

Wednesday, February 15, 2012

Committee On Consumer Protection & Commerce

Rep. Robert Herkes, Chair
Rep. Ryan Yamane, Vice Chair

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Testimony For HB1746

Members of the Committee On Consumer Protection & Commerce:

Thank you for this opportunity to testify in favor of this Bill.

This energy bill has generated a great deal of interest as it moves through the legislature, and my office has fielded informational calls from Condominium Board Presidents and Managers on both Oahu and Maui. Channel 4 made it their lead story.

The reason for the interest is that Hawaii is facing an energy shortage. Over the past year we have all seen higher utility costs, a matter serious enough for HECO to air recent commercials asking for conservation. Brownouts on all islands have become common. Meanwhile, housing development continues, and prognosis is that immediate future supply will not be able to keep up with demand. This Bill targets waste in residential condominiums, whose owners have faced massive increases in maintenance fees as a result of up to 40% higher energy costs over the last twelve months. If a Board of a high-rise complex chooses to sub-meter, individual residents will become accountable for the energy they use. On inception, a typical high-rise will see its electrical demand reduced by 2-5%, leaving that much more electrical energy available to everybody from businesses to single family homes. We are all pulling from the same source, and there's only so much power to go around.

Thank you for your attention.

Brian Grayling

Testimony for HB1746 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 14, 2012 5:19 PM
To: CPCtestimony
Cc: jneeley@alf-hawaii.com
Attachments: Changes to SB 2429 S.D.1 D~1.doc (37 KB)

Testimony for CPC 2/15/2012 2:00:00 PM HB1746

Conference room: 325
Testifier position: Support
Testifier will be present: Yes
Submitted by: Joyce Y. Neeley, Esq.
Organization: Community Associations Institute
E-mail: jneeley@alf-hawaii.com
Submitted on: 2/14/2012

Comments:

Strikeouts should be stricken; double underlined language should be added.

Page 3

Line 20 change to read:

20 ~~A lien on the unit. The p~~Priority of all the association's lien ~~liens on the unit~~
21 shall be as provided in the association documents or by the date of recordation of the liens
except as otherwise provided by the law, including Chapter 514B, Hawai'i Revised Statutes. ~~if~~
~~the association~~

[Rationale: While the language you have incorporated may be better for pca's, the liens of third parties should not be determined "by the association documents." Thus, "all" is stricken and replaced with "the association's lien." Also, lien should be singular if you accept my rationale. Finally, and most importantly, line 21 needs to be revised to clarify priority. Otherwise, condo's will not be able to argue that they are prior to pca's because of Chapter 514B and the statutory lien which sets up a priority. I think simply adding the language up to the comma before "law" will be enough -- Chapter 514B does not have to be mentioned expressly.]

Page 4

Strike out Lines 1 - 11.

[Rationale: The language on page 3 lines 21 (Beginning of sentence – "If the Association") to page 4 line 11 can be deleted in favor of the priority already described. However, if you do not want to use my priority language and prefer this language, it should at least be corrected by deleting the phrase "homeowners association" which is an undefined term in the Hawaii statutes and will create confusion. There are "planned community associations" (Chapter 421J), and "condominium associations" (Chapter 514B) and "residential cooperative apartments" (Chapter 421I). The latter is not involved in this Bill (and should not be); however, "homeowner associations" means nothing and should be replaced with "planned community associations and condominium associations."]

Strike out Lines 12 - 13.

[Rationale: Omit lines 12 and 13 on page 4 as they would resurrect the lien limit you have agreed is gone. It should either be replaced with the language I gave you on Association Lien Releases or simply stricken and the language on Association Lien Releases be added as a new provision following this provision. I assume that you want the Association Lien Releases to apply to all associations covered by the Bill (pcas and condos) and thus this language would most easily be put into 667. Otherwise, it must be put in 514B and 421J both.]

At the end of Line 19 add: This shall not, however, prevent the association from liening for fines, penalties, or late fees if the lien is also for unpaid assessments.

[Rationale: I believe that my language proposed to be added at the end of line 19 makes it clear what the task force asked for. I was told by the task force that if the lien is for assessments, then the fines, penalties and late fees are appropriate. (Regardless of what the task force believes, these categories are never the basis for a lien to our knowledge in this firm.) However, to maintain perspective, you need to keep in mind that the banks will charge all of these categories (and more) in their lien and regardless of whether any mortgage payments are due.

Also, another lawyer pointed out to me that this language will have the inadvertent effect of doing away with partial payment plans adopted by many associations. If an owner sends in a partial payment to a bank, the payment is applied first to attorneys' fees, then late fees, then interest, then penalties and so on. The same technique is used by associations, as it is frequently dictated by the recorded association documents and is recommended by CPA's who advise associations based on how banks account for partial payments. There has to be some technique adopted to apply partial payments for associations. By using a partial payment plan, an association will ensure that the only debt is for assessments. A debtor can easily stop associations from using partial payment policies adopted by the Board or in the recorded documents, by simply writing on his or her check that the amount is only to be used to pay for assessments, for example, and then federal law (FDCPA) will preclude the association from using its partial payment plan.]

Line 21 change to read:

21 to pay a reasonable rental for the unit, ~~if so provided in the~~
22 ~~association documents or the law,~~ In any such foreclosure, the unit owner shall be required to
pay a reasonable rental for the unit to the association and the plaintiff in the

[Rationale: I simply added this because I believe the pcas should be able to collect rent by statute as is provided for condo associations. See section 514B-146(a). Why should condos be better off than pcas?]

Page 9

Line 21 and 22 change to read:

21 approved by a majority vote of the unit owners, ~~in accordance~~
22 ~~with the voting method prescribed in the association documents,~~ [and add the following
language:] as provided in the association documents (i.e., by the voting method prescribed in
the association documents), who are present in person or by proxy or as otherwise permitted
by the association documents

[Rationale: Page 9 – line 21 and 22. This was my mistake and not the task force. If a majority vote were required as dictated by the governing documents, large pcas like Mililani Town, Waikoloa Village, Kaanapali Community Association (Maui), Golf Villas (Maui) and Kapalua (Maui) would be unable as practical matter to ever adopt these helpful techniques already available to condos.]

Page 10

Lines 9-11 change to read:

- 9 (1) A purchaser who holds a mortgage on a delinquent unit
10 ~~that was recorded prior to the filing of a notice of~~
11 which mortgage is not subordinate to the priority of lien by the association and who
acquires the

[Rationale: P. 10, line 9-11. This change is because not every mortgage recorded prior to the filing of a notice of lien is going to gain priority over the association lien. Many pca documents provide that only the first mortgage gets priority even if a second mortgage records before the pca files a notice of lien, (which is not even necessary for the pca in many instances.)]

Page 11

Lines 12-14 change to read:

- 12 regular periodic ~~monthly common~~ assessments that were assessed during the
13 twelve ~~six~~ months immediately preceding the completion of the
14 or nonjudicial power of sale foreclosure. In no event shall the amount of the special assessment exceed the sum of \$7,200.

[Rationale: P. 11, line 12 – PCA payments are oftentimes quarterly and not monthly (because they are so small). Thus, this is a change that needs to be made.

P. 11, line 13 – 14. The language that I added back in was negotiated by the association task force with the banks. If the banks don't care that we get 12 months of assessments from them or \$7,200 whichever is less, I do not see why the legislature should object. This ability to collect subsequent to a foreclosure auction in which an association is cut out altogether is a poor substitute for the approximately 20 states that give associations 6 months priority over bank liens because the association is required to maintain the collateral – electricity, water, insurance, exterior maintenance and landscaping. If Hawaii is not willing to go along with the 6 month priority for associations, it should be willing to allow banks to pay what they will voluntarily pay to associations after the auction.]

Page 12

Line 2 change to read:

- 2 (1) Any ~~other~~ special assessment, except for a special

Line 21 change to read:

- 21 shall not exceed the tenant's rent due at the time of demand ~~each month~~. [Comment: For consistency.] The tenant's

[Rationale: P. 12, line 2. I do not know what the word "other" refers to? I think it should be deleted.]

[Rationale: P. 12, line 21 This change was made to take out the word "month" because everyone agrees that tenants can rent for other periods. I thought "at the time of demand" would take care of that typographical error.]

Page 15

Lines 15-17 change to read:

15 "Assessment" has the same meaning as "common expenses" in
16 section 514B-3; except that in the case of planned community
17 associations under chapter 421J, the term means funds collected by an association from association members to operate and manage the association, maintain property within the community for the common use or benefit of association members, or to provide services to them. Assessment also means expenditures made by, or financial liabilities of, the association for operation of the property, and shall include any allocations to reserves. -Refers to funds

[Rationale: P. 15

Line 15 – John and I had agreed, I believe, to a longer definition of assessment that could be applied to both condos and to pcas. I think this proposed definition should be added to simplify matters.]

Testimony for HB1746 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, February 15, 2012 8:43 AM

To: CPCtestimony

Cc: mz9995@hotmail.com

Testimony for CPC 2/15/2012 2:00:00 PM HB1746

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Micheal Zehner
Organization: Individual
E-mail: mz9995@hotmail.com
Submitted on: 2/15/2012

Comments:

This would be a large cost to owners, likely thousands of dollars per unit for an older highrise.

My building has just had to upgrade its' fire alarm system. It cost over \$1000 per owner just for an small alarm speaker in each room and more smoke detectors in the hallways which were required by law due to elevator upgrades.

Putting in all these meters for water, gas, electric, and so on plus all the associated systems will cost thousands per owner in this difficult economy.