

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

MINUTES OF MEETING

Date: April 17, 2026

Time: 1:00 p.m.

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

Virtual Participation: Virtual Videoconference Meeting – Zoom Webinar
<https://dcca-hawaii-gov.zoom.us/j/81502094964?pwd=Frpl3OM9Yxi1yCEOG2cshLB9zIEOER.1>

Present: Philip Nerney, Chairperson
Lila Mower, Vice Chairperson
Dathan Choy, Department of Commerce and Consumer Affairs
Patti Thiele, Member
Raelene Tenno, Member

Kedin Kleinhans, Administrative Assistant
Rochelle Araki, Technical Support
Tammy Norton, Technical Support

Absent: Carol Fukunaga, State Senator
Sean Quinlan, State Representative
Kealii Lopez, Member
Shari Wong, Deputy Attorney General

In-Person Guest(s): Gregory Misakian

Virtual Guest(s): Christine Morrison
Dale Head
Jeff Sadino
Lorraine Leslie
Lorraine & Ben Leslie
Victoria Bordignon

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

Call to Order: The meeting was called to order at 1:10 p.m., at which time quorum was established.

Members Fukunaga, Lopez, and Quinlan were excused from the meeting. Prior notification of their non-attendance was received.

Old Business: **Approval of Minutes**

March 6, 2026

Vice Chairperson Mower requested amendments to page 5 of the minutes to more accurately reflect Ms. Shriver's response regarding "M1" disclosures: Ms. Shriver had explained that the common goal is to provide as much information to buyers, noting that it would be beneficial to have the documents available online.

Vice Chairperson Mower requested amendments to page 7 of the minutes to more accurately reflect Ms. Smith's oral testimony: Ms. Smith further indicated that arbitration and mediation results are not published, and that the interpretation of laws, rules, and governing documents is the cause of disputes.

Upon a motion by Chairperson Nerney, seconded by Mr. Choy, it was voted on and unanimously carried to approve the minutes of the March 6, 2026, meeting with the amendments requested by Vice Chairperson Mower.

April 2, 2026

Upon a motion by Mr. Choy, seconded by Ms. Thiele, it was voted on and unanimously carried to approve the minutes of the April 2, 2026, meeting.

New Business: **Discussion Topic: Dedicated Alternative Dispute Resolution Programs**

Discussed ensued on House Bill No. 1897, House Draft 1, Senate Draft 1 ("HB 1897"), which amends the conditions and procedures of alternative dispute resolution methods for condominium-related disputes, including the use of facilitative mediation, evaluation mediation, or binding arbitration. This bill is currently in the conference process.

Vice Chairperson Mower expressed concerns regarding HB 1897 and asked whether the Task Force could request the conference committees to defer decision-making until the Task Force completes its review and issues its proposed recommendations.

Chairperson Nerney stated that, prior to the Legislative Reference Bureau's ("LRB") study prepared pursuant to Act 43, Session Laws of Hawaii 2024, there were anecdotal reports of abuse in the issuance of fines. He indicated that HB 1897 provides for no fees on fines until the dispute is adjudicated via alternative dispute resolution or small claims court, and specifies minimum qualifications for, and disclosures by, mediators. Chairperson

Nerney explain that HB 1897 intends to enhance due process and clarify dispute resolution procedures.

Chairperson Nerney opened the floor to public testimony.

Guest, Gregory Misakian, requested to provide oral testimony. Chairperson Nerney recognized Mr. Misakian.

Mr. Misakian expressed concerns that HB 1897 changes longstanding statutory language and would not address situations in which a unit owner faces substantial legal fees totaling, for example, \$40,000. He stated that the Ombudsman measures proposed this legislative session would address concerns and improve transparency, noting that no State funding would be required.

Guest, Victoria Bordignon, requested to provide oral testimony. Chairperson Nerney recognized Ms. Bordignon.

Ms. Bordignon requested clarification on how HB 1897 provides for “no fees on fines”. Chairperson Nerney responded that the assessment of a fine would be subject to several components, including an internal appeal to the board and an appeal to small claims court, whose ruling with respect to fines would be final.

Ms. Tenno asked Chairperson Nerney whether small claims court typically refers parties to mediation. Chairperson Nerney responded that small claims court can do so.

Guest, Jeff Sadino, requested to provide oral testimony. Chairperson Nerney recognized Mr. Sadino.

Mr. Sadino indicated that he believes HB 1897 changes the status quo from “dispute first, pay later” to “pay first, dispute later”. Chairperson Nerney responded that the bill does not change that status quo.

Vice Chairperson Mower summarized legislative testimony she provided for committee hearings of HB 1897, which included concerns regarding the difficulty of appealing a decision rendered in binding arbitration, unit owners having to bear their own legal costs as well as the potential liability for the association’s legal fees if a unit owner does not prevail, and the potential acceleration of collection actions.

Chairperson Nerney explained that binding arbitration is voluntary and cannot be compelled by the Legislature, as the U.S. Constitution guarantees the right to a trial by jury. He added that HB 1897 attempts to address specific issues discussed by the Task Force and does not change the fundamental structure of the current system.

Guest, Christine Morrison, requested to provide oral testimony. Chairperson Nerney recognized Christine Morrison; however, Christine Morrison experienced technical difficulties and was unable to provide oral testimony at this time.

Guest, Gregory Misakian, requested to provide oral testimony. Chairperson Nerney recognized Mr. Misakian.

Mr. Misakian reported that he has personal experience with mediation and found that it does not work well. He believes Mr. Sadino is correct that HB 1897 changes the status quo from “dispute first, pay later” to “pay first, dispute later”. Mr. Misakian suggested that the Task Force to create a Permitted Interaction Group to evaluate the various changes proposed in HB 1897 and to address potential concerns.

Guest, Jeff Sadino, requested to provide oral testimony. Chairperson Nerney recognized Mr. Sadino.

Mr. Sadino indicated that he is not attorney, but that it is his understanding that section 514B-146(g), HRS, provides for “dispute first, pay later”, noting that some problems of the condominium law may stem from its interpretation. He added that existing law or HB 1897 could benefit from additional clarity to make it easier for the average person to understand.

Chairperson Nerney recalled the history of when the law changed to “dispute first, pay later” and confirmed that HB 1897 does not change that requirement. He stated that he believes the changes proposed by HB 1897 are not being correctly understood. Mr. Sadino reiterated that he is not an attorney, noted that he is attempting to participate in good faith, and expressed concerns regarding how the Chairperson presides over Task Force meetings.

Guest, c m, requested to provide oral testimony. Chairperson Nerney recognized c m.

c m introduced herself as Christine Morrison. She described a past experience in which two management companies incorrectly sent her debt collection letters. She stated that she paid the fines due to the risk of foreclosure; however, it took almost two years for the management companies to properly reimburse her.

Guest, Victoria Bordignon, requested to provide oral testimony. Chairperson Nerney recognized Ms. Bordignon.

Ms. Bordignon stated that there needs to be major reform for how owners are assessed. She suggested that alternative dispute resolution should be at the forefront before the fines process.

Discussion ensued on internal dispute resolution processes employed by boards. Ms. Tenno reported that many boards do not have an internal dispute resolution process in writing. Mr. Choy recalled of a court case in which an association that did not have an internal dispute resolution process in writing was required to pay all the legal fees of the other party. Ms. Tenno indicated that the Task Force could recommend requiring a board's internal dispute resolution procedures to be included in the association's house rules and further require that the house rules be disseminated to all unit owners.

Vice Chairperson Mower stated that while she understands the results of mediation are intended to be private, condominium unit owners deserve greater transparency on how funds from the Condominium Education Trust Fund are being used. Chairperson Nerney responded that, by design, mediation is a private process to discuss a particular dispute outside of the court system.

Chairperson Nerney asked what the public interest is in private disputes. Vice Chairperson Mower responded that there are discrepancies in the decisions being made; for example, one unit owner may be required to pay fines for falling behind on maintenance fees, whereas another unit owner who is similarly behind on maintenance fees may not receive any letters to pay fines. Ms. Tenno added that consistency needs to be mandatory.

Ms. Tenno stated that some board members who are outspoken may experience retaliation. Chairperson Nerney noted that retaliation is addressed in existing law.

Chairperson Nerney indicated that homeowners who do not live in condominiums are required to take legal action in their individual capacity and asked why condominium unit owners are entitled to exercise more rights than others. Vice Chairperson Mower disagreed and responded that condominium unit owners have fewer rights to exercise than others. Ms. Tenno agreed with Vice Chairperson Mower.

Ms. Tenno described concerns that condominium unit owners have to go through multiple hurdles to get other parties to participate, especially when an association does not respond.

Guest, Gregory Misakian, requested to provide oral testimony. Chairperson Nerney recognized Mr. Misakian.

Mr. Misakian reported that he has personal experience with small claims court in Massachusetts and expressed concerns regarding the 30-day period specified within HB 1897. He also disagreed that condominium unit owners are entitled to exercise more rights than others.

Guest, Victoria Bordignon, requested to provide oral testimony. Chairperson Nerney recognized Ms. Bordignon.

Ms. Bordignon expressed concerns regarding selective enforcement by managing agents. She added that unit owners face an uphill battle when taking a managing agent and its attorneys to small claims court. Ms. Bordignon suggested that Form RR-105c and the association biennial registration be revised to include provisions regarding small claims court.

Chairperson Nerney requested confirmation that internal dispute resolution processes employed by boards should be required to be in writing. Ms. Tenno confirmed.

Ms. Tenno expressed concerns that boards and managing agents are not following proper procedures to notify unit owners of changes to the house rules. Chairperson Nerney responded that some association bylaws allow boards to adopt changes without providing notice to owners. He further noted concerns that as bylaws are contracts, there are generally limits on what the Legislature can do to alter contracts.

Vice Chairperson Mower described the concept of social inflation, noting that litigation costs have increased following the recent insurance crisis. She mentioned that information reported on some completed Form RR-105c filings could be intentionally inaccurate to skirt insurance issues. Vice Chairperson Mower stated that concerns with alternative dispute resolution would be mitigated if internal dispute resolution was properly in place.

Ms. Tenno stated that when mediation results are favorable to unit owners, some associations may not follow through in effectuating the agreed-upon solution, noting a lack of enforcement.

Mr. Choy reported that the Court Annexed Arbitration Program (CAAP) provides that an award in non-binding arbitration becomes binding if no appeal is filed within a designated timeframe.

Discussion ensued on whether there is intentional malice by association attorneys. Chairperson Nerney stated that he is not aware of attorneys in the industry who are motivated by such abuse, but is aware of attorneys who would be eager to take on cases where there is evidence of malice. Vice Chairperson Mower indicated that there were anecdotal reports suggesting intentional malice, noting that one attorney reportedly stated, "let the owner try", and "let's bankrupt them". Ms. Tenno added that intentional malice also applies to some condominium managing agents.

Ms. Thiele returned to the discussion on HB 1897 and asked whether the Task Force needed to make a decision at this meeting or the next scheduled meeting. Mr. Kleinhans responded that the agenda for the next

scheduled meeting has been filed to the State electronic calendar and effectively cannot be changed at this time.

Upon a motion by Ms. Tenno, seconded by Vice Chairperson Mower, it was moved that the Task Force recommend that the conference committees for HB 1897 defer-decision making. A vote was taken and recorded as follows:

Chairperson Nerney: Nay

Vice Chairperson Mower: Aye

Ms. Tenno: Aye

Ms. Thiele: Nay

Mr. Choy recused himself from the vote due to a potential conflict-of-interest. (The Hawaii Real Estate Commission, administratively attached to the Department of Commerce and Consumer Affairs, maintains contracts with alternative dispute resolution providers to provide for subsidized mediation and voluntary binding arbitration for registered condominium associations.)

As the vote resulted in two ayes and two nays, the motion did not carry.

Guest, Jeff Sadino, requested to provide oral testimony. Chairperson Nerney recognized Mr. Sadino.

Mr. Sadino stated that unit owners who get into a dispute with their association end up in a losing situation. For example, they may face bankruptcy, lose their home or brokerage accounts, or use up their children's college savings funds. He described his own experience with his association's internal dispute resolution process, noting that once he invoked the process, the association immediately referred him to its attorney.

Mr. Sadino indicated that it is unclear why legislation requiring, for example, boards to provide notice to unit owners about changes to house rules could be seen as conflicting with the U.S. Constitution's prohibition on the impairment of private contracts. He added that the Hawaii State Legislature has recognized and addressed power imbalances between landlords and tenants through the Residential Landlord-Tenant Code.

Mr. Sadino reported that, according to a Condorama presentation by Sue Savio, Hawaii has more D&O insurance claims than any other State; however, Hawaii has approximately 2,000 condominiums compared to roughly 50,000 condominiums in California.

Guest, Victoria Bordignon, requested to provide oral testimony. Chairperson Nerney recognized Ms. Bordignon.

Ms. Bordignon expressed concerns that unit owners only discover problems with their association's governance or enforcement until after buying into the

condominium. She added that many purchasers who want to have a part of the American dream have no choice but to buy into a condominium. Ms. Bordignon further commented that the purchase process resembles an adhesion contract because the purchasers are not a part of the negotiation.

Ms. Bordignon asked if HB 1897 allows an association to appeal a small claims court judgement to the circuit court. Chairperson Nerney indicated that small claims court's decision would be final with respect to fines.

Guest, Gregory Misakian, requested to provide oral testimony. Chairperson Nerney recognized Mr. Misakian.

Mr. Misakian stated that the language in HB 1897 is one-sided, noting that a judgement by small claims court "shall be without prejudice to the exercise of any other remedy available to an association", but not to an "owner".

Vice Chairperson Mower expressed concerns with the LRB study, and the amount of money spent on the study. She indicated that the content of LRB's 1996 study, "Fighting Battles in Modern American Castles: Condominium Dispute Resolution", is far more useful in comparison.

Next Meeting: April 24, 2026
2:00 p.m.

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

And Virtual Videoconference – Zoom

Adjournment: The meeting adjourned at 3:17 p.m.

Reviewed and approved by:

/s/ Philip Nerney

Taken and recorded by:

/s/ Kedin Kleinhans

(Mr.) Philip Nerney
Chairperson

(Mr.) Kedin Kleinhans
Administrative Assistant

PN:kck
04/28/26 (Date Drafted)

(x) Minutes approved as is.

() Minutes approved with changes: