REAL ESTATE COMMISSION
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.hawaii.gov/hirec

MINUTES OF MEETING

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

Date:	March 28, 2025
Time:	9:00 am
Physical Location:	Queen Liliuokalani Conference Room King Kalakaua Building 335 Merchant Street, 1st Floor Honolulu, Hawaii
Present:	Derrick Yamane, Chair, Broker/Honolulu Commissioner Nikki Senter, Vice Chair, Public Member/Honolulu Commissioner Audrey Abe, Broker/Honolulu Commissioner Richard Emery, Broker/Honolulu Commissioner Russell Kyono, Broker/Kauai Commissioner P. Denise La Costa, Broker/Maui Commissioner Neil K. Fujitani, Supervising Executive Officer Miles Ino, Executive Officer Kristen Kekoa, Senior Real Estate Specialist Amy Endo, Real Estate Specialist Nohelani Jackson, Real Estate Specialist Kedin Kleinhans, Senior Condominium Specialist Dathan Choy, Condominium Specialist Lorie Sides, Condominium Education Specialist Shari Wong, Deputy Attorney General Colleen Mar, Office Assistant Joseph Benedict Pagkalinawan, Recording Administrative Assistant
Others:	David J. Grupen, Acting PVL Licensing Administrator Courtney Hara, Hawaii Association of REALTORS® Zale Okazaki, Esq., Recovery Fund Attorney Jennifer Jervis-Apo Tangee Renee Lazarus
Absent:	Jennifer Andrews, Broker/Honolulu Commissioner John Love, Public Member/Honolulu Commissioner
Call to Order:	Chair Yamane called the meeting to order at 9:02 a.m., at which time quorum was established by roll call.
Chair's Report:	The Commission may move into executive session to consider and evaluate personal information relating to individuals applying for licensure in accordance with section 92-5(a)(1), HRS, and/or to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities in accordance with section 92-5(a)(4), HRS. Commissioners Andrews and Love were excused from the meeting. Prior notification of their non-attendance was received.

Chair Yamane announced he would be taking agenda items out of order for efficiency purposes.

Executive Officer's Report

Executive Officer Ino announced that the Commission shall afford all interested persons an opportunity to submit data, views, or arguments in writing, on any agenda item and shall provide all interested parties an opportunity to present oral testimony on an agenda item subject to the conditions set forth in section 16-99-83, HAR. The Commission may remove any person or persons, who willfully disrupt a meeting to prevent and compromise the conduct of the meeting in accordance with section 92-3, HRS. Each speaker will be limited to a five-minute time period pursuant with section 16-99-83(a)(5), HAR.

Additional Distribution

The following materials were distributed prior to the start of the meeting:

5. Licensing and Registration - Ratification

7. Chapter 91, Hawaii Revised Statutes, Adjudicatory Matters
   b. In the Matter of the Real Estate Broker's License of Certified Management, Inc., dba Associa Hawaii: REC 2023-107-L; Commission's Final Order

8. Real Estate Recovery Fund
   a. Mihoko Kanematsu v. Annie K. Moenahele; Realty Advantage Hawaii LLC; Settlement of Recovery Fund Claim

Minutes of Previous Meeting

Upon a motion by Commissioner Emery, seconded by Commissioner Kyono, it was voted on and unanimously carried to approve the minutes of the February 28, 2025, meeting.

Committees and Program of Work:

Laws and Rules Review Committee

Legislative and Government Participation Report

SCR 87, SR 70/HCR 102, HR 98 – Strongly Urging the Real Estate Commission to Allow for the Administration of the Real Estate Salesperson's Examination in the Japanese Language for Purposes of Issuing a Full Real Estate Salesperson's License, Limited to the Sale Timeshare Products in Hawaii, to Promote the Sale of These Products to Japanese-Speaking Visitors and Enhance Japan's Involvement in and Support of the Hawaii Tourism Industry

Supervising Executive Officer Fujitani informed the Commission that the Senate version of the resolution did not have a hearing. However, the House version is still being heard, and when passed, will be referred to the House Committee on Consumer Protection and Commerce. He added that the testimony submitted for the resolution raised many consumer protection concerns including post-licensing and oversight issues after the licensee leaves a larger brokerage. Another concern raised was whether the Regulated Industries Complaints Office ("RICO") will be able to process complaints involving licensees subject to this request.

SCR 187, SR 168 – Requesting the Auditor to Conduct an Audit of the Real Estate Commission's Oversight of Real Estate Management Entities Under Chapter 514B, Hawaii Revised Statutes, and Make Recommendations to Improve the Effectiveness of the Commission's Oversight of Real Estate Management Entities and Related Issues

Senior Condominium Specialist Kleinhans informed the Commission that the above resolutions were referred to the Senate Committee on Commerce and Consumer Protection ("CPN"), and Senate Committee on Ways and Means ("WAM"). However, CPN did not schedule a hearing for these resolutions, and the resolutions are effectively dead for this session.

HCR 24, HR 23 – Requesting the Auditor to Conduct a Follow-Up Sunrise Review to Sunrise Analysis: Condominium Association Manager's Report No. 05-10, Which Analyzed the Regulation of Condominium Association Managers

Senior Condominium Specialist Kleinhans informed the Commission that the above resolutions were referred to House Committee on Consumer Protection and Commerce ("CPC"), and House Committee on Finance ("FIN"). CPC passed the resolutions with amendments at its hearing scheduled on March 20, 2025. Testimony was submitted in support of the resolutions, noting that a follow-up sunrise review may be an appropriate step in identifying solutions to address condominium concerns raised over the past twenty years. FIN has yet to schedule a hearing for the resolutions.

Condominium Review Committee

2025 Hawaii Buildings, Facilities, & Property Management Expo Report – March 5-6, 2025

Condominium Education Specialist Sides informed that staff participated in this year's Hawaii Buildings, Facilities, & Property Management Expo. Staff considers the Expo, which occurs every March, to be a core outreach event as it targets condominium boards and managing agents. She commented that the event gave staff an opportunity to network and resulted in the Real Estate Branch being invited to participate in the Honolulu Board of Realtors Summer General Membership Meeting and Associa Hawaii's Board Member Training.

DCCA 2025 Consumer Protection Week Fair Report – March 6, 2025

Condominium Specialist Choy stated that staff participated in DCCA's Consumer Protection Week Fair. This year's fair hosted different entities ranging from schools and companies. The fair is also held in the State Capitol due to renovations made in the King Kalakaua Building's front lawn, of which the fair was originally held. Condominium Specialist Choy noted that the fair has a decent turnout, mostly from other DCCA offices as well as from legislative offices. Handouts were also passed to the attendees containing questions staff commonly received, as well as information about resources available for the public.

Owner-Occupant – Shirley Lee request for exemption of owner-occupant requirement pursuant to HRS 514B-98.5(b)(4)

Chair Yamane stated that this item was deferred from the Commission's February 2025 meeting due to a lack of quorum. He also disclosed that Ms. Lee's agent worked for Locations Hawaii, that the request was sent to him through his email, and that he forwarded the request to the Real Estate Branch without accessing it. Chair Yamane added that he can make a fair and objective decision on the matter.

Condominium Specialist Choy briefly summarized Ms. Lee's request and added that such request was normally delegated for staff's review and approval, but due to lack of precedence the request was brought to the Commission. He commented that Ms. Lee's request was unusual, due to how it differs significantly from the previous reasons staff received.

Vice Chair Senter disclosed that she drafted the owner-occupant exemption request form that Ms. Lee used to make her request. She also raised her concern about setting precedent pertaining to Ms. Lee's request.

Upon a motion by Chair Yamane, seconded by Commissioner La Costa, it was voted on and unanimously carried to deny Shirley Lee's request for exemption of owner-occupant requirement pursuant to HRS 514B-98.5(b)(4).

Condominium Education Outreach – Condorama XIV, April 19, 2025

Condominium Specialist Choy announced that Condorama XIV is scheduled on April 19, 2025, and will be held online. The event will cover topics relevant to the condominium industry such as insurance. Staff created a flyer advertising the event and included a QR Code showing the event's speaker's bios. Another handout will be provided including a link to the event once it is available. Condominium Specialist Choy noted that staff received many requests to conduct Condorama in person. However, staff decided to conduct the event online as it allowed a higher number of participants.

Supervising Executive Officer Fujitani also stated that DCCA will advertise the event on its social media page but will be using a differently designed graphic instead of the flyer designed by staff and urged the Commissioners to not get confused as both advertisements address the same event.

Commissioner La Costa praised the Condorama events, stating that it is very informative.

Education Review Committee

Administrative Issues – Continuing Education Providers and Courses Ratification List

Upon a motion by Commissioner La Costa, seconded by Commissioner Emery, it was voted on and unanimously carried to approve the Continuing Education Providers and Courses Ratification List:

Registration/Certification	Effective Date
Providers	
Kauai Board of REALTORS	02/19/2025
Courses	
"A Real Estate Agent's Guide to Title Insurance" (3 credits) (Robin Sagadraca)	02/05/2025
"Tools to Manage Your Real Estate Transaction: Zipform Plus™, Ziptms™, and DocuSign™ (3 credits) (Robin Sagadraca)	02/05/2025

	"Recruiting for Success: Creating a Vibrant Real Estate Organization" (6 credits) (Hawaii Association of REALTORS/National)	02/14/2025
	"Knowledge on the New VA Home Loan Benefits for the Real Estate Licensees" (3 credits) (Tony Dias)	02/24/2025

Administrative Issues – Prelicensing Education Schools and Instructors Ratification List

Upon a motion by Commissioner La Costa, seconded by Commissioner Emery, it was voted on and unanimously carried to approve the Prelicensing Education Schools and Instructors Ratification List:

Registration/Certification	Effective Date
Instructor	
Lisa Nakamura (Salesperson and Broker Curriculum)	02/13/2025

Program of Work, FY26 – Annual Report, Quarterly Bulletin, and School Files – Option to Extend – Real Estate Bulletin printing and mailing contract

Senior Real Estate Specialist Kekoa informed the Commission that the initial two-year (2-year) contract was awarded to Trade Media Hui, Inc., for the period July 1, 2023, to June 30, 2025, with one (1), two-year option to extend.

Staff is requesting to exercise the two-year option to extend the contract for the period July 1, 2025, to June 30, 2027.

Upon a motion by Commissioner Abe, seconded by Commissioner Emery, it was voted on and unanimously carried to approve staff's request to exercise the option to extend Real Estate Branch's contract with Trade Media Hui, Inc. to print its bulletin and mailing for another two-year period from July 1, 2025, to June 30, 2027.

Real Estate Recovery Fund

Mihoko Kanematsu v. Annie K. Moenahele; Realty Advantage Hawaii, LLC; Settlement of Recovery Fund Claim

Upon a motion by Vice Chair Senter, seconded by Commissioner Kyono, it was voted on and unanimously carried to authorize Attorney Okazaki to settle the case Mihoko Kanematsu v. Annie K. Moenahele at no more than $25,000.00 from the Real Estate Recovery Fund.

Licensing – Applications

Chair Yamane informed the Commissioners that the information provided to the Commissioners is related only to the issue that is before the Commission for Consideration. The other materials submitted are available for the Commissioners' review should they desire to review it. If the applicants have an issue, which is personal in nature, they have the right to request that their application be considered in executive session.

Tangee Renee Lazarus

Ms. Lazarus was present at the meeting to provide a statement regarding her application and consented to provide her statement during open session.

Ms. Lazarus distributed an article detailing her search for her missing biological mother, explained her difficult childhood without knowing her biological parents, growing up in an abusive household, and how this hardship affected her approach in life, leading to her admission to Harvard University and graduating with honors. Ms. Lazarus also stated that she came to Hawaii to assist with the organization "Parents and Children Together."

As a student, Ms. Lazarus made friends with individuals who introduced her to illegal substances. Her days as a student also led her to learn more about the underground world of illegal substances, deepening her involvement and eventually leading to her arrest for drug possession. Ms. Lazarus was sentenced to probation but was later incarcerated due to a probation violation. Ms. Lazarus thinks that her violation pertained to her failure to attend one of her hearings. Ms. Lazarus also added experiencing multiple emotional setbacks during this time.

After serving in prison, Ms. Lazarus underwent recovery, ultimately obtaining a Hawaii massage therapy license and a guard license. She added that the Transportation Security Administration deemed her to be security risk free.

Commissioner Abe asked whether Ms. Lazarus was off probation and substance free as of 2010. Ms. Lazarus affirmed. Chair Yamane asked why she is seeking to obtain a real estate license. Ms. Lazarus responded that she wants to be involved in the democratization of the real estate process, and that she wanted to help the public in obtaining housing.

Upon a motion by Vice Chair Senter, seconded by Commissioner La Costa, it was voted and unanimously carried to take the matter under advisement.

Fredrick Richard Lukanchoff, Jr.

Upon a motion by Commissioner Kyono, seconded by Commissioner La Costa, it was voted on and unanimously carried to most likely approve the real estate salesperson's license application of Fredrick Richard Lukanchoff, Jr.

Esta Mae Banks

Upon a motion by Vice Chair Senter, seconded by Commissioner Abe, it was voted on and unanimously carried to remove the conditions imposed upon the broker's license of Esta Mae Banks.

Executive Session:

Upon a motion by Commissioner La Costa, seconded by Commissioner Kyono, it was voted on an unanimously carried to enter into executive session, pursuant to section 92-5(a)(1), HRS, "To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both.", and/or section 92-5(a)(8), HRS, "To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order." and/or section 92-5(a)(4), HRS, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities."

Upon a motion by Vice Chair Senter, seconded by Commissioner Kyono, it was voted on and unanimously carried to move out of executive session.

Chapter 91, HRS, Adjudicatory Matters

Chair Yamane called for a recess from the meeting at 9:51 a.m., to discuss and deliberate on the following adjudicatory matters, pursuant to Chapter 91, HRS:

In the Matter of the Real Estate Salesperson's License of Kyle S. Doran: REC 2025-27-L; Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Commission's Final Order

Upon a motion by Vice Chair Senter, seconded by Commissioner Kyono, it was voted on and unanimously carried to accept the settlement agreement.

In the Matter of the Real Estate Broker's License of Certified Management, Inc., dba Associa Hawaii: REC 2023-107-L; Commission's Final Order

The final order was distributed among the Commissioners who approved the order for their signature.

Vice Chair Senter left the meeting.

Following the Commission's review, deliberation, and decision in this matter, pursuant to Chapter 91, HRS, Chair Yamane announced that the Commission was reconvening its scheduled meeting at 9:57 a.m.

Licensing – Applications

Tangee Renee Lazarus

Upon a motion by Commissioner Abe, seconded by Commissioner Kyono, it was voted on and unanimously carried to approve the real estate salesperson's license application of Tangee Renee Lazarus.

Committees and Program of Work:

Education Review Committee

Application – Prelicense Education School – The Real Estate Café; Principal – Savannah Lighty; Salesperson and Broker Curriculum – Live-Webinar and Online-Independent (Self-paced)

Commissioner La Costa requested additional information be included in sections of the course. Senior Real Estate Specialist Kekoa replied that she will request additional information be included in the curriculum.

Upon a motion by Commissioner La Costa, seconded by Commissioner Abe, it was voted on and unanimously carried to approve the "Application – Prelicense Education School – The Real Estate Café; Principal – Savannah Lighty; Salesperson and Broker Curriculum – Live-Webinar and Online-Independent (Self-paced), with amendments as identified by the Commission."

Licensing Examination Statistics 2/1/25 – 2/28/25

PSI submitted the monthly licensing examination statistics as requested.

School Pass/Fail Rates 2/1/25 – 2/28/25

PSI submitted the monthly school pass/fail rates statistics as requested.

School Summary by Test Category 2/1/25 – 2/28/25

PSI submitted the monthly school summary by test category statistics as requested.

Program of Work, FY24-FY25 – Technology and Website – Change Form – Real Estate – Express Change Broker

Executive Officer Ino explained that the matter was previously brought to the Commission for purposes of obtaining funding for the program. Currently, staff is working with Pacific Consulting Group ("PCG") and Transeo Solutions ("Transeo") to develop the new electronic process, with the latter acting as the program's software developer. Executive Officer Ino and Real Estate Specialist Jackson explained the process of the new Express Change Form online program to the Commissioners.

Deputy Attorney General Wong left the meeting.

Executive Officer Ino explained that the new program only applies to requests to change brokers for now, as the program for other Change Form ("CF") changes are still in development. Supervising Executive Officer Fujitani added that PCG discovered that one of the top 3 CF requests is to change brokers. It is anticipated that by adopting the new process, the processing time for licensees changing brokers will be shorter, saving the Licensing Branch time and lessening complaints from the public.

Chair Yamane asked when the new CF program will take effect. Acting Licensing Administrator Grupen replied that the program will take effect in about 20 days from the date of the meeting. Executive Officer Ino informed the Commission that Senior Real Estate Specialist Kekoa will include an article informing licensees of the Express Change Broker Request in the upcoming Real Estate Commission Bulletin. Supervising Executive Officer Fujitani added that PCG and Transeo will record an instructional video. Commissioner La Costa suggested that the video should be uploaded online to help licensees understand the electronic process. Commissioner Kyono agreed.

Executive Officer Ino stated that Hawaii Administrative Rules 16.99.5 require, among other things, that principal brokers and brokers-in-charge respond to a licensee's request to change broker/brokerages within 10 days of receiving the request, and that a referral to RICO will be submitted if there is no response from the principal broker or broker-in-charge. Executive Officer Ino also stated that HAR §16-99-5 requires licensees to report changes to the Commission on a form provided by the Commission. Since this electronic process was replacing the paper CF, staff requests that the Commission approve the new electronic process for reporting changes.

Upon a motion by Commissioner Abe, seconded by Commissioner La Costa, it was voted on and unanimously carried to approve the Express Change Broker Request electronic process.

Licensing – Ratification

Licensing and Registration - Ratification

Upon a motion by Commissioner Emery, seconded by Commissioner La Costa, it was voted on and unanimously approved to ratify the February 28, 2025, Approved Applications List.

Next Meeting: Friday, April 25, 2025, 9:00 a.m.

Physical Location: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813

Adjournment: With no further business to discuss, the meeting was adjourned at 10:23 a.m.

Reviewed and approved by:

_____
Miles Ino
Executive Officer

4/8/2025
_____
Date

[ ] Approved as circulated.
[ ] Approved with corrections; see minutes of _____ meeting;

MI:jp

APPROVED APPLICATIONS FOR REAL ESTATE
REAL ESTATE COMMISSION MEETING ON MARCH 28, 2025

Brokers – Individual	Effective Date
Kevin Anthony Barbarita aka Kevin Barbarita	02/09/2025
Jennifer Park Peele aka Jennifer Peele	02/19/2025
Stacy Elise Levin aka Stacy Levin	02/19/2025
Devi Pua Inia Khanna aka Devi Khanna	02/24/2025
Takako Friend	02/25/2025
Terra Malia Foti	02/25/2025
Kathryn Gail Kang DeJesus aka Kathryn Kang	02/26/2025
Heather Marie Chase Heather Chase	03/03/2025
Kumiko Nakano Noguchi aka Kumiko Noguchi	03/04/2025
Robert B Wellman aka Robert Wellman	03/06/2025

Salesperson – Individual	Effective Date
Alyssa Morgan Volpe	02/05/2025
Alexander Kai Helsey	02/10/2025
Dolly Sengchanthavong	02/10/2025
Amanda Leigh Sorenson aka Amanda Sorensen	02/11/2025
Serjay Petrovich Lelyukh aka Jay Lelyukh	02/12/2025
Vance Seizen Awa aka Vance Awa	02/12/2025
Lillian Wynter Ramirez aka Wynter Ramirez	02/13/2025
Diane Louise Machado-Wyant	02/14/2025
Enola Vasilchuk	02/14/2025
Gisele Marie Eva McDaniel aka Gisele McDaniel	02/18/2025
Anthony Michael Simone aka Anthony Simone	02/18/2025
Matthew Paul Merner aka Matthew Merner	02/18/2025
Kamaehukaikahakilinoholani Nihipali Apuakehau aka Kama Nihipali Apuakehau	02/18/2025
Nan He	02/18/2025
Molly Jamison Philpott aka Molly Philpott	02/18/2025
Martin Henry Cohen	02/18/2025
Austin Yoshio Nakamura aka Austin Nakamura	02/19/2025
Diego Zanoni Fernandes	02/19/2025
Masamoto Michael Nagahama	02/19/2025
Kolby Bluth Allen	02/20/2025

Ryland Cole Hart	02/20/2025
aka Ryland Hart	
Mario Nanguse Lopez	02/20/2025
Ginette Mei Ling Alipio	02/20/2025
Shannon McCarthy	02/21/2025
Christian James Geresy	02/21/2025
aka Christian Geresy	
Vanessa Magaly Horie	02/21/2025
Brandon Kekoa San Nicolas	02/21/2025
Annie Lamalani Akana	02/21/2025
aka Annie L Akana	
Barbara Jo Goldman Garcia	02/24/2025
aka Barbara J Goldman Garcia	
Bellita Gatenio Bitton	02/24/2025
Hidehiko Yamada	02/24/2025
Johnny Pat Marasigan Abarra	02/25/2025
aka Johnny Pat Abarra	
Liani Dubonet Solano	02/25/2025
aka Liani Solano	
Ciro Eduard Ochoa	02/25/2025
Tyler Allen Biggs	02/26/2025
aka Tyler Biggs	
Jayson K Rego Jr	02/26/2025
aka Jayson K Rego	
Madolyn Alexandra Davis	02/27/2025
aka Madolyn Davis	
Hana Mckenzie Wigzell	02/28/2025
aka Hana Wigzell	
Luciano Gomez Orozco	02/28/2025
Bryston Craig Likeke Louis	02/28/2025
aka Bryston C Louis	
Esthela Raquel Mary Trevino	03/03/2025
aka Esthela Trevino	
Aaliyah K. Kahaloa-Young	03/03/2025
aka Aaliyah Kahaloa-Young	
Felisa Suelyn Kamuela Ednie	03/03/2025
aka Felisa Ednie	
Curtis Jerome Bedwell	03/03/2025
Suzette Lyn Ching	03/03/2025
Kiersten Nicole Perez Kiersten Perez	03/03/2025
aka Kiersten Perez	
Juan He	03/03/2025
aka Joanne He	
Tara Marlayna Viator	03/03/2025
aka Tara Viator	
Richard L Huntsinger	03/03/2025
Benjamin Kaikea Ferris	03/04/2025
aka Benjamin K Ferris	
William Patrick Schneider	03/05/2025
aka Will Schneider	
Michelle Rene Donnell	03/05/2025
aka Michelle Donnell	

Aubrey Taylor Butler	03/05/2025
aka Aubrey Butler	
Anthony D Radford	03/06/2025
Kelli Sue Harding	03/07/2025
aka Kelli Harding	
Jeffrey Aaron Kroop	03/07/2025
aka Jeffrey Kroop	
Bin Cao	03/10/2025
Andrew InHo Chang	03/10/2025
aka Andrew Chang	
Ismael Manny Fernando II	03/10/2025
Jeho Jung	03/10/2025
Erminia Tuesday Pilialoha Frias	03/10/2025
aka Tuesday Frias	
Austin Scott MacArthur	03/11/2025
aka Austin MacArthur	
Sean David Paisley	03/12/2025
Cindy H Chang	03/13/2025
aka Cindy Chang	
Nong Xiao Ou	03/13/2025
aka Jenny Ou	

Brokers – Corporations and Partnerships	Effective Date
Aloha Hello Vacation Rentals Corp.	01/29/2025
Alexey Blokhin, PB	
Lotus Property Management, Inc.	02/24/2025
Jeffrey A Davis, PB	

Brokers – Limited Liability Company (LLC)	Effective Date
Koi Partners LLC	02/20/2025
dba Koi Hawaii Realty	
William Tanaka, PB	
Nani Realty LLC	03/07/2025
Tony Arruda, PB	

Corp/Partnership/LLC/LLP Legal Name Change	Effective Date
Turtle Bay Condos LLC	01/22/2025
nka Turtle Bay Condos & Realty LLC	
fka Turtle Bay Condos LLC	

Legal Name Change (Individual)	Effective Date
Anna K Snellgrove	12/17/2024
nka Anna Koga Galatolo	
fka Anna K Snellgrove	
Esther Ruth Wyler	01/03/2025
nka Esther Ruth Hammes	
fka Esther Ruth Wyler	
Makenzie P Nitta	01/08/2025
nka Makenzie Pualani Ebaniz	
fka Makenzie P Nitta	
Mahealani Etsuko Kahale	01/15/2025
nka Mahealani Etsuko Kahale Smith	
fka Mahealani Etsuko Kahale	

Amy A Bircher nka Amy Alohilani Carlson fka Amy A Bircher	01/23/2025
Irma A Romero nka Irma Romero Watts fka Irma A Romero	01/23/2025
Mailelani C Lazo nka Mailelani Fontanilla fka Mailelani C Lazo	03/07/2025
Amanda Han nka Amanda Naomi Sato fka Amanda Han	03/11/2025

License Name Change (Individual)	Effective Date
Yunie Ryan aka Yuna Ryan	12/10/2024
Amy Bircher nka Amy Carlson fka Amy Bircher	01/23/2025
Maly A Romero nka Maly Romero Watts fka Maly A Romero	01/23/2025
Mark D Castillo aka Mark Castillo	02/24/2025
Mailelani C Lazo nka Mailelani Fontanilla fka Mailelani C Lazo	03/07/2025
Amanda Naomi Han nka Amanda Naomi Sato fka Amanda Naomi Han	03/11/2025

Educational Equivalency Certificate	Expiration Date
Nancy J Dunagan	02/12/2027
Karen Ventura Thai	02/13/2027
Miguel Angel Gonzalez	02/19/2027
Kristyn Rae-Nani Ancheta	02/20/2027
Stefanie Marie Olson	02/20/2027
Montana Miranda Moonstone Martinez	02/21/2027
Tyler Richard Forsythe	02/21/2027
Lori Lynn Lochtefeld	02/24/2027
Rebecca Justine Iolani Soon	02/24/2027
John Joseph Maloney	02/24/2027
Michelle Donnell	02/26/2027
Christa Noel Kearns	03/03/2027
Julie Ann Rodriguez	03/03/2027
Kelly Francis Carone	03/03/2027
Lee K Carvalho	03/06/2027
Brittany Wong	03/06/2027
Amber Louise Soria	03/07/2027
Siu Chun Au	03/11/2027
Koni Rene Joseph	03/12/2027
Tammy Lee Ma	03/13/2027
Anna Nevtonova	03/13/2027

Igor Alencev	03/14/2027
Ashley Marie Kehaulani Miyasaki	03/14/2027

Equivalency to Uniform Section of Examination Certificate	Expiration Date
Nancy J Dunagan	02/12/2027
Karen Ventura Thai	02/13/2027
Miguel Angel Gonzalez	02/19/2027
Stefanie Marie Olson	02/20/2027
Montana Miranda Moonstone Martinez	02/21/2027
Lori Lynn Lochtefeld	02/24/2027
John Joseph Maloney	02/24/2027
Michelle Donnell	02/26/2027
Christa Noel Kearns	03/03/2027
Julie Ann Rodriguez	03/03/2027
Kelly Francis Carone	03/03/2027
Amber Louise Soria	03/07/2027
Ashley Nicole Sutton	03/10/2027
Koni Rene Joseph	03/12/2027
Anna Nevtonova	03/13/2027

Real Estate Broker Experience Certificate	Expiration Date
Travis Ikaika Kazuma Ito-Macion	02/13/2027
Jooyun Claire Chung	02/13/2027
Sam Kalahikiola Willocks	02/18/2027
Miguel Angel Gonzalez	02/19/2027
Moses Young Kahalekulu	02/20/2027
Lori Lynn Lochtefeld	02/24/2027
Christine Gerson	02/25/2027
Julie Ann Rodriguez	03/03/2027
Amber Nicole Rich	03/03/2027
Yuki Yonekura	03/03/2027
Kekaiokona Kanahele	03/03/2027
James Lieu	03/04/2027
Matthew James Yamamoto	03/11/2027
Rosa Maria Gomes	03/13/2027
Kim Yoon McLaughlin	03/14/2027

Michigan Supreme Court
Lansing, Michigan

Syllabus

JANINI v LONDON TOWNHOUSES CONDOMINIUM ASSOCIATION

Docket No. 164158. Argued on application for leave to appeal November 8, 2023. Decided July 11, 2024.

Daoud M. Janini and Feryal Janini filed a complaint against London Townhouses Condominium Association in the Wayne Circuit Court alleging that defendant had breached its duty to maintain the sidewalk in the condominium complex by failing to timely remove snow and ice. Plaintiffs owned and resided in a condominium unit in a condominium complex. Defendant was an association of the co-owners of the condominiums in the complex, and defendant was responsible for clearing snow and ice from the common areas of the complex. Daoud Janini fell on a snow- and ice-covered sidewalk in a common area of the complex and hit the back of his head, resulting in a brain injury. After plaintiffs filed their action, defendant moved for summary disposition. The trial court, Dana M. Hathaway, J., granted defendant's motion in part and denied it in part, dismissing all of plaintiffs' claims except for their premises-liability claim. Defendant sought leave to appeal in the Court of Appeals, and the Court of Appeals, CAVANAGH, P.J., and GADOLA, J. (SHAPIRO, J., concurring), reversed the trial court's order denying summary disposition as to the premises-liability claim in an unpublished per curiam opinion. The Court of Appeals held that because plaintiffs were co-owners of the land on which Daoud fell, he was precluded from bringing a premises-liability claim. Plaintiffs sought leave to appeal in the Supreme Court, and in lieu of granting leave, the Supreme Court ordered oral argument on the application. 509 Mich 1072 (2022).

In an opinion by Justice BERNSTEIN, joined by Chief Justice CLEMENT and Justices CAVANAGH, WELCH, and BOLDEN, the Supreme Court *held*:

A co-owner of a condominium unit in a condominium project is an invitee when that person enters the common elements of the condominium project, and the condominium association owes the co-owner a duty to exercise reasonable care to protect the co-owner from dangerous conditions on the land. Therefore, a co-owner may maintain a premises-liability action against the condominium association, and *Francescutti v Fox Chase Condo Ass'n*, 312 Mich App 640 (2015), was overruled.

1. In Michigan, condominium ownership is governed by the Condominium Act, MCL 559.101 *et seq*., and under the act, the administration of a condominium project is governed by the

condominium bylaws. The "common elements" of a condominium project are the portions of the project other than the condominium units. Under the act, the condominium association is a separate legal entity that is capable of being sued by a co-owner or other person. Although the act is silent regarding whether a condominium association has a common-law duty to protect a co-owner from dangerous conditions on the land under its control, i.e., the common areas, nothing in the act clearly prohibits application of the common law to such circumstances. Moreover, there is no indication that, by creating a statutory cause of action that co-owners and others may bring against a condominium association to compel it to enforce the provisions of the governing documents, the Legislature meant to abrogate the common law and immunize condominium associations from tort liability. However, whether a condominium co-owner may maintain a premises-liability action against a condominium association depends on whether a special relationship exists between the co-owner and the association as the owner, occupier, or possessor of the land, such that the law imposes a duty of care on the association.

2. Historically, Michigan has recognized that the duty a possessor of land owes to a person who enters the land depends on whether the visitor is classified as an invitee, a licensee, or a trespasser. An invitee is entitled to the highest level of protection under premises-liability law and enters the land of another upon an invitation that carries an implied assurance that reasonable care has been taken to make the premises safe for their reception. Thus, landowners owe a duty to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land. Special relationships are predicated on an imbalance of control; i.e., the party in possession is in a position of control and is normally best able to prevent harm to others. Although a condominium project's common elements are typically owned collectively by the condominium co-owners, the co-owners do not independently exercise exclusive ownership over the common elements, but rather cede control to the condominium association, whose responsibility it becomes to maintain the common elements. Thus, while condominium co-owners have an undivided interest in the common elements under the act, that interest does not mean that they have control over the common elements.

3. The Michigan Supreme Court has recognized that a "special relationship" exists between a landlord and tenant, and in practice, the relationship between a condominium association and a condominium co-owner is similar to this relationship. For instance, apartment structures have common elements, which the lessor has a duty to maintain. Tenants lack control over these areas, while the landlord has control over them and thus a duty to keep the areas reasonably safe. The Court of Appeals has recognized that tenants are invitees of the landlord while in the common areas. The landlord-tenant relationship mirrors the relationship between a condominium association and a condominium co-owner. In this case, defendant assumed a duty to maintain the common elements under its bylaws, which necessarily required defendant to assume control over the common elements. Plaintiff, by agreeing to the bylaws, ceded control over the common elements to defendant.

4. The next question to consider was whether the special relationship between plaintiff and defendant was that of invitee and land possessor. Invitee status is commonly afforded to persons entering the property of another for a business purpose. In this case, plaintiff was in a business relationship with defendant and paid money to defendant to maintain the common elements. Moreover, in becoming a co-owner, plaintiff agreed to cede individual authority over the common

elements to the association, and defendant's bylaws ensured that the premises would be made safe for plaintiff's use. Under this framework, plaintiff was an invitee and could maintain a premises-liability action against defendant. Although previous premises-liability caselaw may refer to the "land of another," this does not necessarily mean the land of another *owner*. Rather, the "land of another" means that another person or entity has possession and control over the land on which a person is injured. Land ownership is not dispositive to the inquiry in premises-liability cases.

Reversed and remanded.

Justice ZAHRA, joined by Justice VIVIANO, dissenting, would not have overruled *Francescutti*, and, instead, would have held that plaintiff was not a common-law invitee, licensee, or trespasser while in the general common elements of the condominium project. The legal status of a condominium co-owner is not defined by the common law of premises liability, but by the Condominium Act. The legal relationship between a condominium co-owner and their condominium association is governed entirely by the Condominium Act and the association's bylaws; the common law has no application. The Condominium Act limits a condominium co-owner's right to legal action against the condominium association to one for injunctive relief or breach of contract; the act does not provide that damages may be sought from the association. A condominium is an estate in real property and a form of property ownership that did not exist at common law. Therefore, the relationship between a condominium co-owner and a condominium association has always been the product of statutory law. There is little justification for the majority's declaration that condominium co-owners have the rights of tenants under the common law or for classifying them as invitees as to the general common elements of the condominium project. Unlike a tenant, a co-owner has a pecuniary interest in the property, and unlike a landlord, an association is a nonprofit entity with no pecuniary interest in the property.

Michigan Supreme Court
Lansing, Michigan

OPINION

FILED July 11, 2024

S T A T E O F M I C H I G A N

SUPREME COURT

DAOUD MOUSA JANINI and FERYAL JANINI,

Plaintiffs-Appellants,

v No. 164158

LONDON TOWNHOUSES CONDOMINIUM ASSOCIATION,

Defendant-Appellee,

and

JAMES PYDA,

Defendant.

BEFORE THE ENTIRE BENCH

BERNSTEIN, J.

In this case, we consider whether a condominium co-owner can maintain a premises-liability action against a condominium association when the co-owner was

injured while using the condominium's common elements. We conclude that the Court of Appeals erroneously determined that a condominium co-owner is neither a licensee nor an invitee and thus is precluded from bringing a premises-liability claim against a condominium association simply because the condominium co-owner holds an interest in those common elements. The proper inquiry when considering the duty owed in a premises-liability action is who has possession and control over the land where a person was injured, not merely who owns the land. We hold that, when the master deed and bylaws governing a condominium complex provide that the condominium association is responsible for maintaining the common areas and the condominium's co-owners lack possession and control over those common areas, a condominium co-owner using the condominium complex's common areas and elements is an invitee. In such circumstances, a condominium association owes a condominium co-owner a common-law duty to exercise reasonable care to protect them from dangerous conditions in the common areas. For that reason, we reverse the judgment of the Court of Appeals and remand to the trial court for proceedings not inconsistent with this opinion.

I. FACTUAL AND PROCEDURAL HISTORY

Plaintiffs Daoud and Feryal Janini own and reside in a condominium unit that is part of a condominium complex.[1] On March 16, 2019, plaintiff stepped out of his condominium and into a common area of the complex to throw garbage into a dumpster. Plaintiff walked down the complex's sidewalk, which was covered in snow and ice. While walking on the

[1] Plaintiff Feryal Janini's claim is a derivative loss of consortium claim. Accordingly, the use of the singular "plaintiff" throughout this opinion refers specifically to plaintiff Daoud Janini.

sidewalk, plaintiff slipped and fell, hitting the back of his head against the icy sidewalk. This fall resulted in a brain injury.

Defendant London Townhouses Condominium Association is an association of the co-owners of the condominiums in the complex.[2] Defendant's bylaws expressly state that it is responsible for the maintenance of the complex's common elements. It is undisputed on appeal that defendant was responsible for the maintenance of the sidewalk on which plaintiff was injured.

On June 19, 2019, plaintiffs filed a complaint against defendant, alleging that defendant breached its duty to maintain the sidewalk by failing to timely remove snow and ice from the sidewalk. Relevant to this appeal, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10).

The trial court dismissed almost all of plaintiffs' claims except for the premises-liability claim, finding that genuine issues of fact existed on that claim alone. Defendant filed a motion for reconsideration, which the trial court denied. Defendant sought leave to appeal in the Court of Appeals, and the Court of Appeals granted the application.

On February 1, 2022, the Court of Appeals reversed the trial court's order denying summary disposition in an unpublished per curiam opinion. *Janini v London Townhouses Condo Ass'n*, unpublished per curiam opinion of the Court of Appeals, issued February 1, 2022 (Docket No. 355191). In so holding, the Court of Appeals relied on *Francescutti v Fox Chase Condo Ass'n*, 312 Mich App 640; 886 NW2d 891 (2015), which also involved

[2] This appeal concerns only the claims against defendant London Townhouses Condominium Association. The claims against defendant James Pyda were dismissed by stipulated order, and Pyda is not a party to this appeal.

a premises-liability claim filed by a plaintiff who was an owner of a condominium against a defendant condominium association. In *Francescutti*, the Court of Appeals held that the plaintiff, who slipped and fell on an icy, snow-covered sidewalk, could not bring a premises-liability action against the defendant. *Id*. at 643. The *Francescutti* Court reasoned that, because the plaintiff was a co-owner of the sidewalk, the plaintiff did not enter on "the land of another" and thus was neither a licensee nor an invitee. *Id*. Accordingly, the *Francescutti* Court concluded that the defendant did not owe a duty to the plaintiff under a premises-liability theory. *Id*.

In relying on *Francescutti*, the Court of Appeals here explained that plaintiffs were co-owners of the land on which plaintiff fell. Because plaintiffs were "in possession" of the condominium's common elements, the Court of Appeals reasoned that plaintiff was not on land that was in the possession of another when he slipped and fell. *Janini*, unpub op at 4-5. Because the Court of Appeals concluded that plaintiff was neither an invitee nor a licensee at the time of the fall, it held that plaintiffs were precluded from bringing a premises-liability claim against defendant.

Judge SHAPIRO wrote a concurring opinion, indicating that he agreed with the majority that *Francescutti* required reversing the trial court in this case but stating that he believed that *Francescutti* had been wrongly decided. *Janini* (SHAPIRO, J., concurring), unpub op at 1, 7.

Plaintiffs sought leave to appeal in this Court, and in lieu of granting leave, we ordered oral argument on the application. *Janini v London Townhouses Condo Ass'n*, 509 Mich 1072 (2022).

II. STANDARD OF REVIEW

"This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Id*. at 120.]

A reviewing court "should evaluate a motion for summary disposition under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion. A reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial." *Id*. at 121.

III. ANALYSIS

In Michigan, condominium ownership is governed by the Condominium Act, MCL 559.101 *et seq*. A condominium co-owner is "a person, firm, corporation, partnership, association, trust, or other legal entity or any combination of those entities, who owns a condominium unit within the condominium project." MCL 559.106(1). "Pursuant to the Condominium Act, the administration of a condominium project is governed by the condominium bylaws. MCL 559.153. Bylaws are attached to the master deed and, along with the other condominium documents, the bylaws dictate the rights and obligations of a co-owner in the condominium." *Tuscany Grove Ass'n v Peraino*, 311 Mich App 389, 393;

875 NW2d 234 (2015). The condominium's common elements are "the portions of the condominium project other than the condominium units." MCL 559.103(7). If provided by a master deed, condominium co-owners may hold an undivided interest in the common elements, MCL 559.137, and except as otherwise provided by the Act, a condominium co-owner may not alter the common elements. See MCL 559.137(5); MCL 559.147(1).

The Condominium Act also recognizes that the condominium association is a separate legal entity that is capable of being sued. See MCL 559.207 ("A co-owner may maintain an action against the association of co-owners and its officers and directors to compel these persons to enforce the terms and provisions of the condominium documents."); MCL 559.215(1) ("A person . . . adversely affected by a violation of or failure to comply with this act, rules promulgated under this act, or any provision of an agreement or a master deed may bring an action for relief in a court of competent jurisdiction.").

The dissent argues that this Court errs by recognizing that a condominium co-owner may maintain a cause of action against a condominium association under a premises-liability theory because condominiums are governed by a detailed statutory scheme and because the relationship between a condominium association and a condominium co-owner had not before been defined by the common law. However, neither fact necessarily precludes a resort to common-law principles. We do not create or modify the common law in this opinion. We instead apply pre-existing principles regarding the duties of those with possession and control over land to a new circumstance. While the statutory scheme is silent as to whether a common-law duty is afforded to a condominium co-owner from a condominium association, nothing in the Condominium Act clearly prohibits the

application of the common law to these circumstances. See *Bazzi v Sentinel Ins Co*, 502 Mich 390, 400; 919 NW2d 20 (2018) (holding that an insurer that defended a cause of action against it under the no-fault act may "avail itself of any common-law defenses" unless "*clearly* prohibited by statute") (emphasis added). Indeed, "legislative amendment of the common law is not lightly presumed." *Wold Architects and Engineers v Strat*, 474 Mich 223, 233; 713 NW2d 750 (2006). "The Legislature is presumed to know of the existence of the common law when it acts." *Id*. at 234. Thus, the Legislature "should speak in no uncertain terms" when it seeks to modify the common law. *Hoerstman Gen Contracting, Inc v Hahn*, 474 Mich 66, 74; 711 NW2d 340 (2006).

The dissent infers that because MCL 559.207 does not expressly use the word "damages" in describing permissible relief between a condominium association and a condominium co-owner, the Legislature must have clearly intended to displace a common-law premises-liability cause of action. We disagree. MCL 559.207 governs causes of action between a condominium co-owner and a condominium association as they relate to violations of a condominium project's governing documents. The fact that the Legislature sought to codify a remedy for the violation of a condominium project's governing documents does not lead us to believe that the Legislature necessarily intended to displace common-law causes of action between a condominium co-owner and a condominium association.[3] Indeed, if the Legislature had intended the Condominium Act's provisions to

[3] The dissent also dismisses MCL 559.215(1), which allows a person to seek relief generally, by explaining that a person is not a co-owner under the Condominium Act. We disagree. A co-owner is clearly a "person." See MCL 559.106(1) (defining a co-owner to include "a *person* . . . who owns a condominium unit within the condominium project") (emphasis added).

provide exclusive remedies, the Legislature could have said so. See *Wold*, 474 Mich at 234 (explaining that where a statutory scheme and common-law principles coexist, "the Legislature could have easily stated an intent to abrogate [the] common-law"). Similarly, if the Legislature wished to immunize condominium associations from tort liability, they could have said so. See generally MCL 691.1407(1) ("Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function."). In other words, the codification of a distinct remedy under MCL 559.207, which provides guidance as to when an injunction to compel enforcement of the condominium documents is appropriate, does not expressly or impliedly eliminate remedies available under the common law. We presume that the Legislature meant what it said. *Apsey v Mem Hosp*, 477 Mich 120, 127; 730 NW2d 695 (2007). What the Legislature said in the Condominium Act is that condominium co-owners can pursue an action that compels a condominium association to enforce the provisions of the governing documents. The Legislature has *not* said that the codification of this distinct cause of action is intended to displace common-law causes of action, such that a condominium association is effectively immune from tort liability.

Having concluded that plaintiff's common-law cause of action is not precluded by the Condominium Act, we next acknowledge that whether a condominium co-owner may maintain a premises-liability suit against a condominium association depends on whether a special relationship exists between the co-owner and the condominium association as the owner, occupier, or possessor of the land, such that the law will impose a duty of care on the condominium association. See *Bailey v Schaaf*, 494 Mich 595, 604; 835 NW2d 413 (2013). Historically, Michigan has recognized that the duty a possessor of land owes to a

person who enters the land depends on whether the visitor is classified as an invitee, a licensee, or a trespasser. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). "An 'invitee' is 'a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make [it] safe for [the invitee's] reception.' " *Id*. at 596-597 (citation omitted; alterations in original). "[I]nvitee status is commonly afforded to persons entering upon the property of another for business purposes." *Id*. at 597. "A 'licensee' is a person who is privileged to enter the land of another by virtue of the possessor's consent." *Id*. at 596. "A 'trespasser' is a person who enters upon another's land, without the landowner's consent." *Id*.

" '[A]n invitee is entitled to the highest level of protection under premises liability law.' " *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 112; 1 NW3d 44 (2023), quoting *Stitt*, 462 Mich at 597. "Land possessors owe a duty to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land." *Kandil-Elsayed*, 512 Mich at 112 (quotation marks and citation omitted). "A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved." *Stitt*, 462 Mich at 596. The law imposes no additional "duty of inspection or affirmative care to make the premises safe for the licensee's visit." *Id*. "The landowner owes no duty to the trespasser except to refrain from injuring him by wilful and wanton misconduct." *Id*. (quotation marks and citation omitted).

