

# HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

February 12, 2009

Rep. John M. Mizuno, Chair  
and members of the House Committee on Human Services  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **House Bill 876 (Condominiums)**  
**Hearing Date/Time: Thursday, February 12, 2009, 8:00 A.M.**

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies which are regulated by the Hawaii Commissioner of Financial Institutions under the Code of Financial Institutions (Chapter 412, Article 9 of the Hawaii Revised Statutes).

The HFSA wants to **comment** on this Bill.

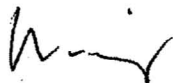
The purpose of this Bill is to raise the maximum amount of the special assessment for delinquent monthly common assessments that can be charged against a person who purchases a condominium unit to \$3,600. It expands limitations on association liability for elderly unit owners aging in place to include handicapped and disabled persons.

We take no position on the part of this Bill that relates to elderly unit owners.

However, we cannot support the other part of this Bill which would increase the maximum amount of the special assessment. Currently the special assessment is the lesser of \$1,800 or the amount of 6 months of unpaid condominium common assessments (e.g. maintenance fees). This Bill would increase the amount from \$1,800 to \$3,600. The law regarding these special assessments was first enacted in 2000 as Act 39. This special assessments provision is in Hawaii Revised Statutes Sec. 514A-90 and 514B-146. This provision requires a third party buyer to pay a portion of the delinquent common assessments (e.g. maintenance fees) even if there is no lien recorded in the State Bureau of Conveyances.

These special assessments could affect the price that a buyer pays for the foreclosed property and the amount that a foreclosing lender will net from the sale. We understand that condominium associations need to get paid when there are delinquent maintenance fees. But lenders also need to get paid the amount owed on the mortgage loans especially if the value of the property is less than the mortgage balance. We realize that maintenance fees in general have increased over the past 9 years. But a doubling of the from \$1,800 to \$3,600 appears to be too much of an increase.

Thank you for considering our comments.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)



P.O. Box 976  
Honolulu, Hawaii 96808

The Honorable John M. Mizuno, Chair  
and Members of the Committee on Human Services

RE: MEASURE: HB876  
HEARING: FEBRUARY 12, 2009, 8:00 A.M., RM 329  
COPIES: 1

Dear Rep. Mizuno and Members of the Committee:

My name is Philip L. Lahne and I am the Co-Chair of the Hawai'i Legislative Action Committee of the Community Associations Institute ("CAI"). CAI is a non-profit national and statewide organization whose members include condominium associations, planned community associations, residential cooperatives, homeowners, managing agents, and others involved in creating, managing, servicing, and living in common interest communities.

The LAC respectfully opposes the passage of HB876 for several reasons. As to Section 1 of the bill, the House Committee on Consumer Protection and Commerce, which is the second referral on the bill, has already passed HB1639, a single referral bill which addresses the issue of the special assessment more completely and comprehensively. Accordingly, at the very minimum Section 1 of HB876 should simply be deleted to avoid wasting scarce legislative time and resources. Section 2 of the bill presents more difficult issues.

Section 2 of the bill proposes to amend Section 514B-142, Hawai'i Revised Statutes, to add handicapped and disabled unit owners to the elderly unit owners previously covered by that Section. Section 514B-142 was included in Chapter 514B in an attempt to recognize the growing phenomenon of "aging in place" whereby individuals who purchased condominium apartments when they were able to care for themselves gradually became to "require services and assistance to maintain independent living in the unit in which the elderly unit owner resides so that the elderly unit owner will not pose any harm to self or to others." While the LAC supported the original enactment of Section 514B-142 and is sympathetic to the intent of HB876, the proposed amendment suggests that there is a simple solution for associations faced with handicapped or disabled owners who require service and assistance to remain in their units. That is simply not the case.

Despite its noble intent, Section 514B-142 has proven to be of little assistance to either condominium associations faced with the problem of elders who require such services and assistance or to those elders themselves, because it has been difficult or impossible to find agencies or organizations that are willing or able to provide "a functional assessment regarding the condition of an elderly unit owner as well as recommendations for the services which the

elderly unit owner may require to maintain a level of independence that enables the owner to avoid any harm to self or to others, and to avoid disruption to the condominium community.” The few condominium associations that have attempt to implement Section 514B-142 have therefore been unable to do so. There is no reason to believe that the situation will be any different with respect to handicapped and disabled unit owners.

Moreover, the list of “problems of aging and aging in place” to which Section 514B-142 applies<sup>1</sup> was specifically crafted to apply to the problems of aging and aging in place and not to the problems of handicapped and disabled persons.<sup>2</sup> Thus, at a very minimum, a separate list of “qualifying conditions” for the handicapped and disabled would need to be developed with the assistance of appropriate professionals. It is difficult to see how this could be done given the wide range of conditions that might qualify an individual as being handicapped or disabled. By contrast, the Legislature was able to draw a bright line to define elderly – sixty-two and older.

