



**Hawaii Real Estate Commission**

# **CONDORAMA VI**

**PRESENTED BY CAI HAWAII**

A **Free** Education Program for Condominium Owners

## **Topics Include:**

Effective Participation In The Legislative Process

Legal Issues Relating To Board Meetings

Parliamentary Procedure & Best Practices for Board Meeting



**Saturday, November 9, 2019**  
**Program: 9:00 a.m. to 10:30 a.m.**  
**State Capitol Auditorium**



## CONDORAMA VI

November 9, 2019

### AGENDA

8:30 – 9:00 a.m.	Registration
9:00 – 9:05 a.m.	Welcome & Introductions
9:05 – 9:35 a.m.	Effective Participation in the Legislative Process - Act 282 (2019), the "Nonjudicial Foreclosure Bill", A Case Study Gordon M. Arakaki, Esq.
9:35 – 9:55 a.m.	Legal Issues Relating to Board Meetings John A. Morris, Esq.
9:55 – 10:25 a.m.	Parliamentary Procedure and Best Practices for Owners and Boards at Board Meetings Rachel Glanstein, PRP
10:25 – 10:40 a.m.	Questions, Evaluation, and Adjournment

*The materials and information provided in this educational effort is intended to provide general education and information and is not a substitute for obtaining legal advice or other competent professional assistance to address specific circumstances. The information contained in this presentation is not an official or binding interpretation, opinion or decision of the Hawaii Real Estate Commission (Commission) or the Department of Commerce and Consumer Affairs.*

*This educational presentation is funded by the Condominium Education Trust Fund (CETF), Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii for condominium unit owners whose associations are registered with the Real Estate Commission.*



## Speakers

**GORDON M. ARAKAKI** has been in practice in Hawaii for over 35 years and has a wealth of experience in both the public and private sectors, as well as substantial experience working with communities, businesses, and government.

- Government Affairs/Lobbying

Gordon has served as the Chief of Staff/Committee Clerk of the Senate Committee on Ways and Means (i.e., the Senate committee responsible for crafting the State's budget and accounting for all measures with fiscal impacts) (2007-2008, 2000), and as Staff Attorney/Committee Clerk for the Senate Committee on Education and Technology (1999) and Senate Committee on Commerce, Consumer Protection, and Information Technology (1997-1998). He also served as Sen. David Ige's Campaign Manager for his House and Senate races (1986-2013) and was part of the core team for Governor Ige's historic 2014 gubernatorial campaign.

With that background and experience and a lifetime spent earning trust and respect, Gordon helps clients navigate the complex law-making processes of the State Legislature.

- Condominium Law

From December 2000 through June 2004, Gordon served as the Hawaii Real Estate Commission's Condominium Law Recodification Project Attorney. During his time as the Recodification Project Attorney, he worked with lawmakers, the Commission, a blue ribbon advisory committee, and stakeholders throughout the State to "update, clarify, organize, deregulate, and provide for consistency and ease of use" of Hawaii's then 44+ year old condominium law. He is the author of the Commission's final report to the Legislature on the recodification of Hawaii's condominium property regimes law, which the Legislature stated should be used as an aid in understanding and interpreting the new law (Hawaii Revised Statutes Chapter 514B). Gordon has lectured and written extensively on the recodification of Hawaii's condominium law, as well as a number of land use issues.

For his work with the condominium community in "helping craft and advance the next generation of the Hawaii Condominium Property Act," Gordon received the Community Associations Institute—Hawaii Chapter's 2004 "Public Advocate Award."

**JOHN A. MORRIS** first became involved with condominiums and homeowner associations when he served for three years (1988-1991) as the first condominium specialist for the Hawaii Real Estate Commission. As condominium specialist, he gave advice on questions about the condominium law and helped review developers' filings for new projects. He also helped establish the Commission's condominium education and mediation programs and proposed and drafted new legislation and rules for the Commission, including the legislation and rules relating to reserves. On behalf of the Commission, he prepared a detailed report for the 1991 legislative session analyzing the issues he encountered as condominium specialist and the problem areas of the law.

Mr. Morris has spoken and written articles about homeowner associations and legislation affecting them. Each year, he helps the firm of Ekimoto & Morris, LLC publish a 400-page "Director's Guide to Hawaii Community Association Law", a handbook for directors which includes the condominium law and other relevant statutes, as well as an analysis of the legal requirements relating to the management and operation of homeowner associations in Hawaii. The Director's Guide is a resource used by many managers and directors throughout the State of Hawaii.

Mr. Morris is a past president of the Hawaii Chapter of CAI and a former member and co-chair of its Legislative Action Committee. Every year, he participates in legislative hearings on changes to the condominium law and provides testimony on proposed bills. In 2011, he served as a member of the Mortgage Foreclosure Task Force Advisory Committee. The committee was created by the Legislature to provide advice and assistance in developing a fair and effective foreclosure law.

**RACHEL GLANSTEIN, PRP** is the youngest Professional Registered Parliamentarian in the State of Hawaii. She has been a member of the National Association of Parliamentarians since 1999. She has served as either a parliamentarian or a professional presiding officer at over 650 meetings since 2004. Rachel's parliamentary specialty is in the area of condominium and community associations. She has consulted with various law firms, providing them with parliamentary terminology to protect their client's procedural rights as well as to ensure that meetings are conducted fairly.

Rachel also has a day job; she is currently employed as the Supervising Property Tax Clerk II with the City & County of Honolulu Real Property Assessment Division.

Rachel has in the past performed parliamentary judging on the state level. She is experienced in teaching about parliamentary procedure. She has served in every office of the Hawaii State Association of Parliamentarians, and of two parliamentary units in the state (Aloha-Ohana Unit of Parliamentarians, the largest parliamentary unit in the state and one of the largest parliamentary units in the country, and the Pono Unit of Parliamentarians).

Rachel is also active on the national level and currently serves as an instructor for continuing education webinars in parliamentary procedure. She has served as the chair of the Parliamentary Research Committee, which publishes general parliamentary questions and answers for parliamentarians throughout the country in the *National Parliamentarian*.

## **“There Ought to be a Law ... How Can I Help that Happen?”**

By Gordon M. Arakaki  
Attorney at Law, LLC

Saturday, November 9, 2019  
Hawaii State Capitol

---

### **OUTLINE**

#### **PEOPLE, PROCESS, AND TOOLS/RESOURCES**

##### **I. PEOPLE**

- The Legislative Process is a Most Human Process.
  - ✓ A friend once told me that he hates politics and doesn’t get involved in it. I responded that politics is just a whole bunch of different people trying to figure out a way to live together on an island without killing each other first. I also noted that whether it’s family, friends, your workplace, your community, or the State Legislature, we all engage in politics at some level.
  - ✓ Everything you’ve learned in your life about getting along with others applies here.
  - ✓ Golden Rule.
- Help one another be our better selves.
  - ✓ Not BEST selves; that’s impossible to sustain.
  - ✓ Our sustainable BETTER selves.

- Make it easier for people to help you.
  - ✓ E.g., initially make requests by e-mail; you can follow up in person with copy of e-mail. [Putting things in writing from the beginning helps you to organize your thoughts and can be the basis for crafting your testimony.]
  - ✓ Put hard copy on colored paper. [There is a blizzard of white paper on staff's desk during crunch times. I'll have more examples throughout my presentation.]
- Ultimately, it's about earning and keeping trust and respect. [Legislators and Staff should be able to trust your word and respect your character.]

## II. PROCESS

- “There Ought to be a Law”—The Legislative Process
  - The Legislative branch of Hawaii's philosophy is that the Legislature should be a marketplace of ideas. Therefore, it is really easy to get a bill introduced in the Hawaii State Legislature. That is why there are thousands of bills introduced in the Legislature every year. [Note that it is different in some other states.]
  - For that reason, the legislative process is set up to kill bad legislation, not pass good legislation. [Yes, I realize that “bad” and “good” may be in the eyes of the beholder. Note lessons from interning at the Legislature while in last year of law school.]
- A. The Legislative Calendar, generally
1. Interim/Pre-Session [May-December] [Now is the time to be crafting bills for the upcoming legislative session.]
  2. Session [January-1<sup>st</sup> week of May]
  3. Governor's Deadline to Veto Bills [early July]
- B. Crafting a Bill and getting it Introduced



1. What is the problem you are trying to fix? You must be able to clearly define the problem you are trying to fix by having a new law passed or an existing law amended.
2. So what? You must be able to explain why having a new law passed or an existing law amended is important to the condominium community.

[Judge Sam King once observed: “I’ll take judicial notice that the sun might not come up tomorrow.” Everything in life has risk. The question is whether the risk is unreasonable. I do not believe that it is possible or desirable to pass laws or rules that try to guard against reasonable risks.]

3. Is a statewide law applying to all condominiums the best way to fix it? The change you want can often be accomplished without having a new law passed or existing law amended, which would affect all of the 1,700+ condominium associations in Hawaii.
4. Who should I ask to help craft and introduce my bill? [The subject matter committee chairs; your district Representative and Senator; House Speaker and Senate President.]
5. When should I ask them? [Now (November) is good.]

C. Working a Bill through the Legislature [Example: SB 551, CD1]

The Legislative Calendar drives everything

1. Bill Introduction Deadline [1 week after Legislature convenes]
2. Bill Referrals
3. Getting a Bill scheduled for Hearing
  - a. Meeting with Legislators, Staff, and other Stakeholders; providing information and educating. [If the problem is hard to understand, help them get beyond the limitations of their experience and imagination. This step is ongoing. Note that almost all of the work is done by legislative committees; it is rare that substantive work on a bill is done on the Floor by the full House or Senate.]

b. Submitting testimony/testifying at a Hearing

["The world is run by those who show up." If you are the primary proponent or opponent of a bill, you need to show up in person to testify. Again, everyone can help others get beyond the limitations of their experience and imagination.]

c. What kind of testimony is effective? [Describe cumulative, petition-like testimony (which does have its uses, but not as a primary point of persuasion); referencing other testimony; high-lighting new information that you believe is important in considering proposed bill. Sample testimony may be provided.]

4. First Lateral (mid-February)/First Crossover (early March)  
Deadlines ["Idea Triage" time.]
5. Second Lateral (mid-March)/Second Crossover (early April)  
Deadlines [Persuading the other Chamber.]
6. Conference Committee (last two weeks of April) [Crunch time.]
7. Gratitude Regardless of Outcome

D. Getting the Governor to sign a Bill into Law (or allow it to become law without his signature)

1. Deadline is 45 days after the Legislature adjourns, Sine Die, not counting weekends and holidays.
2. Notice of Intent to Veto Deadline is 35 days after the Legislature adjourns, Sine Die, not counting weekends and holidays.
3. Educating the Governor and the Governor's policy staff.

["It's not over until it's over." Example of SB 551, CD1. Copy of my letter to Gov. Ige is provided.]

### III. TOOLS/RESOURCES

- Hawaii State Legislature’s website. [Subscribing to receive hearing notices, bill tracking, submission of testimony.]
- Public Access Room. [PAR provides: Legislative Calendar, legislators and staff contact info, conference room schedules, etc.]
- Department of Commerce & Consumer Affairs—Real Estate Branch
- Community Associations Institute—Hawaii Chapter

### IV. CONCLUSION

I leave you with the following thoughts and reminders regarding People, Process, and Tools to help you navigate lawmaking with the Hawaii State Legislature:

#### People

- When dealing with legislators, legislative staff, and stakeholders, be your better self and help one another be our better selves.
- Make it easier for people to help you.
- Continuously work to earn and keep the trust and respect of others.

#### Process

- When proposing a new law or an amendment to an existing law, what is the problem you are trying to fix?
- Is a law applying to all condominiums in Hawaii the best way to fix the problem?

- Please think about the kind of community you are trying to encourage when you have a law passed.
- The calendar rules. Deadlines matter.
- “The world is run by those who show up.”

#### Tools/Resources

- Hawaii State Legislature’s website.
- Public Access Room.
- Department of Commerce & Consumer Affairs—Real Estate Branch
- Community Associations Institute—Hawaii Chapter



**GORDON M. ARAKAKI**

Attorney at Law, LLC  
94-1176 Polinahe Place  
Waipahu, Hawaii 96797  
Cell: (808) 542-1542  
E-mail: gordonarakaki@hawaiiantel.net

July 2, 2019

The Honorable David Y. Ige, Governor  
Executive Chambers  
State Capitol  
Honolulu, Hawaii 96813

Re: **S.B. 551, C.D. 1 (2019)—Relating to Condominiums (nonjudicial foreclosures)**

Dear Governor Ige:

I respectfully request that you either sign S.B. 551, C.D. 1 (2019) into law or allow it to become law without your signature.<sup>1</sup> The sections of the bill that apply retroactively do *not* give condominium associations anything more than they already explicitly had under Hawaii Revised Statutes (“HRS”) Chapters 514A and 514B, before the Hawaii Intermediate Court of Appeals’ (“ICA”) clearly erroneous decision in Sakal v. AOA Hawaiian Monarch, 426 P.3d 443 (July 26, 2018) regarding condominium association nonjudicial foreclosures.

As described in the October 2018 Hawaii Bar Journal, “the ICA concluded that ... *at no point did the Legislature take up the issue of whether to enact a blanket grant of powers of sale over all condominiumized properties in Hawaii*” and “a power of sale in favor of a foreclosing association *must otherwise exist, in the association’s bylaws* or another enforceable agreement with its unit owners, for the association to avail itself of the nonjudicial power of sale foreclosure procedures set forth in Haw. Rev. Stat. ch. 667.” (Emphasis added.)