We have previously explained that "[t]hese special relationships are predicated on an imbalance of control, where one person entrusts himself to the control and protection of

another, with a consequent loss of control to protect himself." *Bailey*, 494 Mich at 604 (quotation marks, citation, and emphasis omitted). We have further explained that premises-liability actions are predicated on "both possession and control over the land." *Kubczak v Chem Bank & Trust Co*, 456 Mich 653, 660; 575 NW2d 745 (1998) (quotation marks and citation omitted). This is because the "party in possession is in a position of control, and normally best able to prevent any harm to others." *Finazzo v Fire Equip Co*, 323 Mich App 620, 627; 918 NW2d 200 (2018) (quotation marks, citations and emphasis omitted).

It is true that, strictly speaking, a condominium building's common elements are typically owned collectively by the condominium co-owners, as with plaintiffs in this case. Accordingly, condominium co-owners often do not independently exercise exclusive ownership over the common elements. Such an arrangement would be prone to dispute. Rather, condominium co-owners cede control over those common elements to the condominium association, and it becomes the responsibility of the condominium association to maintain those common elements. See *Bruce E. Cohan, MD, PC v Riverside Park Place Condo Ass'n, Inc*, 140 Mich App 564, 569-570; 365 NW2d 201 (1985) ("Inherent in the condominium concept is the principle that to promote the health, happiness and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, *each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property*.") (quotation marks, citations, and brackets omitted). In this way, while condominium co-owners have an undivided interest in the common elements, MCL 559.137(1); see also MCL 559.163, that interest does not necessarily amount to *control*

over the common elements, see MCL 559.147(1) (stating that while a co-owner may make alterations within a condominium unit they may not "do anything which would change the exterior appearance of a condominium unit *or of any other portion of the condominium project* except to the extent and subject to the conditions as the condominium documents may specify") (emphasis added). Thus, the practical reality is that while plaintiff was a co-owner of the common elements, he did not enjoy exclusive control over them, which one typically associates with land possession.[4]

When we consider the practical reality of the relationship between a condominium co-owner and a condominium association, it is often like that of a landlord and a tenant. We have previously observed that, under some circumstances, apartment structures contain common elements, which the lessor has a duty to maintain. See *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 429; 751 NW2d 8 (2008). This Court has recognized that a "special relationship" exists between a landlord and its tenant. *Bailey*, 494 Mich at 608-609 ("[W]here tenants, their invitees, or a merchant's invitees lack control over certain premises, the concomitant actor in the special relationship—the landlord or merchant—

[4] We recognize that in some circumstances the master deed and the condominium association's bylaws can, by their terms, alter the relationship between a condominium association and a condominium co-owner. Certainly, in many condominium disputes, like this one, individual condominium co-owners have little to no authority over the common areas and elements. In such a circumstance, the possession of those common areas and elements remains with the condominium association. This necessarily produces a special relationship between the condominium association, as the party with control over the land, and the condominium co-owner, as a person who enters the land. However, this opinion does not purport to apply to any and all disputes between a condominium association and a condominium co-owner. We reiterate that the condominium complex's master deed and bylaws govern the relationship between a condominium association and a condominium co-owner, and the terms of those documents will determine the relationship that exists between a condominium association and a condominium co-owner.

bears the burden of control and thus the duty [to] keep such areas reasonably safe."). The Court of Appeals has aptly recognized in these circumstances that the tenant is the landlord's invitee. *Stanley v Town Square Coop*, 203 Mich App 143, 147; 512 NW2d 51 (1993) (explaining that "tenants are invitees of the landlord while in the common areas, because the landlord has received a pecuniary benefit for licensing their presence"); *Estate of Trueblood v P&G Apartments, LLC*, 327 Mich App 275, 285; 933 NW2d 732 (2019) ("A tenant is an invitee of the landlord.").[5]

In this case, the landlord-tenant relationship mirrors the relationship between a condominium association and a condominium co-owner. Defendant, per its own bylaws, assumed a duty to maintain the common elements. In order to maintain the common elements, defendant necessarily assumed control over them. Plaintiffs, by agreeing to these bylaws, ceded their control over the common elements to defendant. Thus, we conclude that the relationship between a condominium association and a condominium co-owner is similar to the special relationship between a land possessor and its guests.

With this background in mind, we next consider whether the special relationship between plaintiff and defendant is one of an invitee and a land possessor. In order to establish invitee status, we consider whether an individual enters the land by invitation. *Stitt*, 462 Mich at 596-597. Invitee status is commonly afforded to persons entering upon the property of another for business purposes. *Id*. at 597. Here, plaintiffs were in a business

[5] We acknowledge, as the dissent does, that condominium co-owners and tenants are different from one another. But the lack of a perfect pre-existing analogy between condominium relationships and those reflected in the traditional premises-liability framework does not mean that we should ignore the imbalance of possession and control that is typical in a condominium relationship and impose no duty at all.

relationship with defendant. Plaintiffs paid money to the condominium association to maintain the common elements for their own use and enjoyment. Plaintiffs' ability to purchase a condominium unit, along with their rights to use the common elements, are subject to the condition that plaintiffs pay these dues to the condominium association and cede their individual authority over the common elements to the association. Further, by defendant's own bylaws, plaintiffs were assured that the premises would be made safe for plaintiffs' use. See *id*. at 596-597 (explaining that an "invitee" "enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make [it] safe for [the invitee's] reception . . . . The landowner has a duty of care, not only to warn the invitee of any known dangers, but the additional obligation to also make the premises safe") (quotation marks and citation omitted; alterations in original). We hold that, under this framework, plaintiff is an invitee and can maintain a premises-liability action against the condominium association.[6] See also *Jeffrey-Moise v Williamsburg Towne Houses*

[6] Indeed, many of our sister courts have made similar observations. The Arizona Supreme Court has explained that if a condominium association "owes no duty of care over the common areas of the property, no one does because no one else possesses the ability to cure defects in the common area." *Martinez v Woodmar IV Condos Homeowners Ass'n, Inc*, 189 Ariz 206, 209; 941 P2d 218 (1997). Finding that the law cannot recognize "such a lack of responsibility for safety," the Arizona Supreme Court held that "with respect to common areas under its exclusive control, a condominium association has the same duties as a landlord." *Id*. The California Supreme Court also explained that a condominium association "is, for all practical purposes, the Project's 'landlord.' " *Frances T v Village Green Owners Ass'n*, 42 Cal 3d 490, 499; 723 P2d 523 (1986). "And traditional tort principles impose on landlords, no less than on homeowner associations that function as a landlord in maintaining the common areas of a large condominium complex, a duty to exercise due care for the residents' safety in those areas under their control." *Id*. See also *Sevigny v Dibble Hollow Condo Ass'n, Inc*, 76 Conn App 306, 323-324; 819 A2d 844 (2003) (explaining that the undertaking of maintenance by a condominium association "is consistent with the traditional landlord-tenant relationship"); *Lloyd v Pier West Prop*

Coop, Inc, 336 Mich App 616, 631; 971 NW2d 716 (2021) (explaining that a resident's "purchase of a membership in the cooperative entitled her to occupy her townhome and entitled her to use the common areas of the cooperative as long as she paid the required monthly fees and complied with the rules of the cooperative. Plaintiff was thus in a business relationship with the cooperative in which she purchased certain rights of occupancy from the cooperative by buying a membership in the cooperative").[7]

Owners Ass'n, 2015 Ark App 487; 470 SW3d 293, 299 (2015) ("[A] condominium association may be held to the landlord standard of care as to common areas under its control.").

Even when our sister courts have *not* adopted a framework that compares a condominium association and condominium co-owners to a landlord-tenant relationship, those courts have still found that condominium co-owners are owed a duty of care under a theory of premises liability. See, e.g., *McDaid v Aztec West Condo Ass'n*, 234 NJ 130, 141-142; 189 A3d 321 (2018) ("Like any premises owner under the common law, a condominium association has a duty to exercise reasonable care to protect the condominium's residents from a dangerous condition on property within the ambit of the common elements."); *Hurst v Carriage House West Condo Owners Ass'n, Inc*, 2017-Ohio-9236, ¶ 11; 102 NE3d 1071 (Ohio App, 2017) ("An owner of a unit in a condominium complex is generally considered to be a business invitee in relation to a homeowners' association that controls the common areas of the complex. . . . Typically, therefore, appellees would owe business invitees a duty of ordinary care . . . .").

The dissent dismisses our consideration of these persuasive decisions and explains that if plaintiff had filed this cause of action in all but one of these jurisdictions, the complaint would have been summarily dismissed. But the dissent is answering a much broader question than we purport to. At no point does this Court opine on the merits of plaintiff's claim or what the result in this case ought to be. We merely assert that plaintiff can maintain a premises-liability cause of action. We see no reason to opine on how this case should conclude before it even proceeds.

[7] We agree with *Jeffrey-Moise* to the extent that the panel concluded that where a resident is in a business relationship with the land possessor, see *Stitt*, 462 Mich at 597, the resident is properly classified as an invitee, rather than a licensee.

In so holding, we overturn the Court of Appeals decision in *Francescutti*. The *Francescutti* Court erred by centering its holding on the phrase "the land of another." *Francescutti*, 312 Mich App at 643. Admittedly, *Stitt*, on which *Francescutti* relied, used the phrase "the land of another" when defining licensees and invitees. See *Stitt*, 462 Mich at 596-597 (noting that a "licensee" enters "the land of another by virtue of the possessor's consent," and an "invitee" " 'enters upon the land of another upon an invitation' "). However, the phrase "the land of another" does not necessarily equate to "the land of another *owner*." Instead, the "land of another" phrase easily aligns with our decisions that explain that to sustain a premises-liability case, the land on which a person is injured is land over which another person or entity has possession and control. See *Kubczak*, 456 Mich at 660 ("Premises liability is conditioned upon the presence of possession and control, not necessarily ownership.") (quotation marks and citation omitted). We acknowledge that caselaw may sometimes reference a "landowner," given that premises-liability cases often arise in the context of a person injured on land that the person does not own. However, we have explained that land ownership is not dispositive to the inquiry. *Id*. We take this opportunity to clarify, once more, that the proper inquiry when considering the duty owed in a premises-liability context is who holds possession and control over the land where a person was injured and not merely who owned the land.[8]

[8] The dissent explains that many people would be surprised to learn that condominium co-owners are afforded the highest level of protection under premises-liability law, even when they fall on their own property. We disagree. We believe that the people of Michigan would reasonably expect that a condominium association, which typically receives a homeowners' association fee from the condominium co-owners and has exclusive possession and control over the common areas, might exercise reasonable care in ensuring

IV. CONCLUSION

We conclude that the Court of Appeals erred by holding that plaintiffs could not maintain a premises-liability action against defendant. Under these circumstances, we hold that plaintiff was an invitee when he entered the condominium's common area and that defendant owed him a duty to exercise reasonable care to protect him from dangerous conditions on the land. Accordingly, we reverse the judgment of the Court of Appeals and remand this case to the trial court for proceedings not inconsistent with this opinion. We do not retain jurisdiction.

Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden

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that those common areas are safe to the same extent that they expect such behavior from any other person or entity with exclusive possession and control over land.

S T A T E O F M I C H I G A N

SUPREME COURT

DAOUD MOUSA JANINI and FERYAL JANINI,

Plaintiffs-Appellants,

v No. 164158

LONDON TOWNHOUSES CONDOMINIUM ASSOCIATION,

Defendant-Appellee,

and

JAMES PYDA,

Defendant.

ZAHRA, J. (*dissenting*).

In this case, the Court requested supplemental briefing and oral argument to consider the Court of Appeals' decision in *Francescutti v Fox Chase Condo Ass'n*.[1] The *Francescutti* panel held that, under the Condominium Act,[2] a person who "owns a condominium unit within the condominium project," i.e., "a co-owner,"[3] while on the

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[1] *Francescutti v Fox Chase Condo Ass'n*, 312 Mich App 640; 886 NW2d 891 (2015).

[2] MCL 559.101 *et seq*.

[3] MCL 559.106(1) defines a condominium "co-owner" as "a person, firm, corporation, partnership, association, trust, or other legal entity or any combination of those entities, who owns a condominium unit within the condominium project."

general common elements of the condominium project,[4] is neither a licensee nor an invitee under Michigan common law because the co-owner is an owner, in part, of the property. The majority opinion rejects the holding of *Francescutti* and concludes that plaintiff co-owner[5] in this case is an invitee owed the highest duty a possessor of land can owe to someone on that land. Contrary to the conclusion of my colleagues, I would not disturb the *Francescutti* panel's holding that plaintiff is not a common-law invitee, licensee, or trespasser while on the general common elements of the condominium project. Considering the expansion of premises liability occasioned by our decision last term in *Kandil-Elsayed v F & E Oil, Inc*,[6] now is not the time to recognize a new category of premises-liability claims. As a result, I respectfully dissent and would leave it to the Legislature to sort out the competing interests in this complex area of the law.

The legal relationship between a co-owner and their condominium association is governed by statute, i.e., the Condominium Act, and the association's bylaws, which are

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[4] " 'Common elements' means the portions of the condominium project other than the condominium units." MCL 559.103(7). " 'General common elements' means the common elements other than the limited common elements," MCL 559.106(5), which are ostensibly the portions of the condominium project at issue in this case.

A condominium project may also include "limited common elements"; that term refers to "a portion of the common elements reserved in the master deed for the exclusive use of less than all of the co-owners." MCL 559.107(2). This case does not involve any limited common elements of the condominium project, and the majority opinion seemingly would not extend invitee status to condominium co-owners not actually invited onto the limited common elements given that they are for the exclusive use of less than all of the co-owners.

[5] Plaintiff Feryal Janini's claim is a derivative loss-of-consortium claim. Therefore, this opinion will refer to plaintiff Daoud Janini as "plaintiff."

[6] *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95; 1 NW3d 44 (2023).

permitted under the Condominium Act. Under the act, a co-owner's right to legal action against the condominium association is limited to one for injunctive relief; the statute does not provide for "damages" against the association. A co-owner may also plead a breach-of-contract claim against the association.[7] But plaintiff's claim in this matter is not for injunctive relief or breach of contract.

The word "condominium" is derived from a Latin compound meaning "joint dominion,"[8] and the concept of joint ownership and communal living has deep historical roots; yet, this form of real property ownership is foreign to Michigan common law.[9] Consider that, in 1964, the Michigan State Bar Journal published an article, "Condominium in Michigan," with the following introduction:

> Condominium is not a new form of birth control, nor is it a new building material. It is the greatest boon to the real estate business in the State of Michigan since the advent of the [Federal Housing Act].[10]

The author's humor was not remarkable, but to the author's credit, condominiums are now ubiquitous in this state. The article explains, "Condominium came to the United States from Puerto Rico which enacted enabling legislation in 1958," but none of the states

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[7] See *Francescutti*, 312 Mich App at 644.

[8] *Merriam-Webster's Collegiate Dictionary* (11th ed).

[9] "It is believed that some type of communal living analogous to condominiums existed even in Roman times. However, the first formal outline of condominium ownership was in the Code Napoleon of 1804, Article 664, which formally addressed issues of separate and common elements now so inherent in this type of real property ownership." Nichols, *Time For an Overhaul of the Michigan Condominium Act?*, 93 Mich B J 22, 22 (July 2014), citing Levin, *Condo Developers and Fiduciary Duties: An Unlikely Pairing?*, 24 Loyola Consumer L R 197 (2011).

[10] Beresford, *Condominium in Michigan*, Mich St B J, Vol. 43, No. 10 (1964), p 13.

adopted condominium laws "until after the enactment of section 234 of the Federal Housing Act in 1961, which made possible federal insurance of mortgages on individual 'family units' in a multi-family structure . . . ."[11] The article highlights that Michigan borrowed from this legislation when enacting its first condominium statute, the Horizontal Real Property Act, 229 PA 1963, which became effective on May 23, 1963.[12] Later, our Legislature enacted the Condominium Act.[13]

Before the Legislature enacted the Horizontal Real Property Act and introduced the condominium to Michigan in 1964, the word "condominium" had never been mentioned in a published case. The first published case to include the word "condominium" was decided in 1968,[14] several years after the current Michigan Constitution was approved by voters in 1963, which provides the current basis for Michigan common law.[15] Then, as now, it has generally been accepted that "[a] condominium is an estate in real property and a form of property ownership created by statute, and that did not exist at common law."[16]

The relationship between a condominium co-owner and their condominium association has always been and should remain the product of statutory law, which allows

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[11] *Id*.

[12] *Id*.

[13] 1978 PA 59.

[14] See *Aetna Mtg Co v Dembs*, 13 Mich App 686, 688; 164 NW2d 771 (1968).

[15] Const 1963, art III, § 7 provides that "[t]he common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are changed, amended or repealed."

[16] 31 CJS, Estates, § 223, p 238.

for myriad association bylaws that the condominium project's co-owners must accept and follow.

> Common law has long been defined as
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> [t]he body of law derived from judicial decisions, rather than from statutes or constitutions . . . .
>
> > "Historically, [the common law] is made quite differently from the Continental code. The code precedes judgments; the common law follows them. The code articulates in chapters, sections, and paragraphs the rules in accordance with which judgments are given. The common law on the other hand is inarticulate until it is expressed in a judgment. Where the code governs, it is the judge's duty to ascertain the law from the words which the code uses. Where the common law governs, the judge, in what is now the forgotten past, decided the case in accordance with morality and custom and later judges followed his decision. They did not do so by construing the words of his judgment. They looked for the reason which had made him decide the case the way he did, the *ratio decidendi* as it came to be called. Thus it was the principle of the case, not the words, which went into the common law. So historically the common law is much less fettering than a code." Patrick Devlin, *The Judge* 177 (1979).[17]

"This Court is the principal steward of Michigan's common law."[18]

> [A]lteration of the common law should be approached cautiously with the fullest consideration of public policy and should not occur through sudden departure from longstanding legal rules. *Henry* [*v Dow Chem Co*], 473 Mich [63, 83; 701 NW2d 684 (2005)] ("[O]ur common-law jurisprudence has been guided by a number of prudential principles. See Young, *A judicial traditionalist confronts the common law*, 8 Texas Rev L & Pol 299, 305-310 (2004). Among them has been our attempt to 'avoid capricious departures

[17] *Black's Law Dictionary* (11th ed).

[18] *Henry v Dow Chem Co*, 473 Mich 63, 83; 701 NW2d 684 (2005). See also *Price v High Pointe Oil Co, Inc*, 493 Mich 238, 243; 828 NW2d 660 (2013).

> from bedrock legal rules as such tectonic shifts might produce unforeseen and undesirable consequences,' *id*. at 307 . . . ."); see also *Woodman* [*v Kera LLC*, 486 Mich 228, 231; 785 NW2d 1 (2010)] (opinion by YOUNG, J.) ("[M]odifications [of the common law] should be made with the utmost caution because it is difficult for the judiciary to assess the competing interests that may be at stake and the societal trade-offs relevant to one modification of the common law versus another in relation to the existing rule."); *id*. at 268 (MARKMAN, J., concurring in part and dissenting in part) (explaining that the common law develops incrementally); *North Ottawa* [*Community Hosp v Kieft*, 457 Mich 394, 403 n 9; 578 NW2d 267 (1998)] (providing that common law should only be changed "in the proper case").[19]

Therefore, "when it comes to alteration of the common law, the traditional rule must prevail absent compelling reasons for change. This approach ensures continuity and stability in the law."[20]

There can be no question that there has never been any Michigan common law that defined the relationship between a condominium co-owner and their condominium association. The majority opinion admits that "the relationship between a condominium association and a condominium co-owner *had not before been defined by the common law*" and then "appl[ies] pre-existing principles regarding the duties of those with possession and control over land to a new circumstance."[21] In other words, the majority opinion applies pre-existing principles, which are common-law principles, to define the relationship between a co-owner and a condominium association. Contrary to the majority's claim, its opinion is unquestionably a creation or modification of the common law for the simple reason that this form of property ownership was created by statute and

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[19] *Price*, 493 Mich at 259.

[20] *Id*. at 260.

[21] Emphasis added.

did not exist at common law.[22] The Legislature could not have acted in derogation of the common law when legislating the relationship between a co-owner and an association because condominium ownership has no basis in common law.

I agree with the majority opinion that the condominium association is a separate legal entity that is capable of being sued. However, the majority opinion omits that the operative portion of the Condominium Act, MCL 559.207, carefully delineates the type of action that a co-owner may bring against an association. It provides:

> A co-owner may maintain an action against the association of co-owners and its officers and directors to compel these persons to enforce the terms and provisions of the condominium documents. In such a proceeding, the association of co-owners or the co-owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent that the condominium documents expressly so provide. A co-owner may maintain an action against any other co-owner for injunctive relief or for damages or any combination thereof for noncompliance with the terms and provisions of the condominium documents or this act.

The above text makes very clear that a condominium co-owner may maintain an action to "compel" and "enforce" the terms and provisions of the condominium documents. Damages are not included as a remedy for this action. Indeed, this omission was clearly intentional, given that the statute does provide a co-owner with an "*action against any other co-owner for injunctive relief or for damages*."[23] MCL 559.207, however, unquestionably limits a co-owner's action against the association to injunctive relief.[24]

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[22] 31 CJS, Estates, § 223, p 238.

[23] Emphasis added.

[24] The majority opinion does not accurately portray my reliance on MCL 559.207. My interpretation is not predicated on the proposition that "MCL 559.207 does not expressly use the word 'damages' in describing permissible relief between a condominium association and a condominium co-owner . . . ." Rather, the interpretive point is that

Further, MCL 559.207 is significant in that it illuminates the association's duty to maintain the premises. It would be ill-advised for a co-owner to file an action for injunctive relief merely because the co-owner is dissatisfied with the association's response to a snowfall. This provision is generally intended to allow for injunctive relief in response to an association's failure to fulfill its duties under the statute or the association's bylaws, such as an association's ongoing failure to maintain the general common elements.[25]

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because MCL 559.207 does allow for "damages" when a co-owner sues another co-owner, it is clear that the Legislature *intentionally* omitted damages as a remedy in an action brought by a co-owner against the association.

[25] The majority opinion also points to MCL 559.215(1), which states: "A person or association of co-owners adversely affected by a violation of or failure to comply with this act, rules promulgated under this act, or any provision of an agreement or a master deed may bring an action for relief in a court of competent jurisdiction. The court may award costs to the prevailing party."

MCL 559.215(1) is not applicable in this case. This provision contemplates an action by a "person" or an association. A "person" is not a "co-owner" as defined by the Condominium Act. Compare MCL 559.106(1) (defining a "co-owner" as, among other things, a legal entity who owns a condominium unit within the condominium project) and MCL 559.109(2) (defining a "person" as "an individual, firm, corporation, . . . or other legal entity"). Because MCL 559.215(1) specifies that a "person" may bring the action described against a condominium association, it is likely that this provision is intended to protect condominium purchasers.

