

JAN 23 2009

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Act 39, Session Laws of Hawaii 2000, took
2 effect in April 2000 and authorized condominium associations to
3 collect up to six months of maintenance fees or \$1,800,
4 whichever was less, in connection with the foreclosure of a
5 condominium apartment. Prior to Act 39, associations frequently
6 received nothing from the sale of an apartment in foreclosure
7 because all of the proceeds from the foreclosure auction would
8 go to the holder of the first mortgage. The purpose of Act 39
9 was to allow condominium associations some recovery from the
10 foreclosure of the condominium apartment, even if the holder of
11 the first mortgage was not paid in full. The provision
12 recognized that, since the association maintained and insured
13 the condominium apartment and the project in which it was
14 located, the association should recover something from the
15 foreclosure of the apartment.

16 The "cap" or limit of \$1,800 on the association's recovery
17 was based on information that the average monthly maintenance



1 fee in 2000 was \$300 per month. However, nine years later, the
2 average monthly maintenance fee is now well over \$400 per month.
3 Therefore, retaining the \$300 amount unfairly limits the
4 association's recovery in a foreclosure.

5 The purpose of this Act is to increase the cap on an
6 association's recovery to six months of maintenance fees or
7 \$2,400, whichever is less. In this way, associations will
8 continue to receive a fair share of the proceeds from the
9 foreclosure auction of a condominium apartment, to compensate
10 the association for its role in maintaining the value of the
11 condominium apartment, before, during, and after the
12 foreclosure.

13 SECTION 2. Section 514B-146, Hawaii Revised Statutes, is
14 amended by amending subsection (h) to read as follows:

15 "(h) The amount of the special assessment assessed under
16 subsection (g) shall not exceed the total amount of unpaid
17 regular monthly common assessments that were assessed during the
18 six months immediately preceding the completion of the judicial
19 or nonjudicial power of sale foreclosure. In no event shall the
20 amount of the special assessment exceed the sum of [~~\$1,800.~~]
21 \$2,400."



1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect upon its approval.

7

INTRODUCED BY: Rosalyn H Baker
By Request



Report Title:

Condominiums; Foreclosure; Maintenance Fees

Description:

Increases the amount that condominium associations may recover in maintenance fees from the foreclosure of a condominium apartment from \$1,800 to \$2,400.





HAWAII BANKERS ASSOCIATION

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

February 24, 2009

The Honorable Rosalyn H. Baker, Chair
The Honorable David Y. Ige, Vice Chair
Committee on Commerce and Consumer Protection
Hawaii State Senate

Testimony in **Opposition of SB 298** (Relating to Condominiums)

Dear Chair Baker, Vice Chair Ige and Committee Members:

I am Roy Amemiya, speaking on behalf of the Hawaii Bankers Association and requesting that you hold this bill at this time. Proponents of the bill have agreed to discussions with the HBA in an effort to determine an amount that is fair to the stakeholders involved.

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, the proposed increase to \$2,400 represents an increase of over 3% compounded annually over the 9 year period. Our meetings with other stakeholders will help determine if this percentage is fair.

More importantly, there are other similar bills moving through this Legislature that will impact mortgage holders. As the values of properties have and continue to decline, so has the probability that mortgage holders experience larger losses in foreclosure situations. Increasing the losses that lenders incur on foreclosures, may have the unintended consequence of restricting future loans to the condominium market. 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.

Thank you for the opportunity to testify.

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 24, 2009

Senator Rosalyn H. Baker, Chair
and members of the Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 298 (Condominiums)**
Hearing Date/Time: Tuesday, February 24, 2009, 8:30 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 \$2,400.

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 \$2,400. 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 recommend that the parties meet to resolve their differences just as they did in 2000.

Thank you for considering our comments.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)



SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION,
REGARDING SENATE BILL 298

Hearing Date : Tuesday, February 24, 2009
Time : 8:30 a.m.
Place : Conference Room 229

Chair Baker and Committee Members,

The Community Associations Institute Hawaii Chapter Legislative Action Committee ("CAI") supports SB 298 because it will increase the amount a condominium association can receive in a foreclosure. Unfortunately, it appears that the \$2400 provided by SB 298 may not be sufficient in these economic times, because of ever-increasing expenses. Therefore, CAI asks the Legislature to increase the limit above \$2400 or, better still, eliminate the limit altogether.