Based on Hawaii’s condominium law under both HRS Chapter 514A and 514B, nothing could be further from the truth. Please consider the following facts:

---

<sup>1</sup> By way of background, from December 2000 through June 2004, I served as the Hawaii Real Estate Commission’s Condominium Law Recodification Project Attorney. In that capacity, I worked with lawmakers, the Commission, a blue ribbon advisory committee, and stakeholders throughout the State to “update, clarify, organize, deregulate, and provide for consistency and ease of use” of Hawaii’s then 44+ year old condominium law. The State Legislature directed that the Commission’s final report on the recodification (which I wrote) be used as an aid in understanding and interpreting Hawaii’s then new condominium law (i.e., HRS Chapter 514B).

Before I became a solo practitioner in 2014, I generally represented condominium associations, but occasionally represented or advised individuals when I believed that a condominium association was doing something fundamentally wrong. I have also represented some small condominium developers.

I am not involved in any of the litigation that gave rise to the need for S.B. 551, C.D. 1 (2019) and am not being paid by anyone to try to get this bill passed. I am seeking the enactment of S.B. 551, C.D. 1 (2019) because it is the right thing to do.

**1. Pursuant to Act 236 [Session Laws of Hawaii (“SLH”) 1999], all condominiums had the statutory authority to enforce their liens through the nonjudicial foreclosure or power of sale process, and that authority was *deemed incorporated into the Bylaws of all condominium projects*.**

- Pursuant to HRS §514A-82 (Contents of bylaws), subsection (b)(13), “A lien created pursuant to section 514A-90 may be enforced by the association in any manner permitted by law, including nonjudicial or power of sale foreclosure procedures authorized by chapter 667.”
- Pursuant to the explicit statutory language of HRS §514A-82, all provisions of HRS §514A-82, subsection (b) “... *shall be deemed incorporated into the bylaws of all condominium projects* existing as of January 1, 1988, and all condominium projects created after that date.” (Emphasis added.) Therefore, HRS §514A-82(b)(13) is the explicit grant of the power of sale authority to enforce a condominium association’s lien for assessments that the ICA somehow missed.
- Inexplicably, the ICA completely ignored HRS §514A-82(b)(13), which covered requirements for the contents of a condominium project’s bylaws. It only analyzed HRS §514A-90 and its successor provision HRS §514B-146, which deal with the condominium association’s lien for assessments.
  - The ICA cited Act 236 [SLH (1999)], which added the authority of condominium associations to use “nonjudicial or power of sales procedures authorized by chapter 667,” at length when discussing HRS §514A-90, but somehow missed HRS §514A-82(b)(13), *which was also enacted by Act 236 [SLH (1999)]*.

**2. The statutory authority of all condominiums to enforce their liens through the nonjudicial foreclosure or power of sale process never changed with the enactment of HRS Chapter 514B.**

- The artificial and confusing prospective/retrospective bifurcation of HRS §514A-82 into subsections (a) and (b) was the unfortunate result of an old Attorney General’s opinion. When we crafted the recodified condo law that was enacted as HRS Chapter 514B we got rid of the artificial treatment of the provisions in HRS §514A-82 and incorporated many of its provisions, including the association’s authority to use nonjudicial foreclosure to enforce its liens, into more appropriate sections in the recodified condo law (HRS Chapter 514B; the authority was already in HRS §514B-146).

As explained in the Real Estate Commission’s Guiding Principle #3 in its Prefatory Comments to the “Management of Condominiums” Part in its Final Report to the Legislature (December 31, 2003):

The recodified condominium law should enhance clarity of Condominium Property Act.

Provisions on a single issue (e.g., proxies) should be consolidated or grouped together. The artificial approach regarding the contents of bylaws developed in HRS §514A-82(a) and (b) should be eliminated. And the statutory requirements for condominium governing documents should be minimized while incorporating certain provisions currently in HRS §514A-82(a) and (b) in more appropriate statutory sections.

Pursuant to Act 164 (SLH 2004), the Real Estate Commission's "Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes) In Response to Act 213, Section 4 (SLH 2000)," dated December 31, 2003, should be used as an aid in understanding and interpreting the new condominium law (HRS Chapter 514B).

- When we crafted the recodified condominium law, we made sure that all amendments to HRS Chapter 514B applied retrospectively to all condominiums created after the effective date of HRS Chpt. 514B (i.e., July 1, 2006). [See, HRS §514B-21, which until January 1, 2019 read in pertinent part as follows: "This chapter applies to all condominiums created within this State after July 1, 2006. ... Amendments to this chapter apply to all condominiums created after July 1, 2006 or subjected to this chapter, regardless of when the amendment is adopted."]

We did not want HRS §514A-82's artificial bifurcation of "prospective" provisions in subsection (a) and "retrospective" provisions in subsection (b). We wanted people to pay attention to what is going on in the Legislature.

As amended by the 2017 Legislature, the provision now applies to all condominiums regardless when created. [See, HRS Sec. 514B-21, which after January 1, 2019 has read in pertinent part as follows: "This chapter applies to all condominiums created within this State; ... Amendments to this chapter apply to all condominiums, regardless of when the amendment is adopted."]

- Clearly, the provisions in HRS Chapters 514A and 514B allowing condominium associations to enforce their liens using the nonjudicial foreclosure process have statutorily applied to all condominiums ever since Act 236 (SLH 1999) became law in 1999.
- Retrospectively applying Sections 3 and 4 of S.B. 551, C.D. 1 to all proceedings in which a final non-appealable judgment has not yet been entered is the most appropriate (perhaps only) remedy. As demonstrated by the analysis above, applying Sections 3 and 4 of S.B. 551, C.D. 1 in this manner does not give condominium associations anything more than they already explicitly had under HRS Chapters 514A and 514B before the ICA's erroneous decision in Sakal.

**3. If S.B. 551, C.D. 1 does not become law, the ICA's erroneous decision in Sakal will lead to absurd and unjust results.**

When one considers the statutory authority of a condominium association to restate its declaration and bylaws by resolution adopted by its board, it is easy to see that the provisions in HRS Chapters 514A and 514B allowing condominium associations to enforce their liens using the nonjudicial foreclosure process have statutorily applied to all condominiums ever since Act 236 (SLH 1999) became law in 1999.

Pursuant to HRS §514B-109 (Restatement of declaration and bylaws) and its predecessor, HRS §514A-82.2, a condominium association “may restate the declaration or bylaws of the association to amend the declaration or bylaws as may be required in order to conform with the provisions of this chapter or of any other statute, ordinance, or rule enacted by any governmental authority ... by a resolution adopted by the board” (i.e., by a majority of a quorum of a board) and “[t]he restated declaration or bylaws shall be as fully effective for all purposes as if adopted by a vote or written consent of the unit owners.” Restated declarations and bylaws are required to be recorded.

Regardless of whether a condominium association restates its documents or not, however, “the provisions of this chapter” (i.e., HRS Chapter 514B or, previously, its predecessor HRS Chapter 514A) still apply.

The ICA opinion in Sakal, however, requires that “a power of sale in favor of a foreclosing association must otherwise exist, in the association’s bylaws ... for the association to avail itself of the nonjudicial power of sale foreclosure procedures set forth in Haw. Rev. Stat. ch. 667.” The ICA requirement authorizes an association that has restated (not amended) its bylaws to enforce its liens using the nonjudicial foreclosure process, while prohibiting an association that has simply relied on the statutes authorizing condo associations to enforce their liens through the nonjudicial foreclosure process (i.e., nullifying the same statutory authority that permits a condo association to restate its bylaws in the first place!).

Under the ICA opinion in Sakal, the polar opposite treatment of condominium associations that do and don’t restate their bylaws creates an absurd result, and “[s]tatutory construction dictates that an interpreting court should not fashion a construction of statutory text that effectively renders the statute a nullity or creates an absurd or unjust result.” *Dines v. Pacific Ins. Co., Ltd.*, 78 Hawai’i 325, 337, 893 P.2d 176, 188 (1995) (Ramil, J., dissenting) (citing *Richardson v. City & County of Honolulu*, 76 Hawai’i 46, 60, 868 P.2d 1193, 1207, reconsideration denied, 76 Hawai’i 247, 871 P.2d 795 (1994)).

Finally, even if HRS §514A-82(b)(13) never existed, a condominium association could still have restated into its bylaws (i.e., incorporated into its bylaws by restatement rather than amending its bylaws by vote or written consent of the association’s owners) the statutory authority granted by HRS §514A-90 (now HRS §514B-146) to use “nonjudicial or power of sales procedures authorized by chapter 667” to enforce its lien for assessments. It makes more sense, of course, for a condominium association to simply rely on the statute regarding the



association's lien for assessments rather than restating the statutory language in the association's bylaws.

As wisely noted by the trial court, "[it] doesn't make any sense for the association to have to amend its bylaws every time the Legislature amends the law."

**Conclusion:**

Governor, I respectfully request that you either sign S.B. 551, C.D. 1 (2019) into law or allow it to become law without your signature. It is the right thing to do.

With Much Aloha,

GORDON M. ARAKAKI

P.S. Part of the reason that the ICA reached the wrong conclusion might be that it used the wrong standard to review the association's governing documents. That analysis is not directly relevant to my analysis above, though, so I've included it as an attachment for your reading pleasure.

GMA:ga

### **Attachment**

The ICA uses the wrong standard in Sakal when analyzing provisions in a condominium association's governing documents (i.e., its declaration, bylaws, condominium map, etc.).

The ICA in Sakal claims that the ambiguity regarding a condominium association's authority to use the nonjudicial power of sale (as perceived by the ICA) must be construed "against the drafter—the AOA." Wrong.

When we crafted the recodification (enacted as HRS Chapter 514B), we recognized that: (i) condominium associations were stepping into the shoes of developers and (ii) those developers drafted governing documents that generally protected very different interests than those of condominium associations.

For that and other reasons (explained in the official comment that I have reproduced below), HRS §514B-10(b) was enacted. It reads: "Any deed, declaration, bylaw, or condominium map *shall be liberally construed to facilitate the operation of the condominium property regime.*" (Emphasis added.)

As explained in the Real Estate Commission's Comment regarding HRS §514B-10(b) in its Final Report to the Legislature (dated December 31, 2003), which the 2004 Legislature directed should be used to help understand and interpret the law:<sup>2</sup>

Subsection (b) is intended to *negate* any implication that the Hawaii Supreme Court holdings regarding restrictive covenants/equitable servitudes in Hiner v. Hoffman, 90 Haw. 188, 977 P.2d 878 (1999), and Fong v. Hashimoto, 92 Haw. 568, 994 P.2d 500 (2000), apply to condominium communities. Given the importance of condominiums to the quality of life of Hawaii's people, laws must support the fair and efficient functioning of our condominium communities (and other common interest ownership communities).

In Hiner, defendants-appellants ("Hoffmans") constructed a three story house on a lot which was (along with 118 other lots) subject to a restrictive covenant prohibiting any dwelling "which exceeds two stories in height." The Hoffmans had actual knowledge of the restrictive covenant. After warning the Hoffmans of their violation of the restrictive covenant, neighboring homeowners and the community association sued to have the Hoffmans remove the third story of their house.

At the trial court level, the Hoffmans argued that their house consisted of "two stories and a basement." The trial court rejected the Hoffmans' argument and ordered them to remove the third (top) story of their house.

On appeal, the Hoffmans changed their argument and claimed that the term "two stories in height" was ambiguous. In a 3-2 decision, the Hawaii Supreme Court ruled that the term "two stories in height" was ambiguous since it did not provide any dimensions

---

<sup>2</sup> See, Act 164, Session Laws of Hawaii (2004), Section 1.

for the term “story” and was therefore unenforceable in light of the restrictive covenant’s undisputed purpose (to protect views by restricting the height of homes within the neighborhood). The majority on the Court stated that it was following a “long-standing policy favoring the unrestricted use of property” when construing “instruments containing restrictions and prohibitions as to the use of property.” Finally, the majority noted that “such ‘free and unrestricted use of property’ is favored only to the extent of applicable State land use and County zoning regulations.”

In so doing, the majority appeared to ignore the massive growth of servitude regimes over the past forty years and the corresponding importance of ensuring the fair and efficient functioning of such communities (whether they be condominiums or, as in this case, planned communities). As noted by the dissent in Hiner, “where one hundred or more homeowners in the Pacific Palisades community have limited their own property rights in reliance that their neighbors will duly reciprocate, . . . it [is] manifestly unjust to sanction the Hoffmans’ willful non-compliance based on the ‘policy favoring the unrestricted use of property.’” The dissent concluded with the observation that “the majority opinion over-emphasizes the rights of the Hoffmans without due regard to the rights of their neighbors.”

Eight and a half months after deciding Hiner, the Hawaii Supreme Court in Fong invalidated as ambiguous a restrictive covenant limiting certain houses to “one-story in height.” (The Court also found that there was no common scheme to support an equitable servitude and that the restrictive covenant was unenforceable since it was improperly created.)

The archaic body of servitudes law from which the Hawaii Supreme Court fashioned its decisions in Hiner and Fong evolved from rules developed to govern relatively small groupings of property owners (compared to today’s condominium and planned development communities) in contexts largely unrelated to modern common interest ownership communities.