Along these lines, I tend to agree with Judge Rudy Nichols, see note 9 of this opinion, that the Legislature should take some action to clarify the Condominium Act. He observed:

> A look at the act can be daunting. The act begins with a series of definitions and then identifies the types of condominiums and projects (*expandable*, *contractible*, *leasehold*, etc.); defines the nature of an owner's interest; establishes the creation or development of easements, restrictions, and improvements and an advisory committee of nondevelopers; establishes certain mandatory bylaw provisions; provides for the sharing of common expenses; and otherwise establishes scores upon scores of rules and

The majority opinion thwarts the applicable statutory provisions by attempting to saddle condominium associations with a common-law duty to their co-owners. Even more unsettling is the seemingly unjustified decision to deem a condominium co-owner " 'entitled to the highest level of protection under premises liability law.' " In response to my critique of this decision, the majority opinion asserts that had "the Legislature wished to immunize condominium associations from tort liability, they could have said so." My opinion, however, does not suggest that the Legislature wished to immunize condominium associations from all tort liability. Rather, the Legislature intended to limit the actions that a condominium co-owner may bring against an association. Co-owners agree to this restriction when voluntarily purchasing a real estate interest in a condominium unit. The Condominium Act does not address the association's liability to those who have not agreed to be a co-owner in a condominium project, and common-law negligence principles apply to persons other than co-owners who enter onto the land of another who is in possession and control.

> regulations pertaining to conveying, amending, enforcing, assessing, selling, voting, terminating, and financing the condominium association and its units.
>
> The use of "scores" in the previous paragraph—in the sense of grouping a number of items—is an appropriate one. Unlike the Uniform Condominium Act and the Uniform Commercial Code, which are each neatly divided into a series of articles, Michigan's Condominium Act as amended is a hodgepodge of rules and regulations, each affecting in some way the creation, maintenance, and termination of condominium interests. The act is neither clearly written nor organized. [*Time for an Overhaul*, 93 Mich B J at 23.]

These common-sense revisions would certainly clarify the scope of the various actions contemplated within the Act.

The majority opinion provides co-owners the "highest level of protection" on the dubious assertion "that the relationship between a condominium association and a condominium co-owner is *similar* to the special relationship between a land possessor and its guests."[26]

The majority opinion takes a facile approach by pigeonholing co-owners as tenants on the basis of mere similarities. There is little justification for classifying a condominium co-owner as an invitee as to the general common elements of the condominium project.[27] Moreover, unlike a tenant, a co-owner has a pecuniary interest in the property. This is an important distinction. The underlying economic rationale of tort law is the allocation of risk. There is no risk to be allocated when the property owner and the party injured by a dangerous condition on the property are one and the same. While the presence of multiple owners of the property in question changes the equation, the injured fractional owner

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[26] Emphasis added.

[27] The majority opinion at least acknowledges "the lack of a perfect pre-existing analogy between condominium relationships and those reflected in the traditional premises-liability framework . . . ." Yet the majority still does not bolster its argument that Michigan's common law, in the absence of a directive in the Condominium Act, imposes a duty on condominium associations to act as landlords. Rather, the majority opinion obfuscates the issue, claiming that it makes more sense to treat a condominium association as a landlord than to "impose no duty at all." Of course, my opinion never suggests that a condominium association has no duty to condominium co-owners. The Condominium Act and the association's bylaws obviously define the association's duties with respect to co-owners. The majority simply does not accept that these duties cannot be enforced without an action that includes damages as a remedy, so it readily supplies this remedy under the guise of the common law. In doing so, the majority imposes its own policy preference to reach its desired result.

should bear a burden of risk that is greater than that of a tenant. And unlike a landlord, a condominium association is a nonprofit entity with no pecuniary interest in the property.[28]

Instead of relying on the hallmarks of an invitee relationship, i.e., an invitation and the presence of a possessor's pecuniary interest, the majority opinion supports its position by asserting that "many of our sister courts have made similar observations." Simply compiling observations from other state courts, many of which cite one another for the

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[28] The majority opinion barely engages in discussion of whether a condominium co-owner may be a licensee rather than an invitee. Yet, if the common-law framework were to apply here, there is as much or more justification for classifying a condominium co-owner as a licensee of the general common elements of the condominium project as there is to classify the co-owner as an invitee. In *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 604; 614 NW2d 88 (2000), we held that in determining what circumstances create invitee status, "the owner's reason for inviting persons onto the premises is the primary consideration when determining the visitor's status[.]" We explained that "the imposition of additional expense and effort by the landowner, requiring the landowner to inspect the premises and make them safe for visitors, must be directly tied to the owner's commercial business interests. It is the owner's desire to foster a commercial advantage by inviting persons to visit the premises that justifies imposition of a higher duty." *Id*. Finally, we concluded that "the prospect of pecuniary gain is a sort of quid pro quo for the higher duty of care owed to invitees. . . . In order to establish invitee status, a plaintiff must show that the premises were held open for a *commercial* purpose." *Id*. Because the association does not have a pecuniary interest in the property, a co-owner's legal status appears very similar to the characteristics of a licensee. See *Kreski v Modern Wholesale Electric Supply Co*, 429 Mich 347, 359-360; 415 NW2d 178 (1987) ("A licensee enters the premises not by invitation, but by permission of the owner or occupant. The licensee's presence is permitted by the possessor of the land, but is not related to the 'purpose or interest of the possessor of the land.' "), citing Prosser & Keeton, Torts (5th ed), § 60, p 412. The majority opinion's attempt to analogize a condominium association to a cooperative is misguided. Unlike a condominium association and a condominium co-owner, the business relationship between a cooperative and its members involves a pecuniary interest. Specifically, "the term 'cooperative plan' shall be deemed to mean a mode of operation whereby the earnings of the corporation are distributed on the basis of, or in proportion to, the value of property bought from or sold to shareholders and/or members or other persons, or labor performed for, or services rendered to, or by the corporation[.]" MCL 450.99. No such pecuniary interest exists between a condominium association and a condominium co-owner.

same proposition, hardly fulfills this Court's role as "the principal steward of Michigan's common law[.]"[29] "Our role [as principal steward] is 'to determine which common-law rules best serve the interests of Michigan citizens.' "[30] "More particularly, our role . . . is to determine the 'prevailing customs and practices of the people' in this state."[31] Indeed, this Court has acknowledged the prudential principle that we must "exercise caution and . . . defer to the Legislature when called upon to make a new and potentially societally dislocating change to the common law."[32]

In listing the cases it relies upon, the majority opinion conveniently ignores that all but one[33] of these jurisdictions has retained a limited duty in which a plaintiff must avoid

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[29] *Price*, 493 Mich at 258 (quotation marks and citation omitted).

[30] *People v Woolfolk*, 497 Mich 23, 26; 857 NW2d 524 (2014), quoting *Stitt*, 462 Mich at 607.

[31] *Id*., quoting *Woodman v Kera LLC*, 486 Mich 228, 278; 785 NW2d 1 (2010) (MARKMAN, J., concurring in part and dissenting in part).

[32] *Woodman*, 486 Mich at 245 (opinion by YOUNG, J.), quoting *Henry*, 473 Mich at 89.

[33] The Arizona Supreme Court has explained that if a condominium association "owes no duty of care over the common areas of the property, no one does because no one else possesses the ability to cure defects in the common area." *Martinez v Woodmar IV Condos Homeowners Ass'n, Inc*, 189 Ariz 206, 209; 941 P2d 218 (1997). With the exception of the city of Flagstaff, the most populous areas of Arizona, a state situated well below the 42nd parallel, of course, face fewer open and obvious dangers related to the accumulation of ice and snow.

The other cited jurisdictions have an open and obvious rule, including California, *Krongos v Pacific Gas & Electric Co*, 7 Cal App 4th 387, 393; 9 Cal Rptr 2d 124 (1992) ("Generally, if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition."); Arkansas, *Rodriguez v Chakka*, 2024 Ark App 224, 24; ___ SW3d ___ (2024) ("In Arkansas, the only recognized exception to the open-and-obvious-danger rule is when a business invitee is forced, as a practical matter, to encounter a known or obvious risk in order to perform his job."); New Jersey, *Mathews v University*

open and obvious dangerous conditions. The open and obvious danger doctrine in these states effectively requires that a plaintiff not know or have reason to know of the danger. Stated differently, had this case been filed in all but one of the states the majority opinion relies on, it would have been summarily dismissed.[34]

Moreover, other states' common-law principles are irrelevant to Michigan statutory law. The majority opinion posits no "prevailing customs and practices of the people" to justify expanding Michigan's common-law principles defining a landlord-tenant relationship to the relationship held between condominium co-owners and their

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Loft Co, 387 NJ Super 349; 903 A2d 1120 (App Div, 2006); and Ohio, *Armstrong v Best Buy Co, Inc*, 99 Ohio St 3d 79, 82; 2003-Ohio-2573; 788 NE2d 1088 (2003) (Generally, "[w]here a danger is open and obvious, a landowner owes no duty of care to individuals lawfully on the premises.").

And while Connecticut does not have an open and obvious danger rule, the Connecticut Supreme Court has adopted a limited "natural accumulations" doctrine that would likewise require summary dismissal of the instant case:

> We believe that in the absence of unusual circumstances, a property owner, in fulfilling the duty owed to invitees upon his property to exercise reasonable diligence in removing dangerous accumulations of snow and ice, may await the end of a storm and a reasonable time thereafter before removing ice and snow from outside walks and steps. To require a landlord or other inviter to keep walks and steps clear of dangerous accumulations of ice, sleet or snow or to spread sand or ashes while a storm continues is inexpedient and impractical. [*Kraus v Newton*, 211 Conn 191, 197-198; 558 A2d 240 (1989).]

[34] Contrary to the majority opinion, I have not dismissed the caselaw that it relies on from other jurisdictions but have only highlighted that these jurisdictions have retained common-law principles that a majority of this Court has recently jettisoned. See *Kandil-Elsayed*, 512 Mich 95. By simply cherry-picking common-law principles of the jurisdictions that support its desired result, the majority opinion fails to "exercise caution" before making "a new and potentially societally dislocating change to the common law." *Woodman*, 486 Mich at 245 (opinion by YOUNG, J.), quoting *Henry*, 473 Mich at 89.

condominium associations. In my view, many prospective condominium co-owners would not purchase their units if informed that they will be liable for the failure of their fellow co-owners to avoid open and obvious dangers in the general common elements of the development. And many citizens would be surprised to learn that the "prevailing customs and practices of the people" provide co-owners with "the highest level of protection under premises liability law," even when they fall on their own property because they failed to avoid an open and obvious danger.[35]

For these reasons, I dissent. I would affirm the Court of Appeals' holding in *Francescutti* to the extent that a co-owner is neither a licensee nor an invitee.[36] I would remand this case to the trial court to determine whether any duty is owed to plaintiff by defendant under the Condominium Act or defendant's bylaws.

Brian K. Zahra
David F. Viviano

[35] See *Kandil-Elsayed*, 512 Mich at 112 (quotation marks and citation omitted).

[36] *Francescutti*, 312 Mich App at 642-643.

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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GORDON M. ROBINSON; GORDON M. ROBINSON, AS CUSTODIAN UNDER THE HAWAI'I UNIFORM TRANSFER TO MINORS ACT FOR KELLY K. ROBINSON; GORDON M. ROBINSON AS CUSTODIAN UNDER THE HAWAI'I UNIFORM TRANSFER TO MINORS ACT FOR KEOLA M. ROBINSON; JAMES CHARLES ROBINSON AND LORRAINE OMPOY ROBINSON, TRUSTEES OF THE JAMES CHARLES ROBINSON AND LORRAINE OMPOY ROBINSON TRUST DATED DECEMBER 20, 2007; JAMES C. ROBINSON, AS CUSTODIAN UNDER THE HAWAI'I UNIFORM TRANSFERS TO MINORS ACT FOR RACHEL E. ROBINSON; JAMES C. ROBINSON, AS CUSTODIAN UNDER THE HAWAI'I UNIFORM TRANSFER TO MINORS ACT FOR KEALA C. ROBINSON, ALSO KNOWN AS KEALA CALAPINI, ALSO KNOWN AS KEALA ROBINSON; KEALA C. ROBINSON ALSO KNOWN AS KEALA CALAPINI, ALSO KNOWN AS KEALA ROBINSON; JAMES C. ROBINSON, AS CUSTODIAN UNDER THE HAWAI'I UNIFORM TRANSFER TO MINORS ACT FOR KAWIKA J. ROBINSON; and JAMES C. ROBINSON, AS CUSTODIAN UNDER THE HAWAI'I UNIFORM TRANSFER TO MINORS ACT FOR JEREMY C. ROBINSON, RACHEL E. ROBINSON, KAWIKA J. ROBINSON, JEREMY C. ROBINSON, KELLY K. ROBINSON, and KEOLA M. ROBINSON,
Plaintiffs-Appellees,

vs.

CATHLEN C. ZARKO; CHRISTOPHER P. ZARKO; DONELLE N. ZARKO; LISA K. ZARKO; and PATRICK C. ZARKO,
Defendants-Appellants,

and

KYLE I. FORSYTHE; SHAWN K. FORSYTHE; SHANIN A. SADO; LAUREN E. FORSYTHE; GILES M. FORSYTHE; TANYA MARIE LOELANI ROBINSON AND WILLIAM ALBERT ROBINSON, CO-TRUSTEES UNDER THE TANYA AND WILLIAM ROBINSON TRUST DATED NOVEMBER 27, 2006; AULANI M. DUSENBERRY; MALIA Y. BARROGA; GILES A.I. FORSYTHE AND ARNETTE FORSYTHE, TRUSTEES UNDER THE GILES A.I. FORSYTHE REVOCABLE LIVING TRUST DATED AUGUST 3, 2006; GILES A.I. FORSYTHE AND ARNETTE R. FORSYTHE, TRUSTEES OF THE ARNETTE R. FORSYTHE REVOCABLE TRUST DATED AUGUST 3, 2006,
Defendants-Appellees.

ARNETTE R. FORSYTHE AND GILES A.I. FORSYTHE AS TRUSTEES OF THE ARNETTE R. FORSYTHE REVOCABLE TRUST DATED AUGUST 3, 2006; ARNETTE R. FORSYTHE AND GILES A.I. FORSYTHE AS TRUSTEES OF THE GILES A.I. FORSYTHE REVOCABLE TRUST DATED AUGUST 3, 2006; SHAWN K. FORSYTHE; LAUREN E. FORSYTHE; GILES M. FORSYTHE; KYLE I. FORSYTHE; and SHANIN A. SADO,
Counter-Claimants-Appellees,

vs.

GORDON M. ROBINSON; GORDON M. ROBINSON, AS CUSTODIAN UNDER THE HAWAIʻI UNIFORM TRANSFER TO MINORS ACT FOR KELLY K. ROBINSON; GORDON M. ROBINSON AS CUSTODIAN UNDER THE HAWAIʻI UNIFORM TRANSFER TO MINORS ACT FOR KEOLA M. ROBINSON; JAMES CHARLES ROBINSON AND LORRAINE OMPOY ROBINSON, TRUSTEES OF THE JAMES CHARLES ROBINSON AND LORRAINE OMPOY ROBINSON TRUST DATED DECEMBER 20, 2007; JAMES C. ROBINSON, AS CUSTODIAN UNDER THE HAWAIʻI UNIFORM TRANSFERS TO MINORS ACT FOR RACHEL E. ROBINSON; JAMES C. ROBINSON, AS CUSTODIAN UNDER THE HAWAIʻI UNIFORM TRANSFER TO MINORS ACT FOR KEALA C. ROBINSON, ALSO KNOWN AS KEALA CALAPINI, ALSO KNOWN AS KEALA ROBINSON; KEALA C. ROBINSON, ALSO KNOWN AS KEALA CALAPINI, ALSO KNOWN AS KEALA ROBINSON; JAMES C. ROBINSON, AS CUSTODIAN UNDER THE HAWAIʻI UNIFORM TRANSFER TO MINORS ACT FOR KAWIKA J. ROBINSON; and JAMES C. ROBINSON, AS CUSTODIAN UNDER THE HAWAIʻI UNIFORM TRANSFER TO MINORS ACT FOR JEREMY C. ROBINSON, RACHEL E. ROBINSON, KAWIKA J. ROBINSON, KELLY K. ROBINSON, and KEOLA M. ROBINSON,
Counter-Defendants-Appellees.

ARNETTE R. FORSYTHE AND GILES A.I. FORSYTHE AS TRUSTEES OF THE ARNETTE R. FORSYTHE REVOCABLE TRUST DATED AUGUST 3, 2006; ARNETTE R. FORSYTHE AND GILES A.I. FORSYTHE AS TRUSTEES OF THE GILES A.I. FORSYTHE REVOCABLE TRUST DATED AUGUST 3, 2006; SHAWN K. FORSYTHE; LAUREN E. FORSYTHE; GILES M. FORSYTHE; KYLE I. FORSYTHE; and SHANIN A. SADO,
Cross-Claimants-Appellees,

vs.

CATHLEN C. ZARKO; CHRISTOPHER P. ZARKO; DONELLE N. ZARKO; LISA K. ZARKO; and PATRICK C. ZARKO,
Cross-Defendants-Appellees,

and

TANYA MARIE LOELANI ROBINSON AND WILLIAM ALBERT ROBINSON, CO-TRUSTEES UNDER THE TANYA AND WILLIAM ROBINSON TRUST DATED NOVEMBER 27, 2006; AULANI M. DUSENBERRY; and MALIA Y. BARROGA,
Cross-Defendants-Appellees.

SCAP-23-0000297

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CAAP-23-0000297; CASE NO. 2CC101000537)

FEBRUARY 19, 2025

RECKTENWALD, C.J., McKENNA, EDDINS, GINOZA AND DEVENS, JJ.

OPINION OF THE COURT BY DEVENS, J.

This appeal comes to this court as a transfer case from the Intermediate Court of Appeals (ICA). Defendants-Appellants Cathlen Zarko, et al. (Zarko Defendants) appeal from the April 18, 2023 Final Judgment and related orders of the Circuit Court of the Second Circuit (circuit court) partitioning a family-owned oceanside home lot in West Maui. The other parties

to the underlying partition action are Plaintiffs-Appellees Gordon Robinson, et al. and James Robinson, et al. (collectively, Plaintiffs), Defendants-Appellees William Robinson, et al. (hereinafter, Robinson Defendants), and Defendants-Appellees Shanin Sado, Kyle Forsythe, and Arnette Forsythe, et al. (collectively, Forsythe Defendants).

The circuit court's Final Judgment ordered the subject parcel, a lot in Mailepai, Lāhainā, Maui (the Property) and its four existing free-standing residential structures, be partitioned as a four-unit Condominium Property Regime (CPR). On appeal, the Zarko Defendants raise a novel question of law: can a circuit court exercising its equitable powers in a Hawaiʻi Revised Statutes (HRS) Chapter 668 partition action order a partition by condominiumization under HRS Chapter 514B, the Condominium Property Act? For the reasons discussed herein, we hold that partition by CPR is not a lawful form of partition in kind pursuant to HRS Chapter 668. Accordingly, we vacate the circuit court's April 18, 2023 Final Judgment and related orders and remand this case to the circuit court to undo the CPR that was created on the Property, partition the Property by sale, and hold further proceedings consistent with this opinion.

I. Background

A. Factual Background

The Property at issue is located in Lāhainā, Maui. The Property is a portion of the lands described and conveyed by Royal Patent Number 1663, Land Commission Award Number 5524 to L. Konia, being all of Allotment 14a of "Hui Aina o Mailepai" in the ahupuaʻa of Mailepai. The Property is a 2.35 acre parcel encompassing an entire point of land with nearly 1,200 feet of ocean frontage.

The Property was conveyed to Elizabeth Cockett Robinson (Elizabeth) and eventually placed into her trust. During her life, Elizabeth conveyed undivided percentage interests in the Property to her children and grandchildren. After her passing, the remaining undivided percentage interest in Elizabeth's trust went to her five children: Gordon, James, Arnette, Cathlen, and William.

The parties to this suit are the ʻohana groups of the five siblings who have held the following respective ownership interests in the Property: Forsythe Defendants--24.8% undivided interest; Zarko Defendants--21.8% undivided interest; James Robinson Plaintiffs--21.8% undivided interest; Gordon Robinson Plaintiffs--15.8% undivided interest; and William Robinson Defendants--15.8% undivided interest. There are four separate

dwelling structures on the Property, three of which were built by Gordon, James, and William Robinson, whose families live on the Property, while the families of Arnette Forsythe and Cathlen Zarko do not reside there. One of the dwellings is uninhabitable.

For decades, the families repeatedly tried to divide the Property into severalty between the five siblings' 'ohana groups, but without success. In 2003, Gordon Robinson proposed a three-lot subdivision, which was not pursued by the co-owners, and in 2004, the Successor Trustee for the Elizabeth Cockett Robinson Trust, Giles Forsythe, proposed the Property be subdivided into four lots. The co-owners apparently signed a four-lot subdivision agreement; however, the Property was never subdivided. The parties also attempted to sell the Property in its entirety from 2005 through 2008. Offers were received, but the parties never sold.

B. Circuit Court Proceedings

After the failed attempts to subdivide and sell, a partition action was initiated in the Circuit Court of the Second Circuit over fourteen years ago on August 26, 2010.[1] The Plaintiffs' suit sought a partition in kind of the Property into

[1] The Honorable Rhonda I.L. Loo presiding.

five parcels or, in the alternative, partition by sale.[2] The Forsythe, Robinson, and Zarko Defendants filed answers and counterclaims seeking partition by sale.

In 2012, the parties agreed to list the Property for sale in February and again in October. The Property was not sold.

On August 1, 2012, the Plaintiffs filed a Second Amended Complaint, which amended their request from a five-parcel subdivision to a three-parcel subdivision of the Property, or, in the alternative, partition by sale.[3] Plaintiffs later filed a Third Amended Complaint clarifying party names. The Forsythe, Zarko, and Robinson Defendants filed answers, and the Forsythe and Robinson Defendants filed counter- and cross-claims asking that the Property be sold.[4]

Over a year later, the circuit court appointed a partition commissioner to prepare a report determining if and how the Property could be divided in kind for allotment to the parties,

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[2] Plaintiffs filed a First Amended Complaint which corrected the names of the defendants in the action.

[3] Plaintiffs added a third claim, seeking damages for the loss of a homeowner's tax exemption allegedly due to the Zarko Defendants' failure to pay their proportionate share of the property taxes. Issues related to the amounts of property taxes paid or owed are not before this court, as the circuit court's proceedings have not reached matters relating to the equitable division of the Property and adjudication of claimed credits and offsets.

[4] The Robinson Defendants' counterclaim also sought, as an alternative to partition by sale, a partition in kind of the Property into three lots.

or if the Property required a sale. On January 24, 2014, the commissioner submitted his report concluding that the Property should be sold on the market because partition of the Property in kind would greatly prejudice the owners. This recommendation was based on the commissioner's assessment of six appraisals of the Property's value, three for the Property as a whole, and three with a three-parcel subdivision, factoring in the many costs and financial burdens and regulatory compliance issues with the County of Maui (County) codes.

