:00 PM.

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee,

**My name is Greg Misakian and I strongly support HB726.**

**They say a picture is worth a thousand words, further below is the picture, and with just a few words I submit my testimony.**

There are those who often oppose consumer protection Bills meant to help condominium owners and residents of Hawaii. The same group who often oppose these measures profit more when they are not enacted, are deferred, are improperly referred to the wrong committees, or are improperly triple referred. The game is clear and the rules are not, but the picture is 100% clear, unless you choose not to look. Hawaii needs better laws to ensure that Legislators, Attorneys, and all members of the public behave ethically and properly, and in the best interest of all.

### **Campaign Contributions of Yuriko Sugimura (aka Jane Sugimura), as seen at the State of Hawaii Campaign Spending Commission website:**

Abercrombie, Neil	Individual	Sugimura, Yuriko J.	12/15/2009	\$1,000.00	\$1,500.00	Bendet Fidell & Sugimura AAL ALC	Attorney
Abercrombie, Neil	Individual	Sugimura, Yuriko J.	07/19/2010	\$100.00	\$1,700.00	Bendet Fidell & Sugimura AAL ALC	Attorney
Abercrombie, Neil	Individual	Sugimura, Yuriko J.	10/02/2009	\$500.00	\$500.00	Bendet Fidell & Sugimura AAL ALC	Attorney
Abercrombie, Neil	Individual	Sugimura, Yuriko J.	08/12/2010	\$100.00	\$1,800.00	Bendet Fidell & Sugimura AAL ALC	Attorney
Abercrombie, Neil	Individual	Sugimura, Yuriko J.	09/03/2010	\$500.00	\$2,400.00	Bendet Fidell & Sugimura AAL ALC	Attorney
Abercrombie, Neil	Individual	Sugimura, Yuriko J.	08/18/2010	\$100.00	\$1,900.00	Bendet Fidell & Sugimura AAL ALC	Attorney
Abercrombie, Neil	Individual	Sugimura, Yuriko J.	03/24/2010	\$100.00	\$1,600.00	Bendet Fidell & Sugimura AAL ALC	Attorney
Baker, Rosalyn	Individual	Sugimura, Yuriko J.	05/08/2017	\$150.00	\$550.00		Attorney / CPA

Baker, Rosalyn	Individual	Sugimura, Yuriko J.	05/07/2013	\$300.00	\$300.00		Attorney / CPA
Baker, Rosalyn	Individual	Sugimura, Yuriko J.	05/10/2016	\$200.00	\$400.00		Attorney / CPA
Baker, Rosalyn	Individual	Sugimura, Yuriko J.	06/23/2008	\$100.00	\$300.00		Attorney / CPA
Baker, Rosalyn	Individual	Sugimura, Yuriko J.	07/13/2011	\$200.00	\$500.00		Attorney / CPA
Baker, Rosalyn	Individual	Sugimura, Yuriko J.	05/10/2015	\$200.00	\$200.00		Attorney / CPA
Baker, Rosalyn	Individual	Sugimura, Yuriko J.	05/05/2012	\$200.00	\$700.00		Attorney / CPA
Baker, Rosalyn	Individual	Sugimura, Yuriko J.	05/02/2018	\$200.00	\$750.00		Attorney / CPA
Baker, Rosalyn	Individual	Sugimura, Yuriko J.	12/03/2019	\$500.00	\$500.00		Attorney / CPA
Baker, Rosalyn	Individual	Sugimura, Yuriko J.	05/06/2014	\$200.00	\$500.00		Attorney / CPA
Baker, Rosalyn	Individual	Sugimura, Yuriko J.	06/20/2010	\$200.00	\$300.00		Attorney / CPA
Belatti, Della	Individual	Sugimura, Yuriko J.	01/30/2019	\$200.00	\$200.00		
Belatti, Della	Individual	Sugimura, Yuriko J.	06/11/2018	\$250.00	\$250.00		
Caldwell, Kirk	Individual	Sugimura, Yuriko J.	11/24/2015	\$1,000.00	\$1,000.00	Bendet Fidell Sugimura	Attorney
Chang, Stanley	Individual	Sugimura, Yuriko	05/29/2020	\$150.00	\$150.00		
DeCoite, Lynn	Individual	Sugimura, Yuriko J.	04/25/2019	\$150.00	\$150.00		
Espero, William	Individual	SUGIMURA, Yuriko J.	10/05/2017	\$200.00	\$300.00		
Fukunaga, Carol	Individual	Sugimura, Yuriko J.	05/27/2014	\$250.00	\$250.00	Bendet Fidell Sugimura	Principal

Fukunaga, Carol	Individual	Sugimura, Yuriko J.	07/12/2011	\$200.00	\$200.00	Bendet Fidell Sugimura	Principal
Fukunaga, Carol	Individual	Sugimura, Yuriko J.	03/12/2015	\$125.00	\$125.00	Bendet Fidell Sugimura	Principal
Fukunaga, Carol	Individual	Sugimura, Yuriko J.	05/04/2012	\$200.00	\$500.00	Bendet Fidell Sugimura	Principal
Fukunaga, Carol	Individual	Sugimura, Yuriko J.	06/13/2018	\$300.00	\$1,325.00	Bendet Fidell Sugimura	Principal
Fukunaga, Carol	Individual	Sugimura, Yuriko J.	09/14/2017	\$400.00	\$525.00	Bendet Fidell Sugimura	Principal
Fukunaga, Carol	Individual	Sugimura, Yuriko J.	05/11/2009	\$200.00	\$200.00	Bendet Fidell Sugimura	Principal
Fukunaga, Carol	Individual	Sugimura, Yuriko J.	11/22/2017	\$500.00	\$1,025.00	Bendet Fidell Sugimura	Principal
Fukunaga, Carol	Individual	Sugimura, Yuriko J.	07/16/2010	\$200.00	\$400.00	Bendet Fidell Sugimura	Principal
Fukunaga, Carol	Individual	Sugimura, Yuriko J.	07/14/2011	\$100.00	\$300.00	Bendet Fidell Sugimura	Principal
Hashimoto, Troy	Individual	Sugimura, Yuriko J.	05/24/2018	\$1,000.00	\$1,000.00	Bendet Fidell Sugimura	Attorney
Hashimoto, Troy	Individual	Sugimura, Yuriko J.	11/21/2019	\$100.00	\$200.00	Bendet Fidell Sugimura	Attorney
Hashimoto, Troy	Individual	Sugimura, Yuriko J.	05/20/2022	\$1,000.00	\$2,000.00	Bendet Fidell Sugimura	Attorney
Hashimoto, Troy	Individual	Sugimura, Yuriko J.	11/02/2021	\$1,000.00	\$1,000.00	Bendet Fidell Sugimura	Attorney
Ichiyama, Linda	Individual	Sugimura, Yuriko	04/11/2018	\$100.00	\$200.00		
Ichiyama, Linda	Individual	Sugimura, Yuriko	02/24/2020	\$100.00	\$250.00		
Ichiyama, Linda	Individual	Sugimura, Yuriko	11/13/2019	\$100.00	\$150.00		
Ige, David	Individual	Sugimura, Yuriko J.	11/28/2017	\$1,000.00	\$1,000.00	Bendet, Fidell, Sugimura AAL ALC	Attorney
Ige, David	Individual	Sugimura, Yuriko J.	07/19/2018	\$100.00	\$1,100.00	Bendet, Fidell, Sugimura AAL ALC	Attorney



Ihara, Les	Individual	Sugimura, Yuriko J.	07/05/2016	\$100.00	\$200.00		
Iwase, Randall	Individual	Sugimura, Yuriko J.	01/29/2007	\$300.00	\$300.00		
Johanson, Aaron	Individual	SUGIMUR A, YURIKO J.	10/14/2015	\$300.00	\$300.00	CLAY CHAPMAN IWAMURA PULICE & NERVELL	ATTORNEY
Johanson, Aaron	Individual	SUGIMUR A, YURIKO J.	07/21/2016	\$300.00	\$600.00	CLAY CHAPMAN IWAMURA PULICE & NERVELL	ATTORNEY
Johanson, Aaron	Individual	SUGIMUR A, YURIKO J.	11/03/2021	\$1,000.00	\$1,000.00	CLAY CHAPMAN IWAMURA PULICE & NERVELL	ATTORNEY
Keith-Agaran, Gilbert	Individual	SUGIMUR A, YURIKO J.	01/08/2015	\$150.00	\$150.00		
Keith-Agaran, Gilbert	Individual	SUGIMUR A, YURIKO J.	01/15/2016	\$150.00	\$300.00		
Keohokalole, Jarrett	Individual	Sugimura, Yuriko	05/17/2018	\$200.00	\$250.00		
Keohokalole, Jarrett	Individual	Sugimura, Yuriko	03/11/2020	\$150.00	\$150.00		
Kong, Samuel	Individual	Sugimura, Yuriko J.	04/18/2018	\$100.00	\$150.00		
Kong, Samuel	Individual	Sugimura, Yuriko J.	04/24/2019	\$150.00	\$150.00		
Kong, Samuel	Individual	Sugimura, Yuriko J.	06/22/2019	\$100.00	\$250.00		
Learmont, Lei	Individual	Sugimura, Yuriko J.	05/04/2018	\$500.00	\$500.00		
Luke, Sylvia	Individual	Sugimura, Yuriko	06/23/2022	\$500.00	\$500.00		
Luke, Sylvia	Individual	Sugimura, Yuriko	04/23/2008	\$50.00	\$150.00		
Luke, Sylvia	Individual	Sugimura, Yuriko	01/11/2019	\$250.00	\$250.00		

Luke, Sylvia	Individual	Sugimura, Yuriko	04/16/2018	\$300.00	\$300.00		
Maluafiti, Alicia	Individual	Sugimura, Yuriko	06/04/2018	\$500.00	\$500.00		
McKelvey, Angus	Individual	Sugimura, Yuriko J.	11/14/2019	\$100.00	\$150.00	Bendet Fidell Sugimura, AAL, a Law Corporation	Attorney
Menor, Ron	Individual	Sugimura, Yuriko J.	05/01/2019	\$500.00	\$500.00	Clay Chapman Iwamura AAL ALC	Attorney
Menor, Ron	Individual	Sugimura, Yuriko J.	10/16/2019	\$500.00	\$1,000.00	Clay Chapman Iwamura AAL ALC	Attorney
Misalucha, Bennette	Individual	SUGIMURA, YURIKO J.	09/11/2020	\$500.00	\$500.00		
Moriwaki, Sharon	Individual	Sugimura, Yuriko J.	09/25/2019	\$500.00	\$1,000.00	Clay Chapman Iwamura, Pulice & Nervell, AAL, ALC	Attorney
Moriwaki, Sharon	Individual	Sugimura, Yuriko J.	02/17/2018	\$232.46	\$232.46	Clay Chapman Iwamura, Pulice & Nervell, AAL, ALC	Attorney
Moriwaki, Sharon	Individual	Sugimura, Yuriko J.	05/16/2018	\$500.00	\$732.46	Clay Chapman Iwamura, Pulice & Nervell, AAL, ALC	Attorney
Moriwaki, Sharon	Individual	Sugimura, Yuriko J.	03/14/2019	\$500.00	\$500.00	Clay Chapman Iwamura, Pulice & Nervell, AAL, ALC	Attorney
Moriwaki, Sharon	Individual	Sugimura, Yuriko J.	06/14/2018	\$100.00	\$832.46	Clay Chapman Iwamura, Pulice & Nervell, AAL, ALC	Attorney
Moriwaki, Sharon	Individual	Sugimura, Yuriko J.	10/17/2018	\$500.00	\$1,332.46	Clay Chapman Iwamura, Pulice & Nervell, AAL, ALC	Attorney
Moriwaki, Sharon	Individual	Sugimura, Yuriko J.	12/12/2020	\$250.00	\$1,250.00	Clay Chapman Iwamura, Pulice & Nervell, AAL, ALC	Attorney
Moriwaki, Sharon	Individual	Sugimura, Yuriko J.	12/06/2021	\$2,750.00	\$4,000.00	Clay Chapman Iwamura, Pulice & Nervell, AAL, ALC	Attorney

Nishimoto, Scott	Individual	Sugimura, Yuriko J.	01/31/2019	\$250.00	\$250.00		
Nishimoto, Scott	Individual	Sugimura, Yuriko J.	03/04/2019	\$100.00	\$350.00		
Ohno, Takashi	Individual	Sugimura, Yuriko	01/30/2020	\$250.00	\$350.00		
Ohno, Takashi	Individual	Sugimura, Yuriko	01/16/2018	\$150.00	\$200.00		
Oshiro, Blake	Individual	Sugimura, Yuriko	07/27/2010	\$250.00	\$350.00		
Rhoads, Karl	Individual	Sugimura, Yuriko J.	07/12/2021	\$500.00	\$500.00		
Rhoads, Karl	Individual	Sugimura, Yuriko J.	10/03/2019	\$500.00	\$700.00		
Rhoads, Karl	Individual	Sugimura, Yuriko J.	01/11/2016	\$175.00	\$275.00		
Rhoads, Karl	Individual	Sugimura, Yuriko J.	01/04/2019	\$200.00	\$200.00		
Rhoads, Karl	Individual	Sugimura, Yuriko J.	05/08/2012	\$125.00	\$125.00		
Saiki, Scott	Individual	Sugimura, Yuriko J.	05/13/2019	\$500.00	\$500.00	Clay Chapman Iwamura Pulice & Nervel	Attorney
Saiki, Scott	Individual	Sugimura, Yuriko J.	06/21/2022	\$1,000.00	\$1,000.00	Clay Chapman Iwamura Pulice & Nervel	Attorney
Sakamoto, Norman	Individual	Sugimura, Yuriko	05/27/2009	\$150.00	\$150.00		
Say, Calvin	Individual	Sugimura, Yuriko J.	04/29/2019	\$150.00	\$150.00		
Schatz, Brian	Individual	Sugimura, Yuriko J.	04/09/2010	\$50.00	\$450.00		
Schatz, Brian	Individual	Sugimura, Yuriko J.	12/18/2009	\$400.00	\$400.00		
Sugimura, Yuki	Immediate Family	Sugimura, Yuriko	06/04/2022	\$2,000.00	\$2,000.00	Bendet Findell A Law Corporation	Attorney

Sugimura, Yuki	Immediate Family	Sugimura, Yuriko	12/06/2017	\$500.00	\$500.00	Bendet Findell A Law Corporation	Attorney
Sugimura, Yuki	Immediate Family	Sugimura, Yuriko	03/26/2020	\$1,000.00	\$1,000.00	Bendet Findell A Law Corporation	Attorney
Sugimura, Yuki	Immediate Family	Sugimura, Yuriko	08/12/2015	\$1,000.00	\$1,000.00	Bendet Findell A Law Corporation	Attorney
Takayama, Gregg	Individual	Sugimura, Yuriko	02/19/2020	\$100.00	\$350.00	Bendet Fidell	Attorney
Takayama, Gregg	Individual	Sugimura, Yuriko	05/10/2022	\$200.00	\$400.00	Bendet Fidell	Attorney
Takayama, Gregg	Individual	Sugimura, Yuriko	11/13/2019	\$100.00	\$250.00	Bendet Fidell	Attorney
Takayama, Gregg	Individual	Sugimura, Yuriko	03/06/2019	\$50.00	\$150.00	Bendet Fidell	Attorney
Takayama, Gregg	Individual	Sugimura, Yuriko	04/11/2018	\$100.00	\$150.00	Bendet Fidell	Attorney
Takayama, Gregg	Individual	Sugimura, Yuriko	05/10/2022	\$200.00	\$200.00	Bendet Fidell	Attorney
Takenouchi, Jenna	Individual	Sugimura, Yuriko	05/11/2022	\$200.00	\$200.00		
Takumi, Roy	Individual	Sugimura, Yuriko	01/11/2018	\$200.00	\$200.00	Clay Chapman Pulice & Nervell	Attorney
Takumi, Roy	Individual	Sugimura, Yuriko	04/29/2022	\$1,000.00	\$1,500.00	Clay Chapman Pulice & Nervell	Attorney
Takumi, Roy	Individual	Sugimura, Yuriko	05/04/2021	\$500.00	\$500.00	Clay Chapman Pulice & Nervell	Attorney
Takumi, Roy	Individual	Sugimura, Yuriko	04/16/2019	\$500.00	\$500.00	Clay Chapman Pulice & Nervell	Attorney
Tam, Adrian	Individual	Sugimura, Yuriko	09/26/2020	\$500.00	\$500.00	Clay Chapman Iwamura Pulice & Nervell	Attorney
Tokuda, Jill	Individual	Sugimura, Yuriko	06/08/2018	\$250.00	\$1,550.00	Bendet Fidell Sugimura. AAL. ALC	Attorney
Tokuda, Jill	Individual	Sugimura, Yuriko	06/27/2018	\$100.00	\$1,650.00	Bendet Fidell Sugimura. AAL. ALC	Attorney

Tokuda, Jill	Individual	Sugimura, Yuriko	11/14/2017	\$500.00	\$600.00	Bendet Fidell Sugimura. AAL. ALC	Attorney
Tokuda, Jill	Individual	Sugimura, Yuriko	03/29/2018	\$500.00	\$1,100.00	Bendet Fidell Sugimura. AAL. ALC	Attorney
Tokuda, Jill	Individual	Sugimura, Yuriko	05/03/2018	\$200.00	\$1,300.00	Bendet Fidell Sugimura. AAL. ALC	Attorney
Tokuda, Jill	Individual	Sugimura, Yuriko J.	12/15/2021	\$500.00	\$500.00	Clay Chapman	Attorney
Weyer, Matt	Individual	Sugimura, Yuriko	07/20/2022	\$500.00	\$500.00	Clay Chapman Iwamura Pulice & Nervell	Attorney

## Testimony In Support of SB729

**Submitted for:** Commerce and Consumer Protection, scheduled to be heard on Thursday, 2/16/23 at 9:30 AM.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee,

**I strongly support SB729.**

**SB729 will provide much needed Board of Directors training and certification and will eliminate the “excuses” often made by Directors when they improperly conduct AOA business, “that they are just volunteers.”** A seat on any Board of Directors must be filled by qualified candidates, and the “volunteer” excuse was and is unacceptable. The results can clearly be seen in the many mismanaged Associations throughout Hawaii. Those on the Board need to be required to go through mandatory training and certification, so they know what is expected of them and their Fiduciary Duty.

My personal experience at my Association has confirmed what every legislator should know, that there are many unqualified Directors on the Board, and this is negatively impacting my Association. This is repeated all across Associations throughout Hawaii, and I have heard this from many concerned condominium owners. The result is abuse of power and malfeasance, and the solution begins with SB729, followed by an Ombudsman’s Office to oversee condominiums and HOAs.

**Directors on Association Boards need to know their responsibilities and duties, and read and understand HRS 514B and their Governing Documents. Abuse of their positions also needs to result in oversight and enforcement by the Hawaii Attorney General’s office, until an Ombudsman is in place.**

**I ask the Committee and all State Legislators to please support SB729.**

**And I ask you to support and act on SB1201 and SB1202, which were introduced by the Kokua Council on behalf of our kupuna and all residents of Hawaii.**

Mahalo,

Gregory Misakian

2<sup>nd</sup> Vice President, Kokua Council  
Board Member, Waikiki Neighborhood Board

*The Kokua Council is one of Hawaii’s oldest elder advocacy groups. We advocate for issues, policies, and legislation that impact the well-being of seniors and our community.*

## Testimony to Oppose HB381

**Submitted for:** Consumer Protection & Commerce (CPC) Committee Hearing, scheduled to be heard on Thursday, 2/16/23 at 2:00 PM

Aloha Chair Nakashima, Vice Chair Sayama, and Members of the Committee,

**I do not support HB381.**

Mediation and Arbitration have been found to not be working as hoped, and those in the condominium trade industry who say they are, are not telling the truth. Data from the DCCA's Real Estate Branch indicates that the majority of Mediations are unsuccessful.

Those that are profiting from Mediation and Arbitration are private Attorneys and the Mediators (who are also Attorneys). The cost to file for a Mediation is \$375 each time, and does not include other costs, such as hiring an Attorney to represent you, when the other side is stacked with Director & Officer (D&O) Insurance assigned Attorneys and Association Attorneys. Many homeowners on fixed budgets will

I also have first-hand experience with Mediation, to highlight further that it is not effective. The lengthy and costly experience has enabled me to talk from "experience" and not as an outsider. As Mediations are private and confidential, there can be no real data as to how successful Mediations are, and if there was a fair and equitable resolution. Arbitration is even more costly for homeowners, and subsequently is not used very often for that reason alone.

Mediation is also driving up the cost of D&O Insurance, which is passed on to every condominium owner via their maintenance fees. Companies that provide D&O Insurance are also not providing new policies to Associations. I know this well, as the D&O insurance company at my Association would not renew the policy, and our Board could only get insurance from Lloyd's of London. The policy is one third of the coverage, and the deductible is 7x more.

Homeowners in Hawaii need a "fair" and "cost effective" means to resolve disputes with their Condominium Associations and HOAs, and hearings should have been scheduled for:

- 1) HB178 - Ombudsman's Office for Condominium Associations, Planned Community Associations, and Cooperative Housing Corporations
- 2) HB1501 - Ombudsman's Office for Condominium Associations

Both measures are supported by the Kokua Council, and are the means to solve this longstanding problem by providing fair and equitable dispute resolution and enforcement of HRS 514B statutes. Unfortunately, both measures were "triple" referred and did not follow the correct process of going to the Subject Matter Committee first. That committee should have

been your committee, Consumer Protection & Commerce. We are counting on all Legislators to be fair and honest in their decisions, and this includes the process that leads to those decisions.

**I ask the Committee and all State Legislators to oppose HB381.**

**I also ask you to support HB176, HB178, HB1297, and HB1501, which were introduced by the Kokua Council on behalf of our kupuna and all residents of Hawaii.**

Mahalo,

Gregory Misakian

2<sup>nd</sup> Vice President, Kokua Council  
Board Member, Waikiki Neighborhood Board

*The Kokua Council is one of Hawaii's oldest elder advocacy groups. We advocate for issues, policies, and legislation that impact the well-being of seniors and our community.*



<b>CONCERNS – RECOMMENDATION – CLOSING STATEMENT</b>
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**10/27/23 TASK FORCE MEETING – PUBLIC RIGHT TO SPEAK - SUNSHINE LAWS**

I was called on to speak at the end of the meeting on 10/27/23, but never did, as a Deputy Attorney General suddenly spoke up and said the meeting should end at 4:30 PM. To allow me to speak for 2-3 mins. would have been very easy to accommodate, yet the meeting was abruptly ended. I contacted OIP for an opinion and was told that I should have been allowed to speak. I am making a formal request to reclaim my time and to be treated respectfully and fairly, especially by the Chair.

**RECOMMENDATION**

If I am correct, the Task Force (which acts like a Board of Directors), should be able to vote to remove a member from a role. My request it to please do this at the November 30, 2023 meeting, and replace the Chair.

**CLOSING STATEMENT**

As I stated in my first testimony to the Task Force, I have a lot of information to share. I hope that you read the information that I and others have taken the time to present to you. There are very bad things happening to condominium owners, our finances, and our homes, and these are being orchestrated by bad actors who have no place on any Boards. There is much more to come and the public needs to be aware of what is really going on, and to learn more about those in the background pulling the strings on what legislation is enacted.

Mahalo,

Gregory Misakian  
Resident of Waikiki & Consumer Advocate

## Introduction

My name is Jeff Sadino. I have been a condo owner in Makiki since 2017. I have college degrees in both physics and mathematics. My professional background is in MRI Neuroscience Research at the UH Department of Medicine. I am a published scientist in peer-reviewed journals for both theoretical astrophysics and neuroscience. I also have 12 years' experience working as a financial advisor where I had a fiduciary standard of care and was responsible for the management of about \$70,000,000 in retirement accounts for several hundred clients, primarily UH professors.

In 2017, Hawaiiana and Porter McGuire filed a baseless lawsuit against me, which they never actually pursued after receiving my Answer. In 2020, they filed a second baseless lawsuit against me, wherein I counter-sued. We were scheduled for an 8-day trial in July 2022. In June 2022, we reached a settlement agreement. During our 2023 annual Association meeting, the Association revealed that they had written off about \$55,000 in their attorney fees and had no plans to try to recover them.

I pursued every dispute resolution path that I could, including contacting supervisors at Hawaiiana, contacting the Real Estate Commission in person, filing complaints at the ODC, filing complaints at RICO, and initiating Mediation. I found all of the current ADR methods woefully insufficient. I even requested a Board Hearing, as I am unequivocally entitled to pursuant to my Governing Documents. Instead of following the Governing Documents, Hawaiiana entered me into attorney status. Porter McGuire should have rejected the referral and told Hawaiiana to follow the Governing Documents. Instead, the attorneys accepted the referral, in direct violation of our Governing Documents and in direct breach of their oft-repeated recommendations for the Board to engage in dialogue when there is a problem with an owner (see Attachment).

I literally was punished in the worst way possible by Hawaiiana and Porter McGuire for trying to initiate a dialogue with my Board to get to a solution to our dispute.

I think that I am qualified to give feedback on the objectives of this Task Force based on my personal experiences.

To be clear, I think that condo owners need to educate themselves about what their governing documents say and what 514B says. If a condo owner breaks the rules, then they should be held accountable. I support this 100%.

However, what I see as Defcon-5 rampant is that the Boards, Property Managers, and condo Attorneys have a blatant disregard for following the rules themselves and even though owners have many protections for themselves in 514B, they have no realistic way to enforce their protections because to go to litigation is to risk \$200,000+ in expenses and the complete destruction of everything they have worked for in their lives up to that point. My experience supports this claim beyond argument.

Dispute Resolution is a very important topic that needs immediate improvement from the status quo and I hope my comments here can contribute to that.

## Suggestions

During the last meeting, Representative Quinlan made a comment to the effect that problems should be addressed as early on in the process as possible. I think this viewpoint is all-too-often overlooked.

Two simple things could be done to solve 90%+ of the problems in condo governance as early on in the process as possible:

1) get rid of the 100% attorney reimbursement for associations. Through my experience, when the Board members (and Property Managers) can have the association pay for attorneys to solve all of their problems, it disincentivizes the Board members to be active participants in the solution to the problems. In fact, it encourages the escalation of problems because the attorneys only get paid when problems escalate, not when they de-escalate. This would solve the problem of excessive attorney involvement in condominium disputes, especially trivial disputes. This is demonstrated by the email thread in my Attachment.

2) Create more accountability for the immediate supervisors at the property management companies. To clarify, too frequently the representatives of property management companies that are involved in the day-to-day activities of an association are very poorly trained and have very high turnover. When they create problems, the property manager just simply moves them to a different property and assigns a new person to the property. Also, these front-line representatives likely come into and out of the property management industry frequently. It is important to create accountability on their supervisors because the supervisors typically place more importance on their long-term career prospects within the industry and also probably have more staying power with each association. The point I am trying to make is that the front-line representatives have high turnover and low dedication to the industry, so accountability should be placed on people where accountability can have the biggest impact. If the supervisors were at risk of repercussions, I think a lot of the problems caused by Property Managers would disappear.

## Other Improvements To Condo Governance

### REGARDING GOVERNANCE

#### Separation of Powers:

Also, I think there needs to be separation of powers within the Board. Currently, the Board makes the rules, enforces the rules, and judges the accused. When the Judicial branch is made up of the same people who allege that a rule has been broken, then condo governance (or any government) turns into just a façade of justice and due process for the alleged violator. Condo owners are deemed guilty until proven innocent.

#### Standard of Good Faith:

Also, I think more Legislative Intent should be applied to 514B-9, titled Obligation of good faith. The entire section reads in full: "Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." When I went to Court arguing a violation of Good Faith, the Judge dismissed my Court explaining that in Hawaii, it is well established case law that an Obligation of Good Faith exists only between a life insurance company and the policy owner. This brings up a tangential point: it is not enough for a condo owner to know the Governing Documents and 514B, they must also know decades of unrelated case law. It is completely ridiculous that an individual needs to be a lawyer as a pre-requisite to owning a condo in Hawaii.

#### Double Standards:

I also think there should be a warranty of plain language on the governing documents and 514B. I'm not a lawyer and I don't know exactly what that means legally, but on multiple occasions in different formats, the trade industry attorneys have said that the governing documents and 514b are too complicated and/or vague for a Board member to understand or know how to follow. Their recommendation is that if a Board Member is unsure about what their Governing Documents mean, then they should consult the Association attorney. This is fine if you are a Board Member and can make somebody else pay for your attorneys, but it just simply is not realistic to ask that of an individual Owner.

Also, there exists another asymmetry: for a Board Member, as long as you are simply "trying" to do the right thing, you cannot be held liable, even if you do violate the governing documents or 514b. However, as an Owner, "trying" is not enough. You must follow the governing documents and 514b exactly. If not, then the association's attorneys will attack you no matter how trivial your alleged violation was. This is true even if the governing documents or 514b has been written contradictorily or vaguely, sometimes on purpose.

I find it unworkable and a violation of our American values when we hold the Individual to a higher standard than the people who are governing those individuals.

Alternatively, a Law could be drafted that instructs a Court to weigh any vagueness or contradiction in the Governing Documents or 514B in favor of the Owner.

#### Empower DCCA Enforcement:

Also, I think that the Legislature needs to empower either the DCCA, REC, or RICO to investigate issues beyond just document requests. I oftentimes find that the REC and RICO refuse to supervise licensed property managers and licensed attorneys because for some reason, they think they are restricted to just document requests or just education. I'm not sure where this status quo came from, but clarity from the Legislature would be helpful.

## REGARDING DEBT COLLECTION

### Protection From Unreasonable Fines:

Also, while Interest is capped at I believe 18% in 514B, there is no cap on Late Charges. I think that Late Charges need to be expressed as a fixed dollar amount, not as a percentage of amount (claimed) to be owed by the Owner. My Association currently charges owners 15% of their (claimed) balance every month but 0% interest charges. This equates to 180% per year. Because they arbitrarily label this as a "Late Charge" and not an "Interest Charge", they are able to get away with it. I have seen other Property Managers do this as well.

### Debt Collection Common Sense:

Also, I think there needs to be serious reform for how the debt collection process works. Most debt collection companies operate by keeping a percentage of the money that they are able to collect. However, in condominium governance, the debt collectors are almost always attorneys. Worse, these attorneys charge by the hour, oftentimes between \$300 - \$400/hr. This is irregardless of their effectiveness. In fact, the more ineffective they are at collecting the debt, the more money they make. The incentive structure is misaligned.

As an example, Porter McGuire sent me a debt collection letter that had the incorrect amount by about 100% (about \$5,000 demanded when the true claimed amount from the property manager was about \$2,500). I disputed this and I was eventually found to be correct in my opposition. However, both Hawaiiiana and Porter McGuire still left the \$160 charge for the erroneous demand letter on my account. Also, it took Porter McGuire 77 days to provide me with the correct amount. In that time period, they continued to charge me monthly "Late Fees" onto my account at a rate of 435% per year, even though they refused to tell me how much I (allegedly) owed them.

While this is just a brief nutshell of just this one incident, it is clear that the attorney debt collectors do a very incompetent job of debt collecting but it is the Owner who ends up shouldering the burden of their incompetence. I ask that debt collection charges either be restricted to a percentage of amount recovered or to put a maximum hourly rate on how much a debt collector can charge.

### Transparency of Attorney Fees:

Also, for an association to make a demand for payment from an Owner for attorney fees, the Owner must be provided with an itemized breakdown of what those attorney fees are paying for.

In my experience, on multiple occasions, Porter McGuire and Hawaiiiana posted the incorrect amount of charges to my account, which totaled in the thousands of dollars (over \$5,000, that I know of). In addition to the incident mentioned above, both Porter McGuire and Hawaiiiana illegally posted their mediation charges to my account. In a different incident, Porter McGuire and Hawaiiiana charged me attorney fees when I made a request for recent Board Minutes. In yet another incident, Porter McGuire and Hawaiiiana posted attorney fees for a completely different civil case onto my account. To emphasize,

**they charged me for the attorney expenses of a person completely unrelated to me and completely unrelated to our Association.**

Previously, when I asked for a breakdown/documentation of attorney fees posted to my account for my records, Porter McGuire said that I would first have to pay the attorney fees in full and then I could ask the board to provide me the breakdown. I paid the attorney fees and then requested the breakdown from the Board. The Board then declined my request, saying that the breakdown is subject to attorney client privilege. I later discovered (through formal Discovery) that there were in fact erroneous attorney charges that had been posted to my account during this time period.

Without this transparency, the trade industry will just simply hide their charges inside of the attorney bills and there will be no realistic way for an Owner to even know about it, let alone challenge erroneous charges.

Regarding Mr. Nerney's Draft ADR Proposal

On pages 4-5, 514B-106(b) should remain intact either in current form or modified form. This holds Board's members to a fiduciary standard for engaging in dispute resolution.

§514B-106 Board; powers and duties. (a) Except as provided in the declaration, the bylaws, subsection (b), or other provisions of this chapter, the board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D. ~~[Any violation by a board or its officers or members of the mandatory provisions of section 514B-161 or 514B-162 may constitute a violation of the fiduciary duty owed pursuant to this subsection; provided that a board member may avoid liability under this subsection by indicating in writing the board member's disagreement with such board action or rescinding or withdrawing the violating conduct within forty-five days of the occurrence of the initial violation.]~~

On page 9, 514B-146(d)(2), should require that in addition to the charge, also to be included is when that charge was posted to the Owner's account and the first due date of that charge.

(2) The amount of any charge included in the assessment that is not imposed on all unit owners as a common expense, such as a fine or penalty, a late fee or a filing fee; and...

(3) should require that a breakdown of the claimed attorney fees shall be included (for reasons that are detailed in my testimony above). A simple bottom line number should not be sufficient, especially when it is in the thousands or tens-of-thousands of dollars. Nobody sane would pay thousands of dollars without some sort of receipt for what it was for in any situation in our lives, but that is the current status quo in Hawai'i condo governance for some reason. I believe this is how attorney reimbursement works in State law for Litigation, but I may be wrong.

(3) The amount of attorneys' fees and costs, if any, included in the assessment.

On page 9, subsection (c), an owner should be able to contest a common expense assessment prior to paying it, but this should not prevent the Association from attempting to collect on it. What if the Association just simply claims, out of either bad intentions or just simply ignorance/incompetence, or perpetual accounting errors, that the owner incorrectly owes them thousands of dollars??? Why in the world should the owner be forced to pay money that they don't owe just so that they can contest it? This makes absolutely no sense to me.

On page 10, continuing (d) from page 9, the Association should also be required to include the owner with a summary of what their options are for dispute resolution. Anecdotally, it seems like neither the property managers nor the attorneys have done a very good (any?) job of dispersing the Legislature's efforts at improving condo governance to individual condo owners. This step in the process seems like a very suitable place for this information to be shared. Also, I think that if an Owner disputes the charges described in this section, they shall have the irrefutable option to be heard at a Board Meeting if they request one.

I think that the information in this subsection should be required to be provided to the Owner within 5 days of its request. In my case, it took Hawaiiana and Porter McGuire 77 days and 13 requests before

they provided me the meaningful information. The entire time, they were posting Late Charges to my account at **a rate of 435% per year**. In effect, the Association was making really good money just by procrastinating on their responsibilities. If the Association is making demands for payment, then they should already have this information readily available to be sent out within 24 hours.

On page 10, (f), the part prohibiting the association from attempting to collect on an assessment should be explicit to say that posting late fees or an interest rate to an Owner's account for the disputed charges shall be considered an "effort to collect the contested assessment" and shall be prohibited. Otherwise, the Association, as in my case, takes months and months to make any progress in responding to an Owner. That entire time, the Owner is getting punished because they are being charged late fees and interest as a result of the Association's procrastination.

I also think that the owner should be able to contest any assessment, whether it is paid or unpaid.

I also think that the Owner should be reimbursed at the statutory interest rate of 18%. My association currently charges me 180% interest on amounts that I owe, so I think if the association illegally separates an owner from their ability to use their money, the least the association can do is reimburse the owner at 18% interest as compensation for not having use of their money. They think it is fair to charge an Owner 180%, so they can't argue against the fairness of getting charged themselves just one-tenth of that.

If there is no punishment, then the Association will just break the law and if they get caught, then they do not actually get punished, they just return things to the way they should have been in the first place. But with nothing to lose, the Association will never be incentivized to follow the law without being compelled to. If they get caught, so what? There is no actual punishment.

A unit owner who elects to request mediation shall do so within thirty days  
after the date of the statement described in subsection (d). A timely demand  
for mediation shall stay an association's effort to collect the contested  
assessment for sixty days. The unit owner shall be entitled to a refund of any amounts paid that are  
determined to have not been owed.

On page 13, 157(c) should be expanded. I participated in Mediation, which under the current law, forbids my association from demanding attorney fees from me. However, both Hawaiiiana and Porter McGuire continued to post tens of thousands of their attorney fees to my account. In fact, they even placed a lien on my property for these unjust attorney fees. They did this but they were never held accountable for it. What is to stop them from doing it again in this new iteration of the law?



I also think the phrase “who expressly accepts the whole of the evaluation in writing” should be written so that a non-lawyer can understand it.

Regarding Early Neutral Evaluation as Evidence in Litigation:

I have very strong concerns regarding the thoroughness of this proposal. This proposal allows the Evaluation to:

“be admissible as evidence for all purposes in any action or proceeding relating to the subject matter of the dispute; provided that a judge, jury or arbitrator may determine the weight to be given to the evaluation in deciding questions of liability, damages and any other relief; and”

However, this proposal makes no allowance for Discovery, witnesses, etc. in Evaluation. The proceedings of the Early Neutral Evaluation are held to a less thorough standard than the proceedings in Litigation. I think it is inappropriate to carve out a special exception for admissibility for this less-than-rigorous evidence that was created through a generally “free form” process.

While the proposal allows the Trial Court to weigh the importance of the Evaluation, that would require the Evaluation itself to be re-litigated and the whole process seems dangerously messy to me at this early point in time. I would feel more comfortable taking time to see how the Evaluation process works prior to allowing it as evidence in a trial.

Perhaps I am misunderstanding how an Evaluation would work, but I think we need to see how Evaluations actually work in real life before allowing them to be used as evidence in litigation, which could be significantly prejudicial to the losing side.

Enforcement of Evaluation Ruling:

I also think clarification is needed for the mandatory obedience to the Evaluator’s ruling. Is it optional? Mandatory? What powers does the Evaluator have to compel compliance. Does the Evaluator even have the knowledge themselves for how to compel compliance? The Evaluator could be any individual who has “a minimum of ten years full-time experience working with condominiums in a professional capacity;” This could include a tremendous number of people who have experience in condominiums, but very little/no experience in dispute resolution or the law.

Optional if Association Requests Evaluation, but Mandatory if Owner Requests Evaluation:

Also, I admittedly have very little trust in the trade industry based on first-hand experience. I fear that the trade industry will take advantage of any weaknesses in a new system of Evaluation to force an Owner into an unfavorable legal landscape. The entire point of alternative dispute resolution is to create a playing field where the Owner has a fair chance. I am fearful that the Association will use Litigation when it maximally benefits them and use Evaluation when it maximally benefits them. I think the Owner should be able to choose which venue they want to argue their dispute in. If they want to pursue the

more expensive and thorough path of litigation instead of the free-form procedures of Evaluation, then so be it.

In consideration of this, I think this purpose would be effectuated by making Evaluation mandatory when it is requested from an individual against the Association, but optional when it is requested from the Association against an individual. I know this sounds like a double standard, but it comes out of my personal and anecdotal experience with how asymmetrical the fight is when defending oneself from the trade industry.

#### More Description Needed:

I would also like to see more description of what the Evaluation process would look like, its various procedures, and its various timelines. There was an Ombudsman's Bill that was introduced for the 2023 Session that provided a much more thorough overview of what an Owner could expect from the ADR process.

This current proposal is quite vague on what the Evaluation process actually looks like. Subsection (f) simply says "The evaluation process shall be determined by the evaluator..." with some very broad guidelines to follow.

For example, (f)(3) says that "Rules of evidence, except those concerning privileges, shall not apply at the hearing." But this proposal does not include any pre-Hearing timelines. It also does not explicitly state that the Declarations and/or exhibits need to be shared with the opposing party, or on what timeline that sharing needs to be commenced/completed by.

I do not think that an Owner can make an informed decision about the pros and cons of pursuing Evaluation over Litigation with the current sparse description in this Proposal.

#### Awarding of Costs:

On page 33, (h)(2), this reimbursement should be "over-turnable" if the Trial Court rules in favor of a different party than the Evaluation Court.

- (2) bind the parties with respect to the evaluator's award of attorneys' fees, costs and other expenses in connection with the evaluation process.

#### Qualifications of Evaluators:

I think that the Evaluator should be mutually acceptable to both parties. Looking at the qualifications in subsection (a) on page 33, it seems clear that most people who would qualify to be an Evaluator are going to be part of the trade industry...and the people who are part of the trade industry are the problem, in my experience.

Additionally, it seems to indicate that the REC determines who is eligible to be an Evaluator. Currently, I think only one Commissioner has experience in condominiums, and this person has been a long-time registered lobbyist for the trade industry and has made many, many statements opposing condo owners. As an example, last year, this commissioner said on the Condo Insider podcast that any reports of problems in condo governance are just “fake news.” I fear that the REC members will simply defer to this one person and this one person will be biased towards approving Evaluators who are too favorable to the trade industry.

(a) The commission may determine the qualifications of any individual who serves as a mediator, arbitrator or evaluator in a matter involving payment from the fund, provided that:

(3) An evaluator shall have a minimum of ten years full-time experience working with condominiums in a professional capacity.

On page 35, (d), if an Owner has already paid the association reimbursement for attorney fees, the association shall promptly refund the Owner the now-voided award of attorney fees.

I also wonder who determines if a conflict of interest is material and if it was not disclosed? Is it the Real Estate Commission? Will this REC Hearing be open to the public? I will point out that the only person on the REC who has experience with condominium governance is a former long-time registered lobbyist for the trade industry. This process that determines a conflict-of-interest needs more description and more safeguards.

(d) An evaluation made by an evaluator may be excluded from evidence and excluded from other consideration if the evaluator failed to make a disclosure required by subsection (a).

Thank you very much for your time and consideration in reading my testimony,

Jeff Sadino

**ATTACHMENT**

**jsadino.axa@hotmail.com**

---

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

**Categories:** Jesi, DPR

Jeff,

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

Here is the attorney handling your case:

Mike Biechler  
[mbiechler@hawaiiilegal.com](mailto:mbiechler@hawaiiilegal.com)

Laree McGuire  
[lmcguire@hawaiiilegal.com](mailto:lmcguire@hawaiiilegal.com)

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

Mahalo,

**Jesi K. Anderson-Park | Management Executive, CMCA®**  
**Hawaiiana Management Company, Limited**  
Pacific Park Plaza, Suite 700  
711 Kapiolani Boulevard | Honolulu, HI 96813  
PH: 808.593.6319 Cell: 808.694.0782  
[www.hmcmgt.com](http://www.hmcmgt.com) | [jesia@hmcmgt.com](mailto:jesia@hmcmgt.com)

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

Hi Jesi,

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

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

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

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

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

Jeff,

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

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

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

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

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

Hawaiiiana Management Company, Limited

Pacific Park Plaza, Suite 700

711 Kapiolani Boulevard | Honolulu, HI 96813

PH: 808.593.6319 Cell: 808.694.0782

[www.hmcmgt.com](http://www.hmcmgt.com) | [jesia@hmcmgt.com](mailto:jesia@hmcmgt.com)

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## Kyle-Lee N. Ladao

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**From:** Lila Mower [REDACTED]  
**Sent:** Tuesday, November 28, 2023 11:57 AM  
**To:** Kyle-Lee N. Ladao  
**Subject:** [EXTERNAL] Fwd: next Condo Property Regime Task Force meeting is now on the calendar

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Aloha Kyle,

Please share the email message below with the CPR Task Force from "K" who, in accordance with the meeting agenda, wishes to remain anonymous and asked me to forward K's testimony.

Aloha,

Lila 🌸

"Truth will ultimately prevail where there [are] pains to bring it to light."~ George Washington

WE ARE NOT ATTORNEYS AND ANY INFORMATION PROVIDED HEREIN SHOULD NOT BE CONSIDERED LEGAL ADVICE AND CAN NOT BE USED AS SUCH. ANY INFORMATION OR OPINION PROVIDED IS BASED SOLELY ON RESEARCH OR EXPERIENCE IN DEALING WITH CONDOMINIUM ASSOCIATION ISSUES.

On Mon, Nov 27, 2023 at 11:30 AM K < @gmail.com > wrote:

Hi Lila,

Thank you for sending this. I am not able to attend the meeting, but wanted to provide you with my testimony. Can you keep my identity anonymous as I try to decide what to pursue next for my condo board?

Below is my testimony, I have edited it slightly because I thought I was writing in response to a law, but I don't think it was typed write.

Hello,

I am writing in regards to condo mismanagement. I currently live in an affordable housing project that is being overseen by a Homeowner's Association. In my current association, we have issues on transparency and communication.

Meeting minutes are only posted 2-4 months after the meeting which is beyond the HI Rev Stat § 514A-83.4 (2017) which states that

**(c)** Minutes of all meetings shall be available within seven calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session. [L 2007, c 244, pt of §2].



In an attempt to be fair, I asked my board on September 28, 2023 to post the minutes for July 2023 and August 2023 on the association website. My request was ignored. As this continues, several house rules are being changed without informing any of the homeowners only after the fact. Our maintenance fee has risen by 13% since being built a few years despite 60% of the applicants being in the affordable housing bracket. This means my neighbors and I are living paycheck to paycheck to live in somewhere that's supposed to be affordable.

I do love where I am living, but I wish there was more transparency, regulation, and honesty with how my condo board is being run. Thank you for your time and consideration.

K

## Kyle-Lee N. Ladao

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**From:** Lisa Kabutan <[REDACTED]>  
**Sent:** Wednesday, November 29, 2023 8:39 PM  
**To:** Kyle-Lee N. Ladao  
**Cc:** Lisa Mi  
**Subject:** [EXTERNAL] Testimony for Condominium Property Regime (CPR) Task Force

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11/29/23

Dear Mr. Ladao:

I am submitting this as testimony re the unprofessional and unbecoming conduct of our HOA property manager and his absolute refusal for over 5 months to answer six questions I posed to him re a huge, open, uncovered hole in the hallway wall directly outside my kitchen.

On January 5, 2023, I first wrote an email to L.C., the property manager from Hawaiian Properties of our HOA, re a huge hole in the hallway wall outside my kitchen, where I've since learned the electrical wires and pipes to my unit are located. As far as I learned from talking to my neighbors on the 9th floor, that hole had been left open and uncovered, a violation of the Fire Code, for well over 2 years. When a neighbor of mine asked the on-site manager at our condo, M.T., the reason for the long delay in covering that hole in the hallway on the 9th floor of our building, her response was that she couldn't find workers in Honolulu who could do drywall. So, after a period of more than 2 years, and I believe in response to my email, dated 1/5/23, re several unaddressed maintenance problems in our building, that huge hole in the hallway wall adjoining my kitchen was finally covered some weeks later. We were told it was only a "temporary" repair since the Hawaii Plumbing Group was going to be starting on the Wastewater Pipes Replacement Project (HPG began work in our building in May 2023) in our building and all the hallway walls to every unit in the building were going to have to be opened again and then subsequently re-covered with drywall and repainted.

In June 2023, when HPG commenced work on my unit, I was notified that there was a "cutwire problem" in the hallway wall adjoining my kitchen which I was required to prepay for in order to get it repaired. After the electrician fixed what turned out to be an "abandoned wire," I immediately checked the outlet in my kitchen that night, and the outlet that had not been working since I moved back into my condo in June 2021, suddenly began working again. I thereafter wrote to our property manager, L.C., and asked him for answers to SIX questions re that hole in the hallway wall directly outside my kitchen (and that electrical outlet). I also added that I believed that our HOA was negligent in not repairing that open, uncovered hole for YEARS, and thus should be responsible in part or in full for paying that electrician's bill. Our property manager, L.C., didn't respond to any of my questions. I therefore wrote to him again 2 weeks later. Again, L.C. failed to acknowledge receipt of my 2 emails nor did he respond to any of my questions. I then contacted the President of Insurance Associates.S.S., (our building is insured by this company) for her help in getting L.C. to answer my questions. She called and spoke to L.C. She then informed me that our property manager, L.C., told her that he had given our Board the responsibility for answering my questions. However, I ran into the President of the Board, P.R., shortly thereafter, and she told me that L.C. had NEVER mentioned the matter to her, and she knew nothing about it. I then wrote back to the President of Insurance Associates and informed her that L.C., our HOA property manager from Hawaiian Properties, had lied to her and that the President of our Board had not been asked by L.C. to respond to my 6 questions as he had told her he had done in their phone conversation.

In September 2023, because I had still not received any response from our property manager, L.C., re my questions about the huge hole in the hallway wall that had been left open and uncovered for more than 2 years, I began calling Hawaiian Properties and leaving messages for K.A., L.C.'s supervisor at Hawaiian Properties. I finally reached K.A. and spoke to him in early October re this matter. I also sent K.A. a timeline of events that had occurred and forwarded him the two emails with my 6 questions which I had sent to L.C. in June and July 2023. K.A. told me that he would speak to L.C. On October 31, 2023, after waiting over 5 months for a response to my 6 questions from our property manager, L.C., I received a brief email from him informing me that my questions were "irrelevant" as the hole in the wall has been covered! I subsequently wrote L.C. and cc'd his supervisor, K.A. at Hawaiian Properties, letting L.C. know how upset I was that after 5 months of waiting for him to answer my 6 questions, he was still refusing to answer any of my questions, and had simply dismissed my questions as "irrelevant."

I then called Hawaiian Properties to speak to their Complaints Department and found out they don't have one. I was told that my only recourse was to write directly to the President of Hawaiian Properties and submit a complaint against our HOA property manager, L.C. At this point, I am unsure whether or not the President of Hawaiian Properties will even read my email or respond to my complaints re our property manager, L.C., in which case my 6 questions will go unanswered. I don't know what further action I can take in this matter. It is exhausting and extremely stressful for me to keep trying to get answers to my 6 questions while being totally ignored by our HOA property manager from Hawaiian Properties! And this is just one (of many) example of our property manager's unprofessional and unbecoming conduct and his dismissive attitude and arrogance. To be honest, I'm worn out, and although it would be very difficult at my age to move, I have often considered just selling my condo and getting out of this building all because of the uncaring and unresponsive management we have here. I know I am not alone as an Owner-Occupant in being dissatisfied with the performance, conduct, and attitude of our property manager, L.C., our site manager, and our HOA Board. I stopped attending Board Meetings in January 2023 when I was rudely cut off and silenced after 2 minutes, the maximum length of time the Board gives anyone wishing to speak at these meetings, although, in fact, this "rule" is applied arbitrarily. I had previously been told by our property manager that I should voice my concerns and complaints at this board meeting and, as instructed, I had written and notified him to be put on the agenda for that meeting so I could be voice my complaints, but was given no real opportunity to do so!

Thank you for your attention to my concerns. There is an obvious need for legislative changes to protect the rights of the thousands of condominium owners here in the state of Hawaii. I appreciate any efforts you make to address the corruption and the lack of transparency of HOA property managers and property management companies, site managers, and HOA boards,

Sincerely,  
Lisa Kabutan

[Sent from Yahoo Mail for iPhone](#)

ibert  
[REDACTED]

November 23, 2023

TESTIMONY for November 30, 2023  
Attention: Mr. Ladao

Aloha members of the CPR Task Force

The testimony I submit is based on ACT 189 Relating to Common-Interest Development by President Kouchi, Speaker Saiki and Members of the Legislature, signed by Governor Green. I offer this testimony to shine light for needed reforms in the alternative dispute resolution.

I have experience in two separate mediations, 2016 and 2018. I can say it was a waste of the dispute resolution process and money invested by the condominium education trust fund as well as my financial cost on legal fees in hopes to find a resolution. Because of no resolve, circumstances escalated to retaliation. I filed a law-suit in 2021. Nothing was gained nor solved. Business went on as usual, continues today.

Alternative dispute resolution process is like taking a square peg and pounding it into a round hole. The complexities of combined 514B Condominium Law, Condominium Associations Declaration, By-laws & House Rules along with compliance of DPP building and Fire Safety Codes are greater than the complexities of the IRS tax code manual.

IRS tax code is successful because of enforcement. If you don't comply you are penalized even jail time that Al Capone couldn't escape. The IRS agent's only job is to audit, investigate if fraud is found then prosecute and collect monies. The department is made up of experienced tax auditors and that's all they do all day long.

Alternative dispute resolution are represented by a handful of attorneys specializing in Condominium Law. Some attorneys also serve in several positions as retained attorneys to Condominium Associations, volunteers for legislative committee advocacy as well as the influencers and advisors to the Legislatures as the experts. Some are our educators for CAI or HCCA. In the view of a condominium owner it doesn't instill much confidence in the dispute resolution. Owners often walk away dissatisfied and disappointed. Instead mediators and the courts push for settlement often with the owner holding the short end of the stick while investing their money in legal fees hoping to be treated fairly.

I believe, an office of qualified condominium specialists/ ombudsman solely employed to handle condominium consumer complaints and disagreements would serve better than the dispute resolution in place today. Condominium specialists/ombudsman should not moonlight as attorney advisors to Associations or volunteer legislative advocates to influence law makers. This office belongs to and financed by the condominium owners only. Just as it is today.

## CONDOMINIUM SPECIALISTS/ OMBUDSMAN SCENARIO

I offer this task force to act as a condominium specialist/ombudsman in my disagreement with interpretation and application of my Declaration, By-laws and House Rules. The owners of my condo were not given notice and the opportunity to approve a new amenity. The motion was approved by the board and documented on the minutes. No resolution was written to notify the owners.

First, I offer, data from 2023 0915 1805 take of CETF subsidized mediation cases by Vice-Chair Lila Mower <sup>1</sup> In column "mentions allegation(s)\*of violation of government documents at 93.575%.

An email I sent to Kedin Kleinhans, Senior Condo Specialist dated November 15 - 20 <sup>2</sup> in summary of the email discussion based on my Declaration and By-laws in the hierarch of authority when there is a conflict with the Declaration and By-Laws. The conclusion based on documents substantiates my interpretation. Please refer to the email attachments for details.

The questions are:

1. If the conclusion by the task force supports my documents and the hierarchy, what is the next step?
2. The minutes documents and show the motion approved by the board and supported by the management company and the Parliamentarian. My objections were dismissed. What happens next?
3. If the conclusion show a violation of my declaration, should this be referred to RICO for enforcement of the Professional vocational licenses?
4. What happens to the volunteer board of directors?

Sincerely,  
Lourdes Scheibert  
Condo Owner

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<sup>1</sup> 2023 0915 1805 take of CETF subsidized mediation cases

<sup>2</sup> email discussion 11/15 to 11/19 with Kedin Kleinhans and Lourdes Scheibert

**From:** DCCA PVL Real Estate Branch hrec@dcca.hawaii.gov  
**Subject:** FW: [EXTERNAL] 514B by-aws  
**Date:** November 20, 2023 at 9:43 AM  
**To:** [REDACTED]



Aloha Lourdes,

The Real Estate Branch is in receipt of your follow-up email dated November 19, 2023, requesting clarification regarding a “subordination clause” and the hierarchy of authority between the condominium declaration, the bylaws, and HRS Chapter 514B. With respect to condominium governance, a subordination clause identifies which document carries greater weight to the extent two documents are in conflict. For example, a subordination clause contained in condominium bylaws could specify that, should the bylaws conflict with the declaration, the declaration would take priority and shall control.

To answer your question on the hierarchy of authority between the three aforementioned documents, yes. In general:

1. HRS Chapter 514B carries the most authority, unless the law explicitly states otherwise;
2. The Declaration follows; then
3. The Bylaws.

We hope this provides sufficient clarification. Should you have any additional questions, please feel free to contact our office at (808) 586-2643, between the hours of 7:45 a.m. and 4:30 p.m., Hawaiian Standard Time.

Thank you and please take care,

Kedin C. Kleinhans  
Senior Condominium Specialist  
Real Estate Branch  
Professional & Vocational Licensing Division  
Department of Commerce & Consumer Affairs  
335 Merchant Street, Room 333  
Honolulu, HI 96813  
(808) 586-2643  
[www.hawaii.gov/hirec](http://www.hawaii.gov/hirec)

In accordance with Hawaii Administrative Rules Section 16-201-90, the above interpretation is for informational and explanatory purposes. It is not an official opinion or decision, and therefore is not to be viewed as binding on the Real Estate Commission or the Department of Commerce and Consumer Affairs.

