

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Wednesday, February 6, 2008
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 3305, RELATING TO CONDOMINIUMS.

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Bill S. Chee and I serve as the Chairperson of the Real Estate Commission's ("Commission") Condominium Review Committee. I thank you for the opportunity to present testimony on House Bill No. 3305, Relating to Condominiums. The Commission has concerns with House Bill No. 3305 and respectfully disagrees that the bill purportedly makes various minor amendments to assist in clarifying and implementing the recodified condominium law. From the Commission's perspective, there is potential for major substantive amendments to the law in the bill.

The Commission's concerns will be restricted to proposed substantive amendments in House Bill No. 3305 that were not originally contemplated by the recodification of Chapter 514A, HRS, and they are as follows:

- Section 2 -- The term "approval," is used interchangeably with "unit owner" and the "board" throughout chapter 514B, HRS. With this new proposed definition, is it then the proponents' intent to limit the

definition only to "unit owners?" Thus "approval" defined as drafted would appear to have some unintended results; for example, when the proposed definition is used in connection with "approval of the board" as the phrase is used. To address this unintended result, the Commission recommends that the proposed amendment on lines 15 and 16 on page 1 be amended to read as follows: "'Approval' means approval by a vote or written consent." Defining "approval" in this manner will allow both unit owners and the board the flexibility to provide its consent by vote or written consent.

- Section 3 -- The proposed inclusion of section 514B-32, HRS, to automatically apply to pre-existing condominiums may result in invalidating the declarations of all existing condominiums. This is not consistent with the original recodification effort. However, if the proposed amendment is intended to make the approval requirement for amending declarations standard and consistent with the bylaw approval requirements; line 12 on page 2 should be amended to "514B-32 (11)". This would make the proposed amendment a minor housekeeping amendment consistent with the original intent of recodifying the condominium law in providing a 67% owner approval requirement for amending both condominium declarations and bylaws.

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- Section 6 -- Appears to be proposing a new requirement that developers include in the developer's public report information about reserves to repair, maintain and upkeep the condominium project. This new requirement was not contemplated as part of the recodification effort. Currently the original and recodified condominium law requires the association to conduct a reserve study and assess the owners to fund the reserves. However, the developer who is quite familiar with the components of the condominium project apparently is in a better position to conduct a reserve study. Such valuable and relevant information can then be handed to the organized association for use in repairing, maintaining, and upkeeping the condominium project.
- Section 11 -- This section proposes to allow owners and vendees under an agreement of sale to withhold information that is currently being used for a membership list. The membership list is an essential vehicle for condominium self governance. The proposed amendment would weaken this vehicle and allow only those owners who may be privy to the withheld names and addresses the ability to solicit support and proxy votes to amend bylaws, declaration, elections and removals. The recodification did not contemplate this scenario.

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Since the Commission believes House Bill No. 3305 proposes some new substantive amendments not originally contemplated when Chapter 514A, HRS, was recodified, the Commission recommends, as was done in the past when recodifying the condominium law, that the proponents and all interested parties work collectively in arriving at a consensus on the final version of House Bill No. 3305. Thank you for the opportunity to provide comments on House Bill No. 3305.

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DATE: Wednesday, February 6, 2008

TIME: 2:00 pm

PLACE: Conference Room 325

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Robert N. Herkes, Chair

Rep. Angus L.K. McKelvey, Vice Chair

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 3305, RELATING TO
CONDOMINIUMS.

I am Ted Walkey and I am testifying on behalf of Community Association Institute – Hawaii (CAI). CAI is a not-for profit organization dedicated to enhancing the management and governance of common interest communities such as condominiums.

HB 3305 addresses many issues in HRS-514B which make condominium management difficult for both boards and managing agents.

I understand that concerns have been expressed about some issues in the bill and I would like to address them here.

Section 2 – Directors are not permitted to vote on Board issues by written consent.

Section 6 – Concur – Developers would like to ignore the reserve funding in order to understate maintenance fees. New owners are unpleasantly surprised.

Section 11 – The current law makes the association and agent responsible for maintaining the information (current address) but nothing requires the owner to furnish changes to them.

Please approve this bill. Thank you for the opportunity to testify.