The commissioner also addressed the possibility of a partition by CPR. He concluded that the value of the Property would likely diminish because of the nature of a CPR's common ownership and the possibility that the Property's structures were not "in code compliance," problematizing further development or improvement of individual units. Thus a CPR would reduce the value of the Property for the owners, especially for the two, non-resident ʻohana groups. The commissioner concluded that after considering the diminution in value that would result with any division of the Property, and the equities--including the connections the five ʻohana groups had with the land and the costs of subdividing--partition in kind would likely greatly prejudice the owners; therefore, his recommendation was partition of the Property by sale.

Plaintiffs objected to the commissioner's report and again asked the court to order partition in kind by dividing the Property into three separate lots or to investigate a three-unit CPR. The Forsythe Defendants maintained their position seeking partition by sale and asked the court to confirm and adopt the commissioner's report.

On July 14, 2014, the circuit court rejected the commissioner's recommendation to partition the Property by sale and ordered a partition in kind by three-lot subdivision with costs to be advanced by the Plaintiffs. In its findings of fact, the court rejected the commissioner's overall assessment that a partition in kind would result in a diminution in value of the Property as a whole. And in its conclusions of law, the court noted that Hawaiʻi partition law expressed a preference for partition in kind as well as a preference to allot to a co-tenant the portion of the Property that was occupied and improved by that tenant.

A year after the court issued its three-lot subdivision order, Plaintiffs returned to court and asked that the commissioner be allowed to list the Property for private sale, which the court granted without opposition. However, the Property did not sell.

Almost three years after issuance of the three-lot partition order, noting the unlikelihood that the County would grant needed code variances, the commissioner filed a motion asking the court to instruct on a two-lot subdivision instead. With no opposition from the parties, the court granted the commissioner's motion to proceed, amending the July 14, 2014 order to create a two-lot subdivision.

Nearly four years after the two-lot subdivision order was entered, on January 2, 2021, the Robinson Defendants joined the Plaintiffs in filing a motion to amend the July 14, 2014 partition order from a subdivision of the Property to the creation of a four-unit CPR. These parties further requested that Gordon, James, and William Robinson's ʻohana groups each be awarded one of the new condominium units, which were residential structures these ʻohana had lived in for decades, and that the fourth unit be assigned collectively to the Zarko and Forsythe Defendants. The Zarko and Forsythe Defendants opposed this request, with the Zarkos arguing that HRS Chapter 668 did not allow partitions by CPR.

The commissioner filed a statement relating to the Plaintiffs and Robinson Defendants' motion, asking the court for specific guidance on the request for partition by CPR. While agreeing that a CPR would be "simpler" and "alleviate many of

the costs and challenges" impeding subdivision, the commissioner noted "significant challenges" that he asked the court to give detailed instructions on. These challenges included his concerns that structures on the Property may not be able to pass County inspections necessary to condominiumize "without significant expenses and upgrades," and since the CPR would not be a subdivision, careful delineation of rights that applied to the property as a whole versus rights enjoyed by separate units needed to be determined. He noted that the "ultimate solution must be in the best interest of all parties."

The circuit court held a hearing on the motion to partition by four-unit CPR. The Zarko Defendants again argued that HRS Chapter 668 did not empower the court to partition by CPR. And the Forsythe Defendants asserted:

> The problem here is that [HRS Chapter 668] refers to equitable distribution. And the key word here is distribution. When you do a condominium, you are continuing to be hinged at the hips with everybody else in the project. It's not a situation where you walk away with your own separate piece of property which you can do with as you see fit. You are subject to the association, the rules of the association and the condominium.
>
> And, therefore, this is not the same animal as a subdivision. And, therefore, we don't believe that condominiums are allowed in situations where a partition action has been brought forth.

On May 25, 2021, the circuit court granted Plaintiffs and the Robinson Defendants' motion. The court ordered partition by CPR without analyzing the potential prejudice to any of the owners created by the imposition of a CPR. The extent of the

court's discussion of the equities in the hearing only touched on the "feasibility of the request" and "the equitable interest of the parties: namely, that they are parties in this case who wish to remain living on the property and oppose any sale of their interest[.]"

After completing the four-unit CPR, on October 12, 2022, the commissioner filed a motion requesting, inter alia, that the court determine which 'ohana group would take title to each CPR unit. The attached CPR Declaration indicated that the commissioner had apportioned to each of the four units an undivided 25% interest in all common profits and expenses and common elements of the CPR.

Plaintiffs responded to the commissioner's motion for property disposition by asking that the court find, pursuant to HRS § 668-7(5), that the James Robinson Plaintiffs were equitably entitled to Unit A because they built that structure and installed the Property's only water meter near that unit at their expense. And they asked that the court assign Unit B to Gordon's children, Kelly and Keola Robinson, for equitable reasons, since their father built that family home, and Kelly continued to reside there. Plaintiffs had previously requested that the Robinson Defendants receive Unit D, with the

uninhabitable Unit C to be distributed to the Zarko Defendants and Forsythe Defendants collectively.

The Zarko Defendants opposed the commissioner's motion, challenging both the legality of the partition by CPR and the proposed assignment of the CPR units as being inequitable. They further asserted, inter alia, that the court's partition order did not vest the commissioner with the power to act as a CPR developer. They argued that it was likely that two or more CPR units would need to be sold to compensate the Zarko and Forsythe Defendants' almost 50% undivided interest in the Property. The Zarko Defendants also submitted documentation allegedly showing that Unit C was unsafe and unlivable. These records indicated that County building inspectors had only designated the structures on the Property as safety code-compliant once the electricity was shut off to Unit C.

The circuit court granted the commissioner's motion for property disposition, confirming the commissioner's intent to determine if the parties agreed to assign the CPR units to different ʻohana groups, or, if they could not agree, the commissioner would assign the parties their current co-tenancy percentage interest in the disputed units.[5] Once again,

[5] Following the retirement of Judge Loo, the Honorable Kirstin M. Hamman presided over the proceedings after January 2022.

Plaintiffs and the Robinson Defendants asked that the court order Unit C be assigned to the Zarko and Forsythe Defendants, while the Forsythe Defendants asked the court to assign all co-tenants their undivided percentage interests in the entirety, pending a new appraisal of the CPR units. The Forsythe Defendants also objected to any future assignment of Unit C to themselves and the Zarko Defendants as being inequitable given their actual ownership percentages.

On April 18, 2023, the court entered Final Judgment on the commissioner's October 12, 2022 motion for order of property disposition, directing that the judgment was "immediately appealable" under Hawai'i Rules of Civil Procedure (HRCP) Rule 54(b).[6] Two months later, the circuit court ordered the conveyance of ownership interests in the CPR such that "each

[6] HRCP Rule 54(b) (eff. 2000) provides:

> When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

HRCP Rule 54(b).

Unit shall be owned by all of the parties as tenants in common[,]" preserving the original percentage interests for each of the parties' 'ohana groups. The court further ordered the appraisal of the condominiumized Property but then immediately stayed its order pending appeal.

C. ICA Proceedings

The Zarko Defendants timely appealed the circuit court's April 18, 2023 Final Judgment; the January 17, 2023 order, granting the commissioner's October 12, 2022 motion, inter alia, for an order of property disposition; and the May 25, 2021 order granting Plaintiffs' motion to amend the court's July 14, 2014 partition order to a four-unit CPR.

The Zarko Defendants assert three points of error: (1) that the circuit court erred when it ordered the creation of a CPR as a partition in kind pursuant to HRS Chapter 668; (2) that the court erred in imposing the CPR on the parties in the partition action; and (3) that the circuit court erred by not ordering the sale of the Property since condominiumization of the Property is greatly prejudicial to the owners.

The Zarko Defendants argue on their first point that the general rule of centuries of partition decisions is that the purpose of partition is to sever unwanted ties, resulting in severalty, and not to create new ties to co-owners. Condominium

ownership, they assert, is characterized by compliance with binding contracts, like a declaration and bylaws, that our condominium law requires; in this way, a CPR does not fulfill the separating purpose of a partition action. They contend it is a misinterpretation of HRS Chapter 668's grant of equity powers to a partition court, and an overstepping of its authority absent clear legislative intent, for a circuit court to bring the two statutory chapters together; thus creation of a CPR is not the "usual practice of courts of equity in cases of partition." HRS § 668-1.

To their second point, the Zarko Defendants assert that a court-ordered CPR forces unwilling parties to contractually entangle their relationships with their adversaries. And in this case, they argue that the requirements in HRS Chapter 514B that obligate fee owners to agree to the creation of a CPR, and sign necessary documents, were not met because the partition commissioner, not the parties, signed those documents. Further, they argue that a CPR declaration and bylaws dictate owners' obligations, restrictions on property uses, and procedures for future group decision-making (voting behaviors) with other CPR owners; these contracts impose a new system of co-ownership on unwilling owners, which conflicts with a partition's relationship-severing objectives as set forth in case law.

Asserting that the court's partition of the Property by CPR was unlawful, and the parties and commissioner had been unable to timely subdivide the Property, the Zarko Defendants contend they were greatly prejudiced by this partition in kind, and that the circuit court erred when it did not order partition by sale.

The Plaintiffs counter that the partition by CPR should be affirmed and the case be remanded to the circuit court for further proceedings relating to the distribution of the CPR units. On the matter of the lawfulness of the circuit court's power to partition by CPR, Plaintiffs argue that the legislature intended to authorize a partition by CPR pursuant to HRS § 668-7(7). They assert that when HRS § 668-7 is read in pari materia with HRS Chapter 514B, HRS § 668-7(7) authorizes the partition court to exercise any remedy available to a circuit court in a civil action, and that the statute did not expressly exclude the creation of a CPR to partition a property. In support of their contention, Plaintiffs cite Kimura v. Kamalo, in which this court affirmed the trial court's order placing multiple defendants into a continuing co-tenancy in a partitioned parcel. 106 Hawai'i 501, 507-08, 107 P.3d 430, 436-37 (2005). This, Plaintiffs argue, is not different from the co-ownership in a CPR.

If the appellate court were to find the circuit court's partition by CPR unlawful, Plaintiffs further argue that the Zarko Defendants failed to establish that a partition in kind was impracticable and greatly prejudicial to the owners.

The Zarko Defendants subsequently filed an application for transfer, which this court granted.

II. Standards of Review

A. Action for Partition

A partition action is an action in equity; therefore, we review a court's order of partition for abuse of discretion. Kimura, 106 Hawaiʻi at 506-07, 107 P.3d at 435-36; see also Sugarman v. Kapu, 104 Hawaiʻi 119, 124, 85 P.3d 644, 649 (2004). "An abuse of discretion occurs where the court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." Deutsche Bank Nat'l Tr. Co. v. Kozma, 140 Hawaiʻi 494, 498, 403 P.3d 271, 275 (2017) (cleaned up).

B. Statutory Interpretation

"'The interpretation of a statute is a question of law. Review is de novo, and the standard of review is right/wrong.'" Kimura, 106 Hawaiʻi at 507, 107 P.3d at 436 (quoting Sugarman, 104 Hawaiʻi at 123, 85 P.3d at 648).

This court's construction of statutes is shaped by the following rules of interpretation:

> First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.
>
> When there is ambiguity in a statute, the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning. Moreover, the courts may resort to extrinsic aids in determining legislative intent, such as legislative history, or the reason and spirit of the law.

State v. Wheeler, 121 Hawai'i 383, 390, 219 P.3d 1170, 1177 (2009) (cleaned up) (quoting Citizens Against Reckless Dev. v. Zoning Bd. of Appeals of the City & Cty. of Honolulu, 114 Hawai'i 184, 193–94, 159 P.3d 143, 152–53 (2007)).

III. Discussion

A. The purpose of a partition action pursuant to HRS Chapter 668 is to divide and separate co-tenancies to allow the owners to go their own ways.

The Zarko Defendants challenge the circuit court's authority to lawfully partition a property by CPR under the applicable partition statutes.[7] They assert that HRS §§ 668-1

[7] In their answer to the Zarko Defendants' opening brief, the Plaintiffs claim that the appellate court should dismiss their appeal for lack of appellate jurisdiction. Upon review, the court's Final Judgment of April 18, 2023, confirming the commissioner's court-ordered partition of the Property into a four-unit CPR and the commissioner's request to dispose of the units

and 668-7 do not empower a circuit court to order a partition by CPR pursuant to HRS Chapter 514B because the purpose of a partition is to sever ties, which partition by CPR does not accomplish. Plaintiffs argue that the circuit court made no error, as it was authorized by statute and case law to partition the Property into a CPR; that there was nothing unlawful about the creation of the CPR pursuant to HRS Chapters 514B and 668; and that the Zarko Defendants did not suffer great prejudice to their interests with the CPR order.

We disagree with the Plaintiffs. Our partition statutes and body of case law do not authorize partition by CPR as a lawful form of partition pursuant to HRS Chapter 668.

At the time this partition action was filed, HRS § 668-1 (1993) stated:

> When two or more persons hold or are in possession of real property as joint tenants or as tenants in common, in which one or more of them have an estate in fee, or a life estate in possession, any one or more of such persons may bring an action

(October 12, 2022 motion), complied with the requirements of the applicable rules, including HRCP Rule 54(b). The appeal was filed pursuant to HRS § 641-1 and HRCP Rules 54(b) and 58. Therefore, this court has appellate jurisdiction over this matter. See Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 117-19, 869 P.2d 1334, 1336-39 (1994).

Additionally, Plaintiffs claim that the Zarko Defendants' appeal should be dismissed because laches and judicial estoppel bar their appeal. Both arguments are without merit. We note that the Zarko Defendants acted timely and expeditiously when they appealed the circuit court's Final Judgment a day after its entry. And the partition commissioner requested the authority to assign all co-tenants their undivided interest in the entirety of the Property under the new CPR that the Zarko Defendants objected to. To suggest the Zarko Defendants adopted inconsistent legal positions on the CPR creation and assignment is to misrepresent the record. Even if properly raised, Plaintiffs' claims fail for lack of merit.

> in the circuit court of the circuit in which the property or some part thereof is situated, for a partition of the property, according to the respective rights of the parties interested therein, and for a sale of the same or a part thereof if it appears that a partition cannot be made without great prejudice to the owners. The several circuit courts shall have power, in any action for partition, to proceed according to the usual practice of courts of equity in cases of partition, and according to this chapter in enlargement thereof.

HRS § 668-1.

HRS § 668-7 (1993) sets forth the court's powers in partition actions, providing in relevant part:

> The court shall have power . . . :
>
> . . .
>
> (4) To cause the property to be equitably divided between the parties according to their respective proportionate interests therein, as the parties agree, or by the drawing of lots;
>
> (5) To set apart any particular portion or portions of land to any particular party or parties who by prior occupation or improvement or otherwise may be equitably entitled thereto, and make any proper adjustment or equalization thereof by the sale of other portions and the application of the proceeds for such purpose, or as a condition of any such particular allotment to require payment by the parties of any value of the portion set apart to them in excess of their proportionate interest in the value of the whole property;
>
> (6) To divide and allot portions of the premises to some or all of the parties and order a sale of the remainder, or to sell the whole, where for any reason partition in kind would be impracticable in whole or in part or be greatly prejudicial to the parties interested, and by judgment or judgments to invest the purchaser or purchasers with title to any property sold, and use the proceeds to equalize the general partition; [and]
>
> (7) To exercise any other power pertaining to a circuit court in a civil action.
>
> When partition of two or more separate tracts or parcels of land is sought, the whole share of any party in all of them may be set apart to the party in any one or more of the tracts or parcels. Any plan for a subdivision shall, before approval of the court, be subject to approval by the planning department of any county having laws and regulations covering subdivisions, applicable thereto. If action by the planning department on the proposed subdivision is unreasonably delayed, the court may order

> the planning department to appear and show cause why the subdivision should not be approved by the court.

HRS § 668-7 (emphases added).

The statutes provide for partition in kind or partition by sale, with a partition by sale occurring if a partition in kind is "impracticable" or "greatly prejudicial" to the owners. HRS § 668-7(6); see Pioneer Mill Co. v. Ward, 37 Haw. 74, 87 (Haw. Terr. 1945) ("At common law and in equity partition was always in kind, regardless of the difficulty or inconvenience of doing so, unless the parties agreed to a sale and a division of the proceeds."); see also Lalakea v. Laupahoehoe Sugar Co., 35 Haw. 262, 291 (Haw. Terr. 1939) ("[T]he circuit judge at chambers has jurisdiction to partition property either in kind or sale for division[.]").

1. The terms "partition" and "partition in kind" in HRS §§ 668-1 and 668-7 instruct our courts to seek division of co-ownership into severalty.

When interpreting a statute, a court's "foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself." Gillan v. Gov't Emps. Ins. Co., 119 Hawai'i 109, 115, 194 P.3d 1071, 1077 (2008) (cleaned up).

In HRS Chapter 668, the term "partition" is not specifically defined, but as stated, the chapter references and

explicitly provides for only two types of partitions: "partition in kind" and partition by sale. HRS § 668-7. As to a partition in kind, the chapter further alludes to the severalty component of partitions in kind with references to "set apart," "separate tracts or parcels of land," and "subdivision."[8] HRS § 668-7.

When a term is not statutorily defined, "this court may resort to legal or other well accepted dictionaries as one way to determine [its] ordinary meaning." Gillan, 119 Hawai'i at 115, 194 P.3d at 1077 (cleaned up).

Black's Law Dictionary defines "partition" as "[t]he act of dividing; esp., the division of real property held jointly or in common by two or more persons into individually owned interests. Also termed 'partition in kind.'" Black's Law Dictionary 1347 (11th ed. 2019) (emphasis added). The dictionary entry further illustrates the term's meaning by quoting from James W. Eaton's Handbook of Equity Jurisprudence:

> Partition is the segregation of property owned in undivided shares, so as to vest in each co-owner exclusive title to a specific portion in lieu of his undivided interest in the whole. The term 'partition' is generally, but not exclusively, applied to real estate. All kinds of property may be partitioned by the voluntary acts of the owners. In the case of real estate, this is usually accomplished by a conveyance or release, to each co-tenant by the others, of the portion which he is entitled to hold in severalty.

[8] Although HRS Chapter 668A (2016) (eff. 2017) applies to partition actions filed after January 1, 2017, under that chapter, HRS § 668A-2 defines "partition in kind" as "the division of heirs property into physically distinct and separately titled parcels." HRS § 668A-2.

Id. (quoting James W. Eaton, Handbook of Equity Jurisprudence 571 (Archibald H. Throckmorton ed., 2d ed. 1923)).

After the 1840s Mahele, which created and registered Western-style real property in the Kingdom of Hawai'i, a partition statute empowering Hawai'i's courts to divide and separate co-ownership interests in real property was created. HRS § 668-1 descends from the Kingdom's statutes. As an example, the English language partition statute from 1884 empowering this court to hear these suits in equity read:

> Said justices shall severally have power at chambers, to admeasure dower and partition real estate. . . . When the partition of real estate cannot be made without great prejudice to the parties, the judge may order a sale of the premises and divide the proceeds.

1884 Compiled Laws of the Hawaiian Kingdom § 852, at 243. The Hawaiian language publication of the same statute read:

> He mana ko kela ko keia o na Lunakanawai o ka Aha Kiekie ma ke keena, e hookaawale i ka waiwai hapakolu o na wahine kanemake, a e mahele i ka waiwai paa. . . . Ina he mea hiki ole ke mahele i ka waiwai paa me ka poino ole o na ona o ua waiwai nei, alaila e hiki no i ka Lunakanawai ke kauoha ae e kuai ia'ku [sic] ua waiwai paa nei, a e mahele i ke dala i loaa mai.

1889 Na Kanawai Kivila o Ke Aupuni Hawaii § 852, at 265.[9] Our interpretation of what "partition" means in HRS Chapter 668 is guided by the meaning of "mahele" and the developments of land law in our jurisdiction.

[9] Orthography of the 'ōlelo Hawai'i maintained from the published compiled laws.

The Pukui and Elbert Hawaiian Dictionary defines "mahele," inter alia, as a verb meaning "to divide, apportion, cut into parts." Mary Kawena Pukui and Samuel H. Elbert, Hawaiian Dictionary 219 (6th ed. 1986). As this court noted in McBryde Sugar Co. v. Robinson, "[w]hen used in the context of land titles, reference [for the term 'mahele'] is usually to the Great Mahele of 1848, which accomplished the division of the undivided interest in land between the King on one hand and the chief and konohikis on the other." 54 Haw. 174, 182 n.5, 504 P.2d 1330, 1336 n.5 (1973). In our land law, "mahele" can also be the noun meaning "separate parcels" of land. See Miller v. Heirs of Hiwauli, 68 Haw. 401, 402, 716 P.2d 161, 161 (1986) ("[T]he crucial finding was that Keaka conveyed to each of his nine children his 1/2 interest in one of nine separate parcels called 'maheles[.]'").

In a mid-nineteenth-century case, this court provided historical context for land law in our jurisdiction:

> [I]t becomes necessary to examine the nature of the land tenures in this Kingdom, and particularly the great Mahele of 1848. . . . [I]t was finally settled and fully established that there were but three classes of persons having vested rights in the lands of this Kingdom. First, the King; second, the landlords, comprising the chiefs and Konohikis; third, tenants, who afterwards became "Kuleana-men." But as each of these classes had rights in most of the lands, in a descending scale, as it were, it became necessary to separate and define the rights of each--or, rather, to partition in severalty to each one his proper share of the whole.

Harris v. Carter, 6 Haw. 195, 197-98 (Haw. Kingdom 1877),

overruled by Galt v. Waianuhea, 16 Haw. 652 (Haw. Terr. 1905) (emphases added). Prior to the Mahele, "each of these classes had rights in most of the lands, in a descending scale." Id. at 198. These acts were undertaken starting in 1848 to separate and distinguish the land rights of the King from the rights of the chiefs and konohiki from the rights of the makaʻāinana,[10] so that Western-style ownership and private property could be established. This dividing of co-mingled relationships into severalty is what mahele accomplished.

Interpreting "mahele" or "partition" benefits from consideration of the law within this historical framework. The purpose of mahele/partition was to disentangle parties' property interests into severalty. It follows that "partition" in HRS Chapter 668, including "partition in kind," aims to separate and divide co-ownership of property into distinct interests such that owners may, without restrictions, go their separate ways.

2. The "usual practice of courts of equity in cases of partition" upholds the purpose of partition to separate co-ownership, not intensify or create co-ownerships in new forms.

The Zarko Defendants argue that the "usual practice of courts of equity in cases of partition" (HRS § 668-1) cannot be

[10] Pukui and Elbert define a "konohiki" as a "headman of an ahupuaʻa land division under the chief" and "makaʻāinana" as, relevantly, "people in general," or citizens, subjects. Hawaiian Dictionary 166, 224.

interpreted as authorizing a court to order a "partition in kind" by creating and imposing a CPR. Plaintiffs argue that this court's decision in Kimura affirms that the usual practice of partition courts includes the ability to partition by CPR.

In Sugarman v. Kapu, this court noted:

> It is evident from HRS § 668-1 that the legislature intended that the provisions of HRS chapter 668 supplement the court's equitable power. The statute recognizes the power of the courts to act according to the usual practice of courts in equity, and according to this chapter in enlargement thereof. Traditionally, courts of equity exist for the purpose of doing equity by ensuring that no injustice is done to either party involved. Inherent in the power to do equity is, of necessity, discretion to accomplish a just result under the circumstances. As indicated by HRS § 668-1, the legislature did not mean to restrict the powers granted to the circuit courts to only those enumerated in the specific provisions of HRS chapter 668.

104 Hawai'i 119, 124, 85 P.3d 644, 649 (2004) (emphases added) (cleaned up).

Whether a relatively new form of property organization and holding, i.e., a CPR, is included in our courts' "usual practice" of equitable remedy-fashioning in partition suits is at the center of the parties' contention. The phrase "the usual practice of courts of equity" is expansive, not limited by the statute, which states clearly that it is "in enlargement thereof," i.e., that the statute enhances a court's traditional equity powers in partition actions. HRS § 668-1.

Generally, the power of courts in equity to partition real property is longstanding, traceable to English historical roots

in the judicial division of female co-parceners' ownership rights to inherited lands and the statutory actions to divide co-tenancies seen in England during King Henry VIII's rule.[11] The general rule of the usual practice of equity courts in partition actions was summarized by this court in Brown v. Holmes:

> "A writ of partition lies at common law for one or more parceners against the other or others," Freeman on Cotenancy and Partition, Sec. 420, the reason being "that as tenancy in coparcenary arose by operation of law, it was only proper that the law should afford the means of severance." 3 Pomeroy's Equity Jurisprudence, 2 ed. Sec. 1386, n.5. . . . "As early as the reign of Elizabeth, partition became a matter of equitable cognizance; and now the jurisdiction is established as of right in England and in the United States." Pomeroy, Sec. 1387. It is clear that partition either of the estate or of the proceeds of its sale is a matter of right.
>
> By statute[,] a sale may be ordered and the proceeds divided if partition in kind cannot be made "without great prejudice to the parties." [Revised Laws of Hawai'i ("RLH") § 1648 (1905)]

19 Haw. 268, 276 (Haw. Terr. 1909) (final citation omitted) (emphases added).

In Campbell v. DePonte, we affirmed the circuit court's order pursuant to HRS § 668-7(4) that divided a property into smaller lots, holding:

> We have said that, under the provisions of HRS § 668-1, the circuit judge had jurisdiction to partition the property subject to suit by partition in kind or sale for division in whole or in part. . . . There is no doubt that the usual practice of courts of equity, to which HRS § 668-1 refers, includes the partition in kind of the common property, where that is practicable, and favors a partition in kind over partition by sale.

[11] See John G. Casagrande, Jr., Acquiring Property Through Forced Partitioning Sales: Abuses and Remedies, 27 B.C.L. Rev. 755, 758-83 (1986) (citing to 31 Hen. 8, ch. 1 (1539)).

57 Haw. 510, 514, 559 P.2d 739, 742 (1977) (cleaned up).

This "usual practice" of a partition court to divide a property "in kind," i.e., into smaller lots, was also acknowledged in a dissenting opinion in a partition suit in which the majority held that the subject property should be sold because partition in kind was impracticable. Chief Justice Richardson, in dissent, maintained:

> At common law the action for partition of land was designed to allow co-tenants to divide land held jointly. The then existing law only allowed a division in kind, i.e., an actual division of the property. 4A Powell, Real Property, § 612 at 650. More recently statutes have been enacted in almost every jurisdiction to comprehensively deal with the partition remedy. These statutes established the power and jurisdiction of a court to effect partition by a sale of the property with a division of the proceeds where circumstances are such that a division in kind would be injurious or impractical. However, even given the various modifications of the original remedy, the purpose of partition has remained the same, that is:
>
> > [T]o provide a means by which people, finding themselves in an unwanted common ownership, can free themselves from the relationships incidental to such common ownership.

Chuck v. Gomes, 56 Haw. 171, 178-79, 532 P.2d 657, 661-62 (1975) (Richardson, C.J., dissenting) (citations omitted) (emphases added). Chief Justice Richardson further observed that in determining whether "partition in kind is impracticable," "the focus should be placed on whether physical division of the

subject property is . . . susceptible of partition in kind."[12] Id. at 178, 532 P.2d at 661.

B. Under HRS Chapter 668, a court may not partition by CPR because our existing partition laws do not permit a court to replace co-tenancies in the entirety with increased co-ownership entanglements and new contractual obligations imposed by a court on the parties.

Partition by CPR undercuts HRS Chapter 668's objectives and purpose. Our partition statutes and case law clearly set forth that a court may either partition a subject property in kind or sell all or part of the property and divide the resulting proceeds (and, if applicable, parcels) equitably between the parties. We have held that HRS § 668-1 empowers a partition court to partition in kind or sale for division in whole or in part. Lalakea, 35 Haw. at 293. And our partition law favors a partition in kind where practicable over partition by sale. Campbell, 57 Haw. at 514, 559 P.2d at 742 (citing 2 American Law of Property § 6.26 (1952); 4A Powell on Real Property, § 612 (Rohan Rev. 1976)). But the particular nature of the legal entanglements between owners of CPR units subverts the fundamental purpose of partition while maintaining an illusion of an "in kind" division of land.

[12] The court ascertained whether the subject property could be divided into two "separate" parcels or nine "individual" parcels. Id. Gomes, 56 Haw. at 173-74, 532 P.2d at 659.

The Zarko Defendants argue that a CPR is not provided for in our laws as an equitable remedy under HRS § 668-7 because not only are the lingering and binding co-ownerships of a CPR contrary to the histories of partition into severalty, but also because Kimura affirmed severalty as the general rule of partition. Plaintiffs argue the opposite, contending that Kimura, which affirmed the trial court's order placing multiple defendants into a continuing co-tenancy on a single, subdivided parcel, implicitly approved a circuit court's power to partition by CPR.

In Kimura, the majority co-owner sought partition of multiple parcels on the island of Hawai'i held in co-tenancy with multiple defendants, some of whom were non-responsive to the lawsuit. The trial court initially found plaintiffs held an undivided 88% interest in the subject property, with defendants holding a 12% undivided interest. Kimura, 106 Hawai'i at 504, 107 P.3d at 433. The court then ordered the commissioner to compare the costs between a two-lot and a three-lot subdivision of the property. Id. at 505, 107 P.3d at 434.

Responsive defendants requested that the court subdivide the property into three lots, with one for the plaintiffs, one for their family group of defendants, and the third lot to be sold at a later date. Id. The commissioner told the court that

both a two-lot and three-lot subdivision were possible, but that the three-lot subdivision would cost significantly more than creating a two-lot subdivision. Id. The trial court ordered the creation of the two-lot subdivision, assigning the larger parcel to the plaintiffs and the smaller parcel in undivided co-tenancies to all of the defendants, including the non-responsive parties. Id. This court affirmed the trial court's order creating the two-lot subdivision and its disposition of the smaller parcel to the responsive and non-responsive defendants in undivided co-tenancy, noting that defendants were free to pursue further partition and recovery of costs from their non-responsive co-tenants. Id. at 510-11, 107 P.3d at 439-40.

The instant case is clearly distinguishable from Kimura. The circuit court in Kimura did not order the creation of a CPR but instead ordered all defendants into a continued co-tenancy on a subdivided parcel. Id. at 505, 107 P.3d at 433. This preserved the equitable interests of the non-responsive defendants by assigning that parcel to all defendants in the suit, while allowing the majority owner to take its interest in severalty. In contrast to the instant case, Kimura's parties were not forced into new forms of co-ownership. Nor were the Kimura defendants bound closer together in contracts that dictated procedures and voting required to make changes on their

land as the Zarko Defendants are subjected to with the court-ordered CPR. Instead, the Kimura defendants were free to pursue further disentangling of their unwanted co-tenancies because they retained the right to partition, and they "were not prohibited from filing a future partition action as between them and the [non-responsive party.]" Id. at 510, 107 P.3d at 439.

Here, the Zarko Defendants are co-owners of the CPR with their relatives, and they have been bound unwillingly by the court to CPR declarations and bylaws that shape the rights, responsibilities, and future actions of the Property's co-owners. See HRS Chapter 514B. This exceeds Kimura. The instant Property's CPR documents create a decision-making association, common interests, and common elements that all owners must abide by. And HRS Chapter 514B's requirements restrict the Zarko Defendants and the other parties from the relief of partition unless they vote according to their governing documents to remove parts of the Property from the CPR. This binds rather than frees the parties from the relationships incidental to common ownership, thus thwarting the objectives of a partition action.

Kimura does not authorize a court to fashion a partition remedy pursuant to HRS § 668-7 that undermines the purpose and objectives of our partition or "mahele" statutes. A CPR is not

the same as co-tenancy in the entirety. A CPR further entrenches, complicates, and joins parties instead of relieving them of the obligations and interactions that come with co-ownership of a property, and foils the fundamental severing objectives of a partition action.

The Connecticut Supreme Court's reasoning in Wilcox v. Willard Shopping Center Associates, cited by the Zarko Defendants, is persuasive. 544 A.2d 1207, 1208 (Conn. 1988). Wilcox is instructive in its observations on the excessive entanglements that a partition by CPR, if lawful, would impose upon contentious parties seeking partition relief from their co-ownership of a property. Wilcox involved a partition action in which a majority co-owner of a shopping center sought severance of his co-tenancy by sale. Id. at 1209. Defendants urged the trial court to order a CPR of the commercial property instead of attempting to divide the shopping center in kind, as it was clear from the layout of the structures and their shared utilities that a partition in kind was impracticable. Id. The trial court determined that it was impracticable to partition the shopping center in kind and that a partition of the property could not be effected by application of Connecticut's CPR statute, the Common Interest Ownership Act (CIOA). Id. at 1210 (citing General Statutes §§ 47-200 through 47-293).

On appeal, the Wilcox court affirmed the trial court's ruling and held that the Connecticut legislature did not enact its CPR statute "as an additional vehicle to effect partition in kind." Id. at 1211. Noting that Connecticut's partition statutes and its CIOA did not expressly rule out such a partition remedy, the Wilcox court stated its examination of the statutes and policies revealed an incongruity. The court explained:

> A plaintiff in an action for partition seeks to sever or dissolve involuntary joint ownership in real property. In furtherance of that objective, a court is limited to rendering a judgment of either partition in kind or by sale of the real property[,] thus terminating the ownership relationship between the parties.
>
> On the other hand, [the] CIOA affords the purchaser of a condominium fee simple ownership of his unit while sharing with other unit owners the burdens and benefits of the community's common elements. [The] CIOA is a detailed statutory scheme governing the creation, organization and management of common interest communities and contemplates the voluntary participation of the owners. It entails the drafting and filing of a declaration describing the location and configuration of the real property, development rights, and restrictions on its use, occupancy and alienation; the enactment of bylaws; and the establishment of a unit owners' association; and an executive board to act on its behalf. It anticipates group decision-making relating to the development of a budget, the maintenance and repair of the common elements, the placement of insurance, and the provision for common expenses and common liabilities. The Condominium Act imposes additional requirements pertaining, for example, to the amendment of the declaration and bylaws; and to the allocation of profits and expenses. Further, a unit owner seeking to sell his interest to a third party would require the involvement of the unit owners' association in order to provide certain information required by [the CIOA] to be disclosed to the purchaser.
>
> In sum, were the court to superimpose a condominium on the shopping center, relations between [defendants and plaintiff] would be further complicated. Clearly, this is not the goal to be achieved by an action for partition of real property, and would run counter to the policy sought to be advanced by the statutes governing partition. Rather than dissolving the co-

> tenancy between the parties, it would compel [plaintiff] to remain a joint owner with [defendants] at least until such time as the condominium is established. We can discern no legislative intent to delay the severance of joint ownership by creation of a condominium out of the property to be partitioned. We would overstep the bounds of our authority if, in the absence of clear legislative intent, we were to engraft the provisions of [the] CIOA onto the partition statutes to achieve the result sought by [defendants]. Accordingly, we hold that the trial court correctly concluded that imposition of a condominium is not legally possible.

Id. at 1211-12 (citations omitted) (emphasis added).

Pursuant to our laws in HRS Chapter 514B, a CPR binds owners to certain obligations and demands, in contrast to the limited obligations of tenants-in-common owning a non-CPR parcel. Under HRS Chapter 514B, parties are forced into tighter, more intertwined relationships than existed pre-CPR. The circuit court in this case exceeded its equitable authority in the absence of clear legislative intent, instead impermissibly "engrafting" HRS Chapter 514B into HRS §§ 668-1 and 668-7(7) with its partition by CPR. See Wilcox, 544 A.2d at 1212. For example, the Declaration filed for the CPR in the present case sets forth "common elements" for which the "right to partition or divide any part of the common elements shall not exist," except as provided for by HRS Chapter 514B. Further, the Declaration indicated that each condominium unit, of which there were four, comes with a 25% common interest. Plaintiffs argued that the 'ohana groups of Gordon, James, and William should each get one CPR unit--the units they built on the

Property--while the 'ohana groups of Cathlen and Arnette, collectively, should get the fourth unit.

As the Property's CPR Declaration allocates 25% common interest per unit, this sets up the family members, who have been struggling for nearly fifteen years to sever their co-ownership interests, for future and continuing adversarial struggles. In the Bylaws, a quorum of owners for the purposes of owner association meetings requires "a majority of the Owners," defined as "the Owners of Units to which are appurtenant more than fifty percent (50%) of the common interests as established in the Declaration." When determining decision-making by voting, the Bylaws further state: "The vote of a majority of the Owners, as defined [above], shall be binding on all Unit Owners for all purposes, except as otherwise provided in the Declaration or in these Bylaws." With this percentage required for a quorum that then has binding decision-making powers, under Plaintiffs' proposed disposition of the CPR units, Plaintiffs alone would be able to carry and control association meetings and decision-making votes.

It is difficult to imagine how these family groups, like the adversarial co-tenants in Wilcox, can avoid increasing conflicts between them when bound to act according to the CPR Declaration and Bylaws for the simple use and maintenance of

their Property. This kind of embroilment of adversaries is excessive and would continue deeply contentious relationships between unwilling parties rather than free them. The argument that a later sale of a unit would accomplish such relief for an owner does little to acknowledge the requirements of HRS §§ 668-1 and 668-7, especially the requirement that a partition remedy not greatly prejudice the owners. Here, a CPR at its creation is an imposition upon unwilling parties and greatly prejudices the owners with greater restrictions on their property rights, dictation of future acts, and tightening of unwanted relationships.

Our case law and history of land rights confirms that the fundamental purpose of partition or mahele is to divide and separate mingled co-ownership interests. It is also the case that our courts should retain the flexibility in equity to order continuing co-tenancies when a partition in kind results in subdivided parcels involving non-responsive parties, as in Kimura.[13] But it is not lawful for a circuit court to order a

[13] Regarding the role partition suits have played in the histories of land dispossession, especially in Native Hawaiian families, Chief Justice Richardson's dissent in Gomes references these historical stakes, even as it reaffirms the general rule of partition determinations:

> Undoubtedly there will be circumstances which justify the invocation of partition by judicial sale under HRS §§ 668-1 and 668-7(6). In the situation where the statutory grounds are met the preference for actual division of property must yield to

partition by CPR. Such a partition, in full compliance with HRS Chapter 514B, would further bind parties and limit their respective rights in a way that is excessive and greatly prejudicial to the owners. HRS § 668-1. The circuit court abused its discretion by ordering a partition of the Property by CPR.

C. The circuit court abused its discretion in not ordering partition by sale because partition in kind was impracticable and greatly prejudicial to the owners.

The Zarko Defendants argue that the circuit court erred when it did not find that partition in kind was impracticable and greatly prejudicial to the owners, and when the court did not order partition by sale. We agree.[14] We review a circuit

> partition by judicial sale. But let us recognize that such preference for partition in kind should not be so easily disregarded. "Mindful of our Hawaiian heritage," we must not lose sight of the cultural traditions which attach fundamental importance to keeping ancestral land in a particular family line.

56 Haw. at 180, 532 P.2d at 662. A court following Kimura and other cases can balance co-tenants' historical, familial, and practical relationships to their lands in its determinations of the equities, which could include maintaining co-tenancies in a subdivided parcel so as not to completely remove the possibility of future amicable settlements or buy-outs of co-tenants who want to sell.

[14] Plaintiffs assert the Zarko Defendants' request for relief through sale of the Property should be denied because the Zarkos failed to pay back taxes when the circuit court ordered the parties to pay what was required to keep the subdivision process moving forward. We note that the circuit court then ordered Plaintiffs to pay the back taxes and seek a lien against the Zarko Defendants' interests if they so desired. The matter of back taxes allegedly owed by the parties is not properly before us; and on remand, it is a matter for the circuit court to address and determine equitable disposition, including the allocation of offsets, costs, and fees.

court's decision to order a partition in kind instead of a partition by sale under the abuse of discretion standard.

In a partition action, division of a property by physical partition is always favored in this jurisdiction both legally and equitably under HRS Chapter 668. Campbell, 57 Haw. at 514, 559 P.2d at 742. However, when a partition in kind is impracticable or cannot be accomplished without great prejudice to the owners, a court has the power to order the sale of all or part of the subject property. HRS § 668-1.

In Pioneer Mill, this court noted, "[t]he generally accepted test of whether a partition in kind would result in great prejudice to the owners is whether the value of the share of each in case of a partition would be materially less than the share of the money equivalent that could probably be obtained for the whole." 37 Haw. at 87-88 "Great prejudice" can be demonstrated in diminution of value due to division, excessive cost of division, or where division would render substantial portions of the property unusable due to physical features and/or regulatory compliance. Holmes, 19 Haw. at 276. Brown further set out a non-exclusive list of factors to be considered in balancing the equities and determining great prejudice:

> The varied conditions of the property, the variety of uses to which different portions can be put, the absence of profitable use to which much of it is susceptible without large expenditure of time and money, and taking water from non-agricultural to

> agricultural land,--all this presents a complicated problem, the solution of which, without sacrifice of, or injustice to, the interests of some one or more of the co-tenants, is extremely difficult. Considerable discretion must be allowed in determining whether or not under all the circumstances partition would greatly prejudice the common interests. On the other hand, the uncertainty of the tenure and the chances of its early termination might prevent a sale for a sum of money which, when divided among the co-tenants, would equal the profit which each of them can make out of the property during the balance of the term of the lease.

Id. at 276.

Here, in reviewing the circuit court's orders to partition the Property in kind through subdivision and then by CPR, we recognize that Plaintiffs and the Robinson Defendants have expressed a strong desire to remain on the Property, and that the equities include considering what a sale of the Property to a party outside the current family co-owners could do to their ability to stay in their homes, where their 'ohana groups have lived for several generations. But the Zarko Defendants and Forsythe Defendants' experiences of mounting costs and taxes owed are burdens they would not have to bear if they had an earlier opportunity to separate and free their interests in the Property from their siblings and cousins' interests.

In the commissioner's report filed in the circuit court eleven years ago, prior to the CPR creation, the partition commissioner concluded that the Property could not be physically divided without great prejudice to the owners who did not wish to retain an interest in the Property, and therefore, he

recommended sale of the Property as a whole.[15] After the court rejected this recommendation, the commissioner proceeded as the court ordered, but never submitted a subsequent report altering this opinion.

The commissioner stated that while he was "painfully mindful" of the fact that the Property was "family land and all involved had a deep, multi-generational connection with it[,]" he determined that it was not reasonable "to require a majority of owners to expend significant funds to divide the Property when that division will have a severe negative impact on the value and utility of the Property for those majority owners, and will only benefit the minority owners."

"In exercising its discretion, the court should act in the interest of fairness and prudence, and with a just regard to the rights of all concerned[.]" Sugarman, 104 Hawai'i at 124, 85 P.3d at 649 (quotation omitted). We review the proceedings and record in this case to determine whether the circuit court appropriately weighed the equities in not ordering partition by sale.

[15] The commissioner then recommended that the Property not be auctioned, "as may otherwise be allowed by HRS Chapter 668" because "[i]n fairness to all, an auction sale in a situation such as this stands little chance of maximizing potential value." The commissioner instead recommended that the Property be listed and sold "in the normal course" with a qualified realtor chosen by the commissioner or clerk vested by the court.

In this case, the impracticalities and barriers to subdivision of the Property have been multiple despite the parties' attempts over many years to subdivide. They include: aged, faulty or errant electrical wiring or other structures and property features that would be non-compliant with county code were it not for grandfathering the structures as they are; the associated problems of that grandfathering, as any improvements or rebuilding of structures would require the Property's residences and infrastructure be brought up to modern code; the requirement that property taxes be current before subdivision was approved, which not all co-owners--especially the non-resident owners--could afford; and the costs of making property improvements required by the County or seeking variances necessary for permission to subdivide.

The commissioner considered that the parties had "intra-family issues among family groups living on the Property," which "play[ed] into a desire to sell to achieve physical separation." Further, the time and cost of subdividing the Property "would be significant," and no party at the time was willing or able to underwrite the costs. The estimated two-and-a-half to five-year time frame for completing a subdivision, according to the commissioner, weighed against division, "as that would be additional time during which the non-occupant parties would

continue to receive no beneficial use of the Property." "This would be in addition to time post-subdivision that would be required to market and sell portions of the Property for those who do not wish to retain an interest."

The commissioner also observed the "unique" quality of the Property "in that it occupies its own point of land and is without oceanside neighbors. This level of privacy and location will increase value well beyond a similarly sized property that is bounded by neighbors." Therefore, he opined that "[a]ny division of the land would, in my estimation, negatively impact the monetary value of the Property. I am mindful of the fact that the value of the Property is not merely monetary, but as holders of 63% of the Property" had, at that time, "expressed a clear desire to sell, monetary value takes on a greater weight and importance."

We agree that despite the significant and substantive efforts that these families have engaged in over decades to divide their family property into smaller parcels to meet the needs of the 'ohana groups that want to stay and those who are not residing there, division of the Property in kind has been impracticable and is greatly prejudicial to the owners.

If a court determines a partition in kind to be impracticable or greatly prejudicial to the owners, a court has

the authority to order a sale of the property which this court has recognized to be an "absolute right." As this court noted in Pioneer Mill,

> [t]he manifest hardship arising from the division of property of an impartible nature has been almost universally avoided by statutory provisions which give to a person entitled to a partition the right to have the premises sold, if they are so situated that partition cannot be made, or that it would be manifestly to the prejudice of the parties if the property were not sold rather than partitioned. . . . A sale and division of the proceeds among the cotenants is a substitute for partition in kind. However, partition by sale is an absolute right when the conditions which authorize a sale are found to exist.

37 Haw. at 87 (emphasis added).

All the parties to this partition action have at least once requested partition of the Property by sale, including the Plaintiffs, whose initial lawsuit sought a partition by sale in the alternative to partition in kind. All the parties have likewise agreed multiple times before and during the partition proceedings to put the Property up for market sale.