Contrast the Hawaii Supreme Court’s current approach regarding servitudes in common interest ownership communities with that of the *Restatement of the Law, Third, Property (Servitudes)*. As stated in the *Restatement’s* introductory note to Chapter 6 – Common-Interest-Communities:

The primary assumption underlying Chapter 6 is that common-interest communities provide a socially valuable means of providing housing opportunities in the United States. The law should facilitate the operation of common-interest communities at the same time as it protects their long-term attractiveness by protecting the legitimate expectations of their members.

The *Restatement’s* position on servitudes should be used by courts as a guide in resolving disputes over servitudes in condominiums and other common interest ownership communities.

An earlier incarnation of the Hawaii Supreme Court said it well. In State Savings & Loan Association v. Kauaian Development Company, Inc., et al., the Court stated that:

The [Horizontal Property Regimes Act] has profound social and economic overtones, not only in Hawaii but also in every densely populated area of the United States. Our construction of such legislation must be imaginative and progressive rather than restrictive.

. . . .

This court will not follow a common law rule relating to property where to do so would constitute a quixotic effort to conform social and economic realities to the rigid concepts of property law which developed when jousting was a favorite pastime.<sup>3</sup>

As you can see, when HRS §514B-10(b) was enacted, the Legislature essentially statutorily overruled the Hawaii Supreme Court's holding regarding ambiguity in condominium governing documents and construing the governing documents strictly against the purported "drafter" of the governing documents (i.e., the condominium association that has stepped into the shoes of the developer that originally drafted the governing documents). Instead, the Legislature adopted a "facilitate the operation of the condominium property regime" standard for construing a condominium's governing documents.

HRS §514B-3 defines "operation of the property" as "the administration, *fiscal management*, and physical operation of the property,<sup>4</sup> and includes the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements." (Emphasis added.) Consequently, the governing documents of a condominium must be liberally construed to facilitate the fiscal management (among other things) of the condominium.

---

<sup>3</sup> Internal citations omitted.

<sup>4</sup> HRS §514B-3 defines "property" as follows:

"Property" means the land, whether or not contiguous and including more than one parcel of land, but located within the same vicinity, the building or buildings, all improvements and all structures thereon, and all easements, rights, and appurtenances intended for use in connection with the condominium, which have been or are intended to be submitted to the regime established by this chapter. "Property" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

## Condorama VI

**“There Ought to be a Law ... How Can I Help it Happen?”**

---

*By Gordon M. Arakaki  
Attorney at Law, LLC  
Former Hawaii Condominium Law Recodification Attorney*

*Community Associations Institute—Hawaii Chapter*

*November 9, 2019*



## PREFACE

---

Melting Pot,  
Salad Bowl,  
or Cultural Stew?



## PRESENTATION OUTLINE

---

- People
- Process
- Tools/Resources



## PEOPLE

---

- **The Legislative Process is a Most Human Process**
  - Hate “politics”?
  - Everything you’ve learned in your life about getting along with others applies here
  - Golden Rule



## PEOPLE

---

➤ **Help one another be our better selves**

- Not BEST selves; that's impossible to sustain
- Our sustainable BETTER selves



## PEOPLE

---

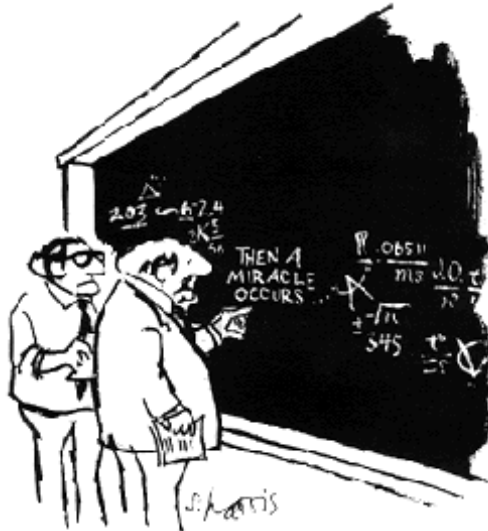
➤ **Make it easier for people to help you**

- For example, initially make requests by e-mail; you can follow up in person with copy of e-mail
- Put really important hard copy on colored paper

## PEOPLE

- Ultimately, it's about earning and keeping trust and respect

## The Legislative Process



'I think you should be more explicit here in step two.'



# LEGISLATIVE PROCESS

- **“There Ought to be a Law”**
- The Legislative branch of Hawaii’s philosophy is that the Legislature should be a marketplace of ideas
- It is really easy to get a bill introduced in the Hawaii State Legislature
- The process is set up to kill bad legislation, not pass good legislation

**Hawaii State Legislature**  
30th Legislature, 2019  
The Legislature has adjourned sine die.

**SB551 SD1 HD2 CD1**

**Measure Title:** RELATING TO CONDOMINIUMS.  
**Report Title:** Associations; Nonjudicial Foreclosure; Power of Sale.  
**Description:** Requires associations to offer mediation with a notice of default and intention to foreclose. Clarifies that the explicit grant of power of sale to associations is not required for the purposes of enforcing association liens under the association alternate power of sale foreclosure process. Applies retroactively to pending matters that arose prior to the effective date. (CD1)  
**Companion:**  
**Packages:** None  
**Current Referral:** CPC, JUD  
**Introducer(s):** BAKER, S. Chang

Sort by Date	Status Text
1/18/2019	S Introduced.
1/22/2019	S Passed First Reading.
1/24/2019	S Referred to CPH, JDC.
1/25/2019	S The committee(s) on CPH has scheduled a public hearing on 01-31-19 9:30AM in conference room 229.
1/31/2019	S The committee(s) on CPH recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in CPH were as follows: 7 Aye(s); Senator(s) Baker, S. Chang, M. Kachulisole, Hishihara, Ruderman, L. Thieden, Fevela; Aye(s) with reservations: none; 0 No(es); none; and 0 Excused: none.
2/7/2019	S Reported from CPH (Stand. Com. Rep. No. 98) with recommendation of passage on Second Reading, as amended (SD 1) and referral to JDC.
2/7/2019	S Report adopted; Passed Second Reading, as amended (SD 1) and referred to JDC.
2/15/2019	S The committee(s) on JDC will hold a public decision making on 02-20-19 10:30AM in conference room 016.
2/20/2019	S The committee(s) on JDC recommend(s) that the measure be PASSED, UNAMENDED. The votes in JDC were as follows: 4 Aye(s); Senator(s) K. Rhoads, Waiaka, Gabbard, Kim; Aye(s) with reservations: none; 0 No(es); none; and 1 Excused: Senator(s) Fevela.
2/28/2019	S Reported from JDC (Stand. Com. Rep. No. 812) with recommendation of passage on Third Reading.
2/28/2019	S One Day Notice 03-01-19.

**All Versions of this Measure**

- SB551 SD1
- SB551 HD2
- SB551 HD1
- SB551 CD1
- SB551

**Committee Reports**

- SB551 SD1 SSCR88
- SB551 SD1 SSCR812
- SB551 HD1 HSCR1404
- SB551 HD2 HSCR2200
- SB551 CD1 CCR65

**Testimony**

Filename

- SB551\_TESTIMONY\_CPH\_01-31-19
- SB551\_SD1\_TESTIMONY\_JDC\_02-20-19

arakaki@ RPFSS CAI Hawaii Chapter - Resou Real Estate Branch | Condor Measure Status

https://www.capitol.hawaii.gov/measure\_indiv.aspx?billtype=SB&billnumber=551&year=2019

3/1/2019	S	Deferred until 03-05-19.
3/5/2019	S	Report Adopted: Passed Third Reading, Ayes, 24; Aye(s) with reservations: none, Noes, 0 (none), Excused, 1 (Senator(s) Harimoto). Transmitted to House.
3/5/2019	H	Received from Senate (Sen. Com. No. 182) in amended form (SD 1).
3/7/2019	H	Pass First Reading
3/7/2019	H	Referred to CPC, JUD, referral sheet 27
3/8/2019	H	Bill scheduled to be heard by CPC on Tuesday, 03-12-19 2:00PM in House conference room 329.
3/12/2019	H	The committees on CPC recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 9 Ayes: Representative(s) Takumi, Aquino, Cabanilla Arakawa, Cachola, Har, Kong, Mizuno, Onishi, Matsumoto; Ayes with reservations: none; Noes: none; and 2 Excused: Representative(s) Ichiyama, Belatti.
3/19/2019	H	Reported from CPC (Stand. Com. Rep. No. 1404) as amended in HD 1, recommending passage on Second Reading and referral to JUD.
3/19/2019	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on JUD with Representative(s) San Buenaventura voting aye with reservations; none voting no (0) and Representative(s) Belatti, Quinlan, Yamane excused (3).
3/27/2019	H	Bill scheduled to be heard by JUD on Friday, 03-29-19 2:05PM in House conference room 325.
3/29/2019	H	The committee(s) on JUD recommend(s) that the measure be deferred until 04-02-19 at 2:00pm.
3/29/2019	H	Bill scheduled for decision making on Tuesday, 04-02-19 2:00PM in conference room 325.
4/2/2019	H	The committee(s) on JUD recommend(s) that the measure be deferred until 04-03-19 2:05pm.
4/2/2019	H	Bill scheduled for decision making on Wednesday, 04-03-19 2:05PM in conference room 325.
4/3/2019	H	The committee(s) on JUD recommend(s) that the measure be deferred until 04-04-19 at 2:00PM.
4/3/2019	H	Bill scheduled for decision making on Thursday, 04-04-19 2:00PM in conference room 325.
4/4/2019	H	The committee(s) on JUD recommend(s) that the measure be deferred until 04-05-19 at 2:00PM.
4/4/2019	H	Bill scheduled for decision making on Friday, 04-05-19 2:00PM in conference room 325.
4/5/2019	H	The committees on JUD recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 10 Ayes: Representative(s) C. Lee, San Buenaventura, Brower, Creagan, Loven, McKelvey, Morikawa, Takayama, Yamane, Thieden; Ayes with reservations: none; 1 Noes: Representative(s) Say; and Excused: none.
4/5/2019	H	Reported from JUD (Stand. Com. Rep. No. 2200) as amended in HD 2, recommending passage on Third Reading.
4/5/2019	H	Forty-eight (48) hours notice Tuesday, 04-09-19.
4/9/2019	H	Passed Third Reading as amended in HD 2 with none voting aye with reservations; Representative(s) Har, Say voting no (2) and none excused (0). Transmitted to Senate.
4/11/2019	S	Received from House (Hse. Com. No. 742).
4/11/2019	S	Senate disagrees with House amendments.
4/11/2019	H	Received notice of disagreement (Sen. Com. No. 893).
4/15/2019	H	House Conferees Appointed: Takumi, C. Lee Co-Chairs; Matsumoto.

58551 SD1 TESTIMONY CPC 03-12-19  
58551 HD1 TESTIMONY JUD 03-29-19

### Hearing Notices

Comm Room	Date/Time	Notice
CPH 229	1/31/2019 9:30 AM	<a href="#">View</a>
JDC 016	2/20/2019 10:30 AM	<a href="#">View</a>
CPC 329	3/12/2019 2:00 PM	<a href="#">View</a>
JUD 325	3/29/2019 2:05 PM	<a href="#">View</a>
JUD 325	4/02/2019 2:00 PM	<a href="#">View</a>
JUD 325	4/03/2019 2:05 PM	<a href="#">View</a>
JUD 325	4/04/2019 2:00 PM	<a href="#">View</a>
JUD 325	4/05/2019 2:00 PM	<a href="#">View</a>
CONF 229	4/22/2019 2:30 PM	<a href="#">View</a>
CONF 229	4/24/2019 2:30 PM	<a href="#">View</a>
CONF 229	4/25/2019 2:30 PM	<a href="#">View</a>

arakaki@ RPFSS CAI Hawaii Chapter - Resou Real Estate Branch | Condor Measure Status

https://www.capitol.hawaii.gov/measure\_indiv.aspx?billtype=SB&billnumber=551&year=2019

4/15/2019	S	Received notice of appointment of House conferees (Hse. Com. No. 809).
4/18/2019	S	Senate Conferees Appointed: Baker Chair; K. Rhoads Co-Chair; Fevella.
4/18/2019	H	Bill scheduled for Conference Committee Meeting on Monday, 04-22-19 2:30PM in conference room 229.
4/18/2019	H	Received notice of Senate conferees (Sen. Com. No. 918).
4/22/2019	S	Conference committee meeting to reconvene on 04-24-19 2:30PM in conference room 229.
4/24/2019	S	Conference committee meeting to reconvene on 04-25-19 2:30PM in conference room 229.
4/25/2019	S	The Conference committee recommends that the measure be PASSED, WITH AMENDMENTS. The votes of the Senate Conference Managers were as follows: 2 Aye(s); Senator(s) Baker, K. Rhoads; Aye(s) with reservations: none; 0 No(es); none; and 1 Excused: Senator(s) Fevella.
4/25/2019	H	The Conference Committee recommends that the measure be Passed, with Amendments. The votes were as follows: 3 Ayes: Representative(s) Takumi, C. Lee, Matsumoto; Ayes with reservations: none; 0 Noes: none; and 0 Excused: none.
4/25/2019	S	Reported from Conference Committee as amended CD 1 (Conf. Com. Rep. No. 65).
4/25/2019	S	48 Hrs. Notice (as amended CD 1) 04-30-19.
4/25/2019	H	Reported from Conference Committee (Conf Com. Rep. No. 65) as amended in (CD 1).
4/25/2019	H	Forty-eight (48) hours notice Tuesday, 04-30-19.
4/30/2019	S	Passed Final Reading, as amended (CD 1). Ayes, 25; Aye(s) with reservations: none, 0 No(es); none, 0 Excused: none.
4/30/2019	H	Passed Final Reading as amended in CD 1 with Representative(s) B. Kobayashi, Loven voting aye with reservations; Representative(s) DeCotte, El, Gates, Har, Holt, Matsuyoshi, McKelvey, Perruso, Quinlan, San Buenaventura, Say, Tokioka, Wildberger voting no (13) and none excused (0).
5/1/2019	H	Received notice of Final Reading (Sen. Com. No. 968).
5/2/2019	S	Received notice of passage on Final Reading in House (Hse. Com. No. 883).
5/6/2019	S	Enrolled to Governor.
6/24/2019	H	Notice of intent to veto (Gov. Msg. No. 1202)
6/24/2019	S	Notice of intent to veto dated 06-24-19 (Gov. Msg. No. 1202)
7/12/2019	H	Became law without the Governor's signature, Act 282, 07/10/2019, (Gov. Msg. No. 1402).
7/12/2019	S	Became law without the Governor's signature, Act 282, 07/10/2019, (Gov. Msg. No. 1402).

