

SB 1499

Measure Title: **RELATING TO CONDOMINIUMS.**

Report Title: **Condominiums; Leasehold; Reporting Requirements**

Description: **Requires condominium projects or associations of apartment owners to submit with their biennial registrations with the real estate commission data on the number of leasehold units in a project or association and their appraised value.**

Companion:

Package: **None**

Current Referral: **CPN**

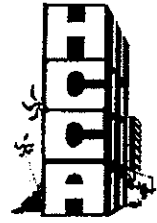


**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations

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February 19, 2011

Sen. Rosalyn H. Baker, Chair
Sen. Brian Taniguchi, Vice-Chair
Senate Committee on Commerce and Consumer Protection

Re: SB 1499 Relating to Condominiums [Biennial Registration]
Hearing: Wed., Feb. 23, 2011, 8:30 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Taniguchi and Members of the Committee:

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

HCAAO supports the intent and purpose of this bill and urges that you pass it out without requiring the submission of the appraised value of the leasehold units that are being reported. Neither the association (through their officers and directors) nor its property managers, who are the people who complete the registration form, have information regarding the value of leasehold units in a particular condominium building

Thank you for the opportunity to testify on this bill.

Jane Sugimura
President

Management Information Consultants

February 22, 2011

Chair: Senator Rosalyn H. Baker
Vice-Chair: Senator Brian T. Taniguchi
Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 229
415 South Beretania Street
Honolulu, HI 96813

RE: SB1499; Testimony in OPPOSITION; Hearing Date: 2/23/2011; Sent via web.

Dear Chair Baker, Vice-Chair Taniguchi, and Members of the Committee:

This testimony is provided in my capacity as a professional registered parliamentarian with more than 25 years' experience with numerous Condominium Associations and Planned Community Association clients.

I am opposed to SB1499 and request that it be held.

Section 2 of the bill proposes to amend HRS §514B-103(a) to add the requirement that associations of a certain size,

"Submit data on the number of leasehold units in each project or association and the appraised value of each of the leasehold units."

The current HRS §514B-103(b) states,

(b) The commission may reject or terminate any registration submitted by a project or an association that fails to comply with this section. Any association that fails to register as required by this section or whose registration is rejected or terminated shall not have standing to maintain any action or proceeding in the courts of this State until it registers. The failure of an association to register, or rejection or termination of its registration, shall not impair the validity of any contract or act of the association nor prevent the association from defending any action or proceeding in any court in this State. [L 2004, c 164, pt of §2; am L 2007, c 244, §6]

(Emphasis added.)

Any lack of "standing to maintain any action", such as a foreclosure or the seeking of injunctive relief in some cases is onerous and helps to ensure timely and complete condominium registration.

The bill is objectionable for several reasons:

1. Many condominium associations have converted most of their leasehold units to fee-simple. The condominium board may have limited or no knowledge of the remaining leasehold units after a lease to fee conversion is complete.

In many cases, a private investor purchases the fee simple interest because the lessee does not purchase it. The board may not be aware of the leasehold units without a title search.

Even if the lessee subsequently buys the fee, the board may not be aware of the purchase.

The association expense of obtaining an appraisal of a unit when the fee has already been purchased could subject the board to a claim of negligence. The most conservative approach for the board is to first obtain a title search to determine if any previous leasehold units were still leasehold or fee simple. This could add about a \$200 cost to each leasehold condominium unit in the state of Hawaii.

2. HRS §§466K-1 and 4 have restrictions and licensing requirements for real estate appraisers. It appears that any appraisal must be done by a licensed real estate appraiser rather than a property manager, board member, or interested owner.

Condominium unit appraisals may be expensive, possibly \$500-\$1,000 per unit. A leasehold condominium association such as Discovery Bay has almost 600 leasehold condominium units, including residential and some commercial units. The requirement for an appraisal of each unit could cost thousands of dollars for each registration.

The requirement to obtain data on the number of leasehold units in each project or association and the appraised value of each of the leasehold units is admirable in that it could provide statistical information on leasehold units in Hawaii condominiums.

This requirement must be balanced with the extraordinary cost of compliance and the unintended consequences on an unknown number of condominium associations.

Therefore, I urge the committee to hold the bill or at least revise the bill to provide for a better method for statistical collection of this information.

I may be contacted via phone: 423-6766 or by e-mail: stevegghi@gmail.com. Thank you for the opportunity to present this testimony.

