

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. The purpose of this Act is to clarify
2 condominium laws related to proxy votes and information
3 available to owners.

4 SECTION 2. Section 514B-123, Hawaii Revised Statutes, is
5 amended by amending subsection (d) to read as follows:

6 "(d) A proxy, to be valid, shall:

7 (1) Be delivered to the secretary of the association or
8 the managing agent, if any, no later than 4:30 p.m. on
9 the second business day prior to the date of the
10 meeting to which it pertains;

11 (2) Contain at least the name of the association, the date
12 of the meeting of the association, the printed names
13 and signatures of the persons giving the proxy, the
14 unit numbers for which the proxy is given, the names
15 of persons to whom the proxy is given, and the date
16 that the proxy is given; and



- 1 (3) If it is a standard proxy form authorized by the
2 association, contain boxes wherein the owner has
3 indicated that the proxy is given:
4 (A) For quorum purposes only; or
5 (B) To the individual whose name is printed on a line
6 next to this box[~~;~~
7 ~~(C) To the board as a whole and that the vote is to~~
8 ~~be made on the basis of the preference of the~~
9 ~~majority of the directors present at the meeting;~~
10 ~~or~~
11 ~~(D) To those directors present at the meeting with~~
12 ~~the vote to be shared with each director~~
13 ~~receiving an equal percentage].~~

14 The proxy form shall also contain a box wherein the
15 owner may indicate that the owner wishes to obtain a
16 copy of the annual audit report required by section
17 514B-150."

18 SECTION 3. Section 514B-126, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[~~§~~514B-126~~§~~] **Board meetings; minutes.** (a) Minutes of
21 meetings of the board shall include the recorded vote of each



1 board member on all motions except motions voted on in executive
2 session.

3 (b) Minutes of meetings of the board shall be approved no
4 later than the second succeeding regular meeting.

5 (c) Minutes of all meetings of the board shall be
6 available within seven calendar days after approval, and
7 unapproved final drafts of the minutes of a meeting shall be
8 available within [~~sixty~~] seven days after the meeting [~~;~~ ~~provided~~
9 ~~that the minutes of any executive session may be withheld if~~
10 ~~their publication would defeat the lawful purpose of the~~
11 ~~executive session~~].

12 (d) Minutes of each monthly meeting shall include all
13 monthly financial statements and any owner delinquent more than
14 ninety days and shall be accessible to an owner on the
15 association's website."

16 SECTION 4. Section 514B-150, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) The board shall make available a copy of the annual
19 audit to each unit owner at least thirty days prior to the
20 annual meeting which follows the end of the fiscal year. The
21 board shall not be required to submit a copy of the annual audit
22 report to an owner if the proxy form issued pursuant to section



1 514B-123(d) is not marked to indicate that the owner wishes to
2 obtain a copy of the report. If the annual audit has not been
3 completed by that date, the board shall make available:

- 4 (1) An unaudited year end financial statement for the
5 fiscal year to each unit owner at least thirty days
6 prior to the annual meeting; and
7 (2) The annual audit to all owners at the annual meeting,
8 or as soon as the audit is completed, but not later
9 than six months after the annual meeting[-], and shall
10 address in detail receipts, disbursements, expenditure
11 of reserves, contracts executed within the year, and
12 any pending litigation."

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

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

16

INTRODUCED BY: Norman Saker



Report Title:

Condominium; Proxy Vote; Information Availability

Description:

Clarifies condominium laws related to proxy votes and information available to owners.





SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION,
REGARDING SENATE BILL 499

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") opposes this bill because it makes changes that may have unintended consequences and will undermine the management and operation of condominium projects in Hawaii.

Section 2 proposes to eliminate the option that owners may give their proxies to the board of directors, either individually or as a group. Instead, owners will merely have the option of giving their proxies for quorum only or to a specific individual.

Allowing owners to give their proxy to the board of directors can be an effective way of allowing owners to participate in the management of their project. For example, if owners believe that the board has been doing a good job but are not familiar with the individual members of the board, they may wish to give their proxy to the board as a group, or even as individuals. There seems to be no reason why the law should eliminate the right of those owners to support their board of directors without naming individual members of the board on the proxy.

Moreover, the purpose of allowing owners to name the board of directors on their proxy was to eliminate past abuses where, for example, the president of the association might receive all of the proxies and control who actually served on the board. Often, if owners do not know the individual members of the board, they at least know the name of the president and might be inclined to give their proxy to the president as the only board member they know. That, in turn, allows presidents to control the board and who is serving on the board. Essentially, the president is receiving the benefit of the work of the board as a whole.