The problem for condominium associations has always been that, although they have a lien on each apartment in the project for delinquent maintenance fees, that lien is almost always behind the lien of the mortgage company. As a result, when the value of the condominium apartment drops below the amount of the mortgage on the apartment, the Association's lien is often worthless. For example, if a condominium apartment is worth \$300,000 but has a mortgage of \$400,000, under Hawaii's foreclosure law, if the apartment is sold for \$300,000, all the sales proceeds will go to the mortgage holder, the mortgage holder can take a deficiency judgment for \$100,000, and the Association will receive absolutely nothing from the sale except a deficiency judgment.

Act 39 (SLH 2000), which became effective 26 April 2000, was passed by the Legislature to remedy that problem. The act allows a condominium association to collect up to six months of maintenance fees – to a maximum of \$1,800 – in a foreclosure of an apartment. The association may claim that amount from a person who either: (i) purchases a condominium apartment at a foreclosure auction; or (ii) purchases a condominium apartment from a lender which purchased the apartment at a foreclosure auction. Most importantly, the six months can be claimed even if a lender with a prior claim is not paid in full in the foreclosure.

Unfortunately, inflation has undermined the effectiveness of Act 39. The maximum limit of \$1800 established in 2000 was a compromise between condominium associations and Hawaii lenders, based on an average maintenance fee in 2000 of approximately \$300. Unfortunately, the law has now been in effect for more than eight years, so at today's prices \$1800 is clearly inadequate to compensate the Association for the fact that it insures, maintains, and generally takes care of the foreclosed apartment during the foreclosure, for the benefit of the Association and the lender conducting the foreclosure of the apartment.

CAI Testimony Regarding SB 298

February 23, 2009

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For that reason, the limit of \$1800 must be increased to fairly compensate the Association for its important role in the foreclosure process. In fact, it appears that the \$2400 provided for in SB 298 will not be sufficient and should probably be increased to considerably more.

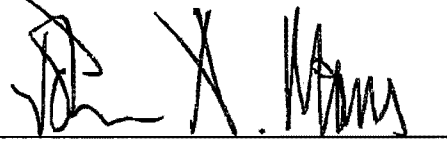
Finally, what Act 39 provides is not unusual. The legislatures of at least 14 other states (Alaska, Colorado, Connecticut, Florida, Minnesota, Nevada, Vermont, New Jersey, West Virginia, Pennsylvania, Rhode Island, Massachusetts, Oregon, Washington) plus Washington, D.C. have already passed similar legislation. Lenders in those other states have apparently recognized that none of them benefit from taking back an apartment in a condominium project which has been crippled by foreclosure losses.

Moreover, many of those states have no specific dollar limit or cap whatsoever on the Association's recovery. Instead, those states provide only that the Association should receive six months of maintenance fees in any foreclosure. Having the Association's recovery based on six months of maintenance fees, without an artificial dollar cap, means that each Association is compensated according to its standard maintenance fee. Eliminating an artificial dollar cap on the Association's recovery also means that associations will not have to return periodically to the Legislature asking that the cap be adjusted for inflation.

For those reasons, CAI hopes that this committee will pass out SB 298 with no dollar cap whatsoever and simply limit the Association's recovery to six months of maintenance fees. Certainly the \$1800 maximum presently provided by the law is insufficient to fairly compensate condominium associations nowadays, almost 9 years after the original act 39 was passed by the Legislature.

Thank you for this opportunity to testify.

Very truly yours,



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

JAM:all



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

February 24, 2009

Senator Rosalyn H. Baker, Chair
Committee on Commerce and
Consumer Protection

Testimony on SB 298 Relating to Condominiums

Dear Senator Baker:

Thank you for this opportunity to testify in opposition to SB 298, on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO). Our organization prefers SB 572 which provides that condominium associations may recover maintenance fees up to \$3,600. Your committee has already approved SB 572.