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**From:** Lourdes Scheibert [REDACTED]  
**Sent:** Sunday, November 19, 2023 7:16 AM  
**To:** DCCA PVL Real Estate Branch <[hirec@dcca.hawaii.gov](mailto:hirec@dcca.hawaii.gov)>  
**Subject:** Re: [EXTERNAL] 514B by-laws

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Hi Kedin,

Thank-you for the clarification. I'm having a problem with the meaning of 'subordination clause'.

My question. 1) Would the following be the hierarchy of authority based on 514B-108 (d), the Declaration and By-Laws? Are the By-Laws in subordination to the Declaration?

514B-108(d)

- Pursuant to Hawaii's Revised Statutes section 514B-108(d), the bylaws may provide for any other matters the association deems necessary and appropriate, **subject to the provisions of the declaration** [emphasis added]

DECLARATION:

- Part B Paragraph B.9. Rules governing the apartment owners. The Association shall take no action limiting or restricting the use or enjoyment of any apartment by its owner or of the common elements by any of the apartment owners except **that seventy-five (75%) percent of the apartment owners may adopt or amend non-discriminatory rules** to secure to each apartment owner the use and enjoyment of the common elements and his apartment from unreasonable interference by other apartment owners, their tenants, families, servants, and guests, and any other persons who may in any manner use the project or any part thereof. Such rules may be included in the bylaws or separate house rules. **The initial house rules shall be those set out in Exhibit 6 hereto.** [Emphasis added.]

BYLAWS:

- ARTICLE III Board of Directors Section 3. (g) Power and Duties. Adoption and amendment of the House Rules covering the details of the operation and use of the Project

BYLAWS:

- ARTICLE VIII General Provisions Section 2. House Rules. **The Board may establish and amend from time to time such House Rules as the Board may deem necessary or appropriate for the operation and use of the Project, including but not limited to common elements, limited common elements and apartments,** and the House Rules shall uniformly apply to and be binding upon all occupants of the apartments. The Apartment Owner's rights respecting their apartments in all other respects shall be subject to the House Rules, which shall be deemed to be a part hereof. Each Apartment Owner shall abide by all such House Rules as from time to time may be amended and is responsible to ensure the same are faithfully observed by the invitees, guests, employees, and tenants of the Apartment Owner. The Board shall also have the authority to establish by House Rules a method for determining violations and penalties therefor. [Emphasis added]

BYLAWS:

- ARTICLE VIII General Provisions Section 15. Conflicts These Bylaws are set forth to comply with the requirement of the ACT and the Declaration. In the event any of these

Bylaws conflict with the ACT or the Declaration, the provisions of the ACT or the Declaration, as the case may be, shall control

Thank-you,  
Lourdes Scheibert  
Condo Owner

On Nov 16, 2023, at 11:24 AM, DCCA PVL Real Estate Branch  
<[hirec@dcca.hawaii.gov](mailto:hirec@dcca.hawaii.gov)> wrote:

Aloha Lourdes,

The Real Estate Branch is in receipt of your email dated November 15, 2023, inquiring about the hierarchy of authority between the condominium declaration, the bylaws, and the condominium law, HRS Chapter 514B. Per your email, your declaration requires 75% owner approval to amend the House Rules; however, your bylaws also provide the board the authority to amend the House Rules.

Unless the law specifically states otherwise, the applicable general rule is that the law will prevail where a conflict exists between the law, declaration, and bylaws. Furthermore, the declaration will generally override the bylaws to the extent the two are in conflict. Pursuant to Hawai'i Revised Statutes section 514B-108(d), the bylaws may provide for any other matters the association deems necessary and appropriate, subject to the provisions of the declaration [emphasis added]. Condominium governing documents may further affirm this hierarchy of authority by inserting a subordination clause, similar to your governing documents, which clearly state:

*These Bylaws are set forth to comply with the requirement of the ACT and the Declaration. In the event any of these Bylaws conflict with the ACT or the Declaration, the provisions of the ACT or the Declaration, as the case may be, shall control [emphasis added].*

Thank you kindly for your attention to this matter. Should you have any questions, please feel free to contact our office at (808) 586-2643, between the hours of 7:45 a.m. and 4:30 p.m., Hawaiian Standard Time. For assistance in answering any questions concerning the Real Estate Branch and all licensing and condominium issues, please visit our website at: [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec).

Please take care,

Kedin C. Kleinhans  
Senior Condominium Specialist  
Real Estate Branch  
Professional & Vocational Licensing Division  
Department of Commerce & Consumer Affairs  
335 Merchant Street, Room 333  
Honolulu, HI 96813  
(808) 586-2643  
[www.hawaii.gov/hirec](http://www.hawaii.gov/hirec)

In accordance with Hawaii Administrative Rules Section 16-201-90, the above interpretation is for informational and explanatory purposes. It is not an official opinion or decision, and therefore is not to be viewed as binding on the Real Estate Commission or the Department of Commerce and Consumer Affairs.



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**From:** Lourdes Scheibert [REDACTED]  
**Sent:** Wednesday, November 15, 2023 9:20 AM  
**To:** DCCA PVL Real Estate Branch <[hirec@dcca.hawaii.gov](mailto:hirec@dcca.hawaii.gov)>  
**Subject:** [EXTERNAL] 514B by-laws

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Hello Kedin,

I have a question.

Our Bylaws conflict with the Declaration because under the Declaration the approval of 75% of the owners is required to amend the House Rules. On the other hand the Bylaws clearly delegate to the Board the power to establish and amend House Rules. Our Bylaws are also clear that in the event of a conflict between our Declaration and our Bylaws, the Declaration prevails:

MY DECLARATION states:

- Section 15. Conflicts. These Bylaws are set forth to comply with the requirement of the ACT and the Declaration. In the event any of these Bylaws conflict with the ACT or the Declaration, the provisions of the ACT or the Declaration, as the case may be, shall control.

My question: Does 514B-108 Bylaws (e) support my Declaration to prevail over the Bylaws and does not give the authority to the board to amend the House Rules without the owners approval of 67%?

Thank-you,

Lourdes Scheibert  
Condo Owner



**Exhibit A**

HI Condo Bulletin	AOAO/BOD V	OWNER V	OWNER V	OWNER V	TOTAL	mediated	mediated	assn did not	owner did not	HI Condo Bulletin	resolution	elevated	mentions allegation(s) <sup>o</sup> of violations of			water leak,			
ISSUE MONTH	OWNER	AOAO/BOD	OWNER	CAM	CASES	to agreemnt	w/o agreemnt	mediate*	mediate**	ISSUE MONTH	outside medtn	to arbitration	514B	retaliation	gov docs	intrusion,etc*			
September-23	0	8			8	3	4			September-23		1			8				
June-23	4	10			14	4	5	1.5	3.5	June-23			1		13	1			
March-23	3	15			18	1	14		2	March-23	1				18	1			
December-22	3	8			11	1	7	0.5	2.5	December-22			1	0.5	9.5				
September-22	2	4			6	3	1	0.5	0.5	September-22	1		2		4				
June-22	5	14			19	4.5	10.5			June-22	4		1	1	17				
March-22	2	15			17	8	4			March-22	4	1	1		16	4			
December-21	1	8			9	3	4			December-21	2			0.5	8.5	2			
September-21	3	13			16	8	5			September-21	3				16	3			
June-21	5	12			17	8	5	2		June-21	2		1		16	1			
March-21	1	9			10	4	3		2	March-21	1		1		9				
December-20	5	15			20	7	12		1	December-20				1	19	1			
September-20	2	4			6	2	3	0.5	0.5	September-20					6				
June-20	1	2			3	3	0		.	June-20					3				
March-20	3	13			16	5	9		1	March-20	1				16	1			
December-19	2	13		1	16	5	6		2	December-19	3		1		15	1			
September-19	3	8			11	6	4			September-19	1		1		10	2			
June-19	0	10			10	5	3	0.5	1.5	June-19			1		9	1			
March-19	2	13			15	7	4	1	1	March-19	2		1		14	2			
December-18	1	2			3	0	3			December-18					3	1			
September-18	3	7			10	4	2	1.5	1.5	September-18	1		1		9	1			
June-18	1	4.5	0.5		6	2	3	1		June-18					6	1			
March-18	5	5	1		11	3	3	1.5	3.5	March-18				1	10				
December-17	3	13			16	5	6	3	2	December-17					16	5			
September-17	1	10			11	3	5	2	1	September-17			1		10	2			
June-17	0	6			6	3	3			June-17			1		5	2			
March-17	2	4			6	4	2			March-17					6				
December-16	2	6			8	2	4	2		December-16					8	3			
September-16	2	8			10	2	5	1	2	September-16			2		8	1			
June-16	1	3	1		5	3	0	0.5	1.5	June-16					5	1			
March-16	2	10			12	3	2	1.5	5.5	March-16			1		11	1			
December-15	2	7			9	3	2	3	1	December-15			1		8				
September-15	0	2	1		3	1	1	1		September-15					3	1			
<b>total cases</b>	<b>72</b>	<b>281.5</b>	<b>3.5</b>	<b>1</b>	<b>358</b>	<b>125.5</b>	<b>144.5</b>	<b>24.5</b>	<b>35.5</b>		<b>26</b>	<b>2</b>	<b>19</b>	<b>4</b>	<b>335</b>	<b>39</b>			
<b>total by percent</b>	<b>20.112%</b>	<b>78.631%</b>	<b>0.978%</b>	<b>0.279%</b>	<b>100.000%</b>	<b>35.056%</b>	<b>40.363%</b>	<b>6.844%</b>	<b>9.916%</b>		<b>7.263%</b>	<b>0.559%</b>	<b>5.307%</b>	<b>1.117%</b>	<b>93.575%</b>	<b>10.894%</b>			
*association declined, refused, nonresponsive, or withdrew										**owner declined, refused, nonresponsive, or withdrew									
										°based on interpretation of comments									

## Kyle-Lee N. Ladao

---

**From:** Marcia Kimura [REDACTED]  
**Sent:** Tuesday, November 21, 2023 3:41 PM  
**To:** Kyle-Lee N. Ladao  
**Subject:** [EXTERNAL] Corrected Version of Statement from Maricia Kimura for November 30 CPR Task Force Meeting

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Mr. Ladao:

Please replace my previous transmission of the statement with this corrected version:

To the CPR Task Force Committee:

I was a Honolulu condo owner who participated in mediation in 2014, through The Mediation Center of the Pacific. Although my case did not, in terms of monetary claims, rise to the level of that of other cases, I maintain that the essential thrust of any mediation action should be the quest for fair solutions to disputes. But this was not achieved in my experience. The crux of my matter was that our association board unjustly hired an attorney against me for a non collection issue, and charged me the fees, to retaliate against me for my previous board recall efforts. The mediators should have, but did not recognize that legal fees imposed on individual owners when board directors' hire attorneys for non collection purposes, are prohibitive, because these are covered by our monthly maintenance payments. I did not accept their decision that my payments of the legal bills would be reimbursed conditional on my surrendering certain rights as an owner and their lack of justification for the illicit fees.

I believe that based on the outcomes of mediation proceedings from previous years, there is no consensus of support among owners and some boards, for mediation as a dispute resolution option, because of the condo industry's involvement in attempts to convince owners to abandon their claims, and the appearance of their undue financial influence on the process, in order to machinate decisions favorable to boards and management. Yet, the industry, including its attorneys, are determined to press on with securing this unsuccessful, ineffective means of dispute resolution, and with denial of fact-based research.

There should also be no conflicting interests of those influential in the mediation process, or in decisions affecting the stability and future of condo home ownership, and those whose influence would be compromised as a result of these affiliations should have the integrity to decline leadership in these capacities.

I feel it behooves me to take every opportunity to support an effective alternative to mediation - the establishment of an ombudsman's office, as an agency in the Department of Commerce and Consumer Affairs. The position would be staffed with individuals sworn to impartial investigation and decisions, not tainted with undue industry influence and their profit motives. When one considers that the very adequate funding for the office would derive from the Condo Educational Trust Fund that every owner pays into and ought to directly benefit from, this is a solution beyond reproach.

Thank you for receiving and considering my testimony. All that we owners ask for are fairness and justice of policies, dispute resolution and legislation that ensure the security of our hard-achieved home ownership.

Marcia Kimura

Hawaii Condo Unit Owner

Thanks very much.  
Marcia

## Kyle-Lee N. Ladao

---

**From:** Norman, Misty (Enact MI) [REDACTED]  
**Sent:** Wednesday, November 22, 2023 3:56 PM  
**To:** Kyle-Lee N. Ladao  
**Subject:** [EXTERNAL] TESTIMONY For CPR Task Force

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Mr. Ladao :

I am reaching to you as a concerned condo owner at Makaha, Surfside in Waianae. I have attached two articles below that have very similar stories and backgrounds as I have witnessed with my own condo association. Similar details Concerning negligence That goes overlooked, Mismanagement of funds from a management company and or the board, and even retaliation on other board members that are effectively trying to protect and move in an ethical direction to do as the ownership asks. I have Witnessed a few board members of our association completely disregard ownership requests for Information and even appoint a single board member to numerous positions to hold voting for a few board members' favor. I have watched board members use association funds, because of negligence or ignorance on how to hold a position.

board members that should've removed themselves from voting of a topic that benefits them personally.

This experience as a condo owner has really discouraged me from wanting to own other condos, due to the lack of representation and laws in the state of Hawaii to protect owners from the corrupt Behaviors of condo associations, and management groups.

Thank you for your time  
Misty Norman  
Makaha Surfside Owner

<https://www.civilbeat.org/2023/04/prominent-honolulu-condo-board-members-are-on-trial-for-alleged-retaliation-heres-why/>

and the article previously posted here <https://www.civilbeat.org/2023/07/prominent-honolulu-condo-directors-pay-600000-to-settle-retaliation->



## The Senate

STATE CAPITOL  
HONOLULU, HAWAII 96813

May 10, 2018

Via Hand Delivery

Mr. Stephen H. Levins  
Office of Consumer Protection  
235 S. Beretania Street, Room 801  
Honolulu, HI 96813

Ms. Daria Ann Loy-Goto  
Regulated Industries Complaints Office  
235 S. Beretania Street, 9<sup>th</sup> Floor  
Honolulu, HI 96813

Dear Mr. Levins and Ms. Loy-Goto:

One of my constituents, Ms. Christine Morrison, has asked that I refer debt collection practices at Kehalani Community Association (KCA) by its agent Hawaiiiana Management to the appropriate agency for investigation. In certain instances, Ms. Morrison believes that the dates of the notices/letters to her have arrived with a much later postmarked date, i.e. notice dated 02/28/18 with a remit deadline of 02/28/18 reflect a postmark of 03/12/18, which seem designed to ensure that she could not have responded by the remit deadline.

Another concern from Ms. Morrison involves demand letters that do not reflect payments that have been made to her account. Although Ms. Morrison has written to KCA's agent Hawaiiiana Management to provide the documentation to support the alleged "debt", she has not received any responses.

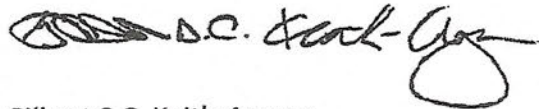
Mr. Stephen H. Levins  
Ms. Daria Ann Loy-Goto  
May 10, 2018  
Page 2

I would agree with Ms. Morrison that it's very troubling that payments are not updated in a timely manner. All of the notices sent by Hawaiiiana Management on behalf of KCA outlines threats of nonjudicial foreclosure, which are very alarming to the recipient. Enclosed are copies of documents provided by Ms. Morrison, which includes notices with postmarked envelopes, statement of bank account that reflects payments of association dues, excerpts of Kehalani Master Association documents, and other pertinent information.

If you require further information regarding this issue, please contact Ms. Morrison at 49 Kokea Street #1101, Wailuku, HI 96793. EMAIL: society4148@yahoo.com

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "G.C. Keith-Agaran". The signature is stylized and includes a large circular flourish at the end.

Gilbert S.C. Keith-Agaran  
State Senator – District 5

Enclosures: 7

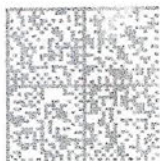
cc: Ms. Christine Morrison





**HAWAIIANA MANAGEMENT COMPANY, LTD.**

Pacific Park Plaza  
711 Kapiolani Boulevard, Suite 700 *2760*  
Honolulu, Hawaii 96813



U.S. POSTAGE & FITNEY

ZIP 50813 \$000.47<sup>0</sup>  
02 1N  
0001303084MAP 12 2018

96759383539 0008



KEHALANI COMMUNITY ASSOCIATION  
C/O HAWAIIANA MGT. CO., LTD. - PAYMENT DEPT.  
711 KAPIOLANI BLVD., SUITE 700  
HONOLULU, HI 96813

February 28, 2018

MORRISON, CHRISTINE

WAILUKU, HI 96793

CREDITOR: KEHALANI COMMUNITY ASSOCIATION  
ACCOUNT NUMBER: [REDACTED]  
RE: KEHALANI CA/  
UNIT ID: V1101  
ACCOUNTANT: IMELDA MATEO (808) 593-6326

ASSOCIATION DUES (65 month)	130.00
LATE CHARGES	75.00
TOTAL AMOUNT OF DELINQUENCY:	205.00

DEAR OWNER:

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

We have not received your payment which was due on the first of last month. Because your payment was not received by the 10th, an additional late charge of \$50.00 has been added to the total. Our records show that your account is now delinquent in the Total Amount indicated above.

Please remit the total amount due, including late fees, by the end of this month. If full payment has been sent recently, please disregard this notice. 2-28-18

To avoid further late payments and late charges we hope you will consider enrolling in our auto payment program. The information regarding this service is enclosed.

Very truly yours,

Hawaiiana Management Company

Further note:

If you have not already paid the total amount due the following applies to you:

KCA Collection Letter (C 2)

- **If, by the 10th of next month the total amount of the delinquency has not been paid in full, a third collection letter will be sent out (the C-3 letter) and you will be advised that an additional \$75.00 late charge has been added to your account AND**

**(1) That the total amount of Base Assessments and Neighborhood Assessments due from you for the remainder of the fiscal year will be immediately due and payable.**

**(2) That if the total amount described in Item (1) above is not paid in full by the end of the month then an additional late charge of \$100.00 shall be charged and the account will then be forwarded for collection to the Association's collection agency and/or attorney without any further notification.**

**(3) The collection agency and/or attorney have been authorized to pursue any and all legal remedies including but not limited to filing suit, advising credit reporting agencies of the delinquency, recording a lien against the real property and instituting judicial or non judicial foreclosure actions.**

Notice pursuant to Fair Debt Collection Practices Act  
15 USC Section 1692

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS CONSTITUTES NOTICE OF THE AMOUNT OF THE DEBT AND THE NAME OF THE CREDITOR TO WHOM THE DEBT IS OWED. UNLESS YOU, WITHIN THIRTY DAYS AFTER RECEIPT OF THE NOTICE, DISPUTE THE VALIDITY OF THE DEBT, OR ANY PORTION THEREOF, THE DEBT WILL BE ASSUMED TO BE VALID. IF YOU NOTIFY US IN WRITING WITHIN THE THIRTY-DAY PERIOD THAT THE DEBT, OR ANY PORTION THEREOF, IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT AND A COPY OF SUCH VERIFICATION WILL BE MAILED TO YOU. UPON YOUR REQUEST WITHIN THE THIRTY-DAY PERIOD, WE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF IT IS DIFFERENT FROM THE CURRENT CREDITOR.

**C-2 Letter**

**KCA Collection Letter (C-2)**

**C. MORRISON** 1095  
59-102/1213  
54

Date 3-22-18

Pay to the Order of Kehalaui Community Association 205.00

Two hundred + five 00/100 Dollars

**Bank of Hawaii**  
KAMAHA BRANCH  
KAMAHA, HAWAII 96705

Paid Under Protest - Morrison

DO NOT WRITE

To Reorder, Call 1-800-366-8123

>121301578<  
Central Pacific Bank #074  
2018-03-28  
0074318442  
Batch 34255997

0074318442

For  
Central Pacific  
To  
Hawaiiian Multi  
Agent

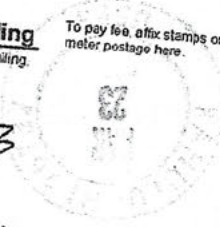


**Certificate Of Mailing**

This Certificate of Mailing provides evidence that mail is sent to USPS® for mailing.  
This form may be used for domestic mail only.

To pay fee, affix stamps or meter postage here.

From: [REDACTED]  
Waialua HI 96793



To: Keoluani Community Association  
c/o Hawaiian MGT CO, ETC / B  
Payment Dept  
711 Kapiolani Blvd Suite 300  
Postmark Here

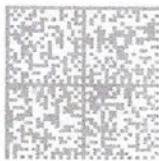
PS Form 3817, April 2007 PSN 7530-02-000-9065

Honolulu HI 96813



**HAWAIIANA MANAGEMENT COMPANY, LTD.**

Pacific Park Plaza  
711 Kapiolani Boulevard, Suite 700  
Honolulu, Hawaii 96813



U.S. POSTAGE

ZIP 96813 \$ 000.47<sup>0</sup>  
02 1M  
0001303064 MAR 30 2013

96793083539 0009



**KEHALANI COMMUNITY ASSOCIATION**  
C/O HAWAIIANA MGT. CO., LTD. - PAYMENT DEPT.  
711 KAPIOLANI BLVD., SUITE 700  
HONOLULU, HI 96813

3/21/2018

MORRISON, CHRISTINE  
[REDACTED]  
WAILUKU, HI 96793

CREDITOR: KEHALANI COMMUNITY ASSOCIATION  
ACCOUNT NUMBER: [REDACTED]  
RE: KEHALANI CA/  
UNIT ID: V1101  
ACCOUNTANT: IMELDA MATEO (808) 593-6326

ASSOCIATION DUES	195.00
LATE CHARGES	150.00
TOTAL AMOUNT OF DELIQUENCY INCLUDING PAYMENTS DUE FOR REMAINING FISCAL YEAR AND LATE CHARGES:	<b>345.00</b>

DEAR OWNER:

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

We have not received your payment of the past due delinquent amount which was due on the first of the month. Because your payment was not received by the 10th, the total amount of Base Assessments and Neighborhood Assessments due for the remainder of the fiscal year is immediately due and payable and an additional late charges of \$75.00 has been added to the total. Our records show that your account is now delinquent in the Total Amount indicated above.

**If the total amount due is not paid by the end of this month, an additional late charge of \$100.00 shall be charged and the account will be forwarded to the Association's collection agency and/or attorney without any further notification.** The collection agency and/or attorney has been authorized to pursue any and all legal remedies including but not limited to filing suit, advising credit reporting agencies of the delinquency, recording a lien against the real property and instituting judicial or non judicial foreclosure actions.

Please remit the total amount due, including late fees, by the end of this month. If full payment has been sent recently, please disregard this notice.



Very truly yours,

---

Hawaiiana Management Company

Notice pursuant to Fair Debt Collection Practices Act  
15 USC Section 1692

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS CONSTITUTES NOTICE OF THE AMOUNT OF THE DEBT AND THE NAME OF THE CREDITOR TO WHOM THE DEBT IS OWED. UNLESS YOU, WITHIN THIRTY DAYS AFTER RECEIPT OF THE NOTICE, DISPUTE THE VALIDITY OF THE DEBT, OR ANY PORTION THEREOF, THE DEBT WILL BE ASSUMED TO BE VALID. IF YOU NOTIFY US IN WRITING WITHIN THE THIRTY-DAY PERIOD THAT THE DEBT, OR ANY PORTION THEREOF, IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT AND A COPY OF SUCH VERIFICATION WILL BE MAILED TO YOU. UPON YOUR REQUEST WITHIN THE THIRTY-DAY PERIOD, WE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF IT IS DIFFERENT FROM THE CURRENT CREDITOR.

**C-3 Letter**

**KCA Collection Letter (C-3)**

C. MORRISON

A/R Received

1091

59-102/1213  
64

APR 02 2018

4-5-18

Date

Pay to the  
Order of

Kehialani Community Association \$ 345.00

Three hundred + fourty five 00/100

Dollars



Security  
Features  
Only on  
Back

Bank of Hawaii

KAHANA BRANCH  
KAHANA, HAWAII 96731

Paid Under Protest

Morrison

For

MP



To Reorder Call 1-800-355-8123

>121301578<  
Central Pacific Bank #074  
2018-04-10  
0074012774  
Batch 34962820

0074012774




For deposit in  
Central Pacific Bank 121301  
Credit of  
Hawaii Agricultural Bank Co.,  
Inc.

Courts

# Here's What Happened When Lawyers For A Condo Association Tried To Collect Their Fees

Porter McGuire Kiakona now faces \$475,000 in damages for violating debt collection laws in a case that started with a \$150 fine against a dog owner.

 72

By Stewart Yerton    / October 30, 2022

 Reading time: 7 minutes.



A Honolulu law firm could have to pay almost half a million dollars to a condo owner after a federal jury found the firm violated debt collection laws when it sought legal fees totaling almost \$50,000 in a dispute involving the condo owner's dog.

The jury found the firm of Porter McGuire Kiakona also improperly invaded the privacy of the condo owner, Navy medic Jeremy Warta, when the firm made public Warta's confidential medical records in court papers filed as part of a separate lawsuit. The jury found Porter McGuire had acted "intentionally, willfully, wantonly, oppressively, maliciously or in a grossly negligent manner," when it made Warta's records public.

U.S. District Court Judge Leslie Kobayashi last week issued a 60-day stay on entering the jury's award, which totals \$75,000 in actual damages and \$400,000 in punitive damages. The judge has ordered the parties to meet



# HAWAIIANA

Hawaiiana Management Company, Ltd.  
1305 North Holo pono Street, Suite 3A  
Kihei, HI 96753  
Tel: (808) 270-3218  
Fax: (808) 873-7423  
Internet: [www.hmcmgt.com](http://www.hmcmgt.com)

March 13, 2020

**Certified Mail** \_\_\_\_\_  
**Return Receipt Requested**

Ms. Christine Morrison  
[REDACTED]

Wailuku, HI 96793

RE: Kehalani Community Association Account # 2760 – 01163-000

Dear Ms. Morrison,

Aloha. I am in receipt of your letter dated March 4, 2020.

Please find a refund check number #0004093 enclosed for \$550.00. Please note that the next payment for your Kehalani Community Association account maintenance fees will be due on July 1, 2020 in the amount of \$65.00.

Please provide a phone number where we can contact you, or call me on my cell phone at 808-264-9658 if you have any questions.

Thank you.

Kathy Seidman Wong  
Senior Management Executive

Cc: Mele Heresa  
Imelda Mateo

KEHALANI COMMUNITY ASSOCIATION - 2760  
 c/o Hawaiiana Management Company, Ltd. P.O. Box 4009, Honolulu, HI 96812, Tel. No. 593-9100

CHECK NO.

0004093

INV. DATE	DESCRIPTION	INVOICE	VENDOR-BLDG	GL ACCT	AMOUNT
03/13/20	RPND ASSN DUES-14#V1101	031320	GRSV-2760	5100	550.00
TO: CHRISTINE MORRISON					550.00
DATE: 3/13/2020					

THIS DOCUMENT CONTAINS A VOID PANTOGRAPH ON A COLORED BACKGROUND AND MICROLINE BORDER

**HAWAIIANA MANAGEMENT CO., LTD AS AGENT FOR**

KEHALANI COMMUNITY ASSOCIATION - 2760  
 P.O. BOX 4009 HONOLULU, HI 96812, TEL. NO. 593-9100

VOID AFTER SIX MONTHS

CHECK NO.

0004093

59-1571213

DATE: 3/13/2020

FIVE HUNDRED FIFTY and 00/100 \*\*\*\*\*

\*\*\*\*\*550.00

CENTRAL PACIFIC BANK  
 P.O. BOX 3590  
 HONOLULU HI 96811

PAY TO THE ORDER OF:

CHRISTINE MORRISON

WAILUKU, HI 96793

*[Handwritten Signature]*  
 TWO SIGNATURES REQUIRED

Ms. Christine Morrison

Wailuku, HI 96793

November 29, 2018

Destination Maui, Inc. and the Kehalani Villas Board  
380 Huku L'i Suite 206  
Kihea, HI 96753

RE: IMMEDIATE DEMAND TO CEASE/DESIST COLLECTION ON PREVIOUSLY COLLECTED DEBT ON ACCOUNT #31643. (DEMAND SENT PURSUANT TO FDCPA, 15 U.S.C. 1692g 809(b) VALIDATION REQUESTED/CHAPTER 514B).

1. This is a demand letter to Destination Maui, Inc. to immediately cease/desist collection on previously paid debt for account # 31643.

2. Provide the reason Destination Maui, Inc. (via ACH DEBIT THE VILLAS AT KEHALANI Association payment) collected \$537.66 on October 17, 2018 and \$537.66 on November 14, 2018 when it was previously paid? + *double payments* *December 12, 2018?* *cm*

- On September 12, 2018 a surepay authorization form was submitted via mail to Destination Maui, Inc.

Clearly written on this surepay authorization form it stated the following (NO RESPONSE):

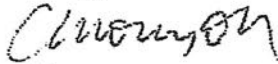
- RE: Surepay authorization form- DEBT ONLY TO START WITH A BALANCE OWING.  
and:
- DEMAND/REQUEST THE FOLLOWING AGAIN:
  - Copy of the original signed agreement between the original creditor and me.
  - Copy of complete payment history (May 2014).
  - The current balance owed on this account.
  - Why monthly billing statements of debt have not been mailed since May 2014?
  - Answers to letters date 2-13-18 and 3-22-18 and the reason for no answers.

3. I am requesting the following documents from Destination Maui, Inc. Please forward a copy of the requested documentation to the address listed above, within fourteen business days,

- Provide immediate billing statements of monthly debt owed and the reason this has not been done, despite requests.
- A copy of the complete payment history (May 2014).

- A copy of the original signed agreement between the original/current creditor and me.
- Proof that Maui Destination, Inc. has purchased the debt or has been hired by the original creditor to collect the debt.
- The reason for no response to letters by Destination Maui, Inc. or the board at the Villas Kehalani, dated February 13, 2018, March 22, 2018, July 1, 2018, September 12, 2018, and November 27, 2018 pursuant to Chapter 514B?



Truly,  
  
 Christine Morrison

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<input type="checkbox"/> Return Receipt (hardcopy)	\$1.00
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<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$0.50
Total Postage and Fees	\$3.95

0555 69  
 Postmark Here  
 NOV 29 2018  
 11/27/2018

Sent to: Destination Maui Inc, Kehalani Villas  
 Street and Apt. No., or PO Box No.: 350 Hulua Lili Suite 206  
 City, State, ZIP+4: Kihua HI 96753

## Complaint Submitted

Your complaint has been submitted and assigned the ID 14123809. For your reference, a copy of your complaint appears below. You will receive an email with further information once your complaint is processed by the BBB.

The complaint is being handled by the dispute center listed below. Please contact them with any questions.

BBB Northwest (DuPont, WA)  
12639 W Explorer Dr, Ste 200  
Boise, ID 83713  
resolutions@thebbb.org (mailto:resolutions@thebbb.org)  
Web: <http://www.bbb.org/northwest> (<http://www.bbb.org/northwest>)

### Consumer Information

Date Filed: 1/29/2020

Sal: Ms.

First Name: christine

Middle Name:

Last Name: morrison

Suffix:

Address:

Wailuku Hawaii 96793  
UNITED STATES

Daytime Phone:

Evening Phone:

Fax:

Email:

### Business Information

Business ID: 0053000576

Name: Destination Maui, Inc.

Address: 380 Huku Lii Pl Ste 206

City: Kihei

State/County: HI

Zip/Postal Code: 96753

Business Phone Number: (808) 244-9021

URL:

This Business was Accredited at the time the Complaint was made.

### Complaint Detail / Problem

Complaint Type: Billing or Collection Issues



**Complaint/Consumer Information**

christine morrison

Wailuku, HI 96793

society4148@yahoo.com

**Business Information**

Destination Maui, Inc.

380 Huku Lii Pl Ste 206

Kihei, HI 96753

**Complaint Summary**

**Complaint Type:** Consumer to Business Complaint

**Nature of complaint:** Billing or Collection Issues

**Problem description:**

RE: Destination Maui, INC management letter dated December 23, 2019 letter regarding January 2020 maintenance fee payment. Destination Maui, INC letter states, "the associations new management company will send out budget and coupons for the Villas. Please email our office to stop automatic payment from your account." My January 20, 2020- My certified/ signature USPS tracking letter states: 1. As of January 2020: Immediate Demand to Cease/Desist Automatic Payment from my account. 2. Request complete answers to certified letters sent dated and the reason for no response: February 13, 2018; March 22, 2018; July 1, 201; September 12, 2018 (Sure pay form); November 27, 2018; November 29, 2018 3. Immediate return of fraudulent/false ach debt with no balance owing but collected on October 17, 2018 , November 14, 2018 and December 12, 2018. The reason for fraudulent/false collection. 4. A copy of the original signed agreement between the original creditor and me (May 2014). 5. A copy of the complete payment history from May 2014. 6. The current balance owing on this account. 7. Why monthly billing statements of debt were not mailed as requested. 8. A complete copy of the Villas at Kehalani board of directors minutes from 2018 and 2019 meetings. C.Morrison

**Desired Resolution:** Explanation of Charges

**Desired Outcome**

Immediate complete answer to my January 20, 2020 certified/signature letter to Destination Maui, INC.

**Complaint Detail**

**Date of Transaction:** 12/23/2019

**Date of First Problem/Issue:** 12/23/2019

**Have you complained**

**or contacted the business? Yes**

**Date(s) Complained:** 1/20/2020

**Purchase Price:** 1698

**Amount disputed:** 1698

**Product/Service:** Maintenance Debt Collection

**Manufacturer or Brand Name:** Destination Maui, INC Manageme

**Payment Made:** In Full

**Payment Method:** ACH Debit

**Salesperson Name:** Destination Maui, Inc

537.66 x 3  
months double  
collections =  
1612.98 \*

**Message to BBB**

[Empty box for message to BBB]

**Waiver(s):**

I authorize the business to communicate with the BBB about my complaint and disclose to BBB any personal information related to the complaint including the following if applicable: (a) information about a transaction or payment, (b) student records, and (c) information about an alleged debt.

- Your complaint cannot be changed, edited or deleted once it has been submitted.
- An exact copy of your complaint will be sent to the business.
- The text of your complaint must be publicly posted on BBB's Web site /BBB reserves the right to not post in

**Problem:** RE: Destination Maui, INC management letter dated December 23, 2019 letter regarding January 2020 maintenance fee payment. Destination Maui, INC letter states, "the associations new management company will send out budget and coupons for the Villas. Please email our office to stop automatic payment from your account." My January 20, 2000- My certified/ signature USPS tracking letter states: 1. As of January 2020: Immediate Demand to Cease/Desist Automatic Payment from my account. 2. Request complete answers to certified letters sent dated and the reason for no response: February 13, 2018; March 22, 2018; July 1, 201; September 12, 2018 (Sure pay form); November 27, 2018; November 29, 2018 3. Immediate return of fraudulent/false ach debt with no balance owing but collected on October 17, 2018 , November 14, 2018 and December 12, 2018. The reason for fraudulent/false collection. 4. A copy of the original signed agreement between the original creditor and me (May 2014). 5. A copy of the complete payment history from May 2014. 6. The current balance owing on this account. 7. Why monthly billing statements of debt were not mailed as requested. 8. A complete copy of the Villas at Kehalani board of directors minutes from 2018 and 2019 meetings. C.Morrison

### Desired Resolution / Outcome

**Desired Resolution:** Explanation of Charges

**Desired Outcome:** Immediate complete answer to my January 20, 2020 certified/signature letter to Destination Maui, INC.

### Complaint Background

Not all of these questions are required. Please provide as much information as you have.

1.Product/Service Purchased: Maintenance Debt Collection

2.Model Number:

3.Contract, Account, or Policy #:

4.Order #:

5.Purchase Date: 12/23/2019

6.Date Problem First Occurred: 12/23/2019

Dates you complained to the company/organization

7. First Date: 1/20/2020

10.Payment Made: In Full

11.Payment Method: ACH Debit

Name of Sales Person

13.First Name: Destination Maui,

15.Last Name: Inc

17.Purchase Price: \$1,698.00

18.Disputed Amount: \$1,698.00

1612-98  
1612-98

THIS DOCUMENT HAS A COLORED SECURITY BACKGROUND. DO NOT CASH IF THE WORD "VOID" IS VISIBLE. THIS PAPER HAS AN ARTIFICIAL WATERMARK ON REVERSE SIDE AND IS ALTERED.

Ckg - MCO \*\*\*512056

The Villas at Kehalani Association  
380 Huku Lili Place, Suite 206  
Kihei, HI 96753  
(808)244-9021

Mutual of Omaha  
Community Association Banc  
Phoenix, AZ 85082-0008

201

PAY \*\*\*\*ONE THOUSAND FIFTY ONE DOLLARS AND 07/100\*\*\*\*\*

TO THE ORDER OF

Christine Morrison  
[Redacted]  
Wailuku, HI 96793

DATE  
1/31/2020

AMOUNT  
\$1,051.07

*Phillips*

537<sup>66</sup> Oct 11, 2018  
+ 537<sup>66</sup> Nov 14, 2018

Dec 12, 2018

used  
2/1/2021 my next payment

Number 2 Account Number [Redacted] Customer Name Christine Morrison

537<sup>66</sup> Due Date 02/01/2018 Amount Due \$524.83

c/o: [Redacted]

\*\$50 after 15th & 1% end of month

Make check payable to:

REMIT TO: Villas at Kehalani  
c/o Destination Maui, Inc.  
P O Box 64611  
Phoenix AZ 85082-4611

[Redacted]

CHRISTINEMOR 052483 3



**Serving:**  
Alaska, Hawaii, Idaho, Montana, Oregon, Washington, Western Wyoming  
PO Box 140015, Boise ID 83714

1/30/2020

Christine Morrison  
[REDACTED]  
Wailuku, HI 96793

Dear Christine Morrison:

This message is in regard to your complaint submitted on 1/29/2020 against Destination Maui, Inc.. Your complaint was assigned ID 14123809.

BBB has received a message from the business regarding your complaint. Please review this information below and provide BBB with a written rebuttal. All responses will be copied to the business for their review.

THE TEXT OF YOUR RESPONSE MAY BE PUBLICLY POSTED ON BBB'S WEBSITE. PLEASE DO NOT INCLUDE ANY PERSONALLY IDENTIFIABLE INFORMATION IN YOUR RESPONSE. By submitting your complaint, you are representing that it is a truthful account of your experience with the business. BBB may edit your response to remove personally identifiable information and inappropriate language.

Please provide your response within 7 calendar days so as to avoid closure of the complaint as assumed resolved.

Sincerely,

Tanya McDowell  
Engagement Consultant

**MESSAGE FROM BUSINESS:**

*Thank you Ms. Morrison*

*I have just been made aware of your issues and am looking into it.*

*I have also called you and left a message and am responding to your letter of Jan. 20, 2020.*

*I will be responding directly to you via telephone and/or letter.*

*Mahalo,*

*Joanne K Phillips*

*Destination Maui Inc.*



**Serving:**

Alaska, Hawaii, Idaho, Montana, Oregon, Washington, Western Wyoming  
PO Box 140015, Boise ID 83714

1/31/2020

Complaint: 14123809

I am rejecting this response because:

1. Destination Maui, Inc management company has provided NO response to any certified letters dated February 13, 2018, March 22, 2018, July 1, 2018, September 12, 2018 (sure pay form), November 27, 2018, November 29, 2018, and January 20, 2020.
2. Destination Maui, Inc management company provided NO debt validation, monthly billing statements, or answers pursuant to HR statutes 514B as requested.
3. Destination Maui, Inc management company December 23, 2019 letter stated, "email our office to stop automatic withdraw from your account." I responded with a January 20, 2020 certified letter to cease/desist automatic (ach debit) payment

Sincerely,

Christine Morrison

## Kyle-Lee N. Ladao

---

**From:** Lila Mower <[REDACTED]>  
**Sent:** Tuesday, November 28, 2023 9:13 PM  
**To:** Kyle-Lee N. Ladao  
**Subject:** [EXTERNAL] Fwd: Testimony to Task Force/Legislation to opt out  
**Attachments:** Hawaiiana Management Company FDCPA For Kehalani Community Association.pdf; Hawaiiana Management Dues Refund.pdf; Destination Maui Double Maintenance FeeCollections 2018.pdf

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Aloha Kyle,

I was notified by Ms. Morrison that she received a message that her emailed testimony submission "bounced" and did not reach you. Please see her testimony (which includes her email to Rep. Tam and the attachments) below and forward her testimony to the CPR Task Force. Mahalo!

Aloha,

Lila 🐾

"Truth will ultimately prevail where there [are] pains to bring it to light." ~ George Washington

WE ARE NOT ATTORNEYS AND ANY INFORMATION PROVIDED HEREIN SHOULD NOT BE CONSIDERED LEGAL ADVICE AND CAN NOT BE USED AS SUCH. ANY INFORMATION OR OPINION PROVIDED IS BASED SOLELY ON RESEARCH OR EXPERIENCE IN DEALING WITH CONDOMINIUM ASSOCIATION ISSUES.

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

**From:** <[REDACTED]>  
**Date:** Tue, Nov 28, 2023 at 4:40 PM  
**Subject:** Testimony to Task Force/Legislation to opt out  
**To:** <[kladao@dcca.hi.gov](mailto:kladao@dcca.hi.gov)>  
**Cc:** Lila Mower <[REDACTED]>

RE: Testimony/evidence for November 30, 2023, Condo Property Regime Task Force;

Legislation for private homeowners to opt out of HOA/Management companies;

Legislation for daily retroactive fines/sanctions against management companies' violations, pursuant to the (FDCPA) Federal Debt Collection Practices Act or other collection schemes;

**Response request please**

Dear Kladao,

1. Please see the below email to Rep Tam regarding 3 management companies.
2. It took close to 2 years for me to get my money wrongfully assessed by Destination Maui and Hawaiiana management company.

Legislation: **MANDATORY daily retroactive fines/sanctions** applied pursuant to violations under the Federal Debt Collection Practices Act or other collection schemes. Management companies knows the law and legal sanctions permitted.

3. Regarding Quam Properties Hawaii, see RICO Case No. REC 2021-255-L (Quam Properties Hawaii, Inc) June 30, 2022, with DCCA administrative settlement payment of \$1,500.
4. **I pay slightly under \$1,000 in monthly fees** and

am filing another DCCA complaint against Quam Hawaii Properties for failure to maintain/repair common elements, and for my demand to refund money for “mandated” services- never rendered.

5. **Immediate Legislation for private homeowners to opt out HOA/Management**  
<https://www.nytimes.com/2023/10/31/realestate/nar-antitrust-lawsuit.html>

Respectfully submitted,

Ms. Morrison

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**From:** c <[REDACTED]>  
**Sent:** Sunday, July 23, 2023 2:22 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Legislation

RE: Legislation

Attachments

Dear Rep. Tam/Flora,

Flora thank you for the research update and please send it. See proof attachments for Representative Tam for legislation. Enclosed is Destination Maui Management Company and Kehalani Community Association debt collection by Hawaiiana Management Company. I am sending another separate email with Quam Properties Hawaii Management.

1. Destination Maui Management collected double payments in maintenance fees totaling \$1,612 for October, November, and December 2018 (\$537.66 per month maintenance fees-three months).

I filed a complaint against Destination Maui Management for failure to comply with HRS 514 for the association's records/documents.

It took 2 years for Destination Maui Management to reimburse me (after a complaint to the BBB).

2. Hawaiiana Management Company over collected \$550.00 for debt (\$65.00 monthly fees) on behalf of Kehalani Community Association pursuant to the Federal Debt Collection Practices Act (FDCPA) per two collection letters.

I never received collection letter one. It starts collection letter 2.

It took years for Hawaiiana Management Company to reimburse me, and document demands for debt validation proofs. The debt validation documents proved Hawaiiana Management Company inaccurate records.

I filed a complaint against Hawaiiana Management Company for failure to comply with the FDCPA debt validation and for the association's records/documents.

3. Pursuant to the article dated January 4, 2023, by Stewart Yerton, <https://www.civilbeat.org/2023/01/condo-owners-want-more-power-to-fight-their-homeowners-boards/>:

Associations are like private governments with the power to establish rules, tax homeowners via dues, spend money, fine residents for breaking rules and **take property via foreclosure if people don't pay fees and fines.**

Proposed Legislation:

- Association Board of Directors, Association attorneys, and the Management Company **Shall not** be allowed to non-judicially foreclosed upon property.
- Association Board of Directors, Association attorneys, and the Management Company **Shall not** be allowed to purchase foreclosed property.
- Sanctions/accountability bills for failure to follow state laws
- 20% Assessment Increase/Limitation on Budget and Maintenance Dues
- No Association or Management Company Right to access unit.
- Legal Right to dissolve an Association, Management Company, and Community Association



Therefore, I believe if I had not been in Hawaii in 2018, my home would have been non-judicially foreclosed upon for improper FDCAP debt collection by Hawaiiana Management Company on behalf of Kehalani Community Association. See, the collection letters 2 and 3 with the USPS post mark envelop. Representative Tam and Flora keep up the efforts to protect all homeowners and especially seniors with limited income. Your right on point with making sure maintenance fees stay at a reasonable rate! I am now paying close to \$1,000 month. Thank you and stay safe.

Respectfully,

Ms. Morrison

Testimony for November 30, 2023  
HB1509 - Mediation Task Force

Aloha!

My apologies, this is long and I spent the last several weeks in self-reflection on this issue of Mediation in Condominiums.

I became a first-time buyer and condo owner in 1990. Since then, have owned 4 other condo properties and have served for a time on 3 of the condo property boards. I attended seminars by CAI or HCCA and joined the HCCA board somewhere along the way in the mid 1990's. Then as the years went by and along the way became the education chair for HCCA and it has been a privilege to provide necessary education to Condo Owners and their respective Board of Directors.

Let me start off with this:

Self-Governance:

Management of Condominiums are created by statute and intended to operate as self-governing entities, with minimal government intervention.

An association is governed by its condominium association through a board of directors elected from among the condominium owners.

These board members are usually unpaid volunteers and often have no experience in running a large property. Board members owe a fiduciary duty to the association in the performance of their duties.

To assist with running the association, many associations hire a professional management company, or a full-time resident manager. Neither is required by law, however, and smaller associations often rely on owner volunteers to handle management tasks.

[https://files.hawaii.gov/dcca/reb/condo\\_ed/condo\\_bull2/cb\\_06\\_00/cb1008.pdf](https://files.hawaii.gov/dcca/reb/condo_ed/condo_bull2/cb_06_00/cb1008.pdf)

CAI supports public policy that recognizes the rights of homeowners and promotes the self-governance of community associations—affording associations the ability to operate efficiently and protect the investment owners make in their homes and communities.

[https://www.caionline.org/Advocacy/Resources/Documents/Infographics/HI\\_FactsFigures\\_Info.pdf](https://www.caionline.org/Advocacy/Resources/Documents/Infographics/HI_FactsFigures_Info.pdf)

# Means of self-governance<sup>[edit]</sup> <https://en.wikipedia.org/wiki/Self-governance>

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The means of self-governance usually comprises some or all of the following:

- A [code of conduct](#) that outlines acceptable behavior within the unit or group.<sup>[16]</sup> This may include a [legal](#) or [ethical code](#) (e.g. the [Hippocratic Oath](#) of [doctors](#), or established codes of [professional ethics](#)).
- A means of ensuring external authority does not become involved unless and until certain criteria are satisfied.
- A means of facilitating the intended functions of the unit or group.
- A means of registering and resolving [grievances](#) (e.g. [medical malpractice](#), union procedures, and for achieving closure regarding them).<sup>[citation needed]</sup>
- A means of [disciplinary procedure](#) within the unit or group,<sup>[17]</sup> ranging from [fines](#) and [censure](#) up to and including penalty of death.
- A means of suppressing parties, factions, tendencies, or other sub-groups that seek to [secede](#) from the unit or gro

**Self-governance**, **self-government**, or **self-rule** is the ability of a person or group to exercise all necessary functions of [regulation](#) without intervention from an external [authority](#).<sup>[2][3][4]</sup> It may refer to personal conduct or to any form of [institution](#), such as [family units](#), [social groups](#), [affinity groups](#), [legal bodies](#), [industry bodies](#), [religions](#), and [political entities](#) of various degree.<sup>[4][5][6]</sup> Self-governance is closely related to various philosophical and [socio-political](#) concepts such as [autonomy](#), [independence](#), [self-control](#), [self-discipline](#), and [sovereignty](#).<sup>[7]</sup>

<https://en.wikipedia.org/wiki/Self-governance#CITEREFRasmussen2011>

## References <sup>[edit]</sup>

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- <sup>1</sup> ↑ *Greenland in Figures 2012*.
- <sup>2</sup> ↑ Rasmussen 2011, pp. x–xi.
- <sup>3</sup> ↑ Sørensen & Triantafillou 2009, pp. 1–3.
- <sup>4</sup> ↑ <sup>*a b*</sup> Esmark & Triantafillou 2009, pp. 29–30.
- <sup>5</sup> ↑ Sørensen & Triantafillou 2009, p. 2.
- <sup>6</sup> ↑ Sørensen & Torfing 2009, p. 43.
- <sup>7</sup> ↑ Rasmussen 2011, p. x.
- <sup>8</sup> ↑ Ghai & Woodman 2013, pp. 3–6.
- <sup>9</sup> ↑ Berlin 1997, pp. 228–229.

**Autonomy**: In [developmental psychology](#) and [moral](#), [political](#), and [bioethical philosophy](#), **autonomy**<sup>[note 1]</sup> is the capacity to make an informed, uncoerced decision.

It is my belief that the term “self governance” has lost its meaning or intent.

§HRS 514B, City and County Ordinances and Federal laws supersede a Condo governing documents. Christopher Shea Goodwin, when asked a question at a seminar often says “subject to your governing documents”....

Most governing documents may or may not have any provisions for criminal background checks, HRS 514B does. Some governing documents might not have provisions for Conflict of Interest, HRS 514B does.

Governing documents, City Ordinances and State Laws (subject to privacy issues) do not have any provisions for taking pictures of the property. Then how can a Resident Manager and the Board fine (\$1000) a resident for taking a picture of the plants?

**The term “Self Governing” needs to be changed to “Self Governing in accordance with local, federal and governing documents”.**

Condo Dispute Resolution started in 2005. It seems every few years at the legislature there is a bill introduced related to Condo Dispute Resolution.

2023 legislature HB 176 (70 pgs of testimony), without doing an actual count, it appears it is mostly opposed.

Item (b)

(1) Investigate the feasibility of expanding the real estate commission’s enforcement authority to include violations of requirements for association meetings and board of director elections;

(3) of particular: Determine whether additional regulations are necessary for members of the board of directors to comply with their duties and obligations under chapter 514B.

Most of the testimony was in response to the proxy, voting and ombudsman. *There is support for Educational requirements for Board Members.*

Testimony from John Morris: For example, **HB 176 mandates that board members "certify" that they have read their declaration, bylaws, house rules and other relevant documents. If they fail to do so, they can be automatically removed from the board.** Unfortunately, this requirement fails to recognize that those documents are often long, complex, and difficult to understand or that the directors are volunteers who are serving without any compensation. Moreover, those documents provide a level of detail that is far beyond what a board member needs to know to fulfil his or her responsibilities to the other members of the association. Some boards are already having problems getting directors willing to serve on the board. This section of HB 176 will simply make the problem worse.

These are the same documents each person needs to read before buying into a condominium. Therefore, they have already acknowledged and accepted the governing documents in the sale of the Condo.

I read mine and often will refer to these same documents for various reasons first as an Owner and 2<sup>nd</sup> as a Board Member.

Refer to Milton Motooka, Esq. Ten tips for avoiding litigation.

## **TEN TIPS FOR AVOIDING LITIGATION**

**(BETTER KNOWN AS THE TEN COMMANDMENTS FOR LIFE WITHOUT LAWYERS)**

1. Do not become a director unless you *have and will spend the time required to do the job.*
2. Be involved in the operation of the Association and treat its operation as the operation of a business.
3. Be familiar with the project documents and understand the Association's responsibilities, authority and limitations.

---

## **TEN TIPS FOR AVOIDING LITIGATION**

**(BETTER KNOWN AS THE TEN COMMANDMENTS FOR LIFE WITHOUT LAWYERS)**

4. When making decisions, carefully review the information provided before proceeding. Do not blindly accept information provided. If necessary, the Board should do independent investigations.
5. When appropriate, seek the advice of professionals.
6. Decisions should be based on what is in the best interest of the Association – not what is “popular,” or what is best for you.

Many Condo attorneys will use the term “reasonable” when discussing issues with their respective condo board.

Are the many disputes between an Owner and the Board reasonable?

Many of the testimonies submitted to this task force reflect “not so reasonable”.

The statistic provided by Lila Mower in Lourdes Scheibert testimony dates November 23, 2023, show a large portion of disputes are allegations of violations (93.575%) to the governing documents.

Telling an owner, they should “get out and sell” is such an insulting response to a very large problem facing the condo community since the days of Richard Port. Retaliation tactics are often used to force down an owner until he/she finally gives up and sells.

CAI touts the “sense of community”. Where is the sense of community with mediation failures at 93.575%? (Lourdes Sheibert Nov 30, 2023 testimony)

Condominiums are “self-governing” in accordance with State, City Ordinances, Federal Laws and the governing documents. Condo Boards have existing rules and regulations to follow, yes they can amend them with the proper approval of the owners.

Condo Boards represent their owners and need to apply the “business judgment rule”, fiduciary duty and prudent decision making. They have a support system in place to use the hired management company and their respective condo attorney for guidance.

If Condo boards followed the above, there would be very few “Kings and Queens” or rogue boards that create the headache for most boards following the rules and regulations.

Licensing of Management Companies and the individual CAM/Property Manager needs to move forward and pass legislation. Licensing to require pre licensing and exam and yearly continuing education.

Condo Board Education for new board members needs to move forward and pass legislation. A yearly “Law update” will most certainly keep our Hawaii Board members updated and a reminder of the task they have volunteered and accepted to follow.

Mediation requires an unbiased mediator and not a condo attorney. Condo attorney mediators already have a conflict of interest.

Testimonies submitted note that in their cases the mediator started the mediation only to disclose at that time of a “conflict of interest”. That should have been done in the mediation planning, just the same as a board member with a conflict of interest.

Bottom line, everyone in the condo needs (and is required in statute) to follow the rules and regulations of the State, City Ordinances and governing documents. The board has the added requirement of Federal Law regulations.

Respectfully,

Raelene Tenno

## Kyle-Lee N. Ladao

---

**From:** Viki Desaulniers [REDACTED]  
**Sent:** Wednesday, November 22, 2023 4:31 PM  
**To:** Kyle-Lee N. Ladao  
**Subject:** [EXTERNAL] CONDO OMBUDSMAN

CAUTION: This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Aloha Kyle-Lee, My name is Viki Desaulniers, I've owned w/in a trust a Makaha Surfside condo unit I live in... I've lived in it for 18 years. I came to Hawai'i in 1953, I was 1 year old....

Now I'm 71 years old & would love to enjoy my Golden Years where I live... Unfortunately that has not been possible for too many unacceptable reasons to get into Specifics?! We as Condo Owners live in what are supposed to be Self Governed Entities & if that is not being honored by the powers to be? We have no Advocates in Hawai'i.... We need this in Hawai'i sooner than later, please! Mahalo for your time & commitment! Sincerely, Viki Desaulniers [REDACTED]  
[REDACTED]

Sent from my iPhone

**From:** [William Lazu](#)  
**To:** [Kyle-Lee N. Ladao](#)  
**Subject:** [EXTERNAL] Condominium Ombudsman  
**Date:** Wednesday, November 22, 2023 3:15:29 PM

---

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Aloha Kyle-Lee,

My name is William Lazu, I bought a condo at Makaha Surfside around 10 years ago. I've been on our board twice.

I moved to Hawaii in 1976 and have loved it ever since. Who is our advocate. Hint: no one. We have had problems with our property management company even though we have tried different companies.

We need a condominium ombudsman who can address our serious concerns. Please read the Civil Beat article, last month, on how we were robbed of over \$300,000.00, while our board claimed ignorance. The owners MUST have the right to protect their investment from unscrupulous property management companies and board officers who are not fulfilling their fiduciary responsibilities.

This is a simple answer to many issues.

Please call me as needed.

Mahalo nui loa,  
William "Bill" Lazu



[Sent from Yahoo Mail on Android](#)