Section 3. First, the section proposes to eliminate the right of the board to withhold executive session minutes. The purpose of executive session is to allow the board of directors to discuss matters that have the potential to create liability for the association in a full and frank manner without fear that the information will leak to the other side or have adverse consequences for the association. Both purposes benefit the association, yet this bill will undermine those purposes.

CAI Testimony Regarding SB 499

February 23, 2009

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This section also proposes to attach monthly financial statements and owner delinquencies to the minutes. The information is already available to owners and will only make the minutes longer and more complicated than they need to be. Moreover, federal law on debt collection prohibits disclosure of information concerning delinquencies to non-owners, yet it is very common for prospective purchasers to request copies of association minutes. Therefore, it is possible that this requirement will violate federal law on debt collection.

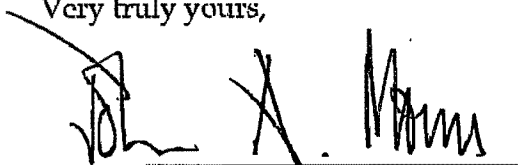
Finally, section 3 assumed, incorrectly, that every association has a website. If this bill passes, those associations without a website will immediately be in violation of the law.

Section 4. This section of the bill proposes to add unnecessary detail to the annual audit, even though the same information is already available to any owner who cares to ask. The purpose of unnecessarily complicating the audit is difficult to understand. Moreover, auditors have their own professional standards to follow in performing an audit and this bill may create problems for auditors who are unable to provide the necessary information while upholding their own standards.

CAI hopes that the Legislature will hold this bill since it creates far more problems than it attempts to solve.

Thank you for this opportunity to testify.

Very truly yours,



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

JAM:alt



H.I.C.C.O.

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 499 Relating to Condominiums

Dear Senator Baker:

Thank you for this opportunity to testify on the various sections of SB 499 on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO).


Our organization opposes changes in Section 2 of the bill, lines 7 through 13. Owners sometimes approve of what the Board of Directors is doing for the Association, and the current language in 514B allows owners to indicate this approval on their proxies. If an owner doesn't like what the Board of Directors is doing, that owner can write in the name of another owner or a particular member of the Board of Directors to represent him/her at Annual Association Meetings.

Regarding Section 3, we suggest that the 7 days in line 8 on page 3 be changed to 10 or 14 days. Regarding section 3 lines 12 to 15, we have no objection.

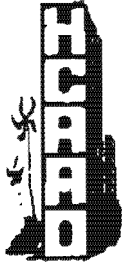
Regarding Section 4, we support these changes, but note that they will likely increase the cost of audits.

The members of our organization urge that you consider our comments regarding SB 499.

Mahalo,



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 OPPOSITION TO SB 499 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 opposes this bill in the following respects:

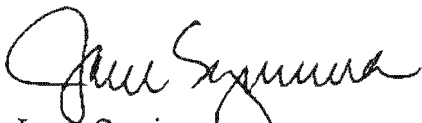
- In Section 2 of the Bill at page 3, deletion of subsections 3(C) and (D) of HRS 514B-123 on the grounds that we have not heard complaints or concerns about these provisions and these provisions allow owners who cannot attend the annual meeting a choice as to whether to give their proxies to the Board as a whole, to individual directors present at the meeting, to a named individual or to no one.
- In Section 3 of the Bill at page 3, in HRS 514B-126(c) replacing "sixty" with "seven" will be difficult because boards usually meet once a month and the final draft of the meeting minutes usually are not circulated for comments until the week before the meeting. The reason for making the draft meeting minutes available within 60 days was in case the board did not meet on a regularly monthly basis.
- In Section 3 of the Bill at page 3, in HRS 514B126(c) deleting the provision allowing the minutes of executive sessions to be withheld.

Boards are allowed to go into executive session to discuss employee and litigation matters, which usually require some confidentiality. It would defeat the purpose of executive sessions if the minutes were required to be published.

We have no objection to the addition of new subsection (d) to HRS 514B-126 in Section 3, at page 3 of the bill requiring monthly financial statements and 90-day delinquencies to be included with the minutes of the monthly meetings.

Accordingly, we ask that you not approve the (i) suggested revisions to HRS 514B-123 re the proxy forms or (ii) change to HRS 514B126(c) re the timing of the release of draft meeting minutes and withholding of executive session minutes.

Thank you for the opportunity to testify.


Jane Sugimura
President

From: anna kerr [annamalia2001@yahoo.com]
Sent: Sunday, February 22, 2009 12:59 PM
To: CPN Testimony
Subject: SB 499

Dear Baker, vice-chair Ige and members of the committee on Commerce and Consumer Affairs:

Testimony re: to Bill 499 re: Condominium Proxy vote and information availability.