Sincerely,

Steve Glanstein

Digitally signed by Steve Glanstein
DN: cn=Steve Glanstein
Date: 2011.02.22 00:47:06 -10'00'

Steve Glanstein, Professional Registered Parliamentarian
President
SG:tbs

JAN 26 2011

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 514A-95.1, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Each condominium project or association of apartment
4 owners having more than five apartments shall:

5 (1) Secure a fidelity bond in an amount equal to \$500
6 multiplied by the number of apartments, to cover all
7 officers, directors, employees, and managing agents of
8 the association of apartment owners who handle,
9 control, or have custody of the funds of the
10 association of apartment owners; provided that the
11 amount of the fidelity bond required by this paragraph
12 shall not be less than \$20,000 nor greater than
13 \$100,000. The fidelity bond shall protect the
14 association of apartment owners against fraudulent or
15 dishonest acts by persons, including any managing
16 agent, who have access to the funds of the association
17 of apartment owners. An association of apartment
18 owners shall act promptly and diligently to recover



1 from the fidelity bond required by this section. An
2 association of apartment owners that is unable to
3 obtain a fidelity bond may seek approval for an
4 exemption or a bond alternative from the commission.
5 The commission shall adopt rules establishing the
6 conditions and terms for which it may grant an
7 exemption or a bond alternative, or permit
8 deductibles. Failure to obtain or maintain a fidelity
9 bond in compliance with this chapter and the rules
10 adopted pursuant thereto, including failure to provide
11 current evidence of the fidelity bond coverage in a
12 timely manner to the commission, shall result in non-
13 registration or the automatic termination of the
14 registration, unless an approved exemption or a bond
15 alternative is presently maintained. Current evidence
16 of a fidelity bond includes a certification statement
17 from an insurance company registered with the
18 department of commerce and consumer affairs certifying
19 that the bond is in effect and meets the requirement
20 of this section and the rules adopted by the
21 commission;



1 (2) Register with the commission through approval of a
2 completed registration application, payment of fees,
3 and submission of any additional information set forth
4 by the commission. Beginning June 30, 1997, the
5 registration shall be for a biennial period with
6 termination on June 30 of an odd-numbered year. The
7 commission shall prescribe a deadline date prior to
8 the termination date for the submission of a completed
9 reregistration application, payment of fees, and any
10 additional information set forth by the commission.
11 Any condominium project or association of apartment
12 owners that has not met the submission requirements by
13 the deadline date shall be considered a new applicant
14 for registration and subject to initial registration
15 requirements. Any new condominium project or
16 association of apartment owners shall register within
17 thirty days of the association of apartment owners'
18 first meeting. If the association of apartment owners
19 has not held its first meeting within one year after
20 the recordation of the purchase of the first apartment
21 in the condominium project, the developer or
22 developer's affiliate or the managing agent shall



1 register on behalf of the unorganized association of
2 apartment owners and shall comply with this section,
3 except the fidelity bond requirement for association
4 of apartment owners. The public information required
5 to be submitted on any completed application form
6 shall include but not be limited to evidence of and
7 information on fidelity bond coverage, names and
8 positions of the officers of the association, the name
9 of the association of apartment owners' managing
10 agent, if any, the street and the postal address of
11 the condominium, and the name and current mailing
12 address of a designated officer of the association of
13 apartment owners where the officer can be contacted
14 directly;

15 (3) Submit data on the number of leasehold units in the
16 condominium project or association of apartment owners
17 and the appraised value of each of the leasehold
18 units;

19 ~~(3)~~ (4) Pay a nonrefundable application fee and, upon
20 approval, an initial registration fee or a
21 reregistration fee, and the condominium education
22 trust fund fee pursuant to section 514B-72 and rules



1 adopted by the director of commerce and consumer
2 affairs pursuant to chapter 91;

3 ~~[(4)]~~ (5) Register or reregister and pay the required fees
4 by the due date. Failure to register or reregister or
5 to pay the required fees by the due date shall result
6 in the assessment of a penalty equal to the amount of
7 the registration or reregistration fee; and

8 ~~[(5)]~~ (6) Report immediately in writing to the commission
9 any changes to the information contained on the
10 registration or reregistration application, the
11 evidence of the fidelity bond, or any other documents
12 set forth by the commission. Failure to do so may
13 result in termination of registration and subject the
14 condominium project or the association of apartment
15 owners to initial registration requirements."

16 SECTION 2. Section 514B-103, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Each project or association having more than five
19 units shall:

20 (1) Secure and maintain a fidelity bond in an amount for
21 the coverage and terms as required by section
22 514B-143(a) (3). An association shall act promptly and



1 diligently to recover from the fidelity bond required
2 by this section. An association that is unable to
3 obtain a fidelity bond may seek approval for an
4 exemption, a deductible, or a bond alternative from
5 the commission. Current evidence of a fidelity bond
6 includes a certification statement from an insurance
7 company registered with the department of commerce and
8 consumer affairs certifying that the bond is in effect
9 and meets the requirement of this section and the
10 rules adopted by the commission;

- 11 (2) Register with the commission through approval of a
12 completed registration application, payment of fees,
13 and submission of any other additional information set
14 forth by the commission. The registration shall be
15 for a biennial period with termination on June 30 of
16 each odd-numbered year. The commission shall
17 prescribe a deadline date prior to the termination
18 date for the submission of a completed reregistration
19 application, payment of fees, and any other additional
20 information set forth by the commission. Any project
21 or association that has not met the submission
22 requirements by the deadline date shall be considered



1 a new applicant for registration and be subject to
2 initial registration requirements. Any new project or
3 association shall register within thirty days of the
4 association's first meeting. If the association has
5 not held its first meeting and it is at least one year
6 after the recordation of the purchase of the first
7 unit in the project, the developer or developer's
8 affiliate or the managing agent shall register on
9 behalf of the association and shall comply with this
10 section, except for the fidelity bond requirement for
11 associations required by section [‡]514B-143(a)(3)[‡].
12 The public information required to be submitted on any
13 completed application form shall include but not be
14 limited to evidence of and information on fidelity
15 bond coverage, names and positions of the officers of
16 the association, the name of the association's
17 managing agent, if any, the street and the postal
18 address of the condominium, and the name and current
19 mailing address of a designated officer of the
20 association where the officer can be contacted
21 directly;



- 1 (3) Submit data on the number of leasehold units in each
2 project or association and the appraised value of each
3 of the leasehold units;
- 4 [~~3~~] (4) Pay a nonrefundable application fee and, upon
5 approval, an initial registration fee, a
6 reregistration fee upon reregistration and the
7 condominium education trust fund fee, as provided in
8 rules adopted by the director of commerce and consumer
9 affairs pursuant to chapter 91;
- 10 [~~4~~] (5) Register or reregister and pay the required fees
11 by the due date. Failure to register or reregister or
12 pay the required fees by the due date shall result in
13 the assessment of a penalty equal to the amount of the
14 registration or reregistration fee; and
- 15 [~~5~~] (6) Report promptly in writing to the commission any
16 changes to the information contained on the
17 registration or reregistration application or any
18 other documents required by the commission. Failure
19 to do so may result in termination of registration and
20 subject the project or the association to initial
21 registration requirements."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.
4

INTRODUCED BY:

Carol Fuhs-Comaga

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Enzanne Chun Leal

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Rosaly H. Sal



Report Title:

Condominiums; Leasehold; Reporting Requirements

Description:

Requires condominium projects or associations of apartment owners to submit with their biennial registrations with the real estate commission data on the number of leasehold units in a project or association and their appraised value.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Testimony for CPN 2/23/2011 8:30:00 AM SB1499

Conference room: 229

Testifier position: oppose

Testifier will be present: Yes

Submitted by: Richard Emery

Organization: Hawaii First Inc.

Address:

Phone:

E-mail: richard@hawaiifirst.com

Submitted on: 2/21/2011

Comments:

Association will not know the appraised value as leases tend to be long and often renegotiated without an appraisal. Furthermore, providing an amount would be disadvantageous at the time of renegotiating a lease or purchasing the fee interest. Anyone interested can get the assessed value over the internet at a public web site.

Testifier: Richard Port

Date of Hearing: Wednesday, February 23, 2011;

Time and Place of Hearing: 8:30 a.m. Conf. Rm #229

Bill Number and Title: SB 1499 Relating to Condominiums

Committee on Housing

Sen. Rosalyn H. Baker Chair

Sen. Brian Taniguchi, Vice Chair

Dear Senators Baker and Taniguchi,

Thank you for this opportunity to testify in support of SB 1499, with amendments.

The most important part of this bill is how many leasehold condominium units exist in Hawaii today.

It is not necessary for this bill to include the appraised value of the leasehold units. Therefore, I ask that you amend the bill to only require that the biennial registration of condominiums include the number of leasehold units in each condominium building.

Please support SB 1499 with the amendment I have suggested.

Richard Port

Testimony for CPN 2/23/2011 8:30:00 AM SB1499

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Ted Walkey

Organization: Individual

Address:

Phone:

E-mail: tedwalkey@hmcmt.com

Submitted on: 2/22/2011

Comments:

Who pays for the appraisals? Why not task the City&County to provide assessed value?