S = Senate | H = House | D = Data Systems | \$ = Appropriation measure | **ConAm** = Constitutional Amendment  
Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

## SB551 SD1 HD2 CD1

Please be advised that these pages may contain links to external Internet sites established by other entities. The Hawaii State Legislature does not maintain, review, or endorse these sites and is not responsible for their content.



## LEGISLATIVE PROCESS

---

### ➤ **The Legislative Calendar, generally**

- Interim/Pre-Session [May-December]
- Session [January-1<sup>st</sup> week of May]
- Governor's Deadline to Veto Bills [early July]



## LEGISLATIVE PROCESS

---

### ➤ **Crafting a Bill and getting it Introduced**

- What is the problem you are trying to fix?
- So what?
- Is a statewide law applying to all condominiums the best way to fix it?



## LEGISLATIVE PROCESS

---

### ➤ **Crafting a Bill and getting it Introduced** (*cont.*)

- Who should I ask to help craft and introduce my bill?
- When should I ask them?



## LEGISLATIVE PROCESS

---

### ➤ **Working a Bill through the Legislature**

### ➤ **The Legislative Calendar drives everything**

- Bill Introduction Deadline
- Bill Referrals

# LEGISLATIVE PROCESS

## ➤ Working a Bill through the Legislature (*cont.*)

- Getting a Bill scheduled for Hearing
  - ✓ Meeting with Legislators, Staff, and other Stakeholders; providing information and educating
  - ✓ Submitting testimony/testifying
  - ✓ What kind of testimony is effective?

arakaki@ RPFSS CAI Hawaii Chapter - Resou Real Estate Branch | Condor Hawaii State Legislature calendar19.pdf

lrbhawaii.org/par/fy/calendar19.pdf

2019 SESSION CALENDAR

Note: On the 60 session days (days when members convene in their respective chambers), the session day count appears in a box on the lower-right, like this: >>> 6

Color code: ■ = bills ■ = resolutions ■ = budget or fiscal bills See reverse side for more deadline information.

SUN	MON	TUE	WED	THU	FRI	SAT
<b>JANUARY</b>			16 Opening Day	17	18 Non-Admin Bill Package Cutoff & Grants/Subsidies Cutoff	19
20	21 HOLIDAY Martin Luther King, Jr. Day	22 State-of-the-State Address & Administration Bill Package Cutoff	23 Recess #1	24 State-of-the-Judiciary & Bill Intro Cutoff	25 Recess #2	26
27	28	29	30	31		
<b>FEBRUARY</b>					1	2
3	4	5	6	7 Triple Referral Filing (Bills)	8	9
10	11	12	13	14	15 First Lateral (Bills)	16
17	18 HOLIDAY Presidents' Day	19	20	21 Mandatory 5-Day Recess Begins	22	23
24	25	26	27 Mandatory 5-Day Recess Ends	28		
<b>MARCH</b>					1 First Decking (Bills)	2
3	4 Recess #3	5	6 Recess #4	7 First Crossover (Bills)	8 Substantive Resolution Cutoff	9
10	11 Budget Decking	12	13 Budget Crossover	14 Triple Referral Filing (Bills)	15	16
17	18 Triple Referral Filing (House Concurrent Resos)	19	20	21	22 Second Lateral (Bills)	23
24	25	26 HOLIDAY Kūhio Day	27 First Lateral (Senate Concurrent Resos)	28 First Lateral (House Concurrent Resos)	29	30

arakaki@ RPSS CAI Hawaii Chapter - Resou Real Estate Branch | Condor Hawaii State Legislature calendar19.pdf

lrbhawaii.org/par/fy/calendar19.pdf

Fit to page Page view Read aloud Add n

APRIL													
31	1	2	3	4 First Crossover (Concurrent Resos)	5 Second Decking (Bills)	6	7	8 Recess #5	9	10 Recess #6	11 Second Crossover (Bills) & Disagree	12	13
14	15 Second Lateral (Senate Concurrent Resos)	16	17	18 Constitutional Amendments	19 HOLIDAY Good Friday	20	21	22 Second Crossover (Concurrent Resos)	23	24	25 Final Decking (Non-Fiscal Bills)	26 Final Decking (Fiscal Bills)	27
28	29 Recess #7	30	1	2 Adjournment Sine Die	(Session pau)								
MAY													

**2019 SESSION CALENDAR: A GUIDE TO THE DEADLINES**

**JAN 16. OPENING DAY** – Hawaii's constitution mandates that the regular legislative session starts at 10:00 a.m. on the third Wednesday of January.

**JAN 18. LAST DAY TO INTRODUCE ALL NON-ADMINISTRATION BILL PACKAGES** – Bills bundled together by common interest groups and accepted and labeled as a package by the clerks. You can view the various packages of legislation by clicking on the "Reports and Lists" button on [capitol.hawaii.gov](http://capitol.hawaii.gov).

**JAN 18. LAST DAY FOR ORGANIZATIONS TO SUBMIT GRANT AND SUBSIDY REQUESTS** – Deadline for "Grant-in-Aid" (GIA) applications. Grants may be appropriated to nonprofit and other organizations for various public purposes that are recognized as priorities and are seen as complimentary to state government functions. Applications, information, and more specifics regarding the deadline appear under "Legislative Information" on [capitol.hawaii.gov](http://capitol.hawaii.gov).

**JAN 22. STATE-OF-THE-STATE ADDRESS** – The Governor's annual address to the assembled joint legislature. The address presents an opportunity for the Governor to report on affairs of state, and to put forth recommendations and initiatives. Many visitors come to the Capitol to hear the Governor's speech and witness the proceedings from the gallery (accessible on the ground floor/atrium level).

**JAN 22. LAST DAY TO INTRODUCE ADMINISTRATION BILL PACKAGE** – This is what is known as the "Governor's Package." The bills are prepared by executive branch agencies for consideration by the legislature, and are introduced on behalf of the executive branch by the President of the Senate and the Speaker of the House of Representatives. View the package of legislation by clicking on the "Reports and Lists" button on [capitol.hawaii.gov](http://capitol.hawaii.gov).

**JAN 24. STATE-OF-THE-JUDICIARY ADDRESS** – The Chief Justice's biannual address to the assembled joint legislature.

**JAN 24. LAST DAY TO INTRODUCE BILLS** – A bill is "introduced" when it has been filed with the House or Senate Clerk, who gives it a number (with an HB or SB prefix) and then puts it on the calendar for First Reading by the chamber. After First Reading, it is given its committee referrals which specify which committees must hear and pass the measure for it to succeed. Only legislators may introduce bills. (Note: At introduction, each bill is given a "Bill Status" webpage that can be accessed via the Legislature's website ([capitol.hawaii.gov](http://capitol.hawaii.gov)) and used to track all the measure's activity.)

**FEB 7. TRIPLE REFERRAL FILING (BILLS)** – All bills referred to three or more committees must be filed so that they can be in their second-to-last committee by the following day. (Note: A referral to a joint committee counts as one committee referral.) This deadline allows ample time for successful bills to make their way to the last committee in their originating chamber by the First Lateral deadline.

**FEB 15. FIRST LATERAL (BILLS)** – All bills referred to more than one committee (i.e., those with multiple referrals) must move to their final committee in the originating chamber by this day.

**FEB 21-27. MANDATORY 5-DAY RECESS** – Hawaii's Constitution mandates a 5-day recess between the 20<sup>th</sup> and 40<sup>th</sup> days of the regular session. Neither the House of Representatives nor the Senate convene or assemble formally in chamber on recess days. Committee hearings do take place.

**MAR 1. FIRST DECKING (BILLS)** – Deadline for bills to emerge from all their committees (with committee reports filed) and be submitted to the clerk of the originating chamber. The "decking" ensures a mandatory 48-hour opportunity for final review by the chamber's members before they are asked to vote on the third reading. Note: A bill must pass three readings (votes) in each chamber before being enrolled to the Governor.

**MAR 7. FIRST CROSSOVER (BILLS)** – Deadline for bills to pass third reading in order to move (or "crossover") to the other chamber. If successful, House bills are sent to the Senate and Senate bills are sent to the House for further consideration.

**MAR 8. LAST DAY TO INTRODUCE SUBSTANTIVE RESOLUTIONS** – Resolutions are legislative measures which may request action of a government entity or state the legislature's position on an issue. They don't have the force and effect of law, require only one reading in chamber, and don't enroll to the Governor.

**MAR 11. BUDGET DECKING** – Deadline for submitting the budget bill for third reading.

**MAR 13. BUDGET CROSSOVER** – Last day for third reading of the budget bill in order to move to the other chamber.

**MAR 14. TRIPLE REFERRAL FILING (BILLS)** – All bills referred to three or more committees must be filed so that they can be in their second-to-last committee in the non-originating chamber the following day. (Note: A referral to a joint committee counts as one committee referral.) This deadline allows ample time for successful bills to make their way to their last committee by the Second Lateral deadline.

**MAR 19. TRIPLE REFERRAL FILING (HOUSE CONCURRENT RESOLUTIONS)** – All House concurrent resolutions referred to three or more committees must be filed so that they can be in their second-to-last committee by the following day. (Note: A referral to a joint committee counts as one committee referral.)

**MAR 22. SECOND LATERAL (BILLS)** – All bills with multiple referrals must move to their final referral committee in the non-originating chamber by this date.

**MAR 27 AND MAR 28. FIRST LATERAL FOR CONCURRENT RESOLUTIONS** – Concurrent resolutions require adoption in each chamber and are used to state the official position of the Legislature on an issue, or to request action formally without having to mandate it by law. All concurrent resolutions with multiple referrals must move to their final committee in the originating chamber by these dates. SCRs on March 27, HCRs on March 28.

**APR 4. FIRST CROSSOVER FOR CONCURRENT RESOLUTIONS** – Deadline for passing the single floor vote for adoption required for resolutions in order to move from the originating chamber to the other chamber.

**APR 5. SECOND DECKING (BILLS)** – Deadline for bills that have been amended by the non-originating chamber to emerge from all their committees (with committee reports filed) and be submitted to the clerk of that chamber. This "decking" ensures a mandatory 48-hour opportunity for final review by the non-originating chamber's members before third reading.

**APR 11. SECOND CROSSOVER (BILLS)** – Deadline for bills to pass third reading in their non-originating chamber and to "cross back" to the originating chamber.

**APR 11. LAST DAY FOR THE ORIGINATING BODY TO DISAGREE WITH BILL AMENDMENTS** – The deadline for the originating chamber to disagree with changes made to its bills by the other chamber. When the Senate and House disagree on a bill, members from each chamber can meet in a "conference" committee to reconcile their differences.

**APR 15. SECOND LATERAL FOR SENATE CONCURRENT RESOLUTIONS** – All Senate Concurrent Resolutions (SCRs) with multiple referrals must move to their final committee in the non-originating chamber (House) by this date.

**APR 18. DEADLINE FOR FINAL FORM OF BILLS PROPOSING CONSTITUTIONAL AMENDMENTS** – A proposed amendment's final form must be provided by written notice to the Governor at least 10 days prior to passing final reading by a 2/3 vote in each chamber. Once adopted by the Legislature, the proposed amendment is submitted to the voters, in the form of a "yes or no" question on the ballot, for ultimate decision.

**APR 22. SECOND CROSSOVER FOR CONCURRENT RESOLUTIONS** – Deadline for passing amended concurrent resolutions in the non-originating chamber in order to "cross back" to the originating chamber.

**APR 25. FINAL DECKING OF NON-FISCAL BILLS** – Deadline for submitting non-fiscal bills for final reading by both chambers.

**APR 26. FINAL DECKING OF FISCAL BILLS** – Deadline for submitting fiscal bills for final reading by both chambers. Fiscal bills include appropriation or spending bills, tax credits, etc., or any bill with a House Finance or Senate Ways and Means referral.