The issues presented by handicapped and disabled persons are also already addressed by a tangle of state and federal laws, rules, and regulations intended to protect the rights of the handicapped and disabled, such as Chapter 515, Hawai‘i Revised Statutes, and the federal Fair Housing Act, among others. Condominium associations with handicapped or disabled unit owners would face the daunting task – and no doubt significant attorneys’ fees and costs – in attempting to harmonize the proposed legislation with anti-discrimination laws which bar associations from discriminating against the handicapped and disabled. It is easy to foresee that a handicapped or disabled person who does not believe he or she needs any “functional assessment” or any “services or assistance” to continue residing in his or her unit will accuse the association of unlawful discrimination and unequal treatment just for proposing that the owner submit to such an assessment, and while the Legislature could conceivably immunize associations from lawsuits brought under state laws with respect to actions taken pursuant to Section 514B-142, it cannot do so with respect to federal laws.

Finally, we note that Section 514B-142 provides no mechanism for making a determination that a person needs a functional assessment<sup>3</sup> or for enforcing or implementing the recommendations contained in any functional assessment other than the legal remedies which associations already

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<sup>1</sup>

- (1) The inability to clean and maintain an independent unit;
- (2) Mental confusion;
- (3) Abusing others;
- (4) Inability to care for oneself;
- (5) Inability to arrange for home care;
- (6) Loneliness and neglect; or
- (7) Inappropriate requests of others for assistance.

<sup>2</sup> “‘Disability’ means having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment.” Section 515-2, Hawai‘i Revised Statutes.

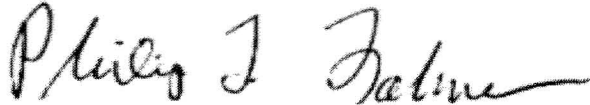
<sup>3</sup>Ordinary laypeople such as condominium board members are unlikely to be able to make a knowledgeable decision as to whether an owner should be asked to undergo a functional assessment, so the board would probably have to hire an appropriate professional to advise it in that regard, and whether such a professional could advise the board without the cooperation of the “target” is questionable.

possess and may require that the association's declaration or by-laws be amended in order to charge the costs of any such assessment to the elderly owner. Even if an association's project document contain or are amended to contain provisions allowing functional assessment costs to be charged to elderly owners, the association would still need to advance the costs and it is likely that many such owners are on fixed incomes and would be unable to pay those costs. Consequently, there is no real incentive for associations to utilize Section 514B-142 rather than exercising their ordinary legal remedies.

Amending Section 514B-142 to include handicapped and disabled owners may demonstrate the Legislature's concern for the handicapped and disabled as well as the elderly, but unless agencies to provide functional assessments are designated and funded, owners are required to participate in assessments and to comply with findings of the assessment, and associations are provided with a speedy and effective judicial remedy in the event that owners fail or are unable to comply with such findings, the amendment will not have its intended effect in the real world of complex solutions to difficult problems, just like the present statute has not had any effect in that world. In that regard, the LAC respectfully suggests that the problem of condominium owners who need services and assistance in order to remain in their homes would be better addressed by requesting an appropriate government agency to do a study and to recommend global solutions that would take into account all categories of persons who may need such services and assistance rather than amending Section 514B-142 piecemeal to include one category after another willy nilly.

Thank you for the opportunity to submit this testimony. If you have any questions, I can be reached at 536-8177 or by email at [plahne@alf-hawaii.com](mailto:plahne@alf-hawaii.com).

COMMUNITY ASSOCIATIONS INSTITUTE  
HAWAII LEGISLATIVE ACTION COMMITTEE



PHILIP L. LAHNE, Co-Chair



# HAWAII BANKERS ASSOCIATION

1000 BISHOP ST., SUITE 301B • HONOLULU, HAWAII 96813-4203  
PHONE: (808) 524-5161 • FAX: (808) 521-4120

February 11, 2009

The Honorable John M. Mizuno, Chair  
The Honorable Tom Brower, Vice Chair  
& Committee Members  
Committee on Human Services  
State House of Representatives

Testimony on House Bill 876 (Relating to Condominiums)

Dear Representatives:

I am Roy Amemiya, speaking on behalf of the Hawaii Bankers Association and requesting that you either hold this bill or modify it by deleting Part 1 pertaining to the senior lien position for condominium associations over the mortgage lenders.

This bill has two separate and unrelated topics – the issue of raising the amount of the senior lien from \$1,800 to \$3,600 for condominium associations in Part 1 and the issue of expanding limitations on association liability in Part 2. HBA does not take a position on Part 2, except to say that if the committee seeks its passage, our objection will be removed if Part 1 is deleted.

The current amount of \$1,800 was enacted in the 2000 Legislative Session. While our organization realizes that association costs, and consequently maintenance fees have probably risen over the intervening years, we have not had any formal discussion with the condominium groups and other stakeholders on how the proposed \$3,600 amount was derived and whether it is fair.

As the values of properties have and continue to decline, so has the probability that mortgage holders experience larger losses in foreclosure situations. Therefore, we feel it is important that the financial industry be involved in discussions with advocates for the condominium industry, as was the case in 2000, in determining an amount that is fair to all. Until then, we ask that the bill be held or that Part 1 be deleted.

Thank you for the opportunity to testify.