

STAND. COM. REP. NO. 690

Honolulu, Hawaii

March 5, 2009

RE: H.B. No. 1415  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Sir:

Your Committees on Judiciary and Consumer Protection & Commerce, to which was referred H.B. No. 1415 entitled:

"A BILL FOR AN ACT RELATING TO SERVICE OF PROCESS,"

beg leave to report as follows:

The purpose of this bill is to require the board of directors (Board) of an association of apartment owners (condominium association) and the Board of a planned community association to designate a representative on premises to provide entry to any duly appointed server of process.

Hawaii Council of Associations of Apartment Owners, Alston Hunt Floyd & Ing, and a concerned individual supported this bill. The Community Associations Institute Hawaii Chapter Legislative Action Committee submitted comments.

Based on discussion with proponents of the measure, and taking into consideration circumstances that may exist in different types of condominium buildings and planned community associations, your Committees have amended this measure by:

- (1) Adding cooperative housing corporations (co-ops), including the Boards of co-ops, within the scope of this measure;
- (2) Requiring that the Board of a condominium association, planned community association, or co-op establish a

HB1415 HD1 HSCR JUD-CPC HMS 2009-2547



policy to provide reasonable access for a process server;

- (3) Clarifying that the policy allow a process server access to a common area adjacent to a principal entry to the relevant residence within the building or community;
- (4) Requiring, in the policy, appropriate documentation and identification be shown by the process server prior to gaining access, and also allowing for denial of access if the process server is not able to produce clear and credible documentation;
- (5) Requiring the policy to designate the person allowing access by appropriate title or position, and also to designate an alternate individual to allow access;
- (6) Requiring periodic updating of the designees allowing access when a condominium association, planned community association, or a co-op make their regular filings with the Department of Commerce and Consumer Affairs (DCCA);
- (7) Requiring DCCA to adopt new forms or adapt current forms to accommodate the new required information for regular filings;
- (8) Deleting the provision allowing DCCA to adopt rules to effectuate the provisions of this bill;
- (9) Changing its effective date to January 1, 2046, to promote further discussion; and
- (10) Making technical, nonsubstantive amendments for style, clarity, and consistency.

As affirmed by the records of votes of the members of your Committees on Judiciary and Consumer Protection & Commerce that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 1415, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 1415, H.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on  
behalf of the members of the  
Committees on Judiciary and  
Consumer Protection & Commerce,



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ROBERT N. HERKES, Chair



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JOV RIKI KARAMATSU, Chair



State of Hawaii  
House of Representatives  
The Twenty-fifth Legislature

HCRC690

Record of Votes of the Committee on Judiciary

Bill/Resolution No.:	Committee Referral:	Date:		
HB 1415	JUDICPC	2/26/09		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
JUD Members	Ayes	Ayes (WR)	Nays	Excused
1. KARAMATSU, Jon Riki (C)	✓			
2. ITO, Ken (VC)	✓			
3. BELATTI, Della Au				✓
4. CABANILLA, Rida	✓			
5. CARROLL, Mele				✓
6. HERKES, Robert N.				✓
7. LUKE, Sylvia	✓			
8. McKELVEY, Angus L.K.				✓
9. MIZUNO, John M.	✓			
10. MORITA, Hermina M.				✓
11. OSHIRO, Blake K.	✓			
12. SOUKI, Joseph M.				✓
13. TSUJI, Clift	✓			
14. WAKAI, Glenn	✓			
15. MARUMOTO, Barbara C.	✓			
16. THIELEN, Cynthia	✓			
TOTAL (16)	10			6
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: <u>K. Lu</u>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				

HCSP 690

Record of Votes of the Committee on Consumer Protection & Commerce

Bill/Resolution No.: HB 1415	Committee Referral: JUD / CPC	Date: 2/26/09		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
CPC Members	Ayes	Ayes (WR)	Nays	Excused
1. HERKES, Robert N. (C)				✓
2. WAKAI, Glenn (VC)	✓			
3. BELATTI, Della Au				✓
4. CABANILLA, Rida	✓			
5. CARROLL, Mele	✓			✓
6. ITO, Ken	✓			
7. KARAMATSU, Jon Riki	✓			
8. LUKE, Sylvia	✓			
9. McKELVEY, Angus L.K.				✓
10. MIZUNO, John M.	✓			
11. MORITA, Hermina M.				✓
12. SOUKI, Joseph M.				✓
13. TSUJI, Clift	✓			
14. MARUMOTO, Barbara C.	✓			
15. THIELEN, Cynthia	✓			
TOTAL (15)	9	0	0	6
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted          If joint referral, _____ did not support recommendation.				
Vice Chair's or designee's signature: _____				
Distribution: Original (White) – Committee     Duplicate (Yellow) – Chief Clerk's Office     Duplicate (Pink) – HMSO				

