

SB 572

HAWAII COUNCIL OF ASSOCIATIONS
OF APARTMENT OWNERS

P.O. Box 726
Aiea, Hawaii 96701
Telephone (808) 566-2122

February 13, 2009

Sen. Suzanne Chun-Oakland, Chair
Sen. Les ihara, Jr., Vice-Chair

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

RE: TESTIMONY IN SUPPORT OF SB 572 RE CONDOMINIUMS
Hearing: Tuesday, February 17, 2009, 1:15 p.m. Conf. Rm. #016

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 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:

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").

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



HAWAII BANKERS ASSOCIATION

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

February 15, 2009

The Honorable Suzanne Chun Oakland, Chair
Committee on Human Services
The Honorable Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection
Hawaii State Senate (Joint Hearing)

Testimony "**In Strong Opposition**" to SB 572 (Relating to Condominiums)

Dear Senators Chun Oakland, Baker and Committee Members:

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 in its entirety.

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.

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 17, 2009

Senator Suzanne Chun Oakland, Chair
and members of the Senate Committee on Human Services
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 572 (Condominiums)**
Hearing Date/Time: Tuesday, February 17, 2009, 1:15 P.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)