

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.

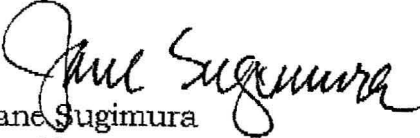
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HB 1845/HB 3298, Re Attorneys Fees  
January 28, 2008  
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Further, neither the graduated scale or 25% are applicable to non-monetary claims such as actions by the Association to enforce its declaration, 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. 3298 – 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 25% would have the following detrimental affects:

1. There would always be a shortfall of 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 25% of the bill. 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.

Cont'd: Testimony: HB 3298  
Hearing: CPC, Wed, Jan 30, 2008, 2:00pm, Rm 325

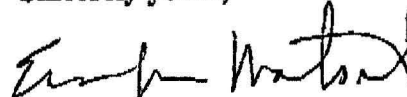
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The current system works for I would say 99 plus percent of the time. To change the law to satisfy the few cases being highlighted, would not be in the best interest of the tens of thousands of homeowners who follow the requirements and rules.

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