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TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Wednesday, March 18, 2009
3:00 p.m.

**TESTIMONY ON SENATE BILL NO. 574, S.D. 1, RELATING TO
CONDOMINIUMS**

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Rod Maile, and I am the Senior Hearings Officer for the Office of Administrative Hearings, Department and Commerce and Consumer Affairs ("DCCA"). Thank you for the opportunity to present testimony on Senate Bill No. 574, S.D. 1, Relating to Condominiums.

Although DCCA does not believe that the number of requests for hearings filed to date with the Condominium Dispute Resolution Pilot Program ("CDR") Pilot Program pursuant to Hawai'i Revised Statutes ("HRS") §514A-121.5, as well as the Condominium Management Dispute Resolution ("CMDR") Pilot

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Program pursuant to HRS §514B-161, warrants the establishment of a permanent condominium dispute resolution contested case process, if there is significant support for the extension of the present CDR and CMDR Pilot Programs, DCCA would not oppose an extension of these Pilot Programs until June 30, 2011.

Thank you for the opportunity to testify on this bill.

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March 17, 2009

Representative Robert N. Herkes
Chair, Consumer Protection
and Commerce Committee
415 S. Beretania Street
Honolulu, Hawaii 96813

Re: SB574 SD1/Oppose
3/18/09 @ 3:00 p.m.

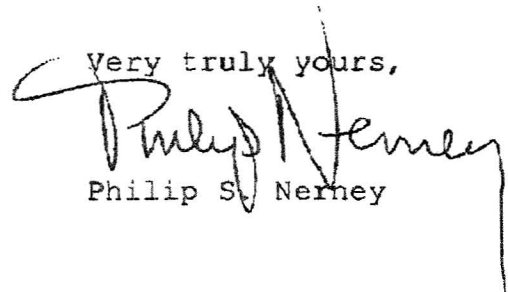
Dear Representative Herkes:

I am an attorney in private practice. I have represented condominium and community associations full time since 1990.¹ I oppose SB574 SD1, for reasons stated in relation to HB875 and not repeated here.

I do wish to note that previous testimony on both sides of the question of extending this pilot program has centered on the value of using an evaluative form of mediation to address condominium-related disputes. Indeed, some testimony has been to the effect that an extension of this pilot program is needed on an interim basis while the focus of attention shifts to the pursuit and development of a more frankly evaluative approach to condominium-related mediations.

Thus, it is to be hoped that future legislative efforts will be aimed at providing a non-adjudicative approach to condominium-related disputes. That will be of far more service to consumers than this pilot program has been.

Very truly yours,



Philip S. Nerney

¹ In the interest of fuller disclosure, I should mention that I am a member of the CAI Legislative Action Committee. I also volunteer at the Mediation Center of the Pacific as chair and trainer for the condominium specialty area. I mediate there and for the Family Court of the First Circuit (in child abuse and neglect cases). The latter service relates to the fact that I have a master's degree in counseling psychology (with a marriage and family emphasis).



Hawaii Council of Associations of Apartment Owners

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March 17, 2009

Rep. Robert Herkes, Chair
Rep. Glenn Wakai, Vice-Chair
House Committee on Consumer Protection and Commerce

RE: TESTIMONY IN SUPPORT OF SB 574, SD1 RE CONDOMINIUMS
Hearing: Wednesday, March 18, 2009, 3 p.m. Conf. Rm. #325

Chair Herkes, Vice-Chair Wakai and Members of the Committee:

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

HCAAO strongly supports this bill and requests that you pass it out unamended.

When this program was initially adopted, it was a 2-year program; however, because of problems associated with the recodification of HRS 514A, i.e., enactment of HRS 514B in 2 separate years, through no fault of anyone, it was mistakenly repealed when HRS514A was repealed and had to be corrected. It took two sessions to make the corrections to this program, which was intended to provide quick, economical resolution of disputes between apartment owners and their boards, has never had to chance to be fully tested.

During this past summer, representatives of the stakeholders on this issues, i.e., John Morris (CAI), Philip Nerney (Mediation/Association Atty.), Steve Glanstein (Parliamentarian), Richard Port (HICCO), Cynthia Yee (REC) Tracy Wiltgen (Mediation Center of the Pacific) met several times to try to come to some agreement on a dispute resolution program. There was a consensus among the members of the group that we would jointly ask the Real Estate Commission to establish and fund (from the condo education fund) an


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evaluative mediation program as an alternative to the existing facilitative mediation program and to include this program in their budget for the next fiscal year. Part of the funding would be used to train and compensate the mediators.

While I believe that an evaluative mediation program may be preferable to the condominium dispute resolution pilot project ("DCCA Hearings"), it will take some time for that program to be developed and we believe that the DCCA Hearings should remain in place as a "safety net" until the evaluative mediation program has been fully developed.

This committee may hear testimony that very few cases have been taken in by the DCCA Hearing and therefore the pilot program should be not be extended; however, the low numbers are likely a result of the fact that there has not been a pro-active campaign by the State to publicize the availability of this program. Also, there is no additional costs to the State if no cases are actually referred to the DCCA Hearings.

Thank you for the opportunity to testify.


Jane Sugimura
President