



February 25, 2008

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE REGARDING
HOUSE BILL 3331, HD 1

Hearing Date : Tuesday, February 26, 2008
 Time : 2: 45 p.m.
 Place : Conference Room 325

Chair Waters 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. Arbitration has been a recognized, proven, and effective means of resolving condominium disputes for more than 20 years. Condo court is a temporary and, as yet, unproven 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). Moreover, experience has shown that 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. Despite those problems, HB 3331, HD 1 favors condo court over arbitration by effectively prohibiting anyone from using arbitration following an unsuccessful mediation.

HB 3331 also has a number of other flaws:

- If the purpose of HB 3331 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

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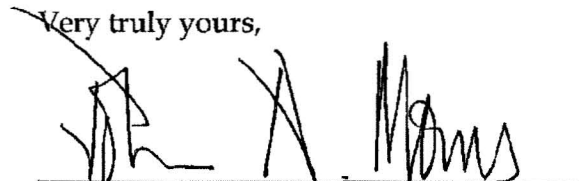
court is generally a much more expensive process than arbitration. Therefore, since either party can still file in circuit court under HB 3331, prohibiting them from filing for arbitration makes no sense.

- 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.
- Section 3 of HB 3331 seems to undermine the legislative intent of sunseting the condo court process on June 30, 2009. Section 3 states that only the amendment to section 514A-121.5(b) will be repealed on June 30, 2009. In fact, section 12 of act 244 (SLH 2007) indicates that all the procedures relating to condo court in subsections 514A-121.5(c) through (k) are supposed to be repealed on June 30, 2009. In addition, section 3 indicates that 514A-121.5 is in section 2 of HB 3331, when, in fact, it is in section 1 of HB 3331.
- The amendments that HB 3331 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 section was supposed to be repealed on June 30, 2009. HB 3331 takes the language creating the condo court program and 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 1, will create considerable confusion, CAI respectfully requests that the committee hold HB 3331, HD 1.

Thank you for this opportunity to testify.

Very truly yours,

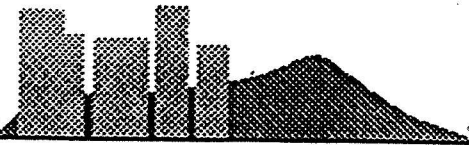


John A. Morris
Hawaii Legislative Action Committee
of the Community Associations Institute

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HICCO



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

February 26, 2008

Rep. Tommy Waters, Chair
Rep. Blake K. Oshiro, Vice Chair
Committee on Judiciary

Testimony on HB 3331, HD 1 Relating to Condominiums

Dear Representatives:

Thank you for this opportunity to testify in strong support of HB 3331, HD 1 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 1 accomplishes several things. First, it indicates the sections of 514B and 514A for which a Condominium Owner or an association 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.

Secondly, HB 3331, HD 1 will ensure that Owners and Boards of Directors will have an opportunity to request a hearing without the other party taking a complaint immediately to the much more expensive process of arbitration. This totally undermines the very purpose for which the Legislature created the hearing process, namely to resolve condominium complaints as inexpensively as possible with the help of an independent hearing officer.

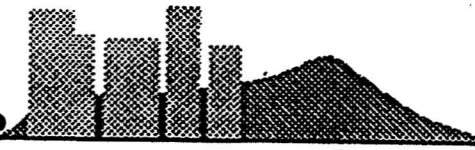
HICCO requests that your committee support HB 3331, HD 1. I will be present to answer any questions you may have.

Sincerely,

Richard Port, Chair
Legislative Committee

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H.I.C.C.O.



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HICCO requests that your committee support HB 3331, HD 1. I will be present to answer any questions you may have.

Sincerely,

Richard Port, Chair
Legislative Committee

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