



H.I.C.C.O.

HAWAII INDEPENDENT CONDOMINIUM & COOPERATIVE OWNERS
1600 ALA MOANA BLVD. - APT. 3100 - HONOLULU - HAWAII 96815

February 12, 2009

LATE
Testimony

Rep. John M. Mizuno, Chair
Rep. Tom Brower, Vice Chair
Committee on Human Services

Testimony on HB 876 Relating to Condominiums

Dear Representatives:

Thank you for this opportunity to testify on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO).

HB 876 will help all condominium owners in Hawaii. Currently, Condominium Associations are only able to recover a maximum of **\$1,800** from the foreclosure of owner units by their banks. Since foreclosures sometimes take a year or longer to complete, and during that time associations are not able to collect maintenance fees for those units, **condominium associations lose thousands of dollars in spite of the fact that these condominium associations play no role in approving the loans entered into between the banks and the individual owners.**

We respectfully request that your committee approve HB 876.

Sincerely,



Richard Port, Chair
Legislative Committee

HAWAII COUNCIL OF ASSOCIATIONS
OF APARTMENT OWNERS

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LATE
Testimony

February 11, 2009

Rep. John Mizuno, Chair
Rep. Tom Brower, Vice-Chair
House Committee on Human Services

RE: TESTIMONY IN SUPPORT OF HB 876 RE CONDOMINIUMS
Hearing: Thursday, February 12, 2009, 8 a.m., Conf. Rm. #329

Chair Mizuno, Vice-Chair Brower and Members of the Committee:

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

HCAAO strongly supports both parts of this bill.

Part I of this bill would raise the maximum allowable special assessment in HRS 514A-90 and HRS 514B-146 from \$1,800 to \$3,600, which is the maximum amount that associations would be allowed to recover in a foreclosure action. The actual amount of the deficiencies are usually in excess of 6 months of maintenance fees because it takes more than 6 months to complete a judicial or non-judicial foreclosure and in most situations, the unit owner stops paying his maintenance fees long before the lender moves to foreclose its mortgage. The \$1,800 maximum was set by Act 39 passed in 2000 and was supposed to represent at least 6 months worth of maintenance fees. That amount is too small based on the increase of monthly maintenance fees since 2000.

In a foreclosure, the defaulting apartment owner does not pay the maintenance fee while continuing to enjoy all common benefits, (e.g., electricity, cable and water, maintenance, cleaning and management staff that clean and maintain the project on a daily basis, property and liability insurance). What results in that situation is that the other owners, in effect, are subsidizing the defaulting owner as to payment of their pro-rata share of common expenses. This is not fair to the owners who pay their maintenance fees in a timely manner. Many of the owners are retired and on fixed incomes and it is very burdensome for them to have to pay that extra expense, which usually occurs in the form of increased maintenance fees in the following year to cover a shortfall due to the Association's inability to collect maintenance fees from defaulting owners.

This bill helps condominium associations in a foreclosure by giving them a lien priority equal to an amount equal to 6 months of maintenance fees or \$3,600, whichever is less. This amount partially sets off the amounts that should have been paid by the defaulting owner to the Association to pay for its employees, insurance, utilities, water, and other common expenses that are incurred in the management and operation of a condominium.

We obtained the number, i.e., \$3,600, by reviewing online the annual condominium registrations filed with the DCCA, Real Estate Commission. Although there are thousand of registrations (since each condominium registered in the state is required to file one with the DCCA) we reviewed over 400 registrations and there were 4 projects where the monthly maintenance fee was between \$200-\$300 and there were many where the maintenance fees were over \$1,000. The median range appeared to be between \$500-\$700/month, thus \$600 X 6 months = \$3,600.

Part II proposes much needed amendments to the aging in place provisions in HRS 514B. This provision was enacted to allow Association staff to assist elderly residents who were experiencing issues in caring for themselves or whose conduct was affecting other residents in the building¹. This provision limits the liability of Association employees and attempts to provide tools for the staff to deal with these situations in a caring and professional manner.

We do however believe that this bill can be improved by making the following amendments:

1. Replace "unit owner" with "unit owner or resident" because not all residents are unit owners and the existing language does not allow the staff to assist residents who are not owners.
2. Delete the word "handicapped" and add a definition of "disabled"² as follows:

"A person who has a physical or mental impairment that substantially limits their ability to carry out normal day to day activities, provided,

¹ Many of the elderly are original owners who have aged in place and may have no close family members or friends or they have been abandoned by their own family, and the Association and its employees are then forced into a situation where they have to deal with residents who have dementia, who are physically frail, who have lost their mobility, or who may be hoarders (which can be a fire hazard to the other residents in the building).


² This definition is taken from the federal Americans with Disabilities Act ("ADA").

however, that this definition shall exclude current substance abuse and visual impairment which is correctable by prescription lenses.”

3. At page 2, line 22, replace the “:” with “.”
4. At the top of page 3 before the listed items (1) -(7), insert the phrase “This provision will apply to residents who are involved in the following situations where their actions or non-actions pose a risk to their health or safety or to others or may cause harm to the resident or others or where the physical or mental abuse may be life-threatening:”
5. At page 3, delete subsection (6) at line 7 and subsection (7) at line 8.
6. At page 3, line 17, the bill refers to the Association obtaining a “functional assessment” of the resident to determine what social or medical services may be required to allow that resident to live independently in the building. Unfortunately, because no specific state or county agency is named at page 3, line 20, for all practical purposes, the Association has not been able to get a functional assessment done. We suggest that a county agency be named or described in this bill, e.g., the Adult Protective Service or the State or County Office of Aging, and that the words “mental health or medical practitioner” also be added. In most if not all cases, the residents affected will not be indigent and would be able to pay for services rendered. This amendment would provide a useful tool to Association staff so that they would be able to assist these special residents maintain their independence as long as possible while living in the building.

Based on the foregoing, we respectfully ask that you pass out Part I unamended and that you amend Part II as requested in this testimony.

Thank you for the opportunity to testify.


Jane Sugimura
President