

# OVERVIEW

## *Sunrise Report: Condominium Commission*

Report No. 08-07, March 2008

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### Summary

In Senate Concurrent Resolution No. 160, Senate Draft 1, the 2007 Legislature requested that the Auditor conduct a “sunrise” analysis of Senate Bill No. 1837, to create a condominium commission in the Department of Commerce and Consumer Affairs (DCCA). The Hawai‘i Licensing Reform Act (Chapter 26H, Hawai‘i Revised Statutes) requires that bills proposing the regulation of previously unregulated professions or vocations be referred to the Auditor for sunrise analysis prior to enactment. The Auditor is to assess whether the proposed regulation is necessary to protect the health, safety, or welfare of consumers and whether the regulation is consistent with other regulatory policies in Chapter 26H, HRS. In addition, the Auditor must examine the probable effects of the proposal and assess alternative forms of regulation.

Hawai‘i’s Condominium Property Act today consists of two laws: the old law found in Chapter 514A, HRS, for projects in existence before July 1, 2006; and the new law codified in Chapter 514B, HRS, for projects built after July 1, 2006. The Real Estate Branch of the DCCA and the Real Estate Commission are responsible for the administrative and regulatory functions of the condominium laws in both chapters. Entities governed by the condominium laws include unit owners, associations of apartment owners, boards of directors, developers, managing agents and resident managers. There are several ways for these entities to resolve disputes involving the interpretation or enforcement of the laws or a condominium’s governing documents—declaration, bylaws, and house rules. These include: filing complaints with DCCA’s Regulated Industries Complaints Office (RICO), mediation, arbitration, administrative hearings under the Condominium Dispute Resolution Pilot Program popularly called condo court, and circuit court action.

In 2004 the Legislature established the condo court pilot program under Chapter 514B, HRS, which is organized and administered by DCCA’s Office of Administrative Hearings (OAH), to hear condominium disputes not resolved through mediation. The OAH reports that there is not a significant demand for hearings through the condo court program. Until its scheduled sunset on July 1, 2009, it remains to be seen whether the demand continues to be insignificant or can benefit condominium owners as a less costly and more informal mechanism to resolve condominium disputes than judicial proceedings.

In 1988, to avoid the creation of a condominium commission, the Legislature established the first temporary, full-time condominium specialist position to assist consumers with information, advice, and referrals relating to condominium laws in the state. The current regulatory structure provides for three permanent, full-time condominium specialists, who assist the condominium associations with registration requirements, as well as provide education, advice, and referrals to condominium owners, associations and boards of directors, to resolve disputes.



We found that the Real Estate Commission has been proactive in its efforts to promote education and research in the field of condominium management, registration and real estate for the benefit of the public, and implement the regulatory framework for those required to be registered under Chapters 514A and 514B, HRS. We found no complaints about the work of the commission's Condominium Review Committee and the condominium specialists. We uncovered no evidence of harm or potential risk to condominium owners that would result absent the creation of a condominium commission. Even though self-governance has been eroded with changes in the recodified condominium law that address management and governance issues, the existing regulatory structure is adequate and there are many avenues of relief available for dispute resolution to protect the entities governed by the law.

Senate Bill No. 1837 does not meet the criteria for the establishment of a condominium commission to oversee the implementation of the Condominium Property Act codified in Chapter 514B, HRS, and to enforce policies relating to condominiums in the state. We were presented no documented evidence of harm or risk to consumers resulting from the sweeping changes to the condominium law recodified in Chapter 514B, HRS, which went into effect on July 1, 2006. As proposed the bill creates a commission without appropriate authority. There are no provisions that address the condominium commission's jurisdiction, powers, duties and functions. The Real Estate Commission notes that the bill "provides for no changes to the overall original policy of the condominium law as to association governance and management, which. . . is based [on] self-enforcement by owners, multiple dispute resolution process, and minimal government authority." The bill is also problematic for the DCCA as it impacts its mission and work. For example, there is no funding mechanism, and the Real Estate Branch and the Real Estate Commission would still need to perform the administrative and regulatory functions for entities governed under Chapter 514A, HRS, since the bill only covers entities governed under the new condominium law.

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## Recommendations and Response

We recommend that Senate Bill No. 1837, 2007 Regular Session not be enacted. The DCCA opted not to provide a response.

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