**MAY 2. ADJOURNMENT SINE DIE** – In Latin, "sine die" means "without a day specified for future meeting." Adjournment sine die occurs on the 60<sup>th</sup> legislative day of a Regular Session, and indicates a suspension of the business of the legislature indefinitely. Next, the Legislature will certify the bills whose form both chambers have agreed to, and will transmit or "enroll" those bills to the Governor. Contact PAR for information regarding the Governor's deadlines.

Public Access Room (PAR): phone 808/597-0478; email [par@capitol.hawaii.gov](mailto:par@capitol.hawaii.gov); website [lrbhawaii.org/PAR/](http://lrbhawaii.org/PAR/) [2/21/2019]

arakaki@ RPSS CAI Hawaii Chapter - Resou Real Estate Branch | Condor Hawaii State Legislature calendar19.pdf

lrbhawaii.org/par/fy/calendar19.pdf

Fit to page Page view Read aloud Add n

the following day. (Note: A referral to a joint committee counts as one committee referral.) This deadline allows ample time for successful bills to make their way to the last committee in their originating chamber by the First Lateral deadline.

**FEB 15. FIRST LATERAL (BILLS)** – All bills referred to more than one committee (i.e., those with multiple referrals) must move to their final committee in the originating chamber by this day.

**FEB 21-27. MANDATORY 5-DAY RECESS** – Hawaii's Constitution mandates a 5-day recess between the 20<sup>th</sup> and 40<sup>th</sup> days of the regular session. Neither the House of Representatives nor the Senate convene or assemble formally in chamber on recess days. Committee hearings do take place.

**MAR 1. FIRST DECKING (BILLS)** – Deadline for bills to emerge from all their committees (with committee reports filed) and be submitted to the clerk of the originating chamber. The "decking" ensures a mandatory 48-hour opportunity for final review by the chamber's members before they are asked to vote on the third reading. Note: A bill must pass three readings (votes) in each chamber before being enrolled to the Governor.

**MAR 7. FIRST CROSSOVER (BILLS)** – Deadline for bills to pass third reading in order to move (or "crossover") to the other chamber. If successful, House bills are sent to the Senate and Senate bills are sent to the House for further consideration.

**MAR 8. LAST DAY TO INTRODUCE SUBSTANTIVE RESOLUTIONS** – Resolutions are legislative measures which may request action of a government entity or state the legislature's position on an issue. They don't have the force and effect of law, require only one reading in chamber, and don't enroll to the Governor.

**MAR 11. BUDGET DECKING** – Deadline for submitting the budget bill for third reading.

**MAR 13. BUDGET CROSSOVER** – Last day for third reading of the budget bill in order to move to the other chamber.

**MAR 14. TRIPLE REFERRAL FILING (BILLS)** – All bills referred to three or more committees must be filed so that they can be in their second-to-last committee in the non-originating chamber the following day. (Note: A referral to a joint committee counts as one committee referral.) This deadline allows ample time for successful bills to make their way to their last committee by the Second Lateral deadline.

**MAR 19. TRIPLE REFERRAL FILING (HOUSE CONCURRENT RESOLUTIONS)** – All House concurrent resolutions referred to three or more committees must be filed so that they can be in their second-to-last committee by the following day. (Note: A referral to a joint committee counts as one committee referral.)

**MAR 22. SECOND LATERAL (BILLS)** – All bills with multiple referrals must move to their final referral committee in the non-originating chamber by this date.

**MAR 27 AND MAR 28. FIRST LATERAL FOR CONCURRENT RESOLUTIONS** – Concurrent resolutions require adoption in each chamber and are used to state the official position of the Legislature on an issue, or to request action formally without having to mandate it by law. All concurrent resolutions with multiple referrals must move to their final committee in the originating chamber by these dates. SCRs on March 27, HCRs on March 28.

**APR 4. FIRST CROSSOVER FOR CONCURRENT RESOLUTIONS** – Deadline for passing the single floor vote for adoption required for resolutions in order to move from the originating chamber to the other chamber.

**APR 5. SECOND DECKING (BILLS)** – Deadline for bills that have been amended by the non-originating chamber to emerge from all their committees (with committee reports filed) and be submitted to the clerk of that chamber. This "decking" ensures a mandatory 48-hour opportunity for final review by the non-originating chamber's members before third reading.

**APR 11. SECOND CROSSOVER (BILLS)** – Deadline for bills to pass third reading in their non-originating chamber and to "cross back" to the originating chamber.

**APR 11. LAST DAY FOR THE ORIGINATING BODY TO DISAGREE WITH BILL AMENDMENTS** – The deadline for the originating chamber to disagree with changes made to its bills by the other chamber. When the Senate and House disagree on a bill, members from each chamber can meet in a "conference" committee to reconcile their differences.

**APR 15. SECOND LATERAL FOR SENATE CONCURRENT RESOLUTIONS** – All Senate Concurrent Resolutions (SCRs) with multiple referrals must move to their final committee in the non-originating chamber (House) by this date.

**APR 18. DEADLINE FOR FINAL FORM OF BILLS PROPOSING CONSTITUTIONAL AMENDMENTS** – A proposed amendment's final form must be provided by written notice to the Governor at least 10 days prior to passing final reading by a 2/3 vote in each chamber. Once adopted by the Legislature, the proposed amendment is submitted to the voters, in the form of a "yes or no" question on the ballot, for ultimate decision.

**APR 22. SECOND CROSSOVER FOR CONCURRENT RESOLUTIONS** – Deadline for passing amended concurrent resolutions in the non-originating chamber in order to "cross back" to the originating chamber.

**APR 25. FINAL DECKING OF NON-FISCAL BILLS** – Deadline for submitting non-fiscal bills for final reading by both chambers.

**APR 26. FINAL DECKING OF FISCAL BILLS** – Deadline for submitting fiscal bills for final reading by both chambers. Fiscal bills include appropriation or spending bills, tax credits, etc., or any bill with a House Finance or Senate Ways and Means referral.

**MAY 2. ADJOURNMENT SINE DIE** – In Latin, "sine die" means "without a day specified for future meeting." Adjournment sine die occurs on the 60<sup>th</sup> legislative day of a Regular Session, and indicates a suspension of the business of the legislature indefinitely. Next, the Legislature will certify the bills whose form both chambers have agreed to, and will transmit or "enroll" those bills to the Governor. Contact PAR for information regarding the Governor's deadlines.

Public Access Room (PAR): phone 808/597-0478; email [par@capitol.hawaii.gov](mailto:par@capitol.hawaii.gov); website [lrbhawaii.org/PAR/](http://lrbhawaii.org/PAR/) [2/21/2019]



## LEGISLATIVE PROCESS

---

### ➤ **Working a Bill through the Legislature** (*cont.*)

- First Lateral (mid-February)/First Crossover (early March) Deadlines
  - ✓ “Idea Triage” time



## LEGISLATIVE PROCESS

---

### ➤ **Working a Bill through the Legislature** (*cont.*)

- Second Lateral (mid-March)/Second Crossover (early April) Deadlines
  - ✓ Persuading the other Chamber



## LEGISLATIVE PROCESS

---

### ➤ **Working a Bill through the Legislature** (*cont.*)

- Conference Committee (last two weeks of April)
  - ✓ Crunch time.
- Gratitude Regardless of Outcome



## LEGISLATIVE PROCESS

---

### ➤ **Getting the Governor to sign a Bill into Law**

- Deadline is 45 days after the Legislature adjourns, Sine Die
- Notice of Intent to Veto Deadline is 35 days after the Legislature adjourns, Sine Die
- Educating the Governor and the Governor's policy staff

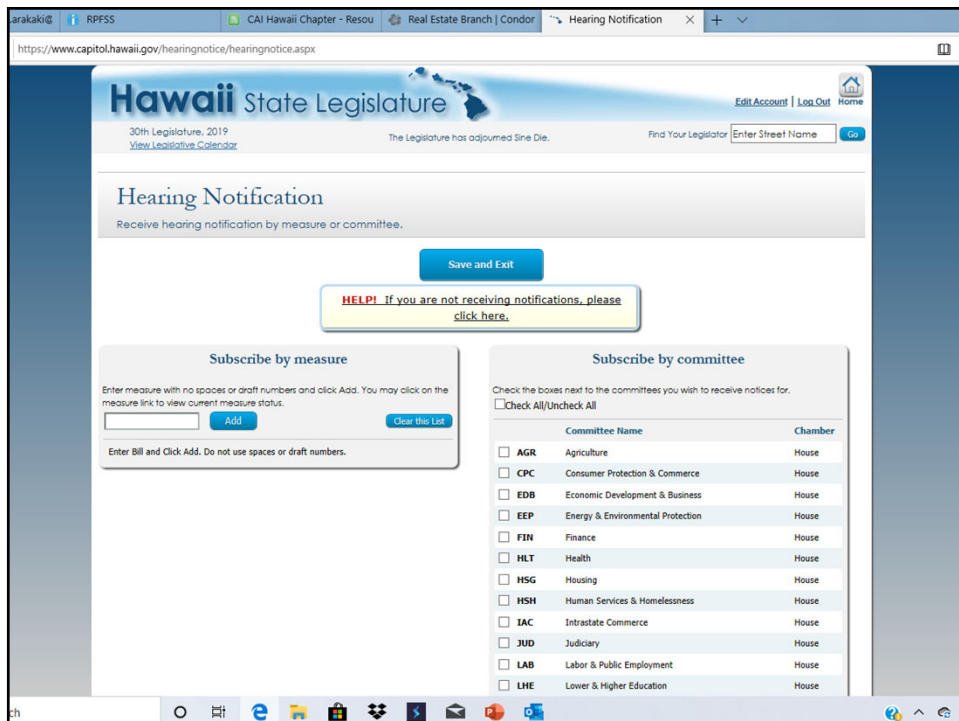
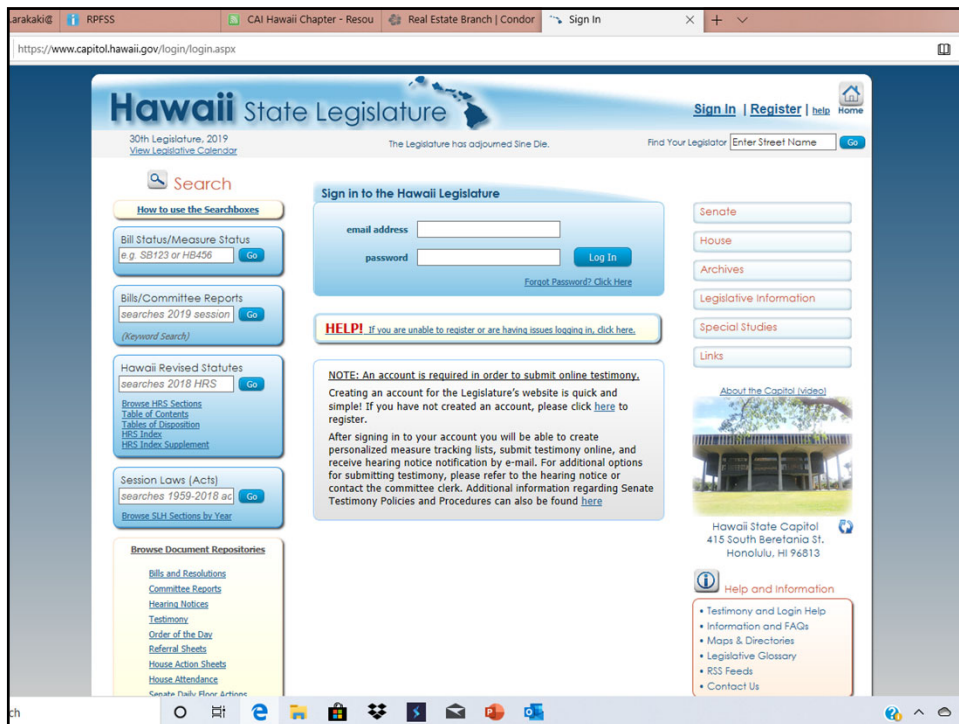


## TOOLS/RESOURCES

### ➤ Legislature's website: **www.capitol.hawaii.gov**

- Subscribing to receive hearing notices
- Bill tracking
- Submitting testimony
- A lot more!





arakaki@ RPFSS CAI Hawaii Chapter - Resou Real Estate Branch | Condor Submit Online Testimony

https://www.capitol.hawaii.gov/submittestimony.aspx

# Hawaii State Legislature

30th Legislature, 2019  
View Legislative Calendar

The Legislature has adjourned sine die.

Find Your Legislator

**Search**

**How to use the Searchboxes**

Bill Status/Measure Status  
e.g. SB123 or HB456

Bills/Committee Reports  
searches 2019 session   
(Keyword Search)

Hawaii Revised Statutes  
searches 2018 HRS   
Browse HRS Sections  
Table of Contents  
HRS Index  
HRS Index Supplement

Session Laws (Acts)  
searches 1959-2018 ad   
Browse SLH Sections by Year

**Browse Document Repositories**

Bills and Resolutions  
Committee Reports  
Hearing Notices  
Testimony  
Order of the Day  
Referral Sheets  
House Action Sheets  
House Attendance  
Generate Public Policy Action

## Submit Online Testimony

[Click for Instructions](#)

If you are having difficulty submitting testimony through our online system, please email your testimony directly to the committee using this list of email addresses.

**NOTE: Cookies MUST be enabled in your browser to use our online submission feature.**

### Special Session Measures

Measure	Hearing Date	
GM 1 Submitting for consideration and confirmation to the Circuit Court of the Second Circuit, State of Hawaii, gubernatorial Nominee KELSEY KAWANO, for a term to expire in 10 years.	11/5/2019 10:00:00 AM	<input type="button" value="Submit Testimony"/>
JC 1 Submitting for consideration and confirmation to the District Family Court of the First Circuit, Judicial Nominee, REBECCA A. COPELAND, for a term to expire in 6 years.	11/5/2019 10:00:00 AM	<input type="button" value="Submit Testimony"/>
JC 2 Submitting for consideration and confirmation to the District Family Court of the First Circuit, Judicial Nominee, ALVIN K. NISHIMURA, for a term to expire in 6 years.	11/5/2019 10:00:00 AM	<input type="button" value="Submit Testimony"/>

**Senate**

**House**


**Archives**

**Legislative Information**

**Special Studies**

**Links**

[About the Capitol video](#)



Hawaii State Capitol  
415 South Beretania St.  
Honolulu, HI 96813

**Help and information**

- Testimony and Login Help
- Information and FAQs
- Maps & Directories
- Legislative Glossary
- RSS Feeds
- Contact Us

arakaki@ RPFSS CAI Hawaii Chapter - Resou Real Estate Branch | Condor Measure Tracking

https://www.capitol.hawaii.gov/measuretracking.aspx

# Hawaii State Legislature

30th Legislature, 2019  
View Legislative Calendar

The Legislature has adjourned sine die.

Find Your Legislator

## Measure Tracking

Create lists of measures, enter customized notes on measures, and generate a detailed measure report.

Enter a name and click Create List to store the measures you wish to track. Use Show List to begin adding measures to that list.

(List names have a 21 character limit)

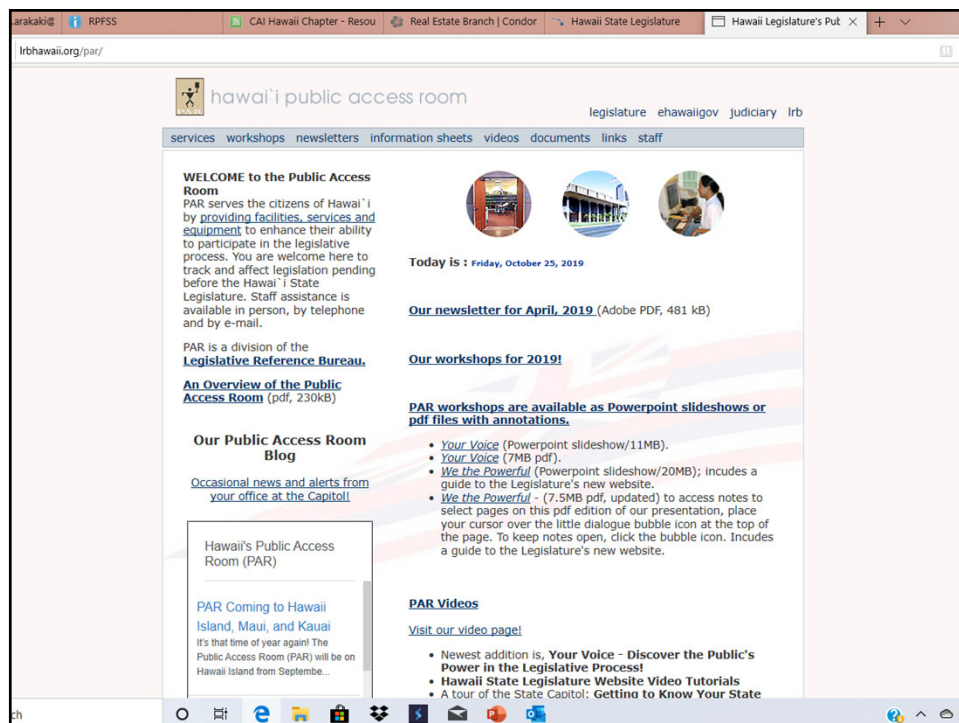
You have no lists yet, please add a list.

## TOOLS/RESOURCES

### ➤ Public Access Room

State Capitol Room 401

- Website: <http://lrbhawaii.org/par/>
- Legislative Calendar
- Legislators and staff contact info
- Conference room schedules
- A lot more!



arakaki@ RPFSS CAI Hawaii Chapter - Resou Real Estate Branch | Condor Hawaii State Legislature Hawaii Legislature's Put x + v

lrbhawaii.org/par/

### 18 Bills Vetted — Fail to Become Law

The Governor has vetoed 18 bills — check out his statements of objection by clicking on the GM (G...)

### Legislature's Website: A Few Changes

While you weren't looking, the

Powered by feedwind

### Capitol

- We the Powerful!**  
How to Participate in the State of Hawai'i's Legislative Process.  
A workshop presented by Suzanne Marinelli, former Coordinator, Hawai'i State Legislature's Public Access Room.  
**Now on video!**

### Find Out...Fast!

A special page to quickly find who to call and where to go.

### How To Enjoy A Public Hearing

(pdf, 65kB)


### How to Submit Testimony Online

(Adobe PDF, 112KB)

Download excerpts from, **A Participant's Guide to Hawaii State Legislative Process**:

- Organization & Function of the Legislature**
- Walk through Session** - Learn about... bills, deadlines, committees, testimony and so much more!

### Welcome to the Public Access Room



Visit our **Online Documents Corner** to access and download state documents, legislative guides and drafting manuals, and citizen participation guides.

### Wi-Fi at the State Capitol

While the Public Access Room still has its array of desktop computers for you to use, you can now enjoy **free wireless Internet connectivity** in our office (room 401), as well as House and Senate conference rooms, the auditorium, certain areas of the chamber-level hallway, and the central corridors along railings on the 2nd, 3rd and 4th floors.

The service is free, and access codes and registration are not required. Please don't hesitate to stop by, email or give us a call if you have any questions!

**STATE CAPITOL**  
Room 401  
415 So Beretania St  
Honolulu, HI 96813  
**(808) 587-0478 phone**

arakaki@ RPFSS CAI Hawaii Chapter - Resou Real Estate Branch | Condor Hawaii State Legislature Hawaii Legislature's Put x + v

lrbhawaii.org/par/

### free wireless Internet connectivity

in our office (room 401), as well as House and Senate conference rooms, the auditorium, certain areas of the chamber-level hallway, and the central corridors along railings on the 2nd, 3rd and 4th floors.

The service is free, and access codes and registration are not required. Please don't hesitate to stop by, email or give us a call if you have any questions!


**STATE CAPITOL**  
Room 401  
415 So Beretania St  
Honolulu, HI 96813  
**(808) 587-0478 phone**

**HOURS:**  
Session:  
M-F 7:45a - 6p  
Interim:  
M-F 8a - 4:30p

**e-mail:**  
par@capitol.hawaii.gov

From the Neighbor Islands, dial toll free:  
974-4000 **Hawai'i**  
984-2400 **Mau**  
274-3141 **Kaua'i**  
**Moloka'i/Lana'i**:  
1-800-468-4644  
followed by the extension:  
Ext. 7-0478 office

### Welcome to the Public Access Room



Visit our **Online Documents Corner** to access and download state documents, legislative guides and drafting manuals, and citizen participation guides.

**quick links:**

- \*NEW\* **Hawaii Legislature's Website: A Guide** (PDF, 400kB)
- \*NEW\* **Written Testimony: The Bare Basics** (PDF, 75kB)
- State Constitution**
- Hawaii Revised Statutes**
- Glossary of Legislative Terms (HTML)**
- Sunshine Law (pdf)**
- Directory of Officials and Guide to Government in Hawaii**
- Session Actions**
- The Legislature on TV**
- A Legislator's Guide To LRB - PAR**

hawai'i state legislature public access room



arakaki@ RPFSS CAI Hawaii Chapter - Resou Real Estate Branch | Condor Hawaii State Legislature Hawaii Legislature's Put x + -

lrbhawaii.org/par/legfy.html

**hawai'i public access room** legislature ehawaii.gov judiciary lrb

services workshops newsletters **information sheets** videos documents links staff

**During the 1989 Legislative session, the Hawai'i State Legislature enacted into law Senate Bill 832 (Act 331, Session Laws of Hawai'i 1989) to improve public access to legislative information.**

Originally staffed by community volunteers, the PAR was established as part of a permanent public access program in 1994, offering a year-round staff and services.

In 1996, the PAR was transferred to the Legislative Reference Bureau.

View [A Timeline of Public Access in Hawai'i](#)

[An Overview of the Public Access Room](#) (pdf, 230kB)

[<< home](#)

**STATE CAPITOL Room 401**  
415 So Beretania St  
Honolulu, HI 96813  
**(808) 587-0478 phone**  
**e-mail:**  
par@capitol.hawaii.gov

**HOURS:**  
Session:

**Legislative Information Sheets**

See also the [Legislature's Legislative Directories web page](#).

Information Sheet	PDF	Word or Excel
Senate Information At-A-Glance	<a href="#">PDF 30kB</a>	<a href="#">Word 30kB</a>
Senate District Descriptions	<a href="#">PDF 65kB</a>	<a href="#">Word 20kB</a>
Senate Leadership & Committee Membership	<a href="#">PDF 45kB</a>	<a href="#">Word 25kB</a>
Senate Committee Hearing Schedule	<a href="#">PDF 76kB</a>	
Senate Seating Chart	<a href="#">PDF 147kB</a>	
2019 Senators Pictures and Profiles	<a href="#">PDF 350kB</a>	<a href="#">Word 2 MB</a>
House Information At-A-Glance	<a href="#">PDF 55kB</a>	<a href="#">Word 35kB</a>
House District Descriptions	<a href="#">PDF 181kB</a>	<a href="#">Word 30kB</a>
House Leadership & Committee Membership	<a href="#">PDF 30kB</a>	<a href="#">Word 30kB</a>
House Conference Room Schedule	<a href="#">PDF 35kB</a>	
House Seating Chart	<a href="#">PDF 52kB</a>	
2019 Representatives Pictures and Profiles	<a href="#">PDF 2MB</a>	<a href="#">Word 2 MB</a>
Session Calendar	<a href="#">PDF 80kB</a>	<a href="#">Word</a>

arakaki@ RPFSS CAI Hawaii Chapter - Resou Real Estate Branch | Condor Hawaii State Legislature Hawaii Legislature's Put x + -

lrbhawaii.org/par/legfy.html

**Session:**  
M-F 7:45p - 6p  
Interim:  
M-F 8a - 4:30p

From the Neighbor Islands,  
dial toll free:  
974-4000 **Hawai'i**  
984-2400 **Maul**  
274-3141 **Kaua'i**  
**Moloka'i/Lana'i**:  
1-800-468-4644  
followed by the extension:  
Ext. 7-0478 office

**Session Calendar**

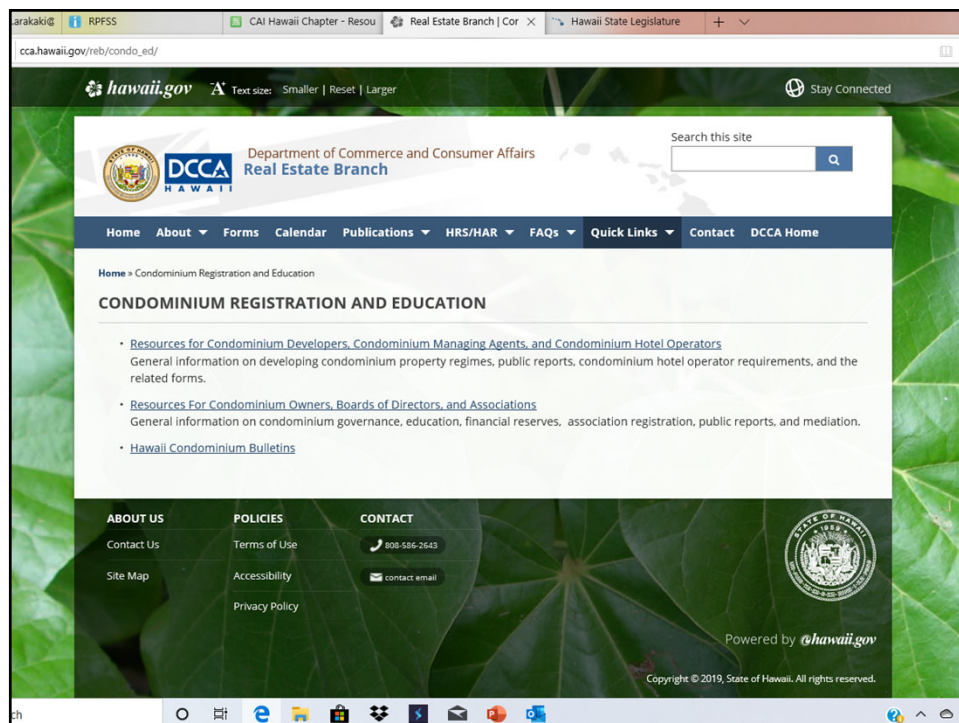
House & Senate Directory	<a href="#">PDF 130kB</a>	<a href="#">Word 30kB</a>
Rm/Phone/Fax/Email	<a href="#">PDF 116kB</a>	<a href="#">Excel 20kB</a>
Office Managers List	<a href="#">PDF 137kB</a>	<a href="#">Word 37kB</a>
Committee Clerks List	<a href="#">PDF 1MB</a>	
Capitol Map	<a href="#">PDF 95kB</a>	
Glossary Of Key Legislative Terms		
FAQ's - Navigating session		<a href="#">Word 25kB</a>
Exploring Resolutions	<a href="#">PDF 350kB</a>	
What does it take for a bill to become law?	<a href="#">PDF 470kB</a>	
Hawaii State Legislature: A Quick Overview	<a href="#">PDF 300kB</a>	<a href="#">Word 175kB</a>
Quick View of How a Bill Becomes a Law	<a href="#">PDF 95kB</a>	<a href="#">Word 55kB</a>
Written Testimony: The Bare Basics	<a href="#">PDF 75kB</a>	
How to Submit Testimony Online	<a href="#">PDF 112kB</a>	<a href="#">Word 70kB</a>
How to Create a Measure Tracking List	<a href="#">PDF 230kB</a>	<a href="#">Word 133kB</a>
How to use your voice at the Legislature	<a href="#">PDF 90kB</a>	<a href="#">Word 45kB</a>
Tips on communicating with legislators	<a href="#">PDF 290kB</a>	<a href="#">Word 50kB</a>
Which Deadlines Apply to Your Bill?	<a href="#">PDF 100kB</a>	<a href="#">Word 70kB</a>
Hawaii's government: an overview	<a href="#">PDF 375kB</a>	
Hawaii Legislature's Website: A Guide *NEW*	<a href="#">PDF 931kB</a>	<a href="#">Word 1.3 MB</a>
How to register an account on The Legislature's Website	<a href="#">PDF 787kB</a>	
Budget Decipher for 2018	<a href="#">PDF 170kB</a>	
How to Receive Hearing Notices by Email	<a href="#">PDF 67kB</a>	<a href="#">Word 42kB</a>
Governor's Deadlines *NEW*	<a href="#">PDF 76kB</a>	

