

## PLANNED COMMUNITY ASSOCIATION OVERSIGHT TASK FORCE

Department of Commerce and Consumer Affairs

State of Hawaii

<https://cca.hawaii.gov/>

### AGENDA

Date: November 16, 2023

Time: 2:30pm

In-Person Meeting Location: Queen Liliuokalani Conference Room  
King Kalakaua Building  
335 Merchant Street, 1<sup>st</sup> Floor  
Honolulu, Hawaii 96813

Agenda: The agenda was posted to the State electronic calendar as required by Hawaii Revised Statutes (“HRS”) section 92-7(b)

Virtual Participation: Virtual Videoconference Meeting – Zoom Webinar (link below)

<https://dcca-hawaii-gov.zoom.us/j/88208301898>

Phone: +1 669 444 9171 US  
Meeting ID: 882 0830 1898

If you wish to submit written testimony on any agenda item, please email your testimony to [kladao@dcca.hawaii.gov](mailto:kladao@dcca.hawaii.gov) or submit by hard copy mail to: Attn: Planned Community Association Oversight Task Force, 335 Merchant Street, Room 310, Honolulu, Hawaii 96813. We request submission of testimony at least 24 hours prior to the meeting to ensure that it can be distributed to the task force members.

### **INTERNET ACCESS:**

To view the meeting and provide live oral testimony during the meeting, please use the above link. You will be asked to enter your name in order to access the meeting as an attendee. The Task Force requests that you enter your full name, but you may use a pseudonym or other identifier if you wish to remain anonymous. You will also be asked for an email address. You may fill in this field with any entry in an email format, e.g., \*\*\*\*\*@\*\*\*mail.com.

Your microphone will be automatically muted. When the Chairperson asks for public testimony, you may click the Raise Hand button found on your Zoom

screen to indicate that you wish to testify about that agenda item. The Chairperson will individually enable each testifier to unmute their microphone. When recognized by the Chairperson, please unmute your microphone before speaking and mute your microphone after you finish speaking.

### **PHONE ACCESS:**

If you cannot get internet access, you may get audio-only access by calling the Zoom Phone Number listed at the top on the agenda.

Upon dialing the number, you will be prompted to enter the Meeting ID which is also listed at the top of the agenda. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. You will not have a panelist number. So, please wait until you are admitted into the meeting.

When the Chairperson asks for public testimony, you may indicate you want to testify by entering "\*" and then "9" on your phone's keypad. After entering "\*" and then "9", a voice prompt will let you know that the host of the meeting has been notified. When recognized by the Chairperson, you may unmute yourself by pressing "\*" and then "6" on your phone. A voice prompt will let you know that you are unmuted. Once you are finished speaking, please enter "\*" and then "6" again to mute yourself.

For both internet and phone access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to five minutes of testimony per agenda item

If connection to the meeting is lost for more than 30 minutes, the meeting will be continued on a specified date and time.

Instructions to attend State of Hawaii virtual board meetings may be found online at <https://cca.hawaii.gov/pvl/files/2020/08/State-of-Hawaii-Virtual-Board-Attendee-Instructions.pdf>

The Task Force may move into Executive Session to consult with the Task Force's attorney on questions and issues pertaining to the Task Force's powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.

1. Call to Order
2. Old Business  
None
3. New Business

A. Expansion of HRS Chapter 421J using HRS Chapter 514B.

The task force will discuss what provisions from the 514B condominium law or elsewhere should be added to the 421J Home Owners Association (HOA) law to provide HOA members and boards with similar rights and responsibilities.

B. Registration of Planned Community Associations

The task force will discuss what would be required to put Home Owners Associations (HOA) on the same footing as condominiums when it comes to registration, dispute resolution, and education. Since HOA's do not have to register as such with a government agency when the HOA's are created (as condominiums do with the REC), a government agency will need to be identified to oversee the registration process.

C. Next Meeting: TBD

Virtual Videoconference Meeting – Zoom Webinar

And

In-Person Meeting Location: Queen Liliuokalani Conference Room,  
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335 Merchant Street, 1st Floor  
Honolulu, Hawaii 96813

D. Adjournment

If you need an auxiliary aid/service or other accommodation due to a disability, contact Kyle Ladao, Administrative Assistant, at (808) 586-3025 or at [kladao@dcca.hawaii.gov](mailto:kladao@dcca.hawaii.gov), as soon as possible, preferably by November 13, 2023. Requests made as early as possible have a greater likelihood of being fulfilled. Upon request, this notice is available in alternate/accessible formats.

