

Honolulu, Hawaii

March 2, 2006

RE: H.B. No. 3225
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 3225 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

begs leave to report as follows:

The purpose of this bill is to fine-tune the recodified condominium law enacted in Act 164, Session Laws of Hawaii (SLH) 2004, and Act 93, SLH 2005, which is set to become effective on July 1, 2006.

Community Associations Institute, Hawaii Chapter, and several concerned individuals supported this bill. The Hawaii Council of Associations of Apartment Owners supported the intent of this measure. Hawaii Independent Condominium & Cooperative Owners and several concerned individuals opposed this bill. The Real Estate Commission and several concerned individuals commented.

In addition to technical, nonsubstantive amendments, this bill also changes the recodified law substantively. These amendments include:

- (1) Providing that under the chapter, punitive damages alone are to be awarded only as specifically provided in the chapter, and removing references to consequential and special damages;



- (2) Adding to the list of sections of the recodified law that apply to condominiums existing before the effective date of the law, two sections that delineate unit boundaries in detail, and allocate the common profits and expenses of the condominium property;
- (3) Providing that amendment of the declaration is not required for changes to the use of common element, open or landscaped spaces, and minor additions or alterations that benefit a unit and do not substantially affect other owners;
- (4) Removing the requirement that 67 percent of all owners must adopt any resolution authorizing fines that are not in the bylaws;
- (5) Removing the requirement that owners must provide notice of intent to cumulatively vote before doing so;
- (6) Providing that the financing of insurance premiums by the association within the policy period is not a loan and may occur without a vote of the unit owners;
- (7) Adopting the standard of the nonprofit corporation law in Chapter 414D, Hawaii Revised Statutes (HRS), by requiring a minimum of three directors;
- (8) Providing that the association may by resolution restate the declaration to correct the percentage of common interest so it totals 100 percent;
- (9) Providing that in the absence of protest, any owner of a unit owned by more than one person may cast the votes allocated to the unit by proxy;
- (10) Specifying that the distribution of information as requested by the Real Estate Commission (Commission) is at the cost of the association;
- (11) Allowing the board with the majority vote or consent of the unit owners to require unit owners to obtain reasonable types and levels of insurance;
- (12) Allowing the association to demand and collect unpaid common expenses from the rental agent renting a unit;



- (13) Clarifying who constitutes a "lessee" for purposes of assessing the costs of lease rent renegotiation; and
- (14) Providing that the provisions of the Hawaii Administrative Rules controlling association replacement reserves will remain in effect until the Commission adopts replacement rules under the recodified law.

Your Committee finds that those testifying at the hearing requested amendments to the recodified condominium law that revisit issues your Committee believed were resolved by enactment of the law in 2004 and 2005. The interested parties have made an effort to resolve those issues once again and have offered additional amendments that have been incorporated in the bill and include:

- (1) Reinstating the provision that the provisions of the new law applicable to existing condominiums do not invalidate an existing condominium's declaration, bylaws, condominium map, or other condominium documents;
- (2) Clarifying that a developer's consent to termination of a condominium is only required where the developer retains an interest in the condominium;
- (3) Clarifying that where funds are to be released from escrow to pay project costs, the developer may submit required information after issuance of the public report effective date if the developer secures an effective date for an amendment to the report;
- (4) Allowing a developer to stop filing annual reports after initial sales of all units have been completed;
- (5) Removing an amendment requiring the purchaser be given two copies of the prospective purchaser's 30-day cancellation right;
- (6) Clarifying that public reports delivered to prospective purchasers must contain all amendments approved by the Commission as of the date the public report is delivered;
- (7) Providing that if a board establishes fines by resolution, it must allow an appeal to the board and



give owners the right to initiate a dispute resolution process or administrative hearing;

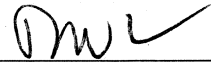
- (8) Changing from 75 to 70 percent, the proportion of unit owners that must reside outside of a project with more than 100 units to allow a majority to amend the bylaws to reduce the board from a minimum of nine members, to as few as five members;
- (9) Prohibiting an owner who is an employee of the association managing agent from participating in discussions of a management contract, and executive sessions where the management contract or property manager will be discussed;
- (10) Making the effectiveness of Chapter 514B, HRS, certain by removing language providing for contingent enactment of a portion of the chapter;
- (11) Removing the repeal of Chapter 514A, HRS, and specifically defining the scope of its applicability upon enactment of the recodified law; and
- (12) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee recognizes that all interested parties have not agreed to these amendments and that more discussion is needed on this bill. Accordingly, the bill has also been amended by changing its effective date to July 1, 2050. Technical, nonsubstantive, amendments were also made for purposes of clarity, consistency, and style

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 3225, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 3225, H.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair



