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TO THE SENATE
JUDICIARY AND GOVERNMENT OPERATIONS COMMITTEE

THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

Monday, April 6, 2009
10:00 a.m.
Conference Room 016

**WRITTEN COMMENTS ON HOUSE BILL NO. 1415, H.D. 1, S.D. 1
RELATING TO SERVICE OF PROCESS**

TO THE HONORABLE BRIAN TANIGUCHI, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Tung Chan, Commissioner of Securities and head of the Business Registration Division, Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to testify on House Bill No. 1415, House Draft 1, Senate Draft 1, relating to service of process. We understand the intent of this measure but we do have technical concerns with the bill.

Brief Summary of Proposed Changes:

1. If this Committee is inclined to pass this bill with the annual corporate filings, we request that the effective date (currently "upon approval") be delayed until at least July 1, 2010. We have explained in our written testimony below that we need additional time to implement the change to our extensive database.

2. We request that the last paragraph of Section 5 of the bill, relating to filings of cooperative housing and planned community associations, be amended to read as follows:

“(c) As of January 1, 2010, each board of directors of an association of apartment owners of a condominium, cooperative housing corporation, or planned community association shall identify the designees specified in subsection (b)(4) in its biennial registration, in the case of a condominium, or in its governing by-laws ~~on its annual corporate filing~~, in the case of a cooperative housing corporation or a planned community association.”

This amendment would not alter the bill’s requirements that these entities have a policy and a designee for service of process. It would only eliminate the confusion and expense related to the new filing requirements for the standard annual report filings and thereby would eliminate our technical problems with this bill as enumerated below. In addition, these entities would be able to freely make designation changes without being subject to business registration fees whenever a change was required.

3. The final technical amendment we request is to delete the language in Section 6 that says “and shall adopt rules pursuant to chapter 91, Hawaii Revised Statutes,”. Under the law, the department is already able and subject to adopting rules if necessary. The objectionable language is confusing and suggests that the Department must adopt rules even if no rules are necessary to implement the law.

Technical Problems with this bill:

The bill requires that each board of directors of a cooperative housing corporation or planned community association shall designate an individual (and an

alternate) to respond to a process server's request for access to property under the board's management. The designation is required to be made on the annual corporate filings of the above-mentioned entities.

First, with respect to planned community associations, the bill's filing provisions would not apply to a host of these associations. Under HRS 421J-2, a planned community association may choose to be "a nonprofit, incorporated or unincorporated organization." Current law does not require planned community associations that choose to be unincorporated to make a filing with the Department and thus the Department maintains no records or filings for them. Therefore, we suggested language (above) governing how such designations be made absent any business registration filing mechanism.

As for those planned community associations that choose to be nonprofit corporations, the technical problem is that, currently, there is no distinction between the annual corporate filings of incorporated planned community associations and other nonprofit corporations. Similarly for cooperative housing corporations, at this time, HRS 421I points to HRS 414 (regular profit corporations) as the governing law for filing requirements with the Department. Accordingly, there is no distinction between the annual filings of a cooperative housing corporation and all other for-profit corporations.

This bill essentially creates: (1) a new filing requirement (designee requirement) and (2) an annual corporate filing distinction to separate cooperative housing corporations and incorporated planned community associations from other registered

corporations (profit or nonprofit). We would require time to implement the change and it would incur expenses. The Department would have to amend a commonly used form (the annual report for corporations) to accommodate a miniscule number of entities (which is also likely to confuse other corporations that are not affected by this bill).

Time and Cost to Implement:

Our IT staff estimates a cost of \$78,000 to accommodate both the nonprofit and profit corporation changes and they have estimated 9.5 months to make the modifications. Our main database actually encompasses 9 different databases that must be integrated for every change. In addition, because our traffic is over 6.5 million users a year, we can only make changes on our production site on weekends and evenings and all changes must be thoroughly tested through each system to assure there are no data corruption issues or incompatibility issues that would cause a crash. Furthermore, we are currently undergoing critical system changes extracting social security numbers from our databases and the changes required in this bill would need to take place after our extraction project. For these reasons, we request that if the Committee wishes to pass this bill with the required annual corporate filings, that the Committee adopt a July 1, 2010 effective date.

Thank you for the opportunity to testify.



Collection Law Section

Chair:
Steven Guttman

Vice Chair:
William J. Plum

Reply to:

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Bill Plum
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April 2, 2009

Senator Brian T. Taniguchi, Chair
Senate Judiciary Committee and
Committee Members
Hawaii State Capitol

RE: SUPPORT FOR HB 1415 - RELATING TO SERVICE OF PROCESS
HEARING: 4/6/09 @ 10:00 A.M. - ROOM 016

Dear Senator Taniguchi and Committee Members:

The Collection Law Section ("CLS") of the Hawaii State Bar Association ("HSBA") asks that you support HB 1415.¹ Currently, it is sometimes difficult for the sheriff or other process server to serve legal documents on individuals who reside in buildings or gated communities. This bill HB 1415 requires condominium associations and others to provide a designated representative to provide entry for such an event. Not only will this bill make the service of legal documents more efficient, it will save time and money for the party who is trying to effect the service. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Bill Plum".

Bill Plum
Vice Chair
Collection Law Section of the
Hawaii State Bar Association

cc: HSBA
Steven Guttman, CLS President

nb1415-2-cla

¹ The opinions of the Collection Law Section are not necessarily those of the Hawaii State Bar Association proper.



Attorneys at Law - A Law Corporation

BEFORE THE
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT
OPERATIONS

Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

HB1415, HD1, SD1 RELATING TO SERVICE OF PROCESS

Testimony of
WILLIAM M. KANEKO
Alston Hunt Floyd & Ing

Monday, April 6, 2009, 10:00 am
State Capitol, Room 016

Chair Taniguchi and members of the Committee on Judiciary and Government Operations:

My name is William M. Kaneko. I am an attorney at Alston Hunt Floyd & Ing. We **SUPPORT** HB1415, HD1, SD1 which requires association of apartment owners of a condominium or the Board of Directors of a planned community association to designate a representative on the property to provide entry for an authorized process server.

Every year, thousands of legal notices in Hawaii are served upon individuals or the legal representatives of organizations to enable them to respond to a legal proceeding before a court or government tribunal. Generally, the process server must hand the legal documents to an individual personally or serve someone in the same household or business. Once the documents are delivered, the process serving agent must provide proof that the papers were served.

For government agencies or private attorneys serving individuals in enclosed condominiums or gated communities, service of process, at times, is always costly and difficult, and sometimes impossible. For example, an individual residing in a gated community or condominium seeking to avoid service can do so simply by denying entry to the process server. In Hawaii, there are about 1,600 registered condominium associations representing over 150,000 apartment units. Too often, individuals seek to avoid being served, therefore delaying or avoiding service of process by "hiding out" in their gated community.

To ensure that the administration of justice is perpetuated through the proper service of process, HB1415, HD1, SD1 would provide adequate and reasonable measures to provide entry to an authorized process server which assures that people who live in gated communities and locked condos do not enjoy protection against being served with legal documents. We urge your passage of HB1415, HD1, SD1. Thank you for the opportunity to testify in support of this measure.

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Hawaii Council of Associations of Apartment Owners

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April 2, 2009

Sen. Brian Taniguchi, Chair
Sen. Dwight Takamine, Vice-Chair
Senate Committee on Judiciary

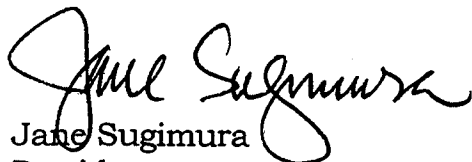
RE: TESTIMONY IN SUPPORT OF
HB 1415, HD1, SD1 RE SERVICE OF PROCESS
Hearing: Monday., April 6, 2009, 10:00 a.m. Conf. Rm. #016

Chair Taniguchi, Vice-Chair Takamine and Members of the Committee:

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

HCAAO supports the intent and purpose of this bill and requests that you pass it out unamended. We suggested revisions to the original bill and most of those revisions have been incorporated in the HD1 and SD1.

Thank you for the opportunity to testify.


Jane Sugimura
President

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

**TO THE SENATE COMMITTEE ON
JUDICIARY AND GOVERNMENT OPERATIONS**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2009**

**Monday, April 6, 2009
10:00 a.m.**

**WRITTEN COMMENTS ON HOUSE BILL NO. 1415, H.D. 1, S.D. 1, RELATING
TO SERVICE OF PROCESS.**

**TO THE HONORABLE BRIAN T. TANIGUCHI, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is William 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 provide written comments on House Bill No. 1415, H.D. 1, S.D. 1, Relating to Service of Process. We understand the intent of this measure but we do have technical and budgetary concerns with the bill. To the extent that this bill would require expenditures on the part of the Commission we oppose it inasmuch as we would have to pass those costs on to the public since we are self-funded.

The Commission wishes to make clear to the Committee that while it has jurisdiction over condominiums, it has no jurisdiction over co-operative housing corporations or planned community associations. For condominiums, we support the intent of this bill to require condominium associations to establish a policy for reasonable access to process servers. We also have no objections that in

Written Comments on House Bill No. 1415, H.D. 1, S.D. 1
Monday, April 6, 2009
Page 2

biennial registrations for condominium associations, that this information be disclosed (as page 4, lines 3-7 suggest).

What we would not want to be responsible for, are the tasks stated in Section 6 of the bill, to adopt forms or make adaptation to forms for the purpose of facilitating implementation of this bill for all the different entities covered under this bill. While we could do a form or adapt current Commission forms for condominium associations, we would not want to nor think it appropriate for our forms to be applied to the other groups named in the bill. Also, if the Department of Commerce and Consumer Affairs ("DCCA") is going to be responsible for developing generic forms, and if the Commission needs to adopt its own form, it would likely adopt DCCA's forms for consistency. The Commission just wants its very limited role, if any, with the implementation of Section 6, disclosed.

Thank you for the opportunity to provide written comments on House Bill No. 1415, H.D. 1, S.D. 1.