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February 5, 2008

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
REGARDING HOUSE BILL 3305

Chair Herkes and Members of the Committee:

My name is John Morris and I am testifying on behalf of the Hawaii Legislative Action Committee of the Community Associations Institute ("CAI") to support House Bill 3305. CAI Hawaii is the local chapter of a national organization dedicated to improving the management and operation of community associations nationwide. CAI has over 200 members in Hawaii and over 14,000 nationwide.

As the bill indicates, most of the changes proposed by the bill are relatively minor but CAI believes they will clarify and better implement the recodified condominium law, chapter 514B, HRS.

A brief summary of the reasons for the proposed changes is as follows:

Section 2. A number of sections in chapter 514B require the approval of the apartment owners. Experience has shown that it is often easier to obtain owner approval through a mail ballot/written consent than through a vote at a meeting. Unfortunately, owners are often unable or unwilling to attend meetings because of job commitments, residence outside of Hawaii, or apathy. Approval by written consent gives every owner a chance to vote on an issue, even if the owner cannot attend an association meeting. That is especially a problem when "supermajority" approval is required, such as 67% for the amendment of a condominium bylaws or declaration. Therefore, the first proposed amendment to the definitions section of chapter 514B -- section 514B-3 -- confirms that any owner approval required under the law can be obtained either at a meeting or through written consent. To clarify that the change refers only to approval by unit owners, CAI proposes that the definition on lines 13 and 14 be amended to read: "Approval" when used in reference to approval by unit owners means approval by a vote or the written consent of the unit owners."

Owners and even boards are often confused about who runs the project, the board of directors or the managing agent. The proposed amendment to the definition of managing agent confirms that the managing agent is only an agent and therefore only assists the board in managing and operating the project.

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A number of provisions in chapter 514B limit the authority of resident managers to participate in the management and operation of a condominium project, to avoid the problem of undue influence by association employees. The fact that the law speaks only of resident managers has sometimes resulted in abuse when an association employee is referred to as an "on-site" or "general" manager, not a "resident" manager. This proposed change corrects that problem.

Section 3. When chapter 514B was enacted, it inadvertently failed to make the section relating to declarations -- section 514B-32 -- automatically applicable to existing associations, even though the section relating to bylaws -- section 514B-108 -- was made automatically applicable. This section proposes to make section 514B-32 automatically applicable to all associations by including it in section 514B-22, (which lists the sections that are automatically applicable to all associations).

Section 4. Section 514B-38(3) was enacted to allow boards of directors the flexibility to make changes to open areas of the project and to allow minor encroachments by owners on the common elements. (For example, under a strict reading of the condominium law, without this section, an owner wishing to install a small air-conditioning compressor on the common elements right outside his unit might have to obtain the approval of at least 75% or even 100% of the other owners.) Unfortunately, the reference to section 514B-140(c) in Section 514B-38(3) has hampered the effectiveness of the change by imposing high owner approval requirements. Section 4 proposes to restore the flexibility that was intended with Section 514B-38(3) by eliminating the reference to section 514B-140(c).

Section 5. Section 514B-35 states that unless the declaration indicates otherwise, parts of the project which benefit only one apartment are deemed limited common elements for the exclusive use of that apartment. The intent is to give apartments the benefit of such limited common elements and also make them responsible for those limited common elements. Nevertheless, section 514B-41, which deals with payment of the expenses of limited common elements does not make that clear. This proposed change is intended to make it clear that owners who receive the benefit of limited common elements under section 514B-35 must also pay the expenses of those limited common elements.

Section 6. While section 514B-83 requires the developer of a condominium project to disclose to prospective purchasers the estimated amount of maintenance fees the owners will have to pay, the section does not require the same disclosure for reserve contributions. Sometimes, the lack of disclosure leads to significantly increased assessments for new owners in the project when they purchase and then must make contributions to reserves. This section proposes amendments to require the developer to also disclose the estimated reserve contributions that will be required from owners if they purchase a unit in a new development.

Section 7. At present, the condominium law requires that within 30 days after adopting a budget, a condominium board must notify owners that the new budget is "available." Instead

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of going to all the trouble of simply letting owners know that the budget is available, this section proposes to require that the board send out a copy of the budget.

