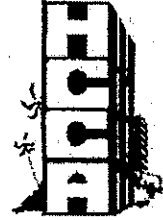




**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations

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



February 13, 2012

Rep. Rida Cabanilla, Chair
Rep. Ken Ito, Vice-Chair
House Committee on Housing

Re: Testimony in Opposition to HB 2721 HD1, Relating to Housing
Hearing: Wed., February 15, 2012, 9:15 a.m. Conf. Rm. #325

Chair Cabanilla and Vice-Chair Ito and Members of the Committee:

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

HCAAO opposes this bill on the grounds that (i) its unnecessary and (ii) there are due process issues with allowing associations to impose statutory liens on owners' units based solely on fines and penalties without judicial oversight.

Most if not all condominium associations and community associations already have provisions in their declarations and bylaws requiring unit owners to comply with the provisions contained therein and most if not all condominium associations have a fine system in place for violations of the House Rules.

Unlike non-payment of maintenance fees or association dues for which there is a right to a statutory lien, there is no such right where the lien relates solely to fines and penalties. Because of the factual and/or legal issues that arise under such claims, in order to preserve the owner's right to due process of law, these claims should be determined by a court and not by the association through its board of directors.

Finally, HB1875 Relating to Foreclosures, which seeks to implement the 2011 recommendations of the mortgage foreclosure task force to address various issues relating to the mortgage foreclosures law and related issues affecting homeowner association liens and the collection of unpaid assessments, expressly

provides that (at page 4, lines 10-12) “. . . **no lien may be imposed by the association against any unit for any assessment arising solely from fines, penalties, or late fees.**”¹ (Emphasis added.)

For these reasons, we respectfully ask that you defer action on this bill.

Thank you for the opportunity to testify on this bill.

Jane Sugimura
President

¹ Also see HRS 514B-146(i) which excludes “late charges, fines or penalties” from being included in the term “regular monthly common expenses”.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 14, 2012 12:58 PM
To: HSGtestimony
Cc: jdodson@ebgca.net
Subject: Testimony for HB2721 on 2/15/2012 9:15:00 AM

Testimony for HSG 2/15/2012 9:15:00 AM HB2721

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Jim Dodson
Organization: Ewa by Gentry Community Association
E-mail: jdodson@ebgca.net
Submitted on: 2/14/2012

Comments:

Many community's fine structures are proportioned based upon the egregiousness of the covenant violation. To limit a fine for failing to comply with an architectural construction violation is akin to brushing a roach off of a table...it is not going to stop anyone wanting to redesign a roof, window treatment, custom construction, etc. contrary to the covenants. Yes, we can still fine for failing to maintain a yard maintenance issue, and the \$100 fine is point appropriate for such a mundane violation. But what about exterior deck treatments that are not in compliance with the architectural standards? Same with stairways, clotheslines, balconies, and any common area encroachments, etc.?

Of course we can still file a "cease and desist" order to stop work, but there is no financial penalty of any value and one size does not fit all. Please increase the amount of the fine to at least \$500.

Testimony to the Senate Committee on Human Services
The Honorable Rita Cabanilla, Chair
The Honorable Ken Ito., Vice Chair
Members of the Committee

Wednesday, February 15, 2012
9:15am Room 325
State Capitol, Conference

Testimony by
Raelene Tenno
Condo Unit Owner since 1990

Bill No. and Title: HB 2721 RELATING TO HOUSING

Purpose: Requires any unit owner to comply with the declaration, covenants, bylaws, and administrative provisions of the association of owners. Establishes penalties and liens for violating the requirements of the association. Requires the association to establish rules to implement and enforce the requirements. Effective July 1, 2012. (HB2721 HD1)

Thank you for allowing me to submit written testimony on HB 2721, I apologize for not being able to personally attend the public hearing on February 15, 2012.

I have been a condo owner since 1990 and have served on the board as well as having the opportunity to service as the Association President for several years. I currently own 3 properties all in Condo Associations, so I am testify as an owner occupant and a landlord.

Although I understand the intent of this bill, I must respectfully oppose this bill.

My husband has a handyman repair business. We often come across owners in Planned Community Associations such as Mililani and Ewa where the house is aging along with the homeowners. Additionally, some are struggling just to keep up with the mortgage and maintenance fee payments. This is an unexpected circumstance that happens in the life of individuals and families. HB 2721 will just be another burden for these owners and more reason for new prospective buyers to be pushed away from the restrictive 421J and 514A or B. As an owner, I would appreciate the Association help in seeking a mutually agreed upon resolution rather than allowing an Association to foreclose on a Homeowner for a covenant enforcement which is hard to swallow and harsh. Could this be another homeowner that now faces homelessness only due to a covenant or House Rule violation?

But if we are talking enforcement due to suspected drug trafficking or prostitution etc then the Association needs to work daily with the proper authorities.

On the other spectrum are the owners (or the tenants) that create the nuisance to the Association by violating the By Laws and or House Rules. Most Associations have a stepped up violation fining system in place.

le: \$25.00 1st offense, \$100.00 2nd offense etc.

I'm dealing with a tenant right now with three House Rule violations for noise this year. Written in my rental lease are provisions for House Rule violations which include an additional fee. The Landlord tenant code (521-72) also provides protection for the landlord in allowing a termination of rental agreement for continuous violations. This is something that I did not know until today in dealing with the HR violations.

The consequences of HB 2721 could place heavy delinquent fees on the books that will hamper Association owners to refinance or prospective buyers from buying.

Thank you again for allowing me to submit testimony in opposition of HB2721

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 14, 2012 3:40 PM
To: HSGtestimony
Cc: joanipt@hawaii.rr.com
Subject: Testimony for HB2721 on 2/15/2012 9:15:00 AM

Testimony for HSG 2/15/2012 9:15:00 AM HB2721

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Joanne Taylor
Organization: Individual
E-mail: joanipt@hawaii.rr.com
Submitted on: 2/14/2012

Comments:

Associations that elect to have a fining process have amended their By Laws to include the process.
Existing owners are aware of the process, as they voted on it. New owners have access to the rules when they purchase.
There is no need to legislate how associations function.
Thank you.