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# A BILL FOR AN ACT

RELATING TO SERVICE OF PROCESS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Chapter 421I, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§421I- Service of process. The board of directors of  
5 the corporation shall establish a policy to provide reasonable  
6 access to process servers in compliance with section 634- ."

7 SECTION 2. Chapter 421J, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10 "§421J- Service of process. The board shall establish  
11 a policy to provide reasonable access to process servers in  
12 compliance with section 634- ."

13 SECTION 3. Chapter 514A, Hawaii Revised Statutes, is  
14 amended by adding a new section to be appropriately designated  
15 and to read as follows:

16 "§514A- Service of process. The board of directors  
17 shall establish a policy to provide reasonable access to process  
18 servers in compliance with section 634- ."



1 SECTION 4. Chapter 514B, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§514B- Service of process. The board shall establish  
5 a policy to provide reasonable access to process servers in  
6 compliance with section 634- ."

7 SECTION 5. Chapter 634, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10 "§634- Service of process within a condominium,  
11 cooperative housing, or planned community. (a) Each board of  
12 directors of an association of apartment owners governed by  
13 chapter 514A or chapter 514B, cooperative housing corporation  
14 governed by chapter 421I, and planned community association  
15 governed by chapter 421J shall establish a policy to provide  
16 reasonable access as specified in subsection (b) to the building  
17 or community to process servers for the purpose of serving any  
18 summons, subpoena, notice, or order on a person identified in  
19 the document being served as residing or staying therein.

20 (b) The policy established pursuant to subsection (a)  
21 shall:



- 1       (1) Allow for access by a process server to a common area  
2       adjacent to a principal entry to the relevant  
3       residence within the building or community;
- 4       (2) Require that, prior to gaining access, the server of  
5       process or other documents shall present clear  
6       personal identification and evidence that the person  
7       is authorized to serve process, including  
8       documentation clearly indicating the precise name and  
9       address, and if applicable, a unit number, of the  
10       resident or person staying on the property to be  
11       served;
- 12       (3) Allow for denial of access to the server of process if  
13       the server of process is not able to produce clear and  
14       credible identification and documentation as required  
15       in paragraph (2); and
- 16       (4) Designate by appropriate title or position an  
17       individual to respond to a request for access,  
18       including but not limited to a resident manager,  
19       building manager located in or reasonably near the  
20       building or community, or other person generally  
21       available to respond to a request for access in a  
22       timely manner, and shall also designate the title or





1           position of at least one alternate individual for such  
2           purpose in the event that the primary designee is not  
3           available.

4           (c) Each board of directors of an association of apartment  
5           owners of a condominium, cooperative housing corporation, or  
6           planned community association shall also identify the designees  
7           specified in subsection (b)(4) in its biennial registration, in  
8           the case of a condominium, or on its annual corporate filing, in  
9           the case of a cooperative housing corporation or a planned  
10           community association, as filed with the department of commerce  
11           and consumer affairs."

12           SECTION 6. The department of commerce and consumer affairs  
13 shall adopt forms, or make adaptations to forms currently in  
14 use, for the purposes of facilitating implementation of this  
15 Act.

16           SECTION 7. New statutory material is underscored.

17           SECTION 8. This Act shall take effect on January 1, 2046.



**Report Title:**

Service of Process; Condominiums; Planned Community  
Associations; Cooperative Housing

**Description:**

Requires condominium associations, planned community  
associations, and cooperative housing corporations to establish  
a policy to designate a representative that is authorized to  
provide entry for a process server. (HB1415 HD1)





## Hawaii Council of Associations of Apartment Owners

P.O. Box 726, Aiea, HI, 96701  
Phone: 485-8282 Fax: 485-8282  
Email: HCAAO@hawaii.rr.com

March 14, 2009

Sen. Rosalyn Baker, Chair  
Sen. David Ige, Vice-Chair  
Senate Committee on Commerce and Consumer Protection

RE: TESTIMONY IN SUPPORT OF HB 1415, HD1 RE SERVICE OF PROCESS  
Hearing: Wed., March 18, 2009, 9:00 a.m. Conf. Rm. #229

Chair Baker, 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 the intent and purpose of this bill and requests that you pass it out unamended. We make suggested revisions to the original bill and most of those revisions have been incorporated in the HD1.

Thank you for the opportunity to testify.

Jane Sugimura  
President



## Collection Law Section

Chair:  
Steven Guttman

Vice Chair:  
WilliamJ. Plum

Reply to:

STEVEN GUTTMAN, CHAIR  
220 SOUTH KING STREET, 19<sup>TH</sup> FLOOR  
HONOLULU, HAWAII 96813  
TELEPHONE: (808) 536-1900  
FAX: (808) 529-7177 E-MAIL: sguttman@kdubm.com

Bill Plum  
528-0050 Direct Line

March 15, 2009

Senator Rosalyn H. Baker, Chair  
and Commerce and Consumer Protection  
Committee Members  
Hawaii State Capital  
Honolulu, HI

RE: SUPPORT FOR HB 1415 - PROPOSED AMENDMENT TO REQUIRE  
CONDOMINIUM ASSOCIATIONS AND OTHERS TO DESIGNATE A  
REPRESENTATIVE TO PROVIDE ACCESS FOR A PROCESS SERVER

Dear Senators:

The Collection Law Section ("CLS") of the Hawaii State Bar Association ("HSBA") asks that you support HB 1415. 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 for considering this legislation.

Sincerely,

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

cc: HSBA  
Steve Guttman, CLS President



**BEFORE THE**  
**SENATE COMMITTEE ON COMMERCE AND**  
**CONSUMER PROTECTION**  
**Senator Rosalyn H. Baker, Chair**  
**Senator David Y. Ige, Vice Chair**

American Savings Bank Tower  
1001 Bishop Street, 18th Floor  
Honolulu, Hawai'i 96813  
Phone: (808) 524-1800  
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Center Professional Center, Suite C21  
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2200 Main Street  
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[www.ahfi.com](http://www.ahfi.com)

**HB1415, HD1 RELATING TO SERVICE OF PROCESS**

Testimony of  
**WILLIAM M. KANEKO**  
Alston Hunt Floyd & Ing

Wednesday, March 18, 2009  
9:00 a.m., State Capitol Room 229

Chair Baker and members of the Committee on Commerce & Consumer Protection:

My name is William M. Kaneko. I am an attorney at Alston Hunt Floyd & Ing. We **SUPPORT** HB1415, HD1 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 that is authorized to provide entry for a duly 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, H1 would provide adequate and reasonable measures to provide entry to a duly 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. Thank you for the opportunity to testify in support of this measure.

## MEMORANDUM

TO: Senator Rosalyn Baker, Chair  
Senator David Ige, Vice-Chair  
Senate Committee on Commerce & Consumer Protection

FR: Richard A. Yanagi  
Attorney at Law

RE: HB1415, HD1 Relating to Service of Process  
Wednesday, March 18, 2009  
9:00 am, Room 229

Chair Baker and members of the Committee on Commerce & Consumer Protection:

My name is Richard A. Yanagi, an attorney in private practice. A significant part of my practice is in collections law, which has required me to serve hundreds of complaints and other Court documents to individuals and businesses over the past 15 years.

I am in support of HB1415, HD1. The measure 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 that is authorized to provide entry for a duly authorized process server.

I appear before this Joint Committee to stress the need and importance to ensure that our legal system is preserved by the proper service of notice to all individuals or the legal representatives of organizations. Providing legal notice through service of process is an integral component of our judicial system. Legal documents are personally delivered to individuals, providing notice, information and instructions in the form of summons, court orders, subpoenas and other legal documents to respond to courts and government tribunals. As an attorney, I regularly serve complaints to defendants using duly authorized process servers.

Many times, individuals seek to avoid service of process in order to avoid the legal consequences of a court order or complaint. Living in a gated community or guarded condominium makes it particularly difficult for a process server to gain entry if an individual seeks to avoid being served. All they have to do is deny entry to the process server. HB1415, HD1 is a practicable and reasonable method to ensure that a duly authorized process server is admitted into a gated community or enclosed condominium complex to legally serve an individual.

I urge your support of HB1415, HD1. Thank you for the opportunity to testify on this matter.