



Hawaii Council of Associations of Apartment Owners

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February 21, 2009

Rep. Jon Riki Karamatau, Chair
Rep. Ken Ito, Vice-Chair
House Committee on Judiciary

Rep. Robert Herkes, Chair
Rep. Glenn Wakai, Vice-Chair

RE: TESTIMONY IN SUPPORT OF HB 1415 RE SERVICE OF PROCESS
Hearing: Tuesday, Feb. 24, 2009, 2:00 p.m. Conf. Rm. #325

Chairs Karamatau and Herkes, Vice-Chairs Ito and Wakai and Members of the
Joint Committee:

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

Our membership includes condominium and co-op housing boards of
directors. During our review of legislative bills prior to this session, my board
indicated that they had no problems with this bill.

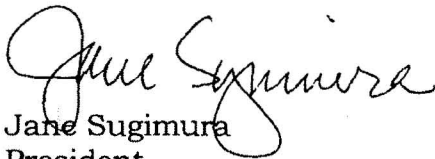
I have the following suggestions:

1. Add co-op housing corporations to new subsection (a) and amend the
title to include co-op apartments, which are governed by HRS 421I and
HRS 414 (per HRS 421I-11)
2. Instead of requiring the boards to provide a name and address of its
designated representative, which information could change from time to
time and if a specific person is named, that person may not be on site at
all times to allow entry into the building, the bill should be amended to

require the boards of directors to establish a policy to provide access to their buildings and/or projects to process servers authorized to serve process in the State of Hawaii and that unless otherwise designated by the boards of directors that the building or project manager or resident manager shall be the person designated to provide access to the buildings or projects or planned community developments.

3. Finally, instead of requiring the DCCA to come up with another form so as to allow registrations of these designees, existing forms can be amended to allow that information. Every other year, all condominiums in the state have to submit a registration statement to the DCCA, Real Estate Division and all non-profits have to file an annual corporate statement. Those forms can be amended to add a line or a block where the condominium or co-op housing corporation could designate an employee by title who would allow entry into the project to process servers. Currently the information from the condominium registration statements and the annual corporate statements are available online on the DCCA website.

Thank you for the opportunity to testify.


Jane Sugimura
President



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BEFORE THE
HOUSE COMMITTEE ON JUDICIARY
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Ken Ito, Vice Chair

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HOUSE COMMITTEE ON COMMERCE & CONSUMER PROTECTION

Robert Herkes, Chair
Glenn Wakai, Vice Chair

HB1415 RELATING TO SERVICE OF PROCESS

Testimony of
WILLIAM M. KANEKO
Alston Hunt Floyd & Ing

Tuesday, February, 24, 2009
2:00 pm, Room 325

Chair Karamatsu and Chair Herkes:

My name is William M. Kaneko. I am an attorney at Alston Hunt Floyd & Ing. We **SUPPORT** HB1415 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 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. Thank you for the opportunity to testify in support of this measure.

The U.S. supreme court, reaffirmed its ruling in Buckley v. Valeo, 424 U.S. 1, (1976) and struck down the constitutionality of a Vermont campaign finance statute that limited both (1) the amounts that candidates for state office may spend on their campaigns and (2) the amounts that individual, organizations, and political parties may contribute to those campaigns as being inconsistent with the First Amendment.

In Hawaii, there are campaign contribution limits in section 11-204(a)(1). These limits are \$2,000, \$4,000, and \$6,000.

As the campaign spending commission testified, it is the reporting requirements, not the limitations on expenditures and contributions that "fosters public confidence in government through a more informed electorate . . . but also serves as a critical crosscheck for ensuring the accurate and completeness of reporting by candidates and other recipients of corporate contributions."

The commission concluded its statements relating to the importance of reporting requirements, by citing language from Buckley v. Valeo, and another supreme court ruling, Grosjean v. American Press Co., "disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."

These bills attempt to bring the current law into compliance with the Tavares holding, the U.S. supreme court rulings, and the commission's support of the intent of the bills.



HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE AND
JUDICIARY REGARDING HOUSE BILL 1415

Hearing Date : TUESDAY, February 24, 2009
Time : 2:00 p.m.
Place : Conference Room 325

Chairs Herkes and Karamatsu and Members of the Committee:

While the Community Associations Institute Hawaii Chapter Legislative Action Committee ("CAI") supports the intention of this bill, CAI does not support the bill as written because it will create serious problems for residents who live in condominiums and other homeowner associations. Thank you for this opportunity to testify.

The problem is that under the present law, there is no one who is really a "duly appointed server of process." Instead, under the present law, anyone over the age of 18 who is not involved in the lawsuit for which legal process is being served can serve legal process.

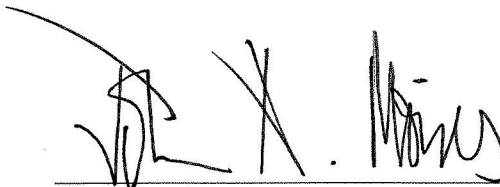
In other words, there is virtually no control whatsoever over who serves legal process. Therefore, under this bill, there would be virtually no control whatsoever on who could request entry to a secure condominium or planned community building.

The situation might be different if, as used to be the case, only a duly authorized Sheriff of the State of Hawaii could serve legal process. Unfortunately, that is no longer the case. Therefore, this bill would permit virtually anyone to request entry into a secure condominium project on the pretext that the person was serving legal process.

Nor is it fair to place the burden on the association and association employees to determine whether the person requesting entry into the project truly is "duly appointed server of process" or someone with other goals and purposes for entry.

Therefore, if the committee intends to pass this bill on, the committee should ensure that there is some well established standard for an association to determine whether the person requesting entry into a building meets the requirements of this bill.

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Hearing Date: February 24, 2009
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A handwritten signature in black ink, appearing to read "John A. Morris", written over a horizontal line.

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

JAM:alt

RICHARD A. YANAGI

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February 23, 2009

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Representative Jon Karamatsu, Chair
Representative Ken Ito, Vice Chair
House Committee on Judiciary

Representative Robert Herkes, Chair
Representative Glenn Wakai, Vice Chair
House Committee on Consumer Protection & Commerce

RE: HB1415 Relating to Service of Process
Joint JUD/CPC
Tuesday, February, 24, 2009
2:00 pm, Room 325

Chair Karamatsu and Chair Herkes:

My name is Richard A. Yanagi, an attorney in private practice for about 15 years. A significant part of my practice is in collections law and I have had served or attempted to serve hundreds of complaints upon individuals and business representatives in my practice.

I am in support of HB1415. 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 a collections attorney, I regularly serve complaints upon defendants using duly authorized process servers.

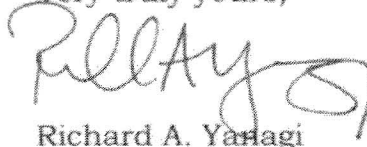
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RE: HB1415 Relating to Service of Process
Joint JUD/CPC

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 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. Thank you for the opportunity to testify on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Yanagi", with a stylized flourish at the end.

Richard A. Yanagi