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February 1, 2008

TO: Senator Russell S. Kokubun
Chair, Senate Committee on Commerce, Consumer Protection, and
Affordable Housing
Hawaii State Capitol, Room 407

Senator Clarence K. Nishihara
Chair, Senate Committee on Tourism and Government Operations
Hawaii State Capitol, Room 213

Via Email: testimony@capitol.hawaii.gov

FROM: Joanna Markle

RE: S.B. 1815 – Relating to Condominiums
Hearing Date: Monday, February 4, 2008 @ 9:00 a.m.

Dear Chairs Kokubun and Nishihara and Members of the Committee on Commerce, Consumer Protection, and Affordable Housing and Tourism and Government Operations:

I am Joanna Markle testifying on behalf of Wyndham Worldwide. Wyndham Worldwide offers individual consumers and business-to-business customers a broad suite of hospitality products and services across various accommodation alternatives and price ranges through its portfolio of world-renowned brands. Wyndham Worldwide has substantial interests in Hawaii that include Wyndham Vacation Ownership, with its new resort at Waikiki Beach Walk.

We oppose S.B. 1815. The term "managing agent" is defined in §514B-3 to mean any person retained, as an independent contractor, for the purpose of managing the operation of the property. An integral part of the managing agent's role is to manage the operations of the condominium hotel and S.B. 1815 would in effect prohibit the managing agent from doing his or her job.

Section 2 is also problematic as it would require the managing agent to obtain and maintain hundreds if not thousands of email addresses of the condominium hotel owners. It would be a challenge because many owners do not want to share this information and keeping the list accurate and current would be difficult because it is common for people to change their email addresses frequently.

Thank you very much for the opportunity to submit testimony.

Testimony of Thomas J. Smyth, CEcD
Before the
Senate Committees on Tourism and Government Operations
and
Commerce, Consumer Protection, and Affordable Housing

Monday, February 4, 2008, 9:00 am, Room 229
SB 1815 Relating to Condominiums

Chairs Nishihara and Kokubun, Vice Chairs Ige and Kim, and Committee Members:

I strongly oppose SB 1815 that mandates that a managing agent, resident manager or the condominium board “shall keep” a list of email addresses of unit owners. The list is to be given or emailed to any owner signing an affidavit that the list will only be used to solicit votes or proxies or for “providing information...with respect to association matters.”

I am a Director of an Association of Apartment Owners, testifying as an individual.

While I understand that email may be by used by a unit owner to vote by proxy, all other proxy procedures outlined in Section 514B-123, HRS, appear limited to mail or facsimile. Thus proxy solicitation would have to be followed by some sort of hard copy proxy form. This appears complex and confusing.

My major concerns, however, are that there is no requirement that an owner provide an email address to the entity required to “keep” the list. In addition, there does not seem to be any procedure for enforcement to ensure that the email addresses are used only for the intended purpose.

I already receive 3-5 pieces of real estate mail a week asking if I want to be listed: I don't want their email. In addition, our Board is involved in complex litigation involving a very few owners. I certainly don't need for my email box to be filled with their diatribes, even if it does involve “association matters.”

Finally, I note that Section 711-1106, HRS, defines “harassment” as something done by someone who “repeatedly makes telephone calls, facsimile or electronic mail transmissions without purpose of legitimate communications.” The definition does not include mail or paper put under your door.

Passage of this bill would seriously invade our privacy, could lead to identity theft and certainly might be even be harassment. As introduced, SB 1815 is not enforceable and should be held.

Thank you for the opportunity to provide testimony.

THE SENATE
24th LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON TOURISM & GOVERNMENT OPERATIONS
Senator Nishihara, Chair

COMMITTEE ON COMMERCE, CONSUMER PROTECTION & AFFORDABLE HOUSING
Senator Russell S. Kokubun

2/4/08

SB 1815
Relating to Condominiums

Chair Nishihara, Chair Kokubun and members of both Committees, my name is Max Sword, here on behalf of Outrigger Hotels & Resorts to speak against this bill.

SB 1815 basically proposes to do two things. The first is to require the AOA and the rental programs to have separate employees, and the other is to make owners' e-mails available.

Regarding the first issue which requires the AOA and the rental programs to have separate employees, this would mean, for example, that the AOA resident manager and the rental program manager would have to be separate persons. This would also apply to even highly-skilled technical staff, such as a chief engineer.

Currently, AOAOs are able to save costs for members by sharing a manager of the property rather than having a separate resident manager and rental program manager. In the case of a chief engineer, an AOA or a rental program would not be able to afford such a skilled person to oversee maintenance of both the common elements, the unit interiors, etc. on their own.

Having the common employees, such as a manager or a chief engineer, allows for a smooth relationship for both the AOA and rental operation, and makes addressing challenges easier and more amicable.

As for the second issue of making e-mails available, this is problematic. It has been our experience that owners are sensitive about having their e-mails released without their permission due to exposing themselves unnecessarily to viruses and junk mail, or they simply wish to keep their privacy.

Currently, the owners, by law, already have a mechanism to acquire names and addresses of fellow owners.

We ask that you defer this bill.

DATE: Monday, February 4, 2008

TIME: 9:00 am

PLACE: Conference Room 229

SENATOR RUSSELL S. KOKUBUN, CHAIR
SENATOR DAVID Y. IGE, VICE CHAIR
COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE
HOUSING

SENATOR CLARENCE K. NISHIHARA, CHAIR
SENATOR DONNA MERCADO, VICE CHAIR
COMMITTEE ON TOURISM AND GOVERNMENT OPERATIONS

Ted Walkey
Senior VP – Operations
Hawaiiana Management Company, Ltd
593-6868

Partial Opposition to SB 1815 RELATING TO CONDOMINIUMS

I am a condominium Director and Manager. I am opposed to Section 2 of SB 1815 in that it imposes a responsibility on associations and their managers to maintain data which may not be obtainable. Frequently owners who are on an automatic assessment payment program will move and not inform the agent or the association of their new mailing address, telephone numbers and other information. As long as the assessments are paid on time, the agent and association has no reason to suspect the mailing address is incorrect.

Please change Section 2 of SB 1815 to read

“(e) The managing agent or resident manager or board shall keep an accurate and current list of members of the association and, **if provided**, their current addresses, including email addresses, and the names and addresses, including email addresses, of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board, and a copy shall be available, at cost, or emailed to any member of the association as provided in the declaration or bylaws or rules and regulations or, in any case, to any member who furnishes to the managing agent or resident manager or the board a duly executed and acknowledged affidavit stating that the list:

Rationale: The managing agent or resident manager or board cannot maintain records which are not provided by the member.

Perhaps an additional amendment to HRS-514B to require members of a common interest community to provide current communications data to their association(s) and/or managing agent(s) would also be appropriate.

Thank you for the opportunity to testify.

DATE: Monday, February 4, 2008

TIME: 9:00 am

PLACE: Conference Room 229

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SENATOR DAVID Y. IGE, VICE CHAIR
COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE
HOUSING

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Perhaps an additional amendment to HRS-514B to require members of a common interest community to provide current communications data to their association(s) and/or managing agent(s) would also be appropriate.

Thank you for the opportunity to testify.



SENATE COMMITTEES ON: COMMERCE, CONSUMER PROTECTION AND
AFFORDABLE HOUSING; AND TOURISM AND GOVERNMENT OPERATIONS
REGARDING SENATE BILL 1815

Hearing Date : Monday February 4, 2008
Time : 9:00 a.m.
Place : Conference Room 229

Chairs Kokubon and Nishihara and Members of the Committees:

My name is John Morris and I am testifying on behalf of the Hawaii Legislative Action Committee of the Community Associations Institute ("CAI") to express concerns about Senate Bill 1815. 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.

CAI is opposed to section 1 of the bill the bill in its present form because it seems that less drastic and burdensome alternatives might correct the perceived problem. CAI suggests that section 2 of the bill be amended to also require an owner to provide the information to the association.

Section 1. CAI understands there have been reports of abuses at resort condominiums when the same company manages the association of apartment owners and the condominium hotel operation at the project. For example, if 50 of the units in a 100 unit condominium project are part of a condominium hotel operation, there can be problems if the hotel operation rents space from the condominium association board or shares employees with the condominium association.

There have been reports that the boards rent association space to a condominium hotel operation at below market rates, to decrease the expenses of the hotel operation and increase the return to those owners who participate in the hotel operation. Similarly, there have been reports that the condominium association and hotel operator share employees and split the expenses of the employees evenly, even though the employees spend more than half their time on condominium hotel business. The problems can be exacerbated and result in potential conflicts if owners who rent their units through the hotel operation also serve on the association's board of directors and control those decisions.


On the other hand, some smaller resort projects can benefit from having the same company manage their condominium association and the condominium hotel operation at the project. For example, having the hotel operation rent space from the association at a fair market rent can generate much-needed income for the condominium association. Similarly, although a small association might be unable to afford a full-time resident manager on its own, if the employee is shared with the condominium hotel operation on a fair basis, the joint employee may effectively serve both the condominium association and the hotel operation.

In summary, there are better ways of trying to achieve the aims of this bill that are more consistent with the concept of self-governance that already exists in the condominium law. Therefore, CAI suggest that rather than an absolute prohibition in the law, it might be better to include provisions regarding: conflict of interest by board members in this particular situation; limits on use of shared employees; and requirements for the rental of association property at fair market rent, etc.

Section 2. In an age of electronic communications, associations can often communicate more effectively if they have e-mail addresses for their members. Nevertheless, while the proposed change in the law requires the association to keep that information, nothing in the law actually requires the owner to provide that information. While that may be implicit in the present wording of the law, it is certainly not spelled out. Therefore, section 2 of this bill should address the requirement for owners to provide information to the association.

For those reasons, CAI agrees with the intent of SB 1815 but opposes it in its present form.

Thank you for this opportunity to testify.

A handwritten signature in black ink, appearing to read 'John A. Morris', is written over a horizontal line. The signature is stylized and somewhat cursive.

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



WAIKIKI IMPROVEMENT ASSOCIATION

Statement of
Rick Egged
President, Waikiki Improvement Association
Before the
SENATE COMMITTEE ON TOURISM AND GOVERNMENT OPERATIONS
Monday, February 4, 2008
9:00 AM
State Capitol, Conference Room 229
in consideration of

SB 1815
RELATING TO CONDOMINIUMS

Good morning Chair Nishihara, Vice Chair Kim and members of the Committee:

I am Rick Egged testifying on behalf of the Waikiki Improvement Association. WIA is a nonprofit organization representing 170 leading businesses and stakeholders in Waikiki.

SB 1815 prohibits the managing agent of a condominium from engaging in the business of a condominium hotel operator and requires the managing agent to make email addresses of unit owners available to all unit owners.

This measure appears to address a particular problem that may have developed. Not being aware of the details of the situation it is difficult to offer productive comments. However, WIA urges caution as the bill adds a prohibition that does not seem to lend itself to efficient business operations. Government should of course avoid such action unless there is an over riding public interest.

WIA has no problems with email notification provision in the bill.

The Waikiki Improvement Association urges deleting the portion of SB 1815 that prohibits the managing agent of a condominium from engaging in the business of a condominium hotel operator, unless a significant public interest is identified in doing so.

Thank you for this opportunity to provide these comments..

Subj: **Hearing Monday February 4, 2008, 9:00 AM, CPH and TSG Committees**
Date: 2/1/2008 3:49:42 P.M. Hawaiian Standard Time
From: DIMAUROAJ
To: testimony@capitol.hawaii.gov

To:
Senator Russell S. Kokubun, Chair of the Committee on Commerce, Consumer Protection, and Affordable Housing and Committee Members, and
Senator Clarence K. Nishihara, Chair of the Committee on Tourism and Government Operations and Committee Members.

I am writing in support of SB 1815, which attempts to resolve the long standing problem of the conflict of interest that is created when an association manager and its employees also operate a condo hotel at the condo complex and also serve as the operations manager at the same complex.

Variations on this bill have been introduced by Senator Inouye and Representative Evans with support by a number of other legislators for the past several years.

In 2005 a variation of this bill, HB 973, passed the Third Reading by the House and was transmitted to the Senate, however this subject has never had a hearing before the Senate before today.

In 2005, the House CPC Committee, which was Chaired by Representative Kenneth Hiraki, stated in its report:

"Your Committee finds that this measure mitigates conflicts of interest that may occur in the management of a condominium property by a managing agent. When employees of a condominium AOA are also employed in a vacation rental business operated by the managing agent at the same complex, these employees must attempt to serve the best interest of the AOA while simultaneously generating the greatest profit for the managing agent's vacation rental business, thus creating an apparent conflict of interest. This measure prohibits these type of arrangements."

These existing conflicts of interest cost AOAOs tens of thousands of dollars each year, which funds are utilized to benefit the condominium hotel operators. That financial burden is especially burdensome and onerous to those many owners in the AOAOs who do not participate in the condominium hotel business with the condominium hotel operator.

Most of those non-participating owners are Hawaii residents and voters who reside full time in the condo complex or reside on another island and have the condo unit for their and their family's use as a weekend or vacation retreat and eventual retirement home or rent their condo unit as a vacation rental themselves or prefer to rent their condo through a local real estate office rather than the condominium hotel operator. Those owners who participate in the condo hotel operation with the condo hotel operator and benefit financially from these intertwining relationships are almost exclusively mainland and foreign national owners. When a large condominium hotel operator or its affiliated entities or employees also function as the AOA manager and/or AOA operations manager at the same complex a clear and apparent conflict of interest exists.

I intend to appear at 9 AM on February 4, 2008 to provide my testimony in support of SB 1815 and to provide the Committees with further testimony as to my experience as to how a condo hotel operator has and continues to receive substantial financial subsidies from the AOA, which expense is borne by all owners in the AOA but most unfairly by those AOA owners who have no connection whatsoever with the condo hotel operation. Such transfer of funds and assets of the AOA to the condo hotel operator are a direct result of the convoluted relationships and resulting conflicts of interest between AOAs and condo hotel operators. Such conflict of interest relationships do not exist and would not be allowed to exist in any other business or profession.

The second part of HB1678 deals with the issue of providing AOA unit owner E mail addresses to other owners for the *strict* purpose of communicating concerning AOA matters. At present HRS 514B-153(e) provides that "addresses" *must* be so provided but "addresses" is not defined as mailing or postal or any other type of address. Many AOA's are now communicating with all their owners by E mail including the transfer of AOA financial data, notice of meetings, etc. If the AOA's are allowed to conduct AOA business via E mail then unit owners should also have the ability to communicate with other owners concerning AOA matters by E mail, especially when the issues being communicated run contra to a policy of the AOA Board.

I thank you for your anticipated attention to these issues which have a serious financial impact on AOA owners who reside and vote in the State of Hawaii.

Sincerely, A. J. Di Mauro

Friday, February 01, 2008 AOL: DIMAUROAJ

**Committee on Commerce, Consumer Protection, and Affordable Housing
Hearing**

**Monday, February 4, 2008, 9:00 a.m.
Conference Room 229**

Senator Russell S. Kokubun, Chair

Testimony on SB1815, Relating to Condominiums

Dear Chair Kokubun and Members of the Committee:

My testimony is in OPPOSITION to SB1815. My name is Lynn McCrory and I am the President of PAHIO Development, Inc. We are a locally owned and operated time share development company on the island of Kauai.

This bill would not allow a managing agent from providing rentals to visitors in a condominium project. Many time share projects in Hawaii are also condominium projects. Often times, a time share owner will want to rent a few extra days in addition to their planned interval at the resort. Alternatively, they will be coming with guests who want their own unit, but want to be nearby their friends.

In a mixed use project (timeshare and whole unit condominium ownership), it is very common for the managing agent to handle all the rentals for any owner who does want to rent their unit or interval. This provides income to the owner of the unit, and assists visitors to come to our islands.

If what is trying to be accomplished by this bill, is not allow visitor rentals in areas which are not zoned for visitors, this bill will remove this option for the condominiums that are in areas that are zoned for visitors. There are other options for addressing the zoning issue.

I humbly ask your consideration for OPPOSITION to SB1815. Mahalo!

Me ke aloha pumehana
With warm aloha,

PAHIO DEVELOPMENT, INC.

Lynn P. McCrory

Lynn P. McCrory, RRP
President

C: PMCI