



March 12, 2008

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND AFFORDABLE HOUSING
REGARDING HOUSE BILL 3331, HD 2

Hearing Date : Thursday, March 13, 2008
Time : 10:00 a.m.
Place : Conference Room 229

Chair Kokubun and Members of the Committee:

The Community Associations Institute, Hawaii Chapter, Legislative Action Committee ("CAI") opposes this bill for a number of reasons.

For more than 20 years, the condominium law has given owners and boards the option of using arbitration as a means of resolving their disputes. This bill attempts to: 1) prohibit the use of arbitration following mediation; and 2) force owners and boards to use the hearings process – commonly referred to as “condo court” – established through the Department of Commerce and Consumer Affairs’ office of administrative hearings. The bill does so by allowing any party to an unsuccessful mediation to file in condo court within 30 days of the end of the mediation, while prohibiting a party from filing for arbitration any sooner than 30 days after the end of the unsuccessful mediation.

The reasoning behind the bill is unclear. Certainly, it is difficult to understand why parties with a dispute should be forced to use condo court, since it is an unproven method of dispute resolution that, so far, has had mixed results. Moreover, condo court is a temporary, pilot program with limited jurisdiction that was established by act 277 (SLH 2006), and which is supposed to sunset on June 30, 2009 (unless the Legislature evaluates the program and decides to make it permanent or to extend it). In addition, experience has shown that, to date, the hearings officers of the DCCA seem intent on restricting the number of cases heard in condo court by using condo court's limited jurisdiction as a basis to dismiss claims, or even whole cases. In contrast, arbitration has been a recognized, proven, and effective means of resolving condominium disputes for more than 20 years. Despite those problems, HB 3331, HD 2 favors condo court over arbitration by effectively prohibiting anyone from using arbitration following an unsuccessful mediation.

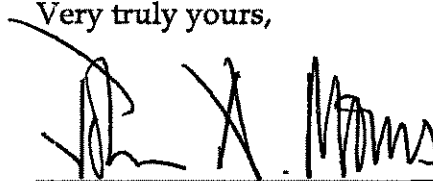
HB 3331, HD 2 also has a number of other flaws:

- If the purpose of HB 3331, HD 2 is to promote cheap dispute resolution, it fails, because the bill will still allow anyone to file in circuit court following an unsuccessful mediation. Circuit court is generally a much more expensive process than arbitration. Therefore, since either party can still file in circuit court under HB 3331, HD 2 prohibiting them from filing for arbitration makes no sense.
- The bill is confusing. It states that any party to an unsuccessful mediation can file for arbitration 30 days after an unsuccessful mediation. Therefore, the bill suggests that a party can file for arbitration even if the other party has already filed for a hearing in condo court.
- The amendments that HB 3331, HD 2 makes to section 514B-161 will prevent the sunseting of the condo court process on June 30, 2009. Act 277 (SLH 2006) created the condo court pilot program by adding a completely new section to chapter 514B. Act 277 (SLH 2006) also stated that that new section was supposed to be repealed on June 30, 2009.
- HB 3331, HD 2 takes the language creating the condo court program from that new section and then adds it to an existing section of Chapter 514B, namely, section 514B-161. In other words, even if the completely new section created by act 277 (SLH 2006) is repealed on June 30, 2009, the language of that section will live on in section 514B-161. Section 514B-161 will not be sunsetted because it is unaffected by act 277 (SLH 2006).

Since the logic of prohibiting arbitration cannot be justified and since HB 3331, HD 2, will create considerable confusion, CAI respectfully requests that the committee hold HB 3331, HD 2.

Thank you for this opportunity to testify.

Very truly yours,



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

HAWAII COUNCIL OF ASSOCIATIONS
OF APARTMENT OWNERS

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LATE

March 12, 2008

Senator Russell Kokubun, Chair
Senator David Ige, Vice-Chair
Senate Committee on Commerce, Consumer Protection and
Affordable Housing
State Capitol
Honolulu, Hawaii 96813

RE: Testimony in Favor of HB 3331, HD2 Re Condominiums
Hearing: Thurs., March 13, 2008, 10 a.m., Conf. Rm. #229

Chair Kokubun and Vice-Chair Ige and Members of the Committee:

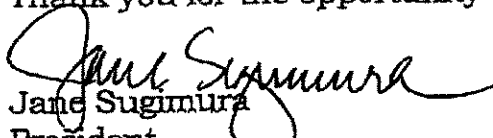
I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO).

HCAAO supports this bill, as amended (except for the defective date), and urges you to pass it out of committee without further amendments.

This bill would amend the condominium dispute resolution ("CDR") provision in both HRS 514A and HRS 154B. It clarifies the term "participation in mediation" by requiring the mediator to provide written notices to all parties of the request to mediate, the disposition of the mediation and to specify the termination date. It also inserts certain language that was inadvertently deleted in 2007 relating to the types of claims would be subject to mediation. This bill also prevents a party from moving the dispute into arbitration for a 30-day period in the event the complainant wishes to resolve it through the CDR program.

HCAAO supported the passage of the CDR pilot project in 2004, 2005 and 2006 and hopes that the program would provide a cheaper, quicker alternative to dispute resolution among condominium owners, board members and others in the condominium community and with these amendments, we believe that that will happen.

Thank you for the opportunity to testify.


Jane Sugimura
President



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

March 13, 2008

Senator Russell S. Kokubun, Chair
Senator David Y. Ige, Vice Chair
Committee on Commerce, Consumer Protection
and Affordable Housing

LATE

Testimony on HB 3331, HD 2 Relating to Condominiums

Dear Senators:

Thank you for this opportunity to testify in strong support of HB 3331, HD 2 on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO). The mission of our organization is to represent the interests of individual condominium and co-op owners in the State of Hawaii.

HB3331, HD 2 accomplishes several things. First, it states which sections of 514B and 514A for which an owner or a Board of Directors can request a hearing. This is important because a majority of condominiums have not as yet opted in to 514B and are still governed by 514A. The current State Statute has caused considerable confusion this year because these sections were omitted in error last year.

Secondly, HB 3331, HD 2 will ensure that an owner or the Board of Directors will have an opportunity to request a hearing without the other party taking a complaint directly to the much more expensive process of arbitration where attorneys are required. This totally undermines the very purpose for which the Legislature created the hearing process.

HICCO requests that your committee support HB 3331, HD 2 and send it to the Committee on Judiciary with an effective date of July 1, 2008. I will be present to answer any questions you may have.

Sincerely,

Richard Port

Richard Port, Chair
Legislative Committee