Section 8. Chapter 514B-106(f) was amended to make it clear that a majority of the owners – 50.1% – must vote to remove a member of the board. Unfortunately, the section also states that a majority of the owners must vote to elect new members of the board after the old board members have been removed. Requiring a majority of owners to vote to elect new members eliminates the protections of cumulative voting that are found in many bylaws. (Cumulative voting allows minority groups to “cumulate” their votes in favor of one candidate so minority groups can have some representation on the board. For example, if there are three vacancies and each owner has three votes – i.e., one vote for each vacancy – under cumulative voting, the minority can vote all three of their votes for one of the candidates, thereby allowing themselves to elect at least one director.) The changes proposed in section 8 will allow the cumulative voting provisions for election of directors to govern the election of directors after removal of directors, to protect minority rights. The section does so by making it clear that only removal must be by a majority vote – i.e., election of directors after removal can be by cumulative voting if the bylaws permit cumulative voting.

Section 9. As with the change made in section 7, this section proposes that instead of simply notifying owners that association meeting minutes are available, the board should mail the minutes to the owners before the next association meeting, so the owners can review the minutes and propose corrections at the meeting.

Section 10. The old condominium law, chapter 514A, required a condominium association to provide owners with a summary of the coverage provided by the association’s insurance policy. Unfortunately, this requirement was inadvertently omitted from Chapter 514B. Section 10 proposes to restore this requirement.

Section 11. Chapter 514B presently requires that an association does not have to start collecting reserves until the beginning of the fiscal year following the association’s first meeting. This change proposes to amend section 514B-148(b) to require associations to start collecting reserves immediately.

Section 12. At present, the law requires an association to keep a list of the names and addresses of association members and vendees who are purchasing an apartment under an agreement of sale. Unfortunately, some members and vendees fail to provide the required information to the association. This change proposes to make it clear that the association is only required to keep a list of those members and vendees who actually provide their names and addresses to the association.

The CAI LAC believes that all of the amendments in the attached bill are worthy of consideration.

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Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,



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

JAM:alt
Enclosure

00134

HAWAII COUNCIL OF ASSOCIATIONS
OF APARTMENT OWNERS

P.O. Box 726
Aiea, Hawaii 96701
Telephone (808) 566-2122

February 5, 2008

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

RE: HB 3305 Re Condominiums
Hearing: Wed., Feb. 6, 2008, 2 p.m., Conf. Rm. #325

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

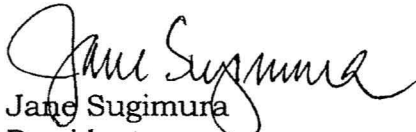
I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO).

HCAAO takes no position on the amendments proposed by this bill except for the proposed amendment in Section 8, page 8 of the bill relating to the release to unit owners of the meeting minutes of the annual meeting of the association. HCAAO prefers the original language and requests that this Committee not approve the proposed amendment.

The words "prior to the next association meeting" could mean that the minutes would be released to owners a few days before the next annual meeting. Typically, the meeting minutes are approved by the Board at the meeting following the annual meeting. Since the minutes are usually approved within 30-60 days after the annual meeting, we see no reason to withhold them from owners at that time.

Accordingly, we ask you not to approve the proposed amendment described in Section 8 and that you pass the bill out with the original language.

Thank you for the opportunity to testify.


Jane Sugimura
President

H.I.C.C.O.

HAWAII INDEPENDENT CONDOMINIUM & COOPERATIVE OWNERS
1600 ALA MOANA BLVD. - APT. 3100 - HONOLULU - HAWAII 96815

February 6, 2008

Rep. Robert N. Herkes, Chair
Rep. Angus L. K. McKelvey, Vice Chair
Committee on Consumer Protection
and Commerce

Testimony on HB 3305 Relating to Condominiums

Dear Representatives:

Thank you for this opportunity to testify in opposition to the change included in Section 8 of HB3305 on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO).

It is critical that if the Board of Directors of a condominium is given the authority to approve Association Annual Meeting Minutes by the members of the association, members of the Association should be able to obtain these minutes within thirty days after the Board approves them as contained in the current statute.

The proposed change would entitle the Board to release the minutes the day before the next year's Association Annual meeting. This is unacceptable because the Association may be taking actions based on the minutes that the Board has approved on behalf of the members without the members having the opportunity to see the minutes.

We urge you not to agree to the change suggested in Section 8 of HB 3305.

Sincerely,

Richard Port

Richard Port, Chair
Legislative Committee

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