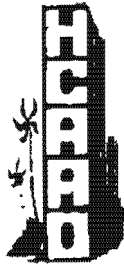
Currently, the average maintenance fee for a condominium association unit is approximately \$600 a month; thus \$3,600 represents the average monthly maintenance fee for a six month period. In actuality, foreclosures often take a year or more to complete. Moreover, some condominium maintenance fees are \$1,000 per month or higher. In addition, from the day that SB 572 is approved by the State Legislature, maintenance fees will begin to exceed the \$3,600 amount.

The members of our organization request that you hold SB 298 and continue to support SB 572.

Sincerely,

Richard Port

Richard Port, Chair
Legislative Committee



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

February 21, 2009

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

RE: TESTIMONY IN RE SB 298 RE CONDOMINIUMS
Hearing: Tuesday, Feb. 24, 2009, 8:30 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 an increase in Act 39 benefits but prefers the language in SB 572, which this committee passed out last week.

Accordingly, we ask that you defer action on this bill.

Thank you for the opportunity to testify.


Jane Sugimura
President

Steve Glanstein
P. O. Box 22885
Honolulu, HI 96823-2885

February 22, 2009

Sen. Rosalyn Baker, Chair
Sen. David Ige, Vice-Chair
Committee on Commerce and Consumer Protection
Hawai'i State Capitol, Room 229
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony supporting SB 298 with Amendments; Hearing Date: February 24, 2009; sent via fax to 586-6659 and e-mail to: CPNTestimony@Capitol.hawaii.gov.

Dear Chair Baker, Vice-Chair Ige, and members of the Committees,

I am an experienced Professional Registered Parliamentarian and have worked with more than 120 condominium association meetings last year. I personally was parliamentarian or chair for 81 of these meetings and have three assistants who assist with the other meetings.

It has been my custom for many years to provide the community with the benefit of my experience with numerous condominium, cooperative, and planned community association meetings (about 1,200 in 25 years). This testimony is presented strictly as an individual in that capacity.

Summary

I support SB 298 with an amendment to completely remove the cap.

Rationale

The bill proposes to increase from \$1,800 to \$2,400 the cap on the amount that a condominium association can collect in a judicial or non-judicial foreclosure.

I support this part of SB 298 WITH AN AMENDMENT TO REMOVE THE CAP for the following reasons:

1. The cap is an arbitrary number that **penalizes the other owners in the condominium** and forces them to pay for any deficiency resulting out of foreclosure.
2. The cap ignores the reality that many condominiums have maintenance fees that are greater than \$300 per month.

3. The cap ignores the reality that some condominium maintenance fees include water, air conditioning, and even electricity.
4. Finally, the banks and mortgage companies have options available to them that our Hawaii condominium associations don't have.

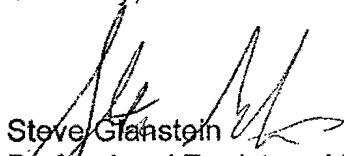
A bank or mortgage company can require maintenance fees to be paid into an escrow account similar to property taxes and lease rent.

Hawaii's condominium associations obviously can't escrow mortgage payments.

A similar bill (HB1639) removing the cap has already been approved in the House Committee on Consumer Protection and Commerce. I urge you to amend this bill by removing the cap.

I urge the committees to approve this bill with the proposed amendment. Thank you for the opportunity to present testimony on this subject.

Sincerely,



Steve Glanstein
Professional Registered Parliamentarian

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 21, 2009 3:11 PM
To: CPN Testimony
Cc: refrey2001@yahoo.com
Subject: Testimony for SB298 on 2/24/2009 8:30:00 AM

Testimony for CPN 2/24/2009 8:30:00 AM SB298

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Richard Frey
Organization: Individual
Address:
Phone:
E-mail: refrey2001@yahoo.com
Submitted on: 2/21/2009

Comments:

I support the increase in payment to condo associations for foreclosed property. This helps protect the interests of the other owners.