

HB 1464

Relating to Planned Community Assosications

Testimony in OPPOSITION from individuals of the general public:

Adam Alexander	Darrel Haring
James R. Anderson	Paul Ratterman
Emma Grubler	Lester Zeidman
Richard C. Hammond	Lisa Kalakau
Michael Flaherty	Jack Corteway
Warren F. Wegesend, Jr.	Bill East
Moana Heu	Hamilton Pieper
Richard Shell	Charles Zahn
Linda Morabito	John Cush
Art Schaupeter	Albert Denys
Claire Lachance	Stephen Lin
V. Jane Farrer	
Gordon Rush	
Kathleen Wojcik	
Richard Wojcik	
Warren Leland	
Beth Malvestiti	
Pamela Potter	
Michael A. Cooper	
Jim Mestanza	
Charles M. Jackson	
Michael Sowers	
David Medina	
Stephen Lewis	
Sandy Volk	
Rick Lederman	
Rosa McAllister	
Wayne D. Price	
Michael Gronemeyer	
Joseph D'Antonio	
Hazel Jean Rachkowski	

From: HSGtestimony
Subject: FW: Testimony for HB1464 on 2/2/2011 8:30:00 AM

-----Original Message-----

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]
Sent: Monday, January 31, 2011 6:42 AM
To: HSGtestimony
Cc: rrodriguez@crmlv.com
Subject: Testimony for HB1464 on 2/2/2011 8:30:00 AM

Testimony for HSG 2/2/2011 8:30:00 AM HB1464

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Richard Rodriguez
Organization: Consolidated Resorts Management
Address: 10 Hoohui Road, Suite 201 Lahaina, HI 96761
Phone: 808 669-9030
E-mail: rrodriguez@crmlv.com
Submitted on: 1/31/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 31, 2011 4:15 PM
To: HSGtestimony
Cc: gen_mgr@pcaonline.org
Subject: Testimony for HB1464 on 2/2/2011 8:30:00 AM

Testimony for HSG 2/2/2011 8:30:00 AM HB1464

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Rory Enright
Organization: Princeville at Hanalei Community Association
Address: 4334 Emmalani Drive Princeville, HI 96722
Phone: 808.826.6687
E-mail: gen_mgr@pcaonline.org
Submitted on: 1/31/2011

Comments:

We oppose this bill. The proposed changes to this statute would create 2 major problems: Members of the community would be even more hesitant to volunteer their time to running the community. Board positions are difficult to fill as it is. By increasing the levels of liability many qualified candidates would decide not to participate. Most communities have a minority of residents that choose to ignore the rules. These residents are the most likely to consider the community's notices and fines as a form of harassment when they are, in fact, the only tools available to the community to achieve compliance with the rules. These changes in the statute would make it even more difficult to enforce the rules.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 01, 2011 7:45 AM
To: HSGtestimony
Cc: Keithhz@Mac.com
Subject: Testimony for HB1464 on 2/2/2011 8:30:00 AM

Testimony for HSG 2/2/2011 8:30:00 AM HB1464

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Keith Hertz
Organization: Maui Sands
Address: 3559 lower Honoapiilani rd Lahaina Hi 96761
Phone: 808-381-6619
E-mail: Keithhz@Mac.com
Submitted on: 2/1/2011

Comments:

I feel I make very good decisions as a board member but if something is passed outside my power and then I am held financially accountable, I'll resign tomorrow. I am a volunteer not an employee. I was elected and give of my time for the greater good. This bill would open the gates for someone who didn't agree with my position to hold me financially responsible for their happiness. Does that even make sense to put a volunteer into that position?

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 01, 2011 1:45 PM
To: HSGtestimony
Cc: jdodson@ebgca.net
Subject: Testimony for HB641 on 2/2/2011 8:30:00 AM

Testimony for HSG 2/2/2011 8:30:00 AM HB641

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Jim Dodson
Organization: Ewa by Gentry Community Association
Address: 91-1795 Keaunui Drive Ewa Beach, HI 96706
Phone: 808 685-0111
E-mail: jdodson@ebgca.net
Submitted on: 2/1/2011

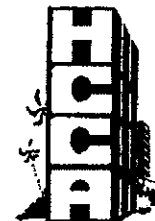
Comments:

There are 14,000 homeowners here that will not be protected by their governing documents if video recordings are used to harass and intimidate volunteer board's of directors simply trying to carry out the affairs of their community. Minutes are available of each meeting and everyone has the right to participate in the affairs of the association by attendance and volunteerism. If enforcing the CC&R's is legally required by statute, when does enforcement of them become interpreted to be intimidation and harassment by the board of directors? There are already laws governing an association's responsibilities, and no one should collectively or otherwise be held as harassing or intimidating for asserting a legal requirement to collect assessments or satisfy the architectural standards in a common interest development. Chapter 414D already addresses many of these issues. This bill is vague and unenforceable.



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

P.O. Box 726, Aiea, HI, 96701
Tel: 485-8282 Fax: 485-8288 HCAAO@hawaii.rr.com



January 31, 2011

Rep. Rida Cabanilla, Chair
Rep. Pono Chong, Vice-Chair
House Committee on Housing

Re: HB 1464 Relating to Planned Community Associations
Hearing: Wednesday, Feb. 2, 2011, 8:30 a.m., Conf. Rm. #325

Chair Cabanilla, Vice-Chair Chong and Members of the Committee:

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

HCAAO has the following concerns regarding this bill:

1. The terms "harass" and "intimidate" are not defined and, accordingly, those terms are vague and ambiguous, which can lead to uneven enforcement if this bill were to pass.
2. 421J does not include a provision imposing a fiduciary duty on board members.