## TOOLS/RESOURCES

### ➤ DCCA—Real Estate Branch

<http://cca.hawaii.gov/reb/>

- Resources for Condominium Owners, Boards of Directors & Associations
  - ✓ Condominium Governance & Information
  - ✓ Condominium Law, Rules, and Legislative Updates
- A lot more!



## TOOLS/RESOURCES

### ➤ **Community Associations Institute—Hawaii Chapter**

<http://www.caihawaii.org/>

- Resource Center
  - ✓ Best Practice Reports
  - ✓ Legislative Center
  - ✓ Newsletters
- A lot more!





## Condorama VI

**“There Ought to be a Law ... How Can I Help that Happen?”**

---

“Nothing will ever be attempted if  
all possible objections must first  
be overcome.”

~ Samuel Johnson

## Condorama VI

**“There Ought to be a Law ... How Can I Help that Happen?”**

---





## CONDORAMA – November 9, 2019

### BOARD MEETINGS

(John Morris)

Under Hawaii's condominium law, board meetings facilitate and implement the basic principle of the condominium law – self-governance – which requires that the condominium owners, not the State of Hawaii or any other government agency, supervise condominium boards and ensure that the boards are following the law.

#### 1. Owner Rights To Participate In Meetings

In 2017, the legislature expanded the concept of self-governance in board meetings by amending section 514B-125, HRS, to state as follows:

***§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 ~~[may]~~ shall be permitted to participate in any deliberation or discussion, other than executive sessions, [unless a majority of a quorum of the board votes otherwise.] pursuant to owner participation rules adopted by the board.*

(b) *Following any election of board members by the association, the board may, at the board's next regular meeting or at a duly noticed special meeting, 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.*

(Emphasis added.)

Prior to this time, the law had given directors control over their meetings by allowing board members to decide whether they would take input from owners who attended the board meetings. This amendment changed that principle significantly and took some of the control on that issue out of the directors' hands.

The 2017 change also modified section 514B-125(e) to require that owners be given additional notice of the agenda items for any upcoming board meeting. Under that change, the board must not only post notice of board meetings but also include "a list of business items expected to be on the meeting agenda." (Emphasis added.)

Finally, the 2017 change also amended section 514B-126(c), HRS, to require that unapproved final drafts of minutes of board meetings must be made available within thirty (30) days after the board meeting (instead of the 60 days under the prior law).

The 2017 changes to section 514B-125, HRS, require the board to carefully consider what to include in the “owner participation rules” required under that section. Notwithstanding the 2017 changes, the board can reasonably take the position that the primary purpose of board meetings is still to allow the board to accomplish the business on its agenda on behalf of all association members. Therefore, the rules the board must adopt to ensure that allowing individual association members to participate in board meetings should not prevent the board from completing its agenda for the benefit of all association members.

On that basis, arguably, the rules can and should address the following concepts:

- The board may still schedule an owners’ forum at the beginning or the end of the board meeting, to allow owners to present concerns to the board prior to or at the end of the formal board meeting. Nevertheless, under the wording of the law, having an owners’ forum does not necessarily preclude owners from participating in the meeting as it progresses.
- As the board meeting progresses, owners should arguably be permitted to speak only after board members have completed their discussion of an item on the board’s agenda. Then, the board may allow owners to ask questions and offer comments on the item, subject to reasonable limits:
  - (i) Owners’ questions and statements can be limited to a maximum of \_\_\_\_\_ minutes on any agenda item, unless the board votes to extend the time for an owner to speak. Owners’ questions and statements should be directed to the board president or the chair of the board meeting.
  - (ii) The board may limit owners’ statements to less than \_\_\_\_\_ minutes if the statements: (a) relate to items that the board has already considered and decided at a prior board meeting; or (b) repeat statements made by owners who have already spoken at the current board meeting.
  - (iii) The board may require that any complex or lengthy questions or statements be presented in writing before the board meeting. If an owner’s question is unclear or requires the board to research and obtain additional information, the board may limit the owner’s right to speak at the board meeting on the question or defer the matter until the next board meeting.

(iv) Any owner who becomes disruptive or acts in a harassing or threatening manner towards anyone at the board meeting may be: (a) prohibited from speaking at the board meeting; and (b) asked to leave the board meeting.

- Owners are supposed to be notified that the board has adopted rules and that the rules will apply to owner participation at board meetings. These rules remain in effect unless amended by the board or any subsequent board elected by the members. Owners are to be notified of any amendments. These rules are to be made available to owners who attend board meetings.

## 2. Board Rights To Exclude Owners From Board Meetings

The law also allows owners to be excluded from board meetings under certain circumstances, primarily for executive sessions.

### **§514B-125 Board meetings.**

\*

\*

\*

*(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.*

The American Heritage Dictionary of the English Language (1992 Ed.) definition of “personnel” indicates that it is: ***“The body of persons employed by OR ACTIVE IN an organization, business, or service.”*** [Emphasis added.] On that basis, there appears to be no reason to restrict executive sessions only to discussions concerning employees, as opposed to volunteers.

## 3. Board Decisions By Email Or Written Consent

Board voting by email or written consent is contrary to the intent and spirit of the condominium law. Sometimes, there is confusion on this issue because the nonprofit corporations law does allow the board to take action by written consent if the

written consent is signed by each director.

**§414D-144 Action without meeting.** (a) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Nevertheless, the nonprofit corporations law does not override the condominium law and, in fact, is very clear on that point:

**§414D-311 Superseding chapters.** In the event of any conflict between the provisions of this chapter and the provisions of chapter 421J, 514B, or 514E, the provisions of chapter 421J, 514B, or 514E **shall supersede and control the provisions of this chapter.**

(Emphasis added.)

Essentially, the condominium law requires that board decisions occur at a board meeting, so it overrides the nonprofit corporations law. Sometimes, however, following the ideal course of action is simply not possible. Therefore, email voting may be necessary in an emergency, but it is not a recommended practice.

Instead, it would be better to try to hold a board meeting by telephone. Section 514B-125(c) of the law provides:

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.

(Emphasis added.)

If email or written consent voting by the board becomes necessary, generally, subsequent ratification of the transaction is legally just as effective as prior approval. The only problem with subsequent ratification is if an issue or problem arises between the time the action is taken – e.g., the contract is entered into – and the time the action is ratified. For example, if the association enters into a contract that has not been approved by the association board at a formal meeting and problems arise with the contract before the board can ratify the contract, the enforceability of the contract could be open to question.

Note: From a contractor's point of view, if someone such as the president signed the contract, the contractor would have a good argument that he could reasonably rely on the actions of the president. The contractor would argue he had no way of knowing that the decision to sign the contract had not been properly approved or had not been ratified at a subsequent board meeting.

#### 4. Board Committees

The condominium law does not specifically authorize committees (nor even mention committees, except in section 514B-104(a)(14)). Very few condominium associations have independent committees created under their bylaws. Regardless, as outlined above, the condominium law assumes that the board of directors, not committees, will operate and manage the project on behalf of the owners.

The board can certainly create committees, but those committees generally derive their authority purely from the board's authority. As a result, under the theory of condominium governance outlined above, committees created by the board have limited authority. Basically, the committees can research issues and make recommendations to the board. The ultimate decision, however, must be made by the board because under the law and most declarations and bylaws, the board, not the committees it creates, is responsible for the day-to-day operation and management of the project. Therefore, as the elected representatives of the owners, the board must make the final decision on any recommendations made by any committee appointed by the board, and the law reflects that requirement:

***§514B-126 Board meetings; minutes.*** (a) *Minutes of meetings of the board shall include the recorded vote of each board member on all motions except motions voted on in executive session.*

Since committees cannot make decisions, arguably owners do not have the right to attend committee meetings. The board can allow the owners to attend committee meetings and even appoint owners to committees. Nevertheless, the board does not clearly have to do so.

In fact, if the board were to: (i) allow committees to have independent authority to make decisions and (ii) not allow owners to attend those committee meetings, such action would arguably be a violation of the condominium law because the committees would be functioning as boards. Again, the condominium law allows apartment owners to attend board meetings (except executive sessions) so the owners can see what the board is doing on their behalf. If committees were allowed to function and make independent decisions that are not voted on and approved by the board nor known to the owners, the owners would lose that important right.

## 5. Board Discussions Outside of Board Meetings

Hawaii has what is commonly referred to as a “sunshine” law that prohibits members of a state or county board from meeting to discuss issues outside of the board’s official meeting:

*§92-2.5 Permitted interactions of members. (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.*

This law is intended to open up governmental processes to public scrutiny and participation by requiring government business to be conducted as transparently as possible, while balancing personal privacy rights guaranteed under the Hawaii State Constitution.

Some people take the position that this type of restriction should also apply to condominium boards. Nevertheless, chapter 92 is clear that it only applies to state and county boards:

*§92-2 Definitions. As used in this part:*

*“Board” means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction, or advisory power over specific matters and which is required to conduct meetings and to take official actions.*

In fact, when proposals have been made to the legislature to impose a sunshine law on condominium boards, associations have generally resisted those proposals on the basis that it would be unfair to prevent volunteer board members, who may even live in the same condominium project, from informally discussing board matters. Put another way, as long as board decisions are made at board meetings and owners can attend board meetings to see those decisions being made, volunteer board members should not be prohibited from informally discussing board matters outside of a board meeting.



The Parliamentarian's Perspective for Avoiding Board Blunders  
Condorama VI – November 9, 2019 Seminar  
By: Rachel Glanstein, PRP

**A. So You Got Elected!**

1. Congratulations
2. State law
3. Association Documents
4. *Robert's Rules of Order Newly Revised* (11<sup>th</sup> ed.) and *Robert's Rules of Order Newly Revised, in Brief* (2<sup>nd</sup> ed).
5. Standing and Special Rules of Order
6. Other Rights and Responsibilities
7. Pending Business

**B. Board Meeting Preparation**

1. Board Communications (e-mail, chat, social networking, website management, etc.)
2. Board Packets
3. Board Reports

**C. Board Meeting Proceedings**

1. Owners' Concerns
2. Decorum
3. Executive Session
4. Minutes vs. Notes

**SPECIAL NOTES**

Every effort has been made to ensure that the information presented is as accurate as possible. It is the reader's responsibility to make sure that the rules are applicable and in accordance with the appropriate rules of the reader's organization.

The author is not in the business of practicing law and understands that there may be legal ramifications associated with the information provided. The information provided herein is informal and for informational purposes only. Consult with an attorney familiar with the Hawai'i condominium or community association law for specific legal advice.

Copyright © 2019, Management Information Consultants, P. O. Box 29213 Honolulu, HI 96820-1613. All rights reserved. Seminar attendees may copy this handout for noncommercial purposes provided it is copied in its entirety. For other requests, contact us at the phone number/e-mail below.

Telephone: (808) 423-6766

E-Mail: [SteveGHI@gmail.com](mailto:SteveGHI@gmail.com)

## A. So You Got Elected!

### 1. Congratulations

You've just been elected (or appointed) to a condominium, planned community association, or cooperative association (collectively referenced as, "association") board.

What does this mean? Did you check the job description? How's the pay scale? What about the hours of work? What special privileges do you get?

What about an officer position? Does that give you a special parking stall? How about a discount in the maintenance fees? What about priority scheduling of the pool or party room? How about an expense account or an association credit card?

You get NO SPECIAL TREATMENT. That's it, period. Actually, YOU HAVE LESS rights.

