

HAWAII COUNCIL OF ASSOCIATIONS
OF APARTMENT OWNERS

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January 29, 2008

Rep. Robert Herkes Chair
Rep. Angus McKelvey, Vice-Chair
House Committee on Consumer Protection & Commerce
State Capitol
Honolulu, Hawaii 96813

RE: HB 1845/HB3298 Re Attorney's Fees
Hearing: Wed., Jan. 30, 2008, 2 p.m., Conf. Rm. #325

Chair Herkes and Vice-Chair McKelvey and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO).

HCAAO understand that the intent and purpose of this bill is to reduce attorneys' fees recoverable in a court actions. HCAAO has some concerns about these 2 bills and ask that the bill be held.

For small condominiums whose maintenance fees are \$500/month or less, a cap (i.e., either the graduated scale proposed by HB1845 or the 25% proposed in HB3298) on the recovery of attorney's fees incurred in collection of delinquent maintenance fees or assessments makes it diseconomic for those associations to initiate legal action. In some cases, legal action is the only way to recover the amounts owed, it would be unfair to place a cap on the amount of recoverable fees where the amount is so small that the amounts recovered for fees would not be sufficient to reimburse the Association for it expended. This additional expense would unfairly impact apartment owners who pay their maintenance fee on time.

For example, based on a 3-months maintenance fee (\$500/month) delinquency totaling \$1,500, under HB1845 the maximum recovery would be \$350 and the maximum recovery under HB 3298 would be \$375. The hourly rate for collection or association attorneys in Honolulu runs between \$150-\$250/hour.

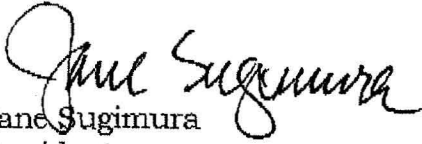
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HB 1845/HB 3298, Re Attorneys Fees
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Further, neither the graduated scale or 25% are applicable to non-monetary claims such as actions by the Association to enforce its declaration, by-laws, House rules and regulations because those types of enforcement actions do not involve a dollar amount. Therefore, these caps should not apply to enforcement actions

For these reasons, we ask that you defer action on these bills.

Thank you for the opportunity to testify.


Jane Sugimura
President

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Eric M. Matsumoto
94-464 Kaweloalii Street
Mililani, Hawaii 96789

January 28, 2008

**Representative Bob Herkes, Chair,
Representative Angus McKelvey, Vice-Chair
Consumer Protection and Commerce Committee
c/o House CPC Vice Chair
State Capitol
Honolulu, HI 96813**

VIA FAX - 586-6161

**Re: H.B. No. 1845 - Relating to Attorney's Fees
Hearing: Wednesday, January 30, 2008; 2:10PM, Conf Room 325**

Dear Representatives Herkes and McKelvey and Committee Members:

My name is Eric Matsumoto, the immediate Past President of the Mililani Town Association. While I continue to serve on the board, I'm submitting testimony on my own behalf given the 20 plus years as its President, and as a Past President of the CAI Hawaii Chapter., and am all too aware of the negative affects this bill would perpetuate against 514B associations across the state.

I strongly oppose this measure as being detrimental to the successful fiscal operation of the affected class of associations. Specifically, limiting attorney's fees to a sliding scale of from 25% to 5% in 5% increments for each \$1,000 due in attorney's fees and then down to 2 ½ % for over \$5,000 would have the following detrimental affects:

- 1. There would always be a shortfall of at least 75% of the attorney's fees.**
- 2. This bill imposes an unfair, discriminatory penalty against homeowners living in these associations only because their boards have been tasked to enforce the restrictions and rules against those who choose to violate the agreement they signed when purchasing their property and reflected in their deed.**

As a result of the above, the budget would always end in a shortfall, and the eventual costs passed on to the other homeowners who had nothing to do with the situations and costs arising from the need for attorneys created by one violator. Does this not sound like the wrong message to violators of association rules and requirements?