As a partition in kind of the Property is impracticable and greatly prejudicial to the owners, the conditions which authorize a sale under HRS § 668-7 are present here.

IV. Conclusion

Accordingly, we vacate the circuit court's April 18, 2023 Final Judgment and related orders. We remand this case to the

circuit court to undo the CPR, partition the Property by sale, and hold further proceedings consistent with this opinion.

Kurt W. Klein
(Robert G. Klein, David A. Robyak, James M. Yuda, Jason W. Jutz, and Mallorie C. Aiwohi also appearing) for Defendants-Appellants

Paul L. Horikawa
for Plaintiffs-Appellees

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Vladimir P. Devens

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[PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-13763

SARA WATTS,

Plaintiff-Appellant,

versus

JOGGERS RUN PROPERTY OWNERS ASSOCIATION, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:22-cv-80121-AMC

Before JORDAN, BRASHER, and ABUDU, Circuit Judges.

ABUDU, Circuit Judge:

In this appeal, we are presented with the question of whether Sara Watts, an African American woman who sued her former homeowners' association, the Joggers Run Property Owners Association (the "Joggers Run HOA" or "HOA"), presented plausible claims under the Fair Housing Act ("FHA") and the Civil Rights Act to overcome the HOA's motion to dismiss for failure to state a claim, Fed. R. Civ. P. 12(b)(6).[1] She asserted that the HOA unlawfully interfered with her right to the full enjoyment of her property through unwarranted citations for violations she contested, through restricted access to community amenities, and through the treatment she received as a former HOA board member. Watts' claims rested on provisions from the FHA (42 U.S.C.

[1] We recognize that Joggers Run is named as a "Property Owners Association" ("POA") and that Florida law distinguishes between a "homeowners' association," governed by Chapter 720 of the Florida Statutes, and a "property owners' association," which falls under Chapter 712. *Compare* Fla. Stat. § 720.301(9) (defining an HOA as "a Florida corporation responsible for the operation of a community or mobile home subdivision . . . in which membership is a mandatory condition of parcel ownership"), *with* Fla Stat. § 712.01(5) (defining a property owners' association as "a homeowners' association as defined in [Section] 702.301, a corporation[,] or other entity responsible for the operation of property . . . in which membership is a mandatory condition"). Thus, similar to the relationship between a square and a rectangle, an HOA can also be a POA, but a POA need not be an HOA. Here, both parties seem to concede that Joggers Run is a POA that is also an HOA, but any difference does not change our analysis given both require mandatory membership in a community covenant.

§§ 3604(b), 3617), and the Civil Rights Act (42 U.S.C. §§ 1981, 1982). The district court granted the HOA's motion to dismiss on the grounds that the FHA does not cover any of the discriminatory conduct that Watts alleged had occurred after she purchased her home, and that Watts failed to allege with any specificity the actual terms in her homeowner's contract which the HOA allegedly violated.

After a thorough review of the record and the parties' briefs, and with the benefit of oral argument, we reverse the district court's judgment and remand the case for further proceedings.

I. FACTUAL BACKGROUND[2]

In August 2013, Watts purchased a home in the Joggers Run community in West Palm Beach, Florida where she lived for nine years with her two children and, for a while, with a service dog. The HOA governed the Joggers Run community and, as a resident of the community, Watts was subject to the HOA's governing documents—the Joggers Run's Rules and Regulations (the "HOA Rules").[3]

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[2] These facts come from allegations in Watts' second amended complaint because, in reviewing a motion to dismiss for failure to state a claim, we "accept[] the allegations in the complaint as true and construe[] them in the light most favorable to the plaintiff." *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1221 (11th Cir. 2016) (citation omitted).

[3] Only for this appeal, which comes to us at the motion to dismiss phase, we take judicial notice of Joggers Run's relevant bylaws, covenants, and current rules available on the HOA's website in assessing the plausibility of Watts' allegations. *See* Joggers Run Prop. Owners Ass'n, Inc., Association Documents

In 2015, Watts became an HOA board member and was the only African American person who attended board meetings. She claimed that White Board members, including the Board's White president, made negative, disparaging comments about people of color, including her. For example, when referring to people of color, the HOA president would call them "monkeys." In another instance, a White board member said "Bye, Felicia" to Watts, a

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(2024), https://www.grsmgt.com/association/joggers_run/association-documents/ [https://perma.cc/YR46-PFVK]; Joggers Run Parking Rules & Regulations, https://www.grsmgt.com/wp-content/uploads/2022/07/e9d93391-ec32-4565-865d-5ce219b57ea9.pdf [https://perma.cc/3T3P-NMFZ]. In reviewing a motion to dismiss, we may consider "matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007) (citing 5B Wright & Miller § 1357 (3d ed. 2004 & Supp. 2007)). Courts may take judicial notice of "relevant public documents required to be filed" that are "not subject to reasonable dispute." *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999); *see also United States ex rel. Rosales v. Amedisys N.C., L.L.C.*, 128 F.4th 548, 554 (4th Cir. 2025) (same). Here, Joggers Run must publish the HOA Rules under Florida law. Fla. Stat. § 720.303(4)(b) (requiring homeowners' associations with 100 or more parcels to publish governing documents). Moreover, Watts' second amended complaint repeatedly refers to the HOA Rules, making clear that these Rules are "central to [her] claim." *Johnson v. City of Atlanta*, 107 F.4th 1292, 1300 (11th Cir. 2024) (citations and internal quotations omitted). At oral argument, the HOA argued that Watts' complaint was conclusory for failing to cite chapter-and-verse of the Rules. However, the HOA did not dispute that the HOA Rules exist or that Watts was subject to these Rules. If Watts had misrepresented the HOA Rules, the HOA had the opportunity to attach the Rules to dispute Watts' claims, but it did not. Thus, we find it appropriate to use our "wide discretion" to take judicial notice of facts "at any stage in a proceeding" in this instance. *Dippin' Dots, Inc. v. Frosty Bites Distrib., LLC*, 369 F.3d 1197, 1204–05 (11th Cir. 2004).

phrase that, according to Watts, is associated with the discriminatory stereotype of an "African American crack addict."[4] During board meetings, when the floor was open for residents' comments, the Board limited Watts' speaking time—the only African American present—to three minutes. The Board did not impose a three-minute time restriction on anyone else who wished to speak during the open comment period. Moreover, on one occasion, police officers removed Watts from a Board meeting, although the complaint does not state for what reason. On October 18, 2017, after Watts complained about the discriminatory comments and treatment, the Board stripped her of her Board membership without any notice.

When Watts first joined the Board, she proposed Joggers Run re-open the basketball courts, an amenity paid for by HOA fees, but the Board repeatedly denied her proposal and cited problems in the past with trespassers and "too many people of color" using the courts. The Board eventually reopened the basketball courts but shut them down again after an incident in August 2019 involving a White board member who harassed Watts' son and his friends who were playing on the court and was aggressive in forcing them to leave. The Board's response after that incident, and

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[4] The "expression comes from the classic film *Friday* . . . released in 1995" in which "Felicia" is a character who "displays many of the signatures of the stereotypical 'crackhead' in many African American urban comedies." Catherine Knight Steele, *The Digital Barbershop: Blogs and Online Oral Culture Within the African American Community*, SOC. MEDIA + SOC'Y 1, 6 (2016), https://journals.sagepub.com/doi/full/10.1177/2056305116683205.

after receiving more complaints about Black kids using the court and noise, was to restrict all access.

Watts also alleged that the HOA selectively enforced the HOA Rules pertaining to parking, pets, yard sales, and penalty fees. For example, per the parking rules, residents were required to leave a handwritten note on any car without a proper HOA decal if the car would remain parked overnight in a non-designated parking spot. Moreover, the rules required the HOA to issue at least two warning notices before towing any vehicles parked in a non-designated spot. In practice, however, a White Board member regularly had cars without the proper decal or an explanatory note parked overnight in non-designated parking places and yet never received a parking citation or had a vehicle towed. Watts' son, on the other hand, who often returned from work late at night when no designated parking spots were available, was not afforded that same treatment. Despite his compliance with the parking policy by leaving a note on the car explaining he was a resident, the HOA had his car towed without any notice, in violation of the HOA's own rules. On another occasion during the COVID pandemic, after Watts informed the HOA that she was having trouble getting an appointment at the DMV to renew her son's expired registration tag, the HOA towed her son's car and then sold it at an auction. When Watts tried to speak with the Board president about the parking issues, the president yelled at her, tried to issue a no-trespass order against her, and issued a citation against her for "being un-neighborly."

Watts also complained about the selective enforcement of the HOA's pet policies. A neighbor called Watts to complain about her service dog running up to the neighbor; however, it was the neighbor's dog that was not in control which caused Watts' dog to leave Watts' porch and approach the neighbor. Nevertheless, because of this "escalated act from a White [n]eighbor," Watts felt forced to give up her service dog. Meanwhile, a different White neighbor was allowed to keep a Pitbull, a breed that the HOA Rules specifically forbade. The HOA also penalized Watts for actions which did not violate HOA policies. For example, there were no notices sent to homeowners stating that "yard sales" were not allowed, and Watts' White neighbor was able to have a yard sale without any HOA problems. Yet, when Watts held a yard sale a month after her neighbor, the HOA sent her a certified letter complaining about the yard sale, claiming it "caused harm to the community." In addition, the HOA separately cited Watts for "things in her yard" without any other explanation even though one of her neighbors, who later became a Board member, often left "dog poop in bags at his back patio and left his trash bin out for about a month" without incident. HOA home repairs also became an area of contention when Watts was charged "mysterious fees" related to roof renovations even though her home was passed over in favor of fixing the roof of a White neighbor, whose roof was repaired by the HOA at no cost and with no adverse HOA action.

Watts alleged that the HOA's discriminatory treatment extended to her guests as well. She pled that one of her African American friends was falsely accused of trespassing and vandalizing cars.

As a result of these accusations, her guest stopped coming to her home, primarily out of fear of being falsely accused of a crime and arrested. In an effort to address the matter, starting in early 2019, Watts filed a police report regarding the harassment she experienced, she had an attorney send a cease-and-desist letter to the Board, and she created a video blog with examples of the ongoing discrimination she faced, all to no avail.

Watts then decided to pursue other legal avenues, and, on December 6, 2021, she filed an administrative complaint of discrimination with the U.S. Department of Housing and Urban Development ("HUD") against the HOA under 42 U.S.C. § 3610(a). On December 16, Watts sued the HOA in state court, and the HOA removed the action to federal court and moved to dismiss it. Watts amended that complaint to include the FHA and Civil Rights Act claims now at issue.

Watts contends that, with all the HOA and residents' harassing treatment, she had no other option but to move out of the Joggers Run community and sell her home. So, on March 30, 2022, she sold it and left Joggers Run. Following the sale, she and her family were homeless, she had to separate her children and temporarily house them with friends, she put her family's personal belongings in storage, and she carried the concern about not finding a new home. She maintained that the discriminatory acts affected her financially, emotionally, and physiologically, which caused her to seek medical treatment.

II. PROCEDURAL HISTORY

In her second amended, four count complaint, Watts alleged the HOA's actions were racially motivated and unlawfully interfered with the use and enjoyment of her home, altered the "terms, conditions, or privileges" related to her home, and denied or limited the services to which she was entitled as a homeowner, in violation of Section 3604(b) and Section 3617 of the FHA. Watts further alleged that the HOA's discriminatory conduct also denied her equal contract rights in violation of Section 1981 of the Civil Rights Act and denied her equal property rights based on her race in violation of Section 1982 of the Civil Rights Act.

The HOA moved to dismiss the entire complaint for failure to raise any cognizable claim under the FHA or the Civil Rights Act, and the district court granted that motion. Although the court found that "Defendant's alleged conduct of harassing Plaintiff and her family is reprehensible," it ruled that none of her allegations could support any of her four statutory claims. First, as to her claim under Section 3604(b) of the FHA, the court held that Watts failed to allege discriminatory conduct "connected to the sale or rental of a dwelling." Accordingly, the court also held she did not sufficiently plead a claim under Section 3617 of the FHA which, the court reasoned, required identifying at least one right under Sections 3603–3606 that the HOA infringed upon. Next, as to the Section 1981 Civil Rights Act claim, the court found that Watts' complaint did not identify the provisions within the contractual relationship that the HOA actually violated. Finally, as to the Section 1982 Civil Rights Act claim, the court held that Watts'

complaint did not explain how the HOA's conduct infringed on her rights to inherit, purchase, lease, sell, hold, or convey personal property.

III. STANDARD OF REVIEW

"We review the district court's grant of a motion to dismiss for failure to state a claim *de novo*, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." *Hunt*, 814 F.3d at 1221 (citation omitted). "To withstand a motion to dismiss" for failure to state a claim, a "complaint must include 'enough facts to state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009)). Plaintiff must allege "more than labels and conclusions, and formulaic recitation of the elements of a cause of action will not do." *Twombly,* 550 U.S. at 555. Nevertheless, "plausibility is not probability." *Lane v. Philbin*, 835 F.3d 1302, 1305 (11th Cir. 2016).

That said, in FHA discrimination cases, "[b]efore discovery has unearthed relevant facts and evidence, it may be difficult to define the precise formulation of the required prima facie case in a particular case." *Hunt*, 814 F.3d at 1221 (citation omitted). In such instances, "the allegations in the complaint 'should be judged by the statutory elements of an FHA claim.'" *Id.* (quoting *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 250 (9th Cir. 1997)).

IV. DISCUSSION

Home ownership has long been viewed as the heart of the American Dream. Yet almost sixty years ago, "Congress . . . recogniz[ed] the awful reality" that "[m]illions of Americans have been denied fair access to decent housing because of their race or color."[5] At that time, a bipartisan committee that President Lyndon B. Johnson appointed issued a report advising that a "national fair housing law" was "essential" to end "evident" and "profoundly divisive" housing segregation that limited the opportunity of all Americans to equal access to housing and the promise that this country could become a "single nation" rather than "a dual society."[6] So, in 1968, Congress passed the Fair Housing Act and declared that "[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. Further, in Section 1981 and Section 1982 of the Civil Rights Act, Congress provided that all Americans, regardless of race, were entitled to equal contract and property rights. 42 U.S.C. §§ 1981, 1982.

Against this backdrop, we have explained "'the language of the FHA is broad and inclusive,' 'prohibits a wide range of conduct,' 'has a broad remedial purpose,' and 'is written in decidedly far-reaching terms.'" *Ga. State Conf. of the NAACP v. City of LaGrange*, 940 F.3d 627, 631–32 (11th Cir. 2019) (quoting *City of Miami*

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[5] 114 Cong. Rec. 2279 (1968) (statement of Sen. Edward Brooke).

[6] NAT'L ADVISORY COMM'N ON CIV. DISORDERS, REPORT ON THE CAUSES, EVENTS, & AFTERMATHS OF THE CIVIL DISORDERS OF 1967 225 (1968).

v. Wells Fargo & Co., 923 F.3d 1260, 1278 (11th Cir. 2019)). In addressing each of Watts' arguments on appeal, we conclude that the district court too narrowly construed the FHA, Section 1981, and Section 1982, and that Watts plausibly stated claims for relief for all the alleged statutory violations.

A. Section 3604(b) of the Fair Housing Act

Section 3604(b) prohibits race-based discrimination related to the sale or rental of a home, including its attendant facilities and services. 42 U.S.C. § 3604(b). Watts' allegations, which we accept as true and construe in her favor, indicate that she entered into an agreement with the HOA after purchasing her home regarding the amenities to which she would have access and the rules and regulations by which she and her family would abide. Watts' complaint is grounded on discriminatory behavior on the HOA's part pertaining to restricted access to the basketball courts and parking areas, inconsistent enforcement of HOA rules and regulations, and unjustified fees and other sanctions against her.

The district court's decision was based on its determination that the HOA actions about which Watts complained were not covered under Section 3604(b) as "terms, conditions, or privileges" related to the sale of her home, or as part of the "provision of services or facilities in connection therewith."[7]

[7] As a threshold matter, the HOA concedes that, in *LaGrange*, we held that Section 3604(b) applies to conduct that occurs after the sale or rental of housing, i.e., "post-acquisition conduct." *LaGrange*, 940 F.3d at 632. Therefore, the mere fact that Watts' complaint is based on HOA actions that occurred after

When interpreting a statute, courts begin by "reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis[.]" *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 7 (2011) (quoting *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486, (2006)). So we begin with the text of Section 3604(b). In full, Section 3604(b) makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(b). Congress did not provide a list as to what "terms, conditions, or privileges" are included in the "sale . . . of a dwelling" as opposed to those that are outside of a "sale."

"In the absence of a statutory definition of a term, we look to the common usage of words for their meaning." *Jackson v. State Bd. of Pardons & Paroles*, 331 F.3d 790, 795 (11th Cir. 2003) (quoting *CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1222 (11th Cir. 2001)). Courts often turn to dictionary definitions for guidance on the common use of a word. *Id.* However, "we must be mindful that to ascertain the meaning of a statute, '[w]e do not look at one

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she moved into the community is not a categorical bar to her claim for relief. The HOA suggests that Section 3604(b) does not apply to previously acquired housing. However, Watts was a homeowner at all relevant times, and as explained below, *LaGrange* recognizes that Section 3604(b) provides a remedy for discriminatory acts that interfered with agreements arising from the sale or rental of a dwelling. *Id.* at 634.

word or term in isolation, but instead we look to the entire statutory context.'" *United Mine Works of Am. Combined Benefit Fund v. Toffel (In re Walter Energy, Inc.)*, 911 F.3d 1121, 1143 (11th Cir. 2018) (quoting *United States v. DBB, Inc.*, 180 F.3d 1277, 1281 (11th Cir. 1999)). Thus, we must read "terms, conditions, or privileges" in the context of housing, specifically owning or renting property.

"Terms" in a contractual context are "propositions stated or promises made which, when assented to or accepted by another, settle the contract and bind the parties." *Terms*, BLACK'S LAW DICTIONARY (4th rev. ed. 1968). A "condition" is "[a] future and uncertain event upon the happening of which is made to depend the existence of an obligation, or that which subordinates the existence of liability under a contract to a certain future event." *Condition*, BLACK'S LAW DICTIONARY (4th rev. ed. 1968). A "privilege" is "[a] particular and peculiar benefit or advantage enjoyed by a person, company, or class beyond the common advantages of other citizens." *Privilege*, BLACK'S LAW DICTIONARY (4th rev. ed. 1968). Generally, "ownership" of a home means the owner has "the totality of rights, powers, privileges[,] and immunities which constitute complete property." RESTATEMENT (FIRST) OF PROP. § 10 cmt. b (AM. L. INST. 1936).

In *LaGrange* we concluded that city-provided utility services fell within the scope of Section 3604(b). 940 F.3d at 633–34. In *LaGrange*, plaintiffs challenged city policies that required them to pay debts owed to the city and present valid state or federally issued photo identification to access utility services such as electricity, gas,

and water as a violation of Section 3604(b) because the policies disproportionately harmed Black and Hispanic residents. *Id.* at 630–31. We held that "a service within the meaning of [Section] 3604(b) must be a housing-related service that is directly connected to the sale or rental of a dwelling." *Id.* at 634. We focused on two factors in determining that water, gas, and electricity were "directly connected to the sale or rental of a dwelling." *Id.* First, we concluded that the utility services were "clearly, directly connected to the sale or rental of a dwelling" because as part of buying a home, a resident "*must* obtain basic utility services," and we explained that "in the context of housing, a person cannot obtain such services without first obtaining a dwelling." *Id.* (emphasis added). Second, we concluded that the utility services were "essential to the habitability of the dwelling" and that, without these utility services, a resident would be unable to live in the home. *Id.*

Similarly, HOA membership is mandatory for homeowners within Joggers Run. Fla Stat. § 712.01(5). The HOA Rules dictate where a resident or guest may park their car without penalty, the use of shared facilities, and participation in the community's governance. The rights that flow from mandatory HOA membership are "fundamental to the ability to inhabit" the shared property. *LaGrange*, 940 F.3d at 634. The terms, conditions, and privileges of owning a Joggers Run home as provided in the HOA Rules may not be a matter of life and death for residents, but these contractual rights are part-and-parcel of that planned housing community. *Id.*

Furthermore, in evaluating a similar provision of the FHA, we have established that access to communal spaces is within the scope of the "terms, conditions, and privileges" of the sale or rental of a dwelling. *Hunt,* 814 F.3d at 1224–25. The provision at issue in *Hunt*, Section 3604(f)(2), mirrors the language of Section 3604(b) except that it extends the same protections to persons with a disability. *Id.* at 1224 (citing 42 U.S.C. § 3604(f)(2)).[8] Hunt alleged that after she and her son, who has Down syndrome, moved into their home, the landlord yelled at her son, forced him to do maintenance work, barred him from areas open to other residents, and used law enforcement as a means of furthering the discrimination. *Id.* at 1224–25. She argued that the landlord imposed these restrictions and requirements on her son and not others because of his disability. *Id.* We reversed the district court's dismissal of Hunt's claims for failure to state a claim, finding that her allegations of discriminatory conduct were sufficient to state a claim under Section 3604(f)(2). *Id.* at 1225. Similarly, according to Watts' complaint, she and her family were denied access to facilities, were

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[8] Section 3604(f)(2) makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

(**A**) that person; or

(**B**) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(**C**) any person associated with that person.

42 U.S.C. § 3604(f)(2).

restricted from engaging in the same behavior as White residents, and were subjected to harassing behavior because of their race.

Our plain reading of the statute is further bolstered by a HUD regulation that implements the FHA, which defines discriminatory actions "relating to the sale or rental of a dwelling" to include *"[l]imiting the use* of privileges, services[,] or facilities *associated* with a dwelling because of race." 24 C.F.R. § 100.65(b)(4) (emphasis added).

Here, the relevant HUD regulation was implemented contemporaneously with the Fair Housing Amendments Act of 1988—a statute enacted to address the enforcement "gap[s]" Congress concluded rendered the original FHA "ineffective." *Sec'y, U.S. Dep't of Housing & Urb. Dev. ex rel. Herron v. Blackwell*, 908 F.2d 864, 868–69 (11th Cir. 1990) (quoting H.R. Rep. No. 711, at 15–16 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 2173, 2176–77). Thus, this regulation is "especially useful" in our independent determination of what "terms, conditions, and privileges" are related to a sale of a dwelling for purposes of enforcing the FHA. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). *See generally Perez v. Owl, Inc.*, 110 F.4th 1296, 1308 (11th Cir. 2024) (finding persuasive the Department of Labor's long-standing and consistent interpretation of the term "regular rate" in independently analyzing the term's meaning under the Fair Labor Standards Act). Furthermore, the Supreme Court has long "recognized that HUD's views about the meaning of the FHA are entitled to 'great weight.'" *Bloch v. Frischholz*, 587 F.3d 771, 781 (7th Cir. 2009) (*en banc*) (summarizing

Supreme Court precedent in recognizing that 24 C.F.R. § 100.65(b)(4) is an important tool in interpreting Section 3604(b)). We, therefore, give weight to 24 C.F.R. § 100.65(b)(4) which clarifies that unlawful post-acquisition conduct includes limitations on a homeowner's access to privileges, services, or facilities associated with their home. 24 C.F.R. § 100.65(b)(4).

Taken together, the text of Section 3604(b), our precedent, and HUD regulations confirm that discrimination against a homeowner by an HOA violates the FHA. Thus, we must determine whether Watts' allegations regarding the HOA's conduct, if true, that limited *contractual entitlements and obligations* under the HOA Rules fall within the scope of Section 3604(b).

Here, when Watts bought her house, she signed a contract to become a member of the Joggers Run community as a condition of the sale. The HOA Rules govern the Joggers Run community and establish the *additional* rights and obligations, beyond the traditional rights in the ownership of the home itself, that homeowners accept when purchasing their home. These additional rights included access to the basketball court, the ability under certain conditions to park in non-designated parking spaces, obtaining roof repairs and similar services, and access to the HOA meetings. These rights fall squarely within the common usage definitions of "privileges, services, and facilities associated with a dwelling." Thus, when a person enters into an enforceable agreement as part of purchasing a property, such as the mandatory HOA contract here, Section 3604(b) prohibits discrimination related to any

additional privileges, services, and facilities afforded by that agreement. Our interpretation of Section 3604(b)'s scope is consistent with HUD's regulation and with our understanding that the "'language of the FHA is broad and inclusive,' 'prohibits a wide range of conduct,' 'has a broad remedial purpose,' and 'is written in decidedly far-reaching terms'" in "dealing with the specific problems of fair housing opportunities." *LaGrange*, 940 F.3d at 631–33 (citations omitted).

Watts' contention that the HOA's actions were racially motivated are best illustrated in her allegations that the HOA did not want to encourage Black kids to use the basketball courts and that one neighbor actually accosted her son and his friend and used expletives and derogatory language to get them off the court. She maintained that her Black guest was harassed and accused of trespassing and vandalizing cars in the community, that the president of the HOA referred to non-White individuals as "monkeys," that a derogatory phrase was used against her, that the Board expressed concerns about too many "people of color" using the basketball courts, and that Board members made contemporaneous complaints that there were "too many black kids at the court."

Watts' allegations plausibly fall within the scope of Section 3604(b) because the contractual rights flowing from her HOA membership were "directly connected to the sale" of her home. *LaGrange*, 940 F.3d at 634. Further, she sufficiently alleged that she was denied equal access and treatment because of her race.

Moreover, this reading of Section 3604(b) as applied to Watts' complaint is consistent with our sister courts. The Seventh Circuit sitting *en banc* in *Bloch v. Frischholz* held that Section 3604(b) encompassed the plaintiff's claims that a condominium association's prohibition against Jewish residents displaying religious symbols violated Section 3604(b). 587 F.3d at 783. The *Bloch* court explained that mandatory association membership is a condition of the sale and held that "[Section] 3604(b) prohibits the [Condominium] Association from discriminating . . . through its enforcement of the rules, even facially neutral rules." *Id.* at 780. The *Bloch* court went on to explain that the "contractual connection" between an association and a condo unit owner distinguished claims against associations from "a blanket 'privilege' to be free from all discrimination" or a "quarrel[] between neighbors." *Id.* (citation omitted). Similarly, the Third Circuit, in *Curto v. A Country Place Condominium Association*, analyzed whether a condominium association's rules that allotted unequal, sex-segregated time at a communal pool violated Section 3604(b). 921 F.3d 405, 407–10 (3d Cir. 2019). The Third Circuit, with guidance from 24 C.F.R. § 100.65(b)(4), ruled the communal pool was a "'facility associated with a dwelling' within the meaning of the statute and regulation." *Curto*, 921 F.3d at 410.

Accordingly, based on Section 3604(b)'s language, HUD's implementing regulation, and the dictionary definitions of relevant terms and, consistent with our broad application of the FHA, the district court's interpretation of Section 3604(b) was erroneous. Because Watts set forth sufficient facts to raise a plausible claim

under Section 3604(b), we reverse the district court's dismissal of this claim.

B. Section 3617 of the Fair Housing Act

The FHA makes it "unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of . . . any right granted or protected by Section 3603, 3604, 3605, or 3606 of this title." 42 U.S.C. § 3617. Thus, to succeed, Watts need only plausibly allege an underlying violation of one of the four statutes, including Section 3604, which the Defendants allegedly violated. Because we disagree with the district court's dismissal of Watts' Section 3604(b) claim, we also conclude that Watts has satisfied her burden for maintaining a claim under Section 3617. *See Sofarelli v. Pinellas County*, 931 F.2d 718, 721–22 (11th Cir. 1991) (finding the plaintiff plausibly stated a Section 3617 claim where individuals interfered with rights guaranteed under Section 3604(b)); *Evans v. Tubbe*, 657 F.2d 661, 662–63 & n.3 (5th Cir. Unit A 1981) (vacating a dismissal where a Black woman who had been intimidated and harassed for using her property alleged a valid claim under Sections 1982, 3604, and 3617 given that the "Fair Housing Act prohibits not only direct discrimination but practices with racially discouraging effects" (citation and internal quotations omitted)).[9]

[9] Decisions of the Fifth Circuit prior to September 30, 1981 are "binding as precedent in the Eleventh Circuit." *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (*en banc*).

C. Section 1981 of the Civil Rights Act

Section 1981 of the Civil Rights Act provides that "[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts." 42 U.S.C. § 1981(a). This includes the right to enjoy "all benefits, privileges, terms, and conditions of the contractual relationship." *Id.* § 1981(b). A Section 1981 claim requires allegations of "(1) intentional racial discrimination (2) that caused a contractual injury." *Ziyadat v. Diamondrock Hosp. Co.*, 3 F.4th 1291, 1296 (11th Cir. 2021) (citations omitted). Unlike the FHA, Section 1981 applies to the creation and enforceability of all contracts. *See generally Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 477 (2006) (explaining that Congress added Section 1981(b) to include discrimination at any stage of a contractual relationship, "to bring postformation conduct . . . within the scope of § 1981"). The district court held Watts failed to identify either specific contractual covenants and restrictions or the benefits, privileges, terms, or contractual rights that the HOA allegedly violated.

When considering the sufficiency of Watts' Section 1981 claim, she only needed to "initially identify an impaired 'contractual relationship' . . . under which [she had] rights." *Domino's Pizza*, 546 U.S. at 476. In a variety of contexts involving claims under Section 1981, courts have recognized that the cornerstone of such a claim is the existence of a contractual relationship. *See, e.g.*, *Moore v. Grady Mem'l Hosp. Corp.*, 834 F.3d 1168, 1172 (11th Cir. 2016) (ruling that allegations of a contractual relationship were not

conclusory where defendants did not dispute the existence of the employment contract); *Kinnon v. Arcoub, Gopman & Assocs., Inc.*, 490 F.3d 886, 891 (11th Cir. 2007) (deciding a customer's allegations that a restaurant's acceptance of her pizza delivery order sufficiently stated a contractual relationship). Recently, we found that a hotel guest of Arab descent properly raised a Section 1981 claim even though his complaint focused on the contractual injury as opposed to a particular contractual provision which triggered his contractual rights. *Ziyadat*, 3 F.4th at 1296 (citations omitted); *see also Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. 327, 341–44 (2020) (Ginsburg, J., concurring in part) (affirming that a plaintiff may plead a contractual injury that occurs at any point during the "entirety of the contracting process[,]" including "[p]ostformation racial harassment"). Similarly, Watts' complaint focused on injuries arising from her contractual relationship with the HOA under the HOA Rules.

Here, the HOA Rules created an enforceable contract that governed Watts' responsibilities as a Joggers Run resident and the benefits of her membership. Watts alleged the HOA discriminated against her based on her race and, in so doing, the HOA violated its own rules, denied Watts and her children the full benefits of living in the community, and interfered with her privileges as a property owner. Thus, Watts' complaint plausibly identified a "contractual relationship" which the HOA allegedly violated in contravention of their own policies, rules, and regulations, thus breaching her rights under Section 1981. *Domino's Pizza*, 546 U.S. at 477. Therefore, she has plausibly stated a Section 1981 claim.

D. Section 1982 of the Civil Rights Act

Section 1982 of the Civil Rights Act provides "[a]ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by [W]hite citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U.S.C. § 1982. In contrast to the FHA, Section 1982 protects "broadly defined" property rights. *City of Memphis v. Greene*, 451 U.S. 100, 122 (1981). The district court rejected Watts' Section 1982 claim on the ground that, because she purchased and sold her home "without interference," she could not establish a Section 1982 violation.

The Supreme Court has "broadly construed" Section 1982 "to protect not merely the enforceability of property interests acquired by [B]lack citizens but also their right to . . . *use property* on an equal basis with [W]hite citizens." *Greene*, 451 U.S. at 120 (emphasis added). The Court has held that Section 1982 protections extend to community membership benefits in recreational facilities to include a community resident's family and friends where access has been restricted based on race. *Id.* at 121–22 (collecting Supreme Court cases). For example, in *Tillman v. Wheaton-Haven Recreation Association, Inc.*, an association was created to operate a community swimming pool, and under its bylaws, it provided that membership "shall be open to bona fide residents . . . of the area within a three-quarter mile radius of the pool." 410 U.S. 431, 433 n.3 (1973). However, the association closed off membership, and thus access to the pool, to a Black resident who lived within the three-quarter-mile geographic range delineated in the bylaws. *Id.* at 433–34. The

association also adopted a policy to prevent White members from bringing Black guests to the pool. *Id.* at 434. The Supreme Court held that the association's racially discriminatory actions fell within the scope of Section 1982 because "[w]hen an organization links membership benefits to residency in a narrow geographical area, that decision infuses those benefits into the bundle of rights for which an individual pays when buying or leasing within the area." *Id.* at 437.

Watts alleged that the HOA created a dual property system: White owners could fully enjoy the amenities, common areas, and services that flowed from their property while Watts, as a Black resident, could not. Her allegations that the HOA's discriminatory actions prohibited or limited her access to HOA membership benefits are sufficient to support her Section 1982 claim that the HOA violated her ability to "use property on an equal basis with [W]hite citizens." *Greene*, 451 U.S. at 120; *see also United States v. Brown*, 49 F.3d 1162, 1167 (6th Cir. 1995) (adopting the Second and Fifth Circuit's reasoning that the "'use' of property is a protected civil right" under Section 1982 (citation omitted)); *Woods-Drake v. Lundy*, 667 F.2d 1198, 1201 (5th Cir. 1982) (collecting cases in which Section 1982 was violated when landlords denied, evicted, or attempted to evict tenants for violating rules such as prohibitions against receiving Black guests). The district court, therefore, improperly dismissed this claim.

V. CONCLUSION

Watts' complaint presented plausible claims for relief under Section 3604(b) and Section 3617 of the FHA and Section 1981 and Section 1982 of the Civil Rights Act. We, therefore, reverse the district court's dismissal and remand the case for further proceedings.

REVERSED and REMANDED.

JORDAN, Circuit Judge, Concurring:

I join in Parts I, II, III, IV.B–D, and V of Judge Abudu's opinion for the court. As to Part IV.A, I concur in the judgment.

Ms. Watts alleges that Joggers Run, a residential community with a mandatory homeowners' association, violated various provisions of the Fair Housing Act, including 42 U.S.C. § 3604(b). Like the court, I believe the FHA claim under § 3604(b) has "substantive plausibility." *Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014).

I reach that conclusion for the following reasons. First, § 3604(b) makes it unlawful to "discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, familial status, or national origin." Second, we have held that § 3604(b) reaches post-acquisition conduct. *See Ga. State Conf. of the NAACP v. City of La Grange*, 940 F.3d 627, 631–34 (11th Cir. 2019) (concluding that § 3604(b) applied to municipally-provided electricity, gas, and water services). Third, the conduct alleged by Ms. Watts—e.g., having her car towed from her property contrary to the association's rules, closing down the basketball court because of a belief that too many Black kids were at the court, and racial harassment that forced her to sell her home—is conduct that is covered by the "provision of services or facilities" language in § 3604(b). *See, e.g., Curto v. A Country Place Condo Ass'n*, 921 F.3d 405, 410–11 (3d Cir. 2019) (applying § 3604(b) to the rules of a communal pool in a condominium association); *Savanna Club Worship Serv., Inc. v. Savanna Club Homeowners' Ass'n*,

456 F. Supp. 2d 1223, 1230 (S.D. Fla. 2005) ("[P]art and parcel of the purchase of a home within a planned community are the rights and privileges associated with membership within the community. It would appear, therefore, that in the context of planned communities, where association members have rights to use designated common areas as an incident of their ownership, discriminatory conduct which deprives them of exercising those rights would be actionable under the FHA."). *Cf. Hunt v. Aimco Props. L.P.*, 814 F.3d 1213, 1224 (11th Cir. 2016) (applying § 3604(f)(2) of the FHA to the defendant, which allegedly prohibited the plaintiff's disabled son "from entering the community room, the pool area, and the office," because the alleged facts "sufficiently pled that [the defendant] placed conditions on [the son] that were not imposed on other residents and restricted his access to facilities in the complex that were open to other residents").

In Part IV.A, the court discusses 24 C.F.R. § 100.65(b)(4). But given the language of § 3604(b), the cases applying that provision to post-acquisition conduct, the mandatory nature of the homeowners' association, and the plausibility standard that governs, I do not see a need to discuss that regulation.

CONTINUING EDUCATION PROVIDERS AND COURSES
RATIFICATION LIST

EDUCATION REVIEW COMMITTEE

April 25, 2025

Registration/Certification	Effective Date
Providers	
Franklin Energy Services, LLC	03/10/2025
Courses	
"NAR Green Designation Day 1 & Day 2" (Franklin Energy Services, LLC/National)	03/10/2025

APPROVED APPLICATIONS FOR REAL ESTATE
REAL ESTATE COMMISSION MEETING ON APRIL 25, 2025

Brokers – Individual	Effective Date
Takako Friend	02/25/2025
Robert B Wellman aka Robert Wellman	03/06/2025
Marc A Caraska	03/07/2025
Gerri L Bradshaw aka Gerri Bradshaw	03/10/2025
Myriam Fiankan Allouko aka Myriam F Allouko	03/13/2025
Suzette M Leal	03/14/2025
Travis Ikaika Kazuma Ito-Macion	03/21/2025
Porsche Sue Kimiko Nathaniel aka Porsche Nathaniel	03/24/2025
Jacqueline Rose Plata	03/27/2025
Amber Nicole Rich aka Amber Rich	03/28/2025
Catherine Elizabeth K Damon	03/31/2025
James Lieu	04/03/2025
Matthew James Yamamoto	04/04/2025

Salesperson – Individual	Effective Date
Bin Cao	03/10/2025
Dalianny Romboli aka Daly Romboli	03/13/2025
Hae Ook Choi aka Julia Choi	03/14/2025
Setsuko Regina Gormley	03/14/2025
Julie First Lewer aka Julie Lewer	03/17/2025
Mark Logan Ross aka Mark Ross	03/17/2025
Aga Nuckowski	03/17/2025
Marcelo Kozama	03/18/2025
Sydni Taylor	03/18/2025
Megan Mikioi Rose aka Megan M Rose	03/18/2025
Kimberly Joan Dunn aka Kim Dunn	03/19/2025
Adrienne P. L. Pulu aka Adrienne Pulu	03/20/2025
Kelsey V Johnson	03/20/2025
Leilani H Akina aka Leilani Akina	03/20/2025
Cody Satoru Kimoto	03/21/2025
Mailyn Pena Gabold aka Mailyn P Gabold	03/21/2025

David Mikhail Mitsevich	03/24/2025
aka David Mitsevich	
Arlene C Guerrero	03/24/2025
Brian W Ivan	03/24/2025
aka Brian Ivan	
Jeanne Marie Herr	03/24/2025
aka Jeanne M Herr	
Anzhelika Mizgireva	03/24/2025
Patty S Pak	03/25/2025
Jennifer Mei Shim	03/25/2025
aka Jennifer Shim	
Hannah Louise Grant	03/27/2025
aka Hannah Grant	
Harrison Barklie Potter	03/27/2025
aka Harrison Potter	
Florencia Ezcurra	03/28/2025
Andrea Ruth Cohen-Chen	03/28/2025
aka Andrea Cohen- Chen	
Tangee Renee Lazarus	03/28/2025
aka Tangee Lazarus	
Linda L Mendenhall	03/31/2025
Ryan Warren Buchan	03/31/2025
aka Ryan Buchan	
Tatum B Osborne	03/31/2025
aka Tatum Osborne	
Susan Jane Penaroza	03/31/2025
Lexie-Marie H Kia-Cox	03/31/2025
Karen Lee Howerton	03/31/2025
aka Karen L Howerton	
Pookela K. Akana-Andrew	04/02/2025
Fanny Paola Arbelaez Orozco	04/02/2025
Maybel Corazon Talon Apostol	04/02/2025
aka Maybel T Apostol	
Gabriela Smith	04/02/2025
Michala Royer Simmons	04/02/2025
aka Michala Simmons	
Jacqueline Ostia King-Jodoi	04/03/2025
aka Jacqueline King-Jodoi	
Robert David Eldridge	04/03/2025
aka Robert D Eldridge	
Blaze Keka Ryder	04/04/2025
aka Blaze Ryder	
Amber Wei Lin Parry	04/07/2025
aka Amber Parry	
Kelli Lanay Taylor	04/07/2025
aka Kelli Taylor	
Don Karl Sabado	04/07/2025
Kenneth-Ikaika Madriaga Baptista	04/08/2025
aka Ikaika Baptista	
Shelev Kancepolsky	04/08/2025
Nicole Nalani Kashiwabara	04/09/2025
aka Nikki Kashiwabara	

Kanako Okuma Lee aka Kanako Lee	04/09/2025

Brokers – Limited Liability Company (LLC)	Effective Date
Global Sphere Realty LLC Terry E Booker, PB	02/27/2025
Ilima Properties, LLC Heather Singleton, PB	03/17/2025
Hawaii Real Estate Management LLC Derek T Kimura, PB	03/20/2025
Axio LLC dba Axio Properties Miyako Kanaoka, PB	03/28/2025
Scorpio Pacific Group LLC Preston Cope, PB	03/31/2025
JNS Investments LLC dba Exit Realty Island Living Jordan Sonner, PB	04/02/2025
Aloha Property Managers LLC Samantha K Haas, PB	04/04/2025

Brokers – Sole Proprietor	Effective Date
Stephen Taylor Flanagan aka Stephen Flanagan	03/13/2025
Federico Vicencio Quevedo	03/27/2025
Tacarra Sheneil Cooper aka Tacarra Cooper	03/31/2025
Theresa Yea Tyng Tang Yanuaria dba Yanuaria Properties	04/03/2025
Jin Zhang	04/08/2025

Legal Name Change (Individual)	Effective Date
Tashanna Okami nka Tashanna Lee Kealalani Okami LoSasso fka Tashanna Okami	02/27/2025
Sau Wan Chun nka Cinderalla Wong fka Sau Wan Chun	03/13/2025
Cheryl Borsh nka Cheryl Elayne Bowlin fka Cheryl Borsh	03/18/2025

License Name Change (Individual)	Effective Date
Danielle A C Shaffer aka Dani Shaffter	02/06/2025
Valerie Nicole Wilson aka Valerie Wilson	02/14/2025
Tashanna Okami nka Tashanna L K O LoSasso fka Tashanna Okami	02/27/2025
Maurice D Rodrigues aka Maurice Rodrigues	03/07/2025

Cheryl E Borsh aka Cheryl Borsh	03/18/2025

Educational Equivalency Certificate	Expiration Date
Amanda Jeanene Cummins	03/17/2027
Jin Zhang	03/17/2027
Bob K Lindsey III	03/18/2027
Jenny Lynne Malcolm	03/18/2027
Casey Michelle Hutnick	03/18/2027
Heather Lee Corby	03/24/2027
Manija Nazarova	03/24/2027
Reyna Anne Powers	03/31/2027
Amy Elizabeth Potter	03/31/2027
LuAnn Michiko Shikasho	04/01/2027
Cody Ginzo Matsukawa	04/03/2027
Shannan Rebecca Stevens	04/03/2027
Stacy R Ono	04/03/2027
Vanessa Lalli Dittenhofer	04/04/2027
Kevin Thomas Engholdt	04/04/2027
Benjamin James Goodhard	04/04/2027
Caitlyn Mackenzie Kelly	04/04/2027
Gabriel Aron Vergara	04/07/2027
Mark Christopher Bennett	04/08/2027
Michael Sterling Hubbard	04/08/2027
Brian James Cambier	04/08/2027
Cooper Daniel Coe	04/09/2027

Equivalency to Uniform Section of Examination Certificate	Expiration Date
Amanda Jeanene Cummins	03/17/2027
Jin Zhang	03/17/2027
Jenny Lynne Malcolm	03/18/2027
Andrew Uchi Aquino	03/19/2027
Heather Lee Corby	03/24/2027
Manija Nazarova	03/24/2027
Reyna Anne Powers	03/31/2027
LuAnn Michiko Shikasho	04/01/2027
Shannan Rebecca Stevens	04/03/2027
Stacy R Ono	04/03/2027
Vanessa Lalli Dittenhofer	04/04/2027
Kevin Thomas Engholdt	04/04/2027
Benjamin James Goodhard	04/04/2027
Mark Christopher Bennett	04/08/2027
Brian James Cambier	04/08/2027
Cooper Daniel Coe	04/09/2027

Real Estate Broker Experience Certificate	Expiration Date
Megan Elizabeth McDonnell	03/05/2027
Jin Zhang	03/17/2027
Garth Cameron Cobb	03/17/2027
Kristine McGowan	03/17/2027
Erika Karin Stuart	03/18/2027
Leilani Bulosan Hearne	03/18/2027

Noelani E Spencer	03/18/2027
Jamie Lee Russell	03/18/2027
Edward Codelia	03/19/2027
Liza Lehua Kalawaia	03/19/2027
Edgar Ezequiel Cervantes	03/25/2027
Michael Richard Hearne	03/25/2027
Leah Ragsac	03/28/2027
John Richard Clay	03/28/2027
Colene J De Mello	04/01/2027
Jason Gregory Baptiste	04/01/2027
Lei-Ann E Hayes	04/02/2027
Tiffany Lee Kane	04/02/2027
Pamela Spanko	04/03/2027
Alexandria Dee Mitsuko Ayers	04/03/2027
Vanessa Lalli Dittenhofer	04/04/2027
Benjamin James Goodhard	04/04/2027
Sook Ja Lee	04/07/2027
Laurie Chang Murphy	04/08/2027
Mark Christopher Bennett	04/08/2027
Maria Florencia Arias	04/08/2027
Lauren Emiko Yama	04/09/2027
Kenneth Edward Attix	04/10/2027

Condominium Hotel Operator	Effective Date
Ho'okipa at the Villas LLC dba Hookipa At The Villas	02/28/2025