## **EXPANSION OF HRS CHAPTER 421J**

The Legislature could expand HRS Chapter 421J by inserting sections of HRS Chapter 514B.

### **I. Sections Likely Not to Require a Sunrise Analysis:**

Several sections from HRS Chapter 514B would likely would not trigger the Sunshine Analysis requirements in HRS §§26H-2 and 26H-6 since no State agency would have direct oversight, no taxation would be applied to fund such oversight, and no unregulated professions or vocations would be subject to regulatory controls. Examples:

- **Having a Mandatory Appeals Process for Fines – §514B-104(a)(11)**

*Except as provided in section 514B-105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may [...]*

*Impose charges and penalties, including late fees and interest, for late payment of assessments and levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, if the bylaws are silent, pursuant to a resolution adopted by the board that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process [...]*

- **50% Owner Approval to Borrow Money – §514B-105(e)**

*Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to the borrowing. In connection with the borrowing, the board may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project. For purposes of this section, the financing of insurance premiums by the association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value.*

- **Dissemination of Budget and Specified Timeline – §514B-106(c)**

*Within thirty days after the adoption of any proposed budget for the condominium, the board shall make available a copy of the budget to all the unit owners and shall notify each unit owner that the unit owner may request a copy of the budget.*

- Guidance on How to Call a Special Meeting as an Owner §514B-121(c)

*Special meetings of the association may be called by the president, a majority of the board, or by a petition to the secretary or managing agent signed and dated by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership; provided that if the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the association's expense in accordance with the requirements of the bylaws and of this part; provided further that a special meeting based upon a petition to the secretary or managing agent shall be set no later than sixty days from receipt of the petition. The petition shall be valid only if submitted within one hundred twenty days of the earliest signature.*

- Right to have Electronic Meetings or Electronic Voting – §514B-121(e)

*All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Notwithstanding any provision to the contrary in the association's declaration or bylaws or in subsection (b), electronic meetings and electronic, machine, or mail voting may be authorized by the board in its sole discretion [...]*

- Owner Right to Install Solar Energy Devices – §514B-140(c)(2)

*Subject to the provisions of the declaration, nonmaterial additions to or alterations of the common elements or units, including, without limitation, additions to or alterations of a unit made within the unit or within a limited common element appurtenant to and for the exclusive use of the unit, shall require approval only by the board, which shall not unreasonably withhold the approval, and such percentage, number, or group of unit owners as may be required by the declaration or bylaws; provided that [...]*

*The installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses pursuant to the provisions in section 196-7.*

- Owner Right to Refuse Installation of Solar or Wind Energy Devices on Limited Common Elements – §514B-140(d)(3)(A)

*Notwithstanding any other law to the contrary in this chapter or any provisions in any declaration or bylaws [...]*

*Regarding the installation of solar energy devices and wind energy devices [...]*

*The board shall have the authority to install or cause the installation of, or lease or license [common] elements for the installation of solar energy devices and wind energy devices on the common elements of the project; provided that solar or wind energy devices shall not be installed upon any limited common element without the consent of*

*the owner or owners of the unit or units for which use of the limited common element is reserved;*

- Reserve Study Disclosures on Budget – §514B-148(a)(4)

*The budget required under section 514B-144(a) shall include at least [...]*

*The estimated replacement reserves that the association will require to maintain the property based on a reserve study performed by the association; provided that the reserve study shall be reviewed by an independent reserve study preparer; provided further that the reserve study shall be reviewed or updated at least every three years;*

- Audit Requirement for Association Financial Accounts – §514B-150(a)

*The association shall require an annual audit of the association financial accounts and no less than one annual unannounced verification of the association's cash balance by a public accountant; provided that if the association is comprised of less than twenty units, the annual audit and the annual unannounced cash balance verification may be waived at an association meeting by a vote of a majority of the unit owners.*

- More Documents Available to Owners & Contract Buyers – §§514B-153 through 154.5

*§§514B-153, 514B-154, and 514B-154.5 enumerate many documents that associations must maintain, including provisions on document availability, disposal, prohibitions, and responding to owner requests.*

- Retention of Election Documents until Contested Election Resolved – §514B-154(c)

*After any association meeting, and not earlier, unit owners shall be permitted to examine proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election; provided that:*

- (1) Owners shall make a request to examine the documents within thirty days after the association meeting;*
- (2) The board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the association or its members or both; and*
- (3) Owners shall pay for administrative costs in excess of eight hours per year. The documents may be destroyed ninety days after the association meeting; provided that in the event of a contested election, the documents shall be retained until the contested election is resolved. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any owner upon the owner's request; provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.*

- Cap of \$1 per Page on Copies – §514B-154(j)

*Any fee charged to a member to obtain copies of association records under this section shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per page, or portion thereof, except the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per page.*

- No Charge for Document Delivery via Electronic Download Portal – §514B-154.5(e)

*An association may comply with this section or section 514B-152, 514B-153, or 514B-154 by making the required documents, records, and information available to unit owners or owners' authorized agents for download through an internet site, at the option of each unit owner or owner's authorized agent and at no cost to the unit owner or owner's authorized agent.*

## **II. Registration of Planned Community Associations**

The aforementioned sections do not include subsidized mediation and arbitration, nor access to assistance from RICO for document requests. Expanding subsidized alternative dispute resolution to PCAs as well as granting RICO authority to assist in owners obtaining documents would likely require a Sunrise Analysis as a State agency would directly regulate and tax a previously unregulated and untaxed area. However, registration of PCAs would require substantial effort to determine:

- What entities and/or residential areas would fall under HRS Chapter 421J?

As PCAs are currently unregulated from State control, data in terms of location, numbers, size, parcels contained within the PCA, etc., would be difficult to compile. While there is a subdivision program within DCCA, the program only administers oversight over a select number of subdivisions only in the context of seller disclosures, and many of them are exempted from registration. In theory, the local counties should have development plans filed prior to any construction, but the quality and existence of those files is potentially dubious. Furthermore, many PCAs are not required to incorporate or register with DCCA-BREG leading to a large gap in data.

- What resources are required to administer registration?

Funding for staff would be required to process timely registrations, including education for owners within PCAs. To compare with condominium data, there are approximately 1,600 registered or previously registered condominium associations, representing 160,000 units. The Real Estate Branch Condominium Section is currently comprised of 3 condo specialists, 1 condo education specialist, 1 secretary, and 3 clerical staff.

A new trust fund would be required to handle the funds, and collection for the trust fund to administer the registration depends on the amount of PCAs. Kapolei, Ewa, Hawaii Loa Ridge, Mililani, and Kehalani (Maui) have high concentrations of residential subdivisions that are not condominiums and may contain tens of thousands of PCAs.

In addition to staffing, the agency assigned to administer the registration may require additional office space. State employees assigned to implement the registration may need to be redescribed.

- How to Incentivize PCAs to Register?

The existing condominium law requires associations to register to access subsidized mediation. Associations that do not register lose their standing in court. If similar legislation was enacted, taking away a PCA's right that they had for potentially decades may cause concern. HRS §429-7 provides:

- (a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.*
- (b) A nonprofit association may assert a claim in its name on behalf of its members if one or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted, nor the relief requested requires the participation of a member.*

As an alternative, a PCA's registration status could be tied to DCCA-BREG's registration as a non-profit tax entity. PCAs that fail to register under the new program would not be considered "in good standing" under BREG records.

- What sort of timeline is anticipated for registration to commence and complete?

Inserting certain sections from HRS Chapter 514B that would likely not require a Sunrise Analysis could be introduced in a legislative session prior to any attempt at registration, or during data collection to determine if registration is feasible.

Otherwise, a Sunrise Analysis requires the Legislature to refer a specific bill to the Auditor by concurrent resolution. The past several analyses conducted by the Auditor appeared to take around six months. Should the Auditor recommend registration be enacted, the Auditor may also recommend whether a phased registration over several years should be considered, e.g., PCAs consisting of 100 or more homes register in the first biennium, then 20-99 homes, followed by 6-19.