This measure further gives license for violators to continually "game" the system, by having the association continue with legal action, thus increasing attorney's fees, knowing full well that they would be liable for only the maximum of 25% of the bill. In my experiences, MTA has had a small number of cases where gaming of the system continued for a long time, even with the violator knowing that the full bill would be his/her responsibility.

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Hearing: CPC, Wed, Jan 30, 2008, 2:00pm, Rm 325

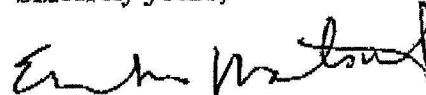
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The current system works for I would say 99 plus percent of the time. To change the law to satisfy the few cases being highlighted, would not be in the best interest of the tens of thousands of homeowners who follow the requirements and rules.

The approach this bill takes is wrong and seems to be a reaction to what happened in probably a singular event, and should not be the basis for changing the law that affects so many other residents in these associations.

Accordingly, I strongly urge this bill not be passed.

Sincerely yours,



Eric M. Matsumoto

Cc: Representative Yamane
Representative Lee
Senator Menor
Senator Bunda



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE REGARDING
HOUSE BILLS 1845 and 3298

Hearing Date : WEDNESDAY, January 30, 2008
Time : 2:00 p.m.
Place : Conference Room 325

Chair Herkes and Members of the Committee:

The Community Associations Institute Hawaii Chapter Legislative Action Committee opposes HB 1845 and HB 3298. Both bills will limit an association's ability to collect delinquent maintenance fees just when quick and effective collection of delinquencies is becoming even more important. These two bills also focus only on the rights of the owner who fails to pay while ignoring the rights of the other owners who do pay (and must make up the owner's delinquency).

Associations rely on all their members to pay monthly fees to ensure that the association can operate and pay its bills. In most residential associations, monthly maintenance fees are the sole source of revenue for the association. If one owner fails to pay, the other owners must make up the difference. If one owner is not required to pay legal fees incurred as a result of these two bills, the other owners will also have to make up the difference.

Associations cannot collect their own delinquencies because if an owner refuses to pay in full, legal action is necessary. Otherwise, the delinquent owner will simply not pay and the association will be short of funds. In addition, other owners who are paying find it demoralizing to learn that fellow owners can refuse to pay with impunity.

Collection of consumer debts is restricted by federal and state law, both of which impose disclosure and notice requirements, as well as specific timetables. Thus, both state and federal law add complexity and cost to the collection process that must be followed by attorneys.

Both bills also ignore the fact that before a delinquent owner's account is turned over to the association's attorney, the delinquent owner will be sent two and sometimes three letters from the association's managing agent -- at no charge -- before the account is

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referred to the association's attorney. In other words, the delinquent owner will often have 60 or 90 days to pay his delinquency before any legal fees are incurred. Under those circumstances, it is difficult to understand why these two bills propose that the owners should still not have to pay legal fees incurred by the association to collect the owners' delinquencies.

One of the reasons the condominium law does not have a sliding scale of charges is that condominiums are often collecting debts of \$1,000 or less (which can still represent two to three months of delinquent fees). If a percentage or sliding scale of charges is introduced as these bills propose, the association will be faced with the probability that it will spend money for legal fees that it will be unable to collect from the very person who has caused legal action to be necessary. Alternatively, the association will have to wait to collect delinquent amounts until the balance increases sufficiently to cover the cost of legal fees that will be permitted under these two bills. Allowing the balance to increase only increases the possibility that the owner will be unable to pay, resulting in the owner losing his condominium and the association receiving nothing.

In summary, since a management company already gives an owner 60 or 90 days to pay his delinquency, it is difficult to see why the association should be barred from collecting its legal fees. Every day the owner does not pay, he increases the burden on his fellow owners. If an owner cannot afford to pay, the other owners should not be forced to subsidize him, since the other owners have their own bills to pay. If an owner refuses to pay, the other owners should not be precluded from collecting the legal fees incurred to make the owner pay.

Thank you for this opportunity to testify.

Very truly yours,



John A. Morris
Hawaii Legislative Action Committee
of the Community Associations Institute

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