

SB 750

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums

Description: Permits members of condominium associations to make electronic recordings of association meetings for personal use.

Companion:

Package: None

Current Referral: CPN

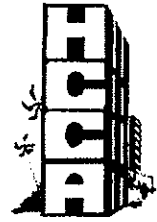


**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations

P.O. Box 726, Aiea, HI, 96701

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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 750 Relating to Condominiums [electronic recording]
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 transparency in condominium governance. While I have reservations regarding this particular bill, my Board does not support passage of this bill.

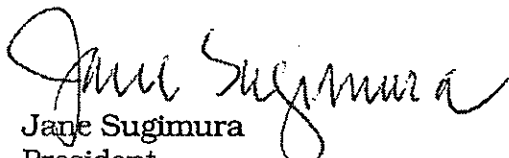
We have concerns relating to this bill as follows:

- In section 1 of the bill, a condominium meeting is described as a “public meeting”, which it is not. There are limitations on who can attend and who can participate. Only unit owners and guests invited by the Board are allowed to attend regular board meetings and the annual association meetings and unit owners are limited by statute as to the extent of their participation at those meetings.
- Many boards record meetings to prepare meeting minutes. If this bill passes allowing owners to make their own tape of the meeting, the board’s recording should be deemed to be the “official record” of the meeting in the event of any dispute.
- At regular board meetings, unit owners who wish to speak are usually required to give their name and their unit number so that that

information can be noted in the meeting minutes. Also, during the meeting discussions, mention is regularly made regarding issues as it affects specific units and their owners. The names of unit owners and their unit numbers are covered by State and federal privacy laws and this bill needs to exempt the Board from any liability if that information is not properly disseminated or disposed of. Technological advances allow recordings to appear on You-Tube and Facebook within hours of their recording and unit owners who record the meetings and who allow privacy information to be so disseminated must be legally accountable to any unit owner for violation of their privacy rights under state and federal laws.

Finally, there is nothing to prevent unit owners and the Board from agreeing to certain rules, procedures or protocols that would allow unit owners to tape a meeting for their own personal reasons subject to any existing state or federal privacy laws.

Thank you for the opportunity to testify.


Jane Sugimura
President



P.O. Box 976
Honolulu, Hawaii 96808

The Honorable Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection

RE: BILL: SB750
DATE: February 23, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Senator Baker and Members of the Committee:

This testimony is submitted on behalf of the Hawai'i Legislative Action Committee of the Community Associations Institute ("CAI"). CAI is a non-profit national and statewide organization whose members include condominium associations, planned community associations, residential cooperatives, homeowners, managing agents, and others involved in creating, managing, servicing, and living in common interest communities.

The purpose of SB750 is to allow members of condominium associations to record meetings of the association or the board of directors, provided that the association's by-laws do not prohibit such recordings, the board of directors is notified before the commencement of any recording, and the recording is made for the private personal use of the member making the recording or another association member. While innocuous on its face, this bill creates a number of concerns which compel CAI-LAC to oppose the bill in its current form.

First and foremost, unlike meetings of the Legislature, county councils, and neighborhood boards, meetings of associations and their boards are private meetings that are only open to members of the association and invited guests of the association or board; they are not open to the world. Allowing recordings to be made will chill the free and open discussion and debate that should occur at association and board meetings because it is only one step from recording these private meetings to putting the recordings online through YouTube and other social media. The bill's limitation to "private personal use" would not prevent this, as a member could argue that "private personal use" includes distribution of the recordings to anyone who the member claims to be a friend or to have some interest in the affairs of the association. Association and board members may well feel intimidated against speaking their mind on controversial issues by the thought that the supposedly private expression of their thoughts may be transmitted to anyone who can view a YouTube video. And, of course, members who are shy or nervous about public speaking will simply not participate if participating means having to speak with a video recorder stuck in their face.

The Honorable Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection
Page 2

Also, nothing in the bill prevents the maker of the recording from editing it with one of the many free or inexpensive, widely available, and easy to use video editing programs to falsely portray others in a negative light or to edit out portions which reflect unfavorably on the maker of the recording or the maker's friends. The result is likely to be multiple versions of the same meeting edited in different ways by different people for different purposes. Another possible result may be lawsuits by persons who believe they have been defamed by the way they are portrayed in someone's recording of a meeting.

Finally, we respectfully invite the Committee to imagine the chaos that may occur at association and board meetings with multiple members equipped with video recorders jostling for position to record speakers or the facial reactions of listeners, demanding that the meeting be recessed while they change tapes or memory cards, or insisting that speakers repeat remarks that they failed to record. It is not too much to predict that physical fights for the best recording location may occur just as they do between paparazzi at sightings of celebrities.

If the Committee desires to pass the bill despite these concerns, CAI-LAC respectfully suggests that members and boards of associations be allowed to prohibit or restrict recording by way of standing meeting rules which can be adopted or repealed by a majority vote rather than requiring the bylaws to be amended, which means that a 67% supermajority vote would be needed to prohibit recordings, as follows:

(1) Association bylaws or, if not prohibited by the bylaws, meeting rules do not prohibit recording of meetings;

We also suggest that subsection (c)(3) be amended to add "that the recording is not distributed or made available other than to another association member, and is only distributed or made available in a complete, unedited, and un-redacted form." In that regard, we suggest that violation of subsection (c) be made a petty misdemeanor.

Thank you for the opportunity to submit this testimony. If you have any questions, I can be reached at 697-6004 or by email at plahne@alf-hawaii.com.

COMMUNITY ASSOCIATIONS INSTITUTE
HAWAII LEGISLATIVE ACTION COMMITTEE



PHILIP L. LAHNE

Management Information Consultants

February 7, 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: SB750; 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 an experienced professional registered parliamentarian for numerous condominium associations and Planned Community Association clients.

Many Planned Community Associations have already adopted meeting rules **prohibiting taping or video-recording** at their meetings. A sample of the adopted rule is, "No video-taping or other electronic recording is permitted (except for production of the minutes) during any of the proceedings unless first approved by the Association members at the meeting."

These associations, who are not all clients, include at least,

- Bayview Estates (Hawaii)
- Ewa by Gentry Community Association
- Hokulia (Hawaii)
- Keauhou Estates (Hawaii)
- Kolea Community Association (Hawaii).
- Kukilakila Community Association
- Lokahi Makai (Hawaii)
- Mauna Olu Estates
- Moana Estates (Maui)
- Palehua Community Association
- Poipu Kai Community Association (Kauai)
- Puu Alii Community Association
- Puu Heleakala Community Association
- Royal Kunia Community Association
- Village Park Community Association
- Waianae Community Development Project
- Waikoloa Villages Association (Hawaii)

SB750, if it becomes law, will nullify and override at least these association rules. It would require an amendment to the association's bylaws in order to prohibit video-taping or other electronic recording.

There are several reasons for opposing HB2110.

1. Condominium Association meetings are private meetings, restricted to homeowners, proxy-holders, etc.
2. Videotaping and recording has been used to intimidate owners as well as board members.
3. The most recent example of video-taping becoming unruly occurred at the Ewa Neighborhood Board meeting in December 2009.

One individual insisted on videotaping the meeting, placing microphones behind the board chair and constantly moving behind and in front of the board members.

The aggravation to the public and the chair was patently obvious on the Olelo video which was also being produced. Finally, the chair adjourned the meeting due to loss of control and the potential for physical confrontations.

The private video-taping was eventually posted on Youtube.

The video of this meeting, including the public complaints about the videotaping is on Youtube at: <http://tinyurl.com/nb23-20091211>.

Another video of this meeting, with people expressing anger about videotaping and including an alleged threat of violence may be viewed through Youtube at: <http://tinyurl.com/nb23-20091211a>.

The video is also on Olelo at:
http://olelo.granicus.com/MediaPlayer.php?view_id=25&clip_id=10184

4. Another example occurred in a Pacific Grand meeting in November 12, 1997. There was contention with an owner who insisted on video-taping only those people he disagreed with. Owners became angry and the meeting was very contentious. Two individuals who were recording were both requested at least three times to stop disrupting the proceedings. A recess was called to summon the police. (Police report no. 97442319-Officer A. Ramos)
5. Videos and recordings have been altered or inappropriately used out of context.
6. Videos and recordings often fail to pick up parts of the meeting, leading to inaccurate results.

7. The technology with mini parabolic microphones permits directed recording of private consultations with attorneys and individual owners or board members.
8. SB750 states in part, "[t]he recording is made for the private personal use of the member making the recording or another association member." There are no sanctions for violation of this law. Also, once the video or recording is posted internationally, it is almost impossible to remove it.
9. SB750 ignores the inherent danger to an owner if a private owner comes to the meeting and informs the association about criminal behavior.
10. Even state boards and commissions under Chapter 92 don't have videotape mandates for their regular meetings.

I suggest that there must be a specific compelling public interest to override an association and their members' decisions to protect themselves from multiple video-taping, recordings, etc.

We know of one case in over 1,300 meetings where video-taping is helping an association and its members. In this case, the videotaping was approved **by the owners** after a promise was made to make a copy available to each of the requesting owners at cost. However, this decision was the **association's choice!**

Every owner has a right to go to the meeting and observe the actions of their fellow owners or board members. I don't believe they have an individual right to take pictures, record, use parabolic microphones, x-ray film, full-body scanners, etc. if it disturbs the assembly.