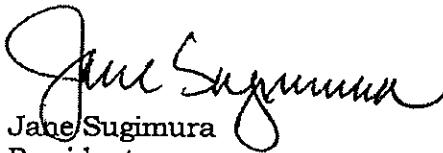
In order to address those concerns, I suggest that a provision be inserted similar to HRS 514B-106(a), which provides that "officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D¹." This provision incorporates the "business

¹ HRS §414D-149 [Business Judgment Rule] (a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee:

- (1) In good faith;
 - (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (3) In a manner the director reasonably believes to be in the best interests of the corporation.
- (b) In discharging the director's duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

judgment rule” in HRS 414D. This means that every decision by a particular board member should be in compliance with the business judgment rule and if not, then the board member will be in breach of his or her fiduciary duty to the association and its members, and can be held personally liable to the association or its members for any loss or damages resulting from that breach. In addition, in a breach of fiduciary duty claim, the board member may not be covered by the association’s officers and directors liability coverage since the carrier may deem that he or she was not acting within the scope of their authority by “ignoring” the business judgment rule.

Thank you for the opportunity to testify.


Jane Sugimura
President

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- (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
 - (2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
 - (3) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.
- (c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.
- (d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.
- (e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.
- (f) Any person who serves as a director to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss caused by or resulting from the person's performance of, or failure to perform duties of, the position to which the person was elected or appointed, unless the person was grossly negligent in the performance of, or failure to perform, such duties.



Mililani Town Association

95-303 Kaloapau Street
Mililani Town, HI 96789
Phone (808) 623-7300

January 30, 2011

Representative Rida Cabanilla, Chair
Representative Pono Chong, Vice-Chair
Committee on Housing
State Capitol
Honolulu, HI 96813

VIA E-Mail: HSGtestimony@capitol.hawaii.gov

Re: H.B. No. 1464 – Relating to Planned Community Associations
Hearing: Wednesday, February 2, 2011, 8:30am Conf Room 325

Dear Chair Cabanilla, Vice-Chair Chong and Committee Members:

My name is Eric Matsumoto, Vice-President of the Mililani Town Association (MTA). I have served in MTA leadership capacities on the board for 25 of the last 32 years. MTA encompasses 16,000 plus units involving both single family residences and numerous townhouse project sub-associations.

We strongly oppose this measure. While Section 1 provides the appropriate language for achieving good governance, Section 2 proposes three wrong reasons for achieving the statement of Section 1, as follows:

Section 2 would require the whole board be liable for loss of enjoyment of a member's real property from harassing or employing harasser(s) and when a board member, through a breach of loyalty gains financially benefits from a board decision or action, in cases where damages result from the breach.

In the many years I've been involved with MTA, the Hawaii Chapter of CAI as a past President and director, as well as Chair of the national CAI Homeowner's Committee and member of the Governmental Affairs Committee, I have not experienced the specific results described above. This has a very high degree of probability of a reaction of one homeowner who had or has an issue with the specific association. It is very evident by the language in sub-paragraph (c) where it appears that a board member had a financial benefit that caused unspecified damages.

It seems that creating legislation for what strongly appears to be an unhappy resident, is not warranted nor the prudent course of action for the homeowner to get resolution, as this measure effectively punishes every PCA in the state. As important is the very likely probability for PCAs to have difficulty finding interested, competent, community-minded homeowners to run for their boards.

Based on the above, we strongly request this bill be held. It is not in the best interest of achieving transparency and good governance of PCAs in the state.

Sincerely yours,

Eric M. Matsumoto
Vice-President, Board of Directors

Cc: Sen Kidani
Rep Lee, Rep Yamane

From: EKOMOMAI@aol.com
Sent: Monday, January 31, 2011 11:16 PM
To: HSGtestimony
Subject: RE: HB 1464

January 31, 2011

Representative Rida Cabanilla, Chair
Representative Pono Chong, Vice-Chair
Committee on Housing
State Capitol
Honolulu, HI 96813

VIA E-Mail: HSGtestimony@capitol.hawaii.gov

Re: H.B. No. 1464 – Relating to Planned Community Associations
Hearing: Wednesday, February 2, 2011, 8:30am Conf Room 325

Dear Chair Cabanilla, Vice-Chair Chong and Committee Members:

My name is Bob Bretschneider. I have been the president of our AOA in Waipio Genty (Liolio) for the past 20 years.

We strongly oppose this measure. While Section 1 provides the appropriate language for achieving good governance, Section 2 proposes three wrong reasons for achieving the statement of Section 1, as follows:

Section 2 would require the whole board be liable for loss of enjoyment of a member's real property from harassing or employing harasser(s) and when a board member, through a breach of loyalty gains financially benefits from a board decision or action, in cases where damages result from the breach.

In the many years I've been involved with MTA, the Hawaii Chapter of CAI as a past President and director, as well as Chair of the national CAI Homeowner's Committee and member of the Governmental Affairs Committee, I have not experienced the specific results described above. This has a very high degree of probability of a reaction of one homeowner who had or has an issue with the specific association. It is very evident by the language in subparagraph (c) where it appears that a board member had a financial benefit that caused unspecified damages.

It seems that creating legislation for what strongly appears to be an unhappy resident, is not warranted nor the prudent course of action for the homeowner to get resolution, as this measure effectively punishes every PCA in the state. As important is the very likely probability for PCAs to have difficulty finding interested, competent, community-minded homeowners to run for their boards.

Based on the above, we strongly request this bill be held. It is not in the best interest of achieving transparency and good governance of PCAs in the state.

Sincerely yours;

Bob Bretschneider
President Liolio AOA