You must be the EXAMPLE of an owner who:

- a. pays the maintenance fees on time;
- b. observes and complies with all of the governing documents including the house rules;
- c. takes great care to ensure that he or she receives no special treatment or privileges for being a board member or officer;
- d. takes care not to speak for the association or the board without proper authority;
- e. takes care not to disclose executive session contents or issues without proper authority;
- f. is familiar with the laws affecting the association (approximate size: chapter 414 is 90 pages, chapter 414D is 69 pages, chapter 421H is 6 pages, chapter 421I is 6 pages, chapter 421J is 14 pages, chapter 514B is 86 pages!);
- g. is familiar with the legal documents affecting the association (some of which can be 100 pages);
- h. is familiar with the principles of SERVING on a board; and
- i. is familiar with rules governing meetings, e.g. *Robert's Rules of Order Newly Revised* or at least *Robert's Rules of Order Newly Revised, in Brief*.

Are you still ready to serve?

### 2. State Law

Condominium associations are associations organized in accordance with Chapter 514A or Chapter 514B of the Hawai'i Revised Statutes. There are also a very small number of condominium associations that are not under any of these chapters.

Planned community associations (also known as "PCA"s) are associations that comply with Chapter 421J of the Hawai'i Revised Statutes.

Limited equity housing corporations are corporations that comply with Chapter 421H of the Hawai'i Revised Statutes.

Cooperative housing corporations are corporations that comply with Chapter 421I of the Hawai'i Revised Statutes. They may also have a dual requirement to comply with Chapter 414 of the Hawai'i Revised Statutes.

Condominium associations and planned community associations that are incorporated may also have a dual requirement to comply with Chapter 414D of the Hawai'i Revised Statutes.

**Caution:**

**Applicability of any state laws must be reviewed with an appropriately licensed attorney.**

A copy of many of these laws are on the CAI-Hawai'i website with appropriate disclaimers. The web link is: [http://caihawaii.org/doc/toc.asp?assn\\_id=249&link\\_id=3957](http://caihawaii.org/doc/toc.asp?assn_id=249&link_id=3957).

Select "Legislative Center" and the particular chapter of the Hawai'i law to download.

The information may also be obtained from the state legislature website. It is usually updated only once a year in December. The web link is: <http://www.capitol.hawaii.gov/hrscurrent/>.

### **3. Association Documents**

Condominium associations usually have a Declaration and Bylaws. They may also have Articles of Incorporation if incorporated. Sometimes they have additional documents such as Lease Agreements, Merger Documents, Waiver of Developer's Rights, etc.

Planned Community Associations usually have a Declaration of Covenants, Conditions, and Restrictions (also called "DCC&Rs" or "CC&Rs"). They usually have Bylaws. They may also have Articles of Incorporation if they're incorporated.

Cooperatives usually have Articles of Incorporation and Bylaws.

**The list is not exhaustive.** Board members should have access to and review all of these documents as part of their responsibility to serve.

### **4. *Robert's Rules of Order Newly Revised* and *Robert's Rules of Order Newly Revised in Brief***

*Robert's Rules of Order Newly Revised* (11<sup>th</sup> ed.) is a 669+ page book that was recently released. Most associations in the state must follow these rules when conducting their meetings.

It can be overwhelming and difficult to read and understand.

There is another book called *Robert's Rules of Order Newly Revised in Brief* (2<sup>nd</sup> ed.) that is a little easier to read, only 197 pages! It has sample wording for handling several motions at a meeting.

Many of the property management companies have access to the updated books, including some simplified handouts that should make meeting management a little easier.

These rules for conducting meetings are known as parliamentary procedure. Individuals who assist in following these rules are called parliamentarians (in the United States). The Hawai'i State Association of Parliamentarians provides useful information and handouts that may assist board members. The web link is: <http://www.hsap.org>.

A basic understanding of parliamentary procedure is essential for the proper conduct of meetings.

## **5. Standing and Special Rules of Order**

These rules may be known by other names, e.g. Policies and Procedures, Meeting Rules, etc.

Standing Rules relate to administration of an organization. Examples include rules regarding check approval, owner complaints in writing, distribution of financial information, etc.

Special Rules relate to rules of parliamentary procedure. They override various rules in *Robert's Rules of Order Newly Revised*. Examples include rules that reduce the debate limit to 2 minutes, provide for owners' concerns at the beginning of a board meeting, etc.

## **6. Other Rights and Responsibilities**

Most of the rights attributable to board members occur at the board meeting. Board members have rights to make motions, debate, and vote.

These rights can only be interfered with under very limited circumstances. For example, a board, by a 2/3 vote, may impose debate limits on its members.

Board members must be alert for any personal conflicts of interest before voting. When in doubt, obtain legal assistance.

A board or another board member doesn't have the right to stop another board member from voting unless specifically provided in the law or bylaws.<sup>1</sup>

In boards with about 12 members or less present, the president can make motions, debate, and vote. The rules in these boards are somewhat relaxed, e.g. no seconds are needed, there is no limit on the number of speeches, and debate can occur without a motion.

Board members must simply do what is best for the association rather than their individual interests.

---

<sup>1</sup> Several references exist, depending on association type. Some references are: HRS §414D-150, §421H-3(11), §421J-5(e), §514B-125(f), RONR(11th ed.),p. 407, ll. 21-31.

This responsibility exists regardless of how the board member was elected. For example, even if a board member is elected only by particular constituency, such as the commercial owners, they must do what is best for the entire association.

The Hawai'i Real Estate Commission website has several useful sources of information about board rights and responsibilities. They are:

- a. The December 2011 issue of the Hawai'i Condominium Bulletin (pp. 4-6), pages 4-6:  
[http://files.hawaii.gov/dcca/reb/condo\\_ed/condo\\_bull2/cb\\_06\\_00/cb1211.pdf](http://files.hawaii.gov/dcca/reb/condo_ed/condo_bull2/cb_06_00/cb1211.pdf)
- b. Board of Directors and Owners Guides  
[http://cca.hawaii.gov/reb/condo\\_ed/condo\\_gen/condo\\_bod/](http://cca.hawaii.gov/reb/condo_ed/condo_gen/condo_bod/)  
Download the Condominium Property Regimes: Board Members Powers, Duties and Owner Rights and Responsibilities' publications, Condominium Reserves Reference Manual, and Condominium Reserves Workbook *[subject to change without notice]*

## 7. Pending Business

Sometimes there is pending board business that exists and new board members are elected at an annual meeting of the owners. *Robert's Rules of Order Newly Revised (11<sup>th</sup> ed.)*, pages 488-489 provides that matters temporarily but not finally disposed of (e.g. those that were postponed) fall to the ground. This would apply to unfinished board business.

Matters referred to a special committee appointed by the board are still active.

Practically, business items that has "fallen to the ground" can be reintroduced to the new board at a proper board meeting. However, it is important for newly elected board members and officers to become familiar with pending board business after their election (or appointment).

### B. Board Meeting Preparation

#### 1. Board Communications (e-mail, chat, social networking, website management, etc.)

Board business must normally be transacted at a properly called board meeting at which a quorum is present. Business is introduced by means of a *motion* which must be approved by a proper vote.

E-mail, chat, social networking sites, website forums, etc. do not constitute official board business. unless otherwise provided in the bylaws or other legal documents, **decisions made in these venues are not official acts of the board of directors.**

The use of these techniques as a decision process defeats the opportunity for board members as well as association owners to observe the demeanor of all directors during the meeting. It also defeats the concept of simultaneous communication between directors.

In associations, boards are usually the highest authority. Therefore, they must use care to appreciate that this authority comes with a higher responsibility. Transparency, while not always convenient, is a necessary part of association management.

There are obvious exceptions to transparency regarding certain association business (especially personnel and litigation). We recommend that these exceptions be used for the purpose of protecting the association rather than eliminating the inconvenience of an ownership presence at meetings.

There are some items that, due to their emergency nature, may require e-mail or written consent approval. However, unless provided by state law or the association's documents, these actions must be ratified at a properly called meeting.

## **2. Board Packets**

Board members need to be prepared for any issues that may arise at board meetings. This covers a wide area. Examples of these issues include financial matters, assessments, house rules, physical maintenance, etc.

Board packet information should be read PRIOR to the board meeting. Board members opening up the packet at the start of the meeting will waste meeting time while they familiarize themselves with the packet information. They hold the decision process hostage to their lack of preparation.

This has been a constant complaint from property managers and board members who conscientiously prepare for meetings.

Likewise, board members are handicapped in the decision process if they don't receive the packets until immediately prior to the board meeting.

There is a shared responsibility between board members and property managers to ensure proper board meeting preparation.

## **3. Board Reports**

Reports are usually of one of four types, i.e. reports of (a) officers, (b) standing committees, (c) special committees, and (d) others, such as property manager, legal counsel, experts, etc. Written reports should contain only that which has been approved by the officer or appropriate committee.

Reports with recommendations should have them restated in the form of *motions* placed at the end of the report. These motions could be moved by the reporting member or another board member, if necessary.

Board members who present reports must be careful about long and involved extemporaneous verbal reports that extend into personal opinions about association matters.

One option is for a board to require all reports in writing so that they can conduct the board meeting more efficiently. Another option is to limit the time allocated for verbal reports so that the board meeting doesn't continue for an indefinite time.

Although not required, reports should be provided and reviewed **prior** to the board meeting.

### **C. Board Meeting Proceedings**

#### **1. Owners' Concerns**

Some boards, especially those with full time management personnel or many owners, may decide not to use this agenda item. These boards may mandate that owners' concerns be presented in advance to management in order to provide the board with management's pre-meeting analysis and recommendations.

Boards have the flexibility to schedule a forum that is separate from a board meeting.

Many association boards provide for this item in order to obtain information from owners about issues affecting the association. The use of this agenda item is entirely up to the board.

If this item is used, board members should be careful not to engage or argue with owners during the presentation of owners' concerns. Time should be scheduled either at the start of or prior to the board meeting. A specific time limit should be provided and enforced. It can be extended by board action. We suggest that all extensions contain a defined time limit, such as 10 minutes, 2 minutes per owner.

The board meeting is not an owners' meeting. Board members must recognize they have a duty to the entire association, not simply the owners present at a board meeting. That duty dictates that they make the CONDUCT OF THE ASSOCIATION'S BUSINESS A PRIORITY for every board meeting.

#### **2. Decorum**

Presidents have a much greater responsibility than other board members at board meetings. Presidents must be prepared for any procedural motions that occur and understand when certain types of motions must be ruled out of order. They also must be ready to recognize breaches of decorum and correct them.

Maintenance of proper decorum is crucial to the success of any board meeting.

There is a modern and somewhat simpler test for board decorum, "Would anybody want their fellow owners, prospective purchasers, insurance adjuster, children, parents, in-laws, or a judge in a court case observe their behavior on 'Civil Beat' or 'Youtube'?"

Board members and invitees need to focus on issues rather than the individuals, avoid profanity and other vulgar language. They need to observe time limits and respect both the PROCESS and the INDIVIDUALS who are involved.

Note that in 2017, the governor signed Act 81 which substantially increased the rights of owners to participate at board meetings. Check with legal counsel if excessive owner participation (or "interference") has been a problem and needs to be managed in accordance with the statute.

### 3. Executive Session

Board members must understand when a board can go into executive session. The permissible reasons for executive session may be found in the laws governing the particular type of association. Do not enter into executive session for convenience; it is only for the purposes permitted by law.

Board members must understand the importance of the confidentiality of executive session proceedings. They must be careful not to be drawn into an extended conversation that **leads to any disclosure** of confidential information from the executive session.

Board members must be careful that executive session minutes are (a) confidentially maintained and (b) not disclosed. They should only be approved in another executive session. Some boards maintain only one original of executive session minutes with management.

Finally, unauthorized disclosure of executive session proceedings can have adverse effects on Directors' and Officers' Insurance coverage, legal settlements, etc.

### 4. Minutes vs. Notes

Minutes represent official board actions and not what has been said at the meeting. The minutes are not a "to-do" list. Make notes for a "to-do" list. Don't use the minutes for politics or "gotchas." Owners' concerns are not official board actions and DO NOT go in the minutes.

References in *Robert's Rules of Order Newly Revised (11<sup>th</sup> ed.)* pages 468-476 and *Robert's Rules of Order Newly Revised in Brief (2<sup>nd</sup> ed.)* pages 146-151 support this requirement.

More information on minutes may also be found in the Real Estate Commission's Hawaii Condominium Bulletin. The reference is: <https://cca.hawaii.gov/reb/files/2019/06/CB1906.pdf>





This free educational presentation was brought to you by the Hawaii Real Estate Commission (Commission) and the Community Associations Institute Hawaii Chapter (CAI Hawaii).

The Condominium Education Trust Fund subsidizes a select number of CAI Hawaii condominium educational events procured by the Commission.

CAI Hawaii is an organization that serves the educational, business, and networking needs of community associations in Hawaii. CAI Hawaii may be contacted at (808) 488-1133 or visit their website at [www.caihawaii.org](http://www.caihawaii.org).

Please sign up for condominium educational emails from the Real Estate Commission at <http://cca.hawaii.gov/reb/subscribe> or contact the Real Estate Commission's condominium hotline at (808) 586-2644, between the hours of 7:45 a.m. and 4:30 p.m., Hawaiian Standard Time, Monday through Friday.