I ask that you please pass this bill for the following reasons:

1) I would like to see board meeting and proxy votes done in a more democratic fashion. As it is now, when board members and the board as a whole get to have proxies, they can control the make up of the board and this is not democracy, this is domination. If a board can control who gets on, then they can control other things, too, ie: give contracts for work projects to board members (conflict of interest) and just generally do anything they please, without any regard to the owners, who happen to pay maintenance fees. This would make things more equal, out in the open and democratic.

I also agree with making the management company legally responsible for making sure that the board is complying with house rules, declarations and bylaws. In my condo, because the board has controlled who gets on it, they selectively enforce house rules, thereby creating chaos and lack of harmony in the apt dwelling. Our property mgmt company does not make sure that the board does things correctly, he states "I just do what the board tells me. We have got to make this a more democratic process and do away with secrecy and proxies going to the board. This is a very old fashioned style of government.

Management companies must ensure that condo law is abided by the board.

And as far as transparency, yes, ALL matters pertaining to the association must be available to ALL owners, and all contracts given, all legal matters, all lawsuits and all financial dealings MUST be transparent. I agree that a website is a good thing and that EVERYTHING is posted. I do not see the point of secrecy. We all pay our maintenance and we are all entitled to ALL and ANY info re: to the association.

And I agree with eliminating executive sessions. By using executive sessions, board members can hide things from owners and this is so UNDEMOCRATIC!

I ask you to do the right thing and pass this bill. Too many of the items in the CPR favor the board and give no protection to the owners. This needs to change.

Margaret Kerr Diamond Head Surf Condo ph 924 6694

From: Charles Torigoe [cktorigoe@hotmail.com]
Sent: Sunday, February 22, 2009 12:27 PM
To: CPN Testimony
Subject: SB499 CPN 02-24-09

Charles K. Torigoe

2092 Kuhio Avenue #1205 Honolulu, Hawaii 96815 Tel: (808) 450-2384 email: cktorigoe@hotmail.com

TESTIMONY

Re: SB 499 Relating to Condominiums
Tuesday, February 24, 2009, 8:30 am

Chair Baker, Vice-chair Ige and members of the Committee on Commerce and Consumer Protection:

Thank you for hearing this bill.

As a condominium owner, I feel a need to clarify a just few of the numerous problems facing resident owners of condominiums.

I speak for all the disenfranchised resident owners who are most affected daily by the association board and who are rendered powerless. I, and many other owners favor passage of this bill.

This bill deletes all proxies for the board, which has given absolute power to a few especially when its managing agent fails to adhere to the law that requires proper notification before mailing proxies.

This bill requires naming of a proxy which will enable others who feel that they can make a contribution to submit his/her resume` and statement and have an opportunity to sit on the board.

This legislation will also enable owners to remove officers and directors on the board who have intimidated occupants and who act in disregard to the welfare of the association; essentially acting in their own interest. For example, the resident manager of our project was witness to the association president threatening me with bodily harm. I filed a police report and was informed that I could file a TRO, which I declined to do. Immediately thereafter, the resident manager's computer was purged of all entries (the threat was included in his report) and a case made against the resident manager by this president to cause dismissal of our resident manager whom all the residents viewed to be forthright and caring; the best we ever had. This association was sued once before for wrongful termination and the plaintiff awarded more than \$350,000 paid in part by the owners. This was also a wrongful termination for which we could have suffered once again however, the person terminated declined to file a suit.

At this point, I would like to make a point of requiring that minutes be kept in executive session be accessible to owners via the web. After all, the owners are more than stockholders and liable for each and every decision made by the board. We also pay all of the monthly expenses and reserve for future repairs. We need more transparency and accountability.

We also do not know what the board has obligated us to in maintenance and construction contracts. We need to know that proper third party consultation has been employed. Therefore the requirement for a proper audit which encompasses reviewing of contracts and any impending litigation. A cash audit is simply not sufficient for anyone to make a decision on especially when buying a condominium.

In conclusion, this bill will not address all of our concerns but will help owners greatly in managing our affairs.

From: julia [juliaaloha@yahoo.com]
Sent: Sunday, February 22, 2009 12:42 PM
To: CPN Testimony
Subject: Testimony for SB499

Sunday, Feb
Testimony of Julia Ringgold
Re: SB499 Relating to Condominiums.
For February 24, 2009
Tuesday 8:30 am.

Chair Baker, Vice Chair Ige and Members of the Committee on Commerce and Consumer Protection;

I ask that you act favorably on this bill because it will ensure that condo owners like me have proper representation at the board meetings.
I ask that you act favorably on this bill because it will help prevent corruption at the board level by following a more democratic process.

