

DRAFT SENATE RESOLUTION 2025 v5

S.R. No. [____]

Urging the Auditor to Conduct an Audit of the Real Estate Commission's Oversight of Hawaii Revised Statutes Chapter 514B Violations by Real Estate Management Agencies.

WHEREAS, condominium communities are a significant part of Hawaii's housing market, providing homes for residents from diverse backgrounds, and effective governance and management are essential for maintaining the value, livability, and stability of these properties; and

WHEREAS, Hawaii Revised Statutes (HRS) Chapter 514B, known as the "Condominium Property Regimes" law, provides the framework for the creation, management, and operation of condominium communities in Hawaii, and aims to protect homeowners and ensure fair practices in condominium governance; and

WHEREAS, the Real Estate Commission (Commission), under the Department of Commerce and Consumer Affairs (DCCA), is tasked with overseeing compliance with HRS Chapter 514B, including violations by real estate management agencies, property managers, and other parties involved in the governance and management of condominium associations; and

WHEREAS, while the Real Estate Commission performs critical oversight, growing concerns among stakeholders—condominium owners, residents, property management professionals, and legal advocates—suggest that gaps in enforcement and oversight may allow violations to go unaddressed, eroding trust in condominium governance; and

WHEREAS, violations of HRS Chapter 514B may include, but are not limited to, the following:

- **Financial Practices:** The imposition of excessive fines by real estate management agencies that are not consistent with established by-laws or regulations; the use of attorneys for the collection of unpaid fees instead of relying on collections agencies, which burdens homeowners with unnecessary legal fees; and unlawful or improper non-judicial foreclosures triggered by the accumulation of these excessive fines or late fees, leading to the loss of homes for homeowners who cannot afford to pay these fines.
- **Governance and Transparency:** Selective enforcement of by-laws, house rules, covenants, or regulations; refusal to provide condominium-related documents such as invoices, contracts, meeting minutes, and other materials that are necessary for homeowners to fully understand and participate in the governance of their properties; and appointments of industry personnel to commissions and boards that create potential conflicts of interest, potentially influencing the fairness and impartiality of enforcement actions.
- **Mediation and Conflict Resolution:** The lack of effective mediation between Associations of Apartment Owners (AOAOs) and homeowners, which often leads to costly civil actions, forcing homeowners to incur unaffordable legal counsel costs, and the failure to facilitate fair and equitable dispute resolution processes; and

WHEREAS, a significant concern has been raised regarding conflicts of interest among individuals serving on the Commission, especially those affiliated with law firms that represent property managers or condominium associations in actions against homeowners, including non-judicial foreclosures, which can create a bias in enforcement and undermine the integrity of the Commission's work; and

WHEREAS, there is a need to assess whether the Commission's oversight and enforcement efforts are effectively ensuring compliance with HRS 514B and whether more resources, clarity in enforcement practices, or changes to existing regulations are required to improve compliance and protect the public interest; and

WHEREAS, these practices, particularly the use of excessive fines, can place undue financial strain on homeowners, leading to non-judicial foreclosures and the loss of homes, which disproportionately impacts homeowners in lower-income communities; and

WHEREAS, the Hawaii State Auditor, as an independent body, has the expertise to conduct thorough audits of state agencies and programs, evaluate the effectiveness of their operations, and identify areas for improvement, including potential conflicts of interest and systemic issues that may harm the public interest; now, therefore, be it

RESOLVED by the Senate of the Thirty-second Legislature of the State of Hawaii, Regular Session of 2025, that the Auditor is urged to conduct an audit of the Real Estate Commission's oversight of HRS Chapter 514B violations by real estate management agencies, with a specific focus on the following areas:

1. The **effectiveness of the Commission's enforcement** actions concerning violations of HRS 514B, including excessive fines, non-judicial foreclosures, selective enforcement of by-laws and house rules, and violations of Covenants, Conditions, and Restrictions (CC&Rs).
2. The **extent of the Commission's oversight** regarding conflicts of interest among Commission board members, particularly those employed by law firms that represent property managers or condominium associations in legal actions targeting homeowners, and the potential impact of these conflicts on the Commission's impartiality.
3. The **oversight of financial practices**, including the imposition of excessive fines by real estate management agencies, ensuring that fines are consistent with condominium by-laws and applicable laws, and assessing the impact of these practices on homeowners, particularly in cases leading to non-judicial foreclosures.
4. The **use of attorneys** for the collection of unpaid fees rather than collections agencies, and the resulting financial burden on homeowners, including the legal costs associated with these practices.
5. The **adequacy of the Commission's monitoring and investigative processes** to detect and address violations, including refusal to provide essential condominium-related documents such as invoices, contracts, meeting minutes, and other materials to homeowners and residents.

6. The **effectiveness of mediation** efforts by the Commission in facilitating conflict resolution between AOAOs and homeowners, and the impact of these efforts on reducing the need for costly civil actions and preventing unaffordable legal counsel for homeowners.
7. The **transparency of condominium governance**, particularly in terms of access to governing documents, financial records, and meeting minutes, and whether this transparency contributes to better decision-making and accountability.
8. The **imposition of penalties** or disciplinary actions on violators of HRS 514B, including whether the penalties have a sufficient deterrent effect on improper practices such as excessive fines, improper foreclosures, and conflicts of interest.
9. **Recommendations for improving the Commission's ability to effectively oversee compliance** with HRS 514B, including stricter enforcement against violations, enhanced conflict-of-interest protections, more effective mediation processes, and better transparency in condominium governance practices.
10. **The extent of the Commission's oversight of the use of unlicensed contractors** for condominium-related work, and whether enforcement is occurring against such violations.
11. The **potential benefits of implementing digital tools and platforms** to improve public access to association governance documents and enhance the Commission's ability to monitor and enforce compliance with HRS 514B.
12. **The imposition of improper fines** by real estate management agencies and the practices surrounding them, ensuring that they align with the condominium's by-laws and applicable laws.

BE IT FURTHER RESOLVED that the Auditor submit an interim report of findings and recommendations to the Legislature by [specific date], with a final report no later than twenty days prior to the convening of the Regular Session of 2026; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Auditor, the Director of the Department of Commerce and Consumer Affairs, the Chairperson of the Real Estate Commission, and the Chairperson of the Hawaii State Bar Association.