I believe there is a compelling public interest to permit Condominium Associations to govern themselves, in accordance with their documents. If anybody wants video, he or she can do it in accordance with policies that the association adopts, instead of the legislature.

I OPPOSE this bill and urge you to hold it.

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

Sincerely,

Steve Glanstein

Digitally signed by Steve Glanstein
DN: cn=Steve Glanstein
Date: 2011.02.07 23:07:59 -10'00'

Steve Glanstein, Professional Registered Parliamentarian
President

SG:tbs

MAUNA LUAN

511 Hahaione Street • Honolulu, Hawaii 96825

February 22, 2011

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

Re: SB 750 Relating to Condominiums (electronic recordings of meetings)
Hearing: Wednesday, February 23, 2011, 8:30 a.m.

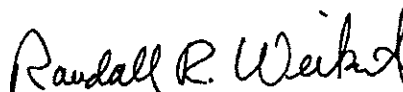
Chair Baker, Vice Chair Taniguchi and Members of the Committee:

My name is Randall Weikert, I am the General Manager of the AOA Mauna Luan, Inc., and we are a member of the Hawaii Council of Community Associations (HCCA) and the Hawaii Chapter of the Community Associations Institute (CAI).

Our association has concerns regarding the current language contained in SB 750 with regard to permitting association members to record board and association meetings. Although Section 2, subparagraph (c)(3) states that the recording must be made for the private personal use of the member making the recording or another association member; our experience is that not all members will follow those requirements which could place the association and/or board of directors in a position of liability if another member's personal information were to be provided outside of the association. For us to support such a bill, we would like to recommend that language be added to specifically make any association member who tape records a meeting and subsequently disseminates any such personal information to the public, legally accountable for any violation of privacy rights and also to indemnify the association and/or board of directors from any liability. We respectfully request your consideration in making these changes to the draft bill.

Thank you for allowing us the opportunity to testify regarding this very important bill.

Sincerely,



Randall R. Weikert
General Manager



Ewa by Gentry

February 14, 2011

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 750/OPPOSE

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

I am the executive director of Ewa by Gentry Community Association, a 7,000 member common interest development (CID) in Ewa Beach and a member of the national governing organization of CID's, the Community Association Institute (CAI) and oppose HB 750. The adoption of this measure could lead to anarchy and litigation in CID's throughout Hawaii and may cause great harm to consumers and members of communities through costly lawsuits.

Generally, the law does not allow the general public into board meetings. While members may attend and address the board, the general public's right to access the board meetings is limited by the governing documents of most CID's. Even though there is no expectation of privacy in open meetings, boards are not precluded from adopting rules for their membership-only meetings that include restrictions on recordings. It should be noted that most judges prohibit audio and video recording in their "public" courtrooms so as to avoid the disruption caused by the recordings.

There are some negative aspects to taping meetings as owners who bring audio or video recorders to board meetings often do so to intimidate participants into silence, including attendees, or because they are threatening litigation. Sometimes they will have a lawyer sitting at their side as they record the meeting. Under such conditions, participants are likely to be reluctant to speak freely for fear of having their comments appear on the internet or used in litigation. The result is to suppress members' free speech rights; this is especially onerous in an environment with volunteer directors and owners raising legitimate concerns with the board. For these reasons, many boards elect to prohibit recorders.

There are many laws now that make it a crime to record confidential conversations without the other person's consent. However, it does not apply to open board or membership meetings (*Damon v Ocean Hills, Ca*), and recording a board meeting does not violate the penal code. Even if not prohibited by law, certain actions can still be subject to private restrictions. For example, an ordinance may allow 3 dogs

Ewa By Gentry Community Association

91-1795 Keaunui Drive • Ewa Beach, Hawaii 96706 • Tel: (808) 685-0111 • Fax: (808) 685-0114

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
Commerce and Consumer Protection

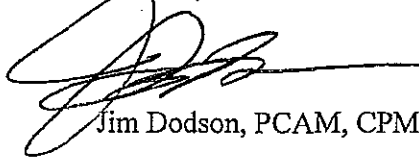
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per household, but an association's private covenants may restrict households to one dog. The same applies to recording meetings, what may be permissible by the state can still be restricted by the CID.

Boards and committees have the authority to create reasonable rules of conduct for their meetings, such as restrictions on recording, prohibiting foul language, abusive behavior, etc. The self-governing nature of CID's typically provides the authority and power to adopt rules in governing documents, and/or the Articles of Incorporation and Bylaws. Also, boards have the authority to record their own meetings for the purpose of preparing minutes, but may prohibit 3rd parties from doing so (just as judges do in their courtrooms). Associations can choose to broadcast meetings if they choose to do so.

I respectfully request that the committee hold or defeat SB 750 in its present form.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Dodson', with a long horizontal line extending to the right.

Jim Dodson, PCAM, CPM, CCAM

Testimony for CPN 2/23/2011 8:30:00 AM SB750

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 meetings are private meetings. In today's technology recordings can be edited or used for other purposes such as You Tube. Such recording practices will actually eliminate participation by owners who may be intimidated by being recorded.

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 750 Relating to Condominiums

Committee on Commerce and Consumer Protection

Sen. Rosalyn H. Baker, Chair

Sen. Brian T. Taniguchi, Vice Chair

Dear Senators Baker and Taniguchi,

I am testifying in strong support of SB 750. It is reasonable in these times in which the Hawaii State Legislature is a national leader in open government to support openness for owners who live in democratic communities called condominiums. Making condominium meetings more democratic will provide owners with better information about how their Boards are operating and will reduce the autocratic manner in which some condominium communities are run.

Your legislative hearings are open to our entire community and are often recorded in spite of some of the outrageous statements made by people who testify; condominium meetings should also be open to their communities as well.

I have no objection to any suggestion to amend the bill to indicate that the Boards own recording is the "official" version of the meeting, or to provide language protecting the condominium Board against liability for possible dissemination of privacy information or outrageous statements made by members.

In any event, I request that the Senate Committee on Commerce and Consumer Protection approve SB 750.

Thank you for this opportunity to testify in strong support of SB 750.

Richard Port

TESTIMONY FOR SB 750

BILL NUMBER AND TITLE: SB 750 RELATING TO CONDOMINIUM
DATE OF HEARING: WEDNESDAY, FEB. 23, 2011
TIME & PLACE OF HEARING: 8:30 A.M. CONFERENCE RM #229
TESTIMONY GIVEN BY: ALICE CLAY

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SEN. ROSALYN H. BAKER, CHAIR
SEN. BRIAN T. TANIGUCHI, VICE CHAIR

ALOHA SENATORS BAKER AND TANIGUCHI,

I STRONGLY SUPPORT SB 750 AND BELIEVE THAT ALL OWNERS SHOULD HAVE THE RIGHT TO REVIEW ALL THE MEETINGS OF THE ASSOCIATION OR THE BOARD OF DIRECTIONS, EXCLUDING EXECUTIVE SESSIONS, WHETHER FOR THEMSELVES OR TO SHARE WITH ANOTHER OWNER OF THE SAME ASSOCIATION.

AS WRITTEN IN SB #750, I REQUEST THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION APPROVE SB 750.

THANK YOU FOR ALLOWING ME TO SUBMIT MY SUPPORT FOR SB 750.

ALICE CLAY

Testimony for CPN 2/23/2011 8:30:00 AM SB750

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: gregory swartz
Organization: Individual
Address:
Phone:
E-mail: swartzg001@hawaii.rr.com
Submitted on: 2/22/2011

Comments:

I absolutely support the right of Association members to make recordings of Association meetings. Many members can not attend the meetings and the minutes prepared do not adequately reflect the comments at the meetings. At our annual meeting last week, our Association Board tried to get an amendment adopted prohibiting recordings. It was not adopted.

Frankly, I think the bill should be amended to require the Association Board to make recordings of all meetings and make them available to members without cost.

Testimony for CPN 2/23/2011 8:30:00 AM SB750

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Lyle Toepke

Organization: Individual

Address:

Phone:

E-mail: kltoepk@hawaii.rr.com

Submitted on: 2/18/2011

Comments:

Condominium meetings are NOT public meetings, there are limitations on who can attend. There are privacy issues involved that could be violated if video taping occurs. Video taping for personal use can be easily misused. Board meetings can be disrupted by video taping.

Testimony for CPN 2/23/2011 8:30:00 AM SB750

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: David O'Neal
Organization: Individual
Address:
Phone:
E-mail: oneald003@hawaii.rr.com
Submitted on: 2/15/2011

Comments:

Condo Associations are private entities, and information relating to their Association meetings is for Association members only. A video recording has the potential to be edited, changed, posted in a public domain, such as on the internet, and can end up causing more harm than good to an Association. Many Associations struggle to get volunteers to serve on their Boards, and having a video camera recording their every move will make it even more difficult, as many homeowners would not be comfortable being taped. Minutes to every Association meeting is available to every Association member, so there is nothing gained by video taping these meetings.