Thank you,
Julia Ringgold
Computer Specialist
Holy Nativity School
Honolulu, Hawaii 96821

(808) 373-3232

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

February 22, 2009

Sen. Rosalyn H. Baker, Chair
Sen. David Y. Ige, Vice-Chair
Committee on Commerce and Consumer Protection
Hawai'i State Capitol, Room 016
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony OPPOSING SB 499; Hearing Date: February 24, 2009; sent via facsimile 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 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

1. The bill appears to be the result of one person's gripe with a condominium association and its board of directors.
2. The bill interferes with the self-governance of condominium associations without any compelling government interest.
3. The bill, if enacted, will have numerous unintended consequences that will adversely affect the entire condominium community (1,628 condominium associations registered with the Real Estate Commission, representing about 151,942 condominiums as of June 4, 2008).

SECTION 1

This section provides that the purpose of the bill is to "clarify condominium laws relating to proxy votes and information available to owners."

The bill actually **changes** the condominium law relating to proxies (Section 2), the information available to owners (Section 3), and the contents of the audit report (Section 4).

SECTION 2

This section removes the requirement that a proxy sent out by the association contain boxes permitting the proxy-holder to authorize the board members present as an entity or individually to cast their vote.

The unintended consequence is that associations will once again direct that owners give their proxy to one individual (usually the president). This was the situation in the early 1980s before the proxy legislation mandated many of these additional requirements.

Owners who are satisfied with their board's actions and don't plan to attend the annual meeting will normally give their proxy to the board. If they are not satisfied with the board's actions, then they designate another individual as a proxy-holder or they can make it more difficult for an association to approve any business by using the "quorum only" box.

This change is unneeded.

SECTION 3

This section requires that minutes of each monthly meeting:

- (a) include monthly financial statements,
- (b) list any owner delinquent more than 90 days, and
- (c) be accessible to an owner on the association's website.

Monthly Financial Statements:

Minutes are official actions. The monthly financial statements of condominium associations are almost never approved nor audited. (Robert's Rules recommends against approving an unaudited financial statement.) The monthly financial statements are not official actions; they are unverified reports provided for information only.

The attachment of monthly financial statements to the minutes creates a presumption that they are official financial statements of the association. This is not true. The monthly financial statements are presented for information, unverified, and unaudited.

The unintended consequence is that prospective buyers or owners may assume that the financial statements truly reflect the condominium association's financial position.

Delinquencies:

There may be Fair Credit Reporting Act considerations for this. The bill provides no exception for disputed payments nor statement of specific detail to be included.

Accessibility via a website:

This has numerous unintended consequences. First, some associations don't have a website. How would they comply? There are over 1,600 condominiums in Hawaii. Does the legal interpretation require that all condominium associations have a website? Some condominium associations only have 4 units.

Second, there are several websites that are not restricted. Some use generic userids and passwords for access. There is a security possibility that names of delinquent owners will be open for Google access.

Third, some boards don't meet monthly, this section refers to "each monthly meeting."

Fourth, there is no exception for the executive session of a board that may be part of a monthly meeting. These minutes may include attorney-client confidential information, settlement agreements, personnel actions, etc. and must be kept confidential.

SECTION 4

This section adds a requirement that the annual audit contain, "address in detail receipts, disbursements, expenditure of reserves, contracts executed within the year, and any pending litigation."

This has numerous unintended consequences.

First, an association with 500 units and monthly payments has at least 6,000 receipts per year. The payments may differ, depending upon the monthly maintenance fee, lease rent (if any), and other charges. There can be hundreds or thousands of receipts, which are not addressed in detail in Hawaii's condominium audits.

Second, the auditor may not have the detailed knowledge to comply with these requirements.

Third, the auditor may not have the expertise to include contracts or even validate any issues relating to the reserves or pending litigation.

Finally, it makes no sense to require an auditor charging more than \$100 per hour to address this detail in an audit.

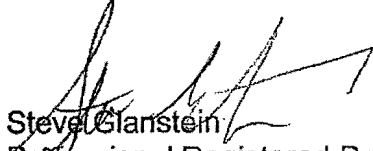
The research will probably be done by property management companies. They will charge the associations at a similar hourly rate and the auditor will simply (a) add it to the report and (b) refuse to express an opinion on it. (Some auditors do this with reserve studies.)

Conclusion:

The bill interferes with the self-governance of condominium associations without any compelling government interest. If enacted, there will be numerous adverse consequences.

I urge the committees to hold this bill. Thank you for the opportunity to present testimony on this subject.

Sincerely,



Steve Glanstein
Professional Registered Parliamentarian