

HOUSE COMMITTEE ON CONSUMER PROTECTION
HOUSE COMMITTEE ON JUDICIARY
REGARDING HOUSE BILL 581

Hearing Date : WEDNESDAY, February 16, 2011
Time : 8:30 a.m.
Place : Conference Room 325

LATE TESTIMONY

Chair Herkes, Chair Keith-Agaran, and Members of the Committees,

My name is Bruce Howe and I am testifying against HB 581. I am Co-Chair of the Legislative Action Committee of the Community Associations Institute and I have been involved with condominiums in Hawaii since 1992 as a managing agent.

I'm testifying in opposition to this bill because it is unnecessary since HRS 514B154 already provides adequate access to all information encompassed in this bill. The only purpose of the bill is to impose an artificially low limit on the "reasonable cost" that may be charged for providing the documents requested. Our national organization has produced a policy statement to combat similar misguided legislation that is being proposed across the country. While it applies to pre-sale disclosures, it is applicable to all aspects of HB581. It is clear and succinct and I have included it for your information below:

DISCLOSURE BEFORE SALES

IN COMMUNITY ASSOCIATIONS

Policy

CAI believes that homeowners should be informed about association matters that may impact their decision to purchase a home/unit and will educate them about their personal rights and responsibilities with regard to the community association. Disclosure documents/resale certificates are invaluable consumer information tools because it is vital that buyers know what they are buying. Disclosure documents/resale certificates should be mandated by state statute to ensure that every buyer is aware of essential information relating to his new home or unit and the community association.

CAI supports mandating disclosure documents/resale certificates for all ownership transfers of homes or units in a community association to ensure that the association is notified of every pending sale and that the transferee is aware of the obligations with respect to the property

It is the Public Policy of CAI that state legislatures should mandate disclosure to potential buyers of homes or units in community associations by providing copies of the following information:

- 1) Amount of current monthly assessments, maintenance fees and other charges for common expenses;*
- 2) Amount of approved special assessments;*
- 3) Association governing documents;*
- 4) Amount of reserve and capital funds available and committed to current or pending projects;*
- 5) Reserve study, if any;*
- 6) Current operating and reserve budgets and year-to-date financial statement;*
- 7) Insurance certificates indicating association-provided coverage;*
- 8) Pending litigation excluding routine assessment collections;*
- 9) Outstanding judgments against the association;*
- 10) Any amounts the current owner owes the association;*
- 11) Notice of any association alleged and uncured violation pertaining to the home/unit;*
- 12) Fees relating to the transfer of ownership or other transactions;*
- 13) A statement of the remedies available to the association as a result of non-payment;*
- 14) Current collection policy;*
- 15) Notice of any restrictions related to the leasing of a unit;*
- 16) List of association amenities;*
- 17) Contact information for the association;*

CAI recognizes that the preparer of the disclosure documents/resale certificates incurs expenses relating to the preparation and production of such documents and supports the right of the preparer to charge a reasonable fee for such transactions.

LATE TESTIMONY

Background

The Community Associations Institute (CAI) recognizes that buying a home or unit in a condominium, cooperative or planned unit development should be a positive event, but can be a stressful and confusing time for the buyer.

CAI believes that full disclosure is an essential tool to ensure that the consumer is aware of all relevant data that may impact the decision to purchase a home or unit in the community association. Resale certificates will also educate the consumer about rights and obligations as an owner of a home or unit in a community association.

Additionally, while community associations are obligated to maintain a roster of current owners, it is often impossible to track sales because of the voluntary nature of resale certificates. The association may not be aware that a new owner has taken possession of a home or unit until months or perhaps years later. Mandating the submission of resale certificates will enable associations to be alerted to ownership changes in a timely manner.

Frequently an association's management company serves to fulfill the requests for document production related to the sale of a property. Such requests may come several months in advance or with short notice. Preparers incur labor and material costs for such production and must attest to the accuracy of the information. As such, preparers should be allowed to charge a reasonable fee for the liability risk incurred by affirming the correctness of the information as well as the preparation and production of disclosure documents/resale certificates. Although most disclosures are of a routine nature, there may be transactions or circumstances that justify additional charges. Such fees, at the discretion of the association or its agent, may be required in advance of production to ensure costs incurred to the association are properly allocated to the parties to the transaction and in a timely manner. If the resale package is demanded without reasonable notice, an expedited charge may be warranted.

Adopted by the Board of Trustees, March 3, 2010

Both self managed associations and managing agents should be allowed to charge a reasonable fee for providing information. The cost of providing that information is not simply that of the copies involved, but of the labor of their employees which may be impacted by the timeliness of the request and the nature of the information requested. We feel that artificially depressing the amount allowed to be charged will, in the long run, be detrimental to the free and open flow of information envisioned by the current statute, HRS 514B 154.

Please contact me at 593-6888 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,

Bruce Howe