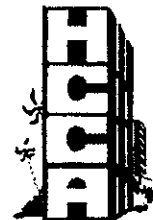




**Hawaii Council of Associations  
of Apartment Owners**  
**DBA: Hawaii Council of Community Associations**  
P.O. Box 726, Aiea, HI, 96701



March 31, 2011

Rep. Gil Keith-Agaran, Chair  
Rep. Karl Rhoads, Vice-Chair  
House Committee on Judiciary

Rep. Robert Herkes, Chair  
Rep. Ryan Yamane, Vice-Chair  
House Committee on Consumer Protection & Commerce

Re: SB 1125, SD2, HD1 Condominiums (Remove Sunset on Condo Court)  
Hearing: Monday, April 4, 2011, 2:15 a.m., Conf. Rm. #325

Chairs Agaran and Herkes, Vice-Chairs Rhoads and Yamane and Members of the Joint Committee:

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

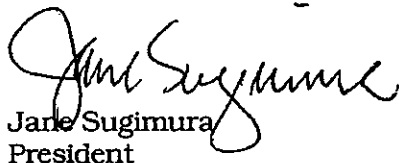
The House Housing Committee amended this bill and removed the repeal of the sunset provision and instead extended the sunset to 2015. Since this program is currently being used by the parties that were the intended beneficiaries, e.g., unit owners and Board of Directors, we ask that this joint committee reinstate the original language of the bill and repeal the sunset provision altogether so that we will not have to keep returning every few years to ask for an extension.

HCAAO has always supported programs that encouraged quick and inexpensive resolution of disputes between condominium unit owners and their boards. Under existing laws, the alternative dispute resolution programs available to unit owners and boards are (i) non-binding arbitration (HRS 514A-121 and HRS 514B-162), (ii) mediation and (iii) DCCA administrative hearings (HRS 514A-121.5 and HRS 514B-161). Whereas, mediation and arbitration may not result in a resolution of the dispute (i.e., the parties may not be able to reach a mutual agreement in a mediation and the non-prevailing party can choose not to abide by the arbitrator's decision in the non-binding arbitration), the DCCA administrative hearings always result in a final decision by the hearings officer (unless the parties are able to come to some agreement prior to the hearing.).

When the DCCA administrative hearings were initially adopted, it was a 2-year pilot program<sup>1</sup>; however, because of problems in 2006 associated with the recodification of HRS 514A, i.e., enactment of HRS 514B in 2 separate years, through no fault of anyone, the program was inadvertently repealed when HRS 514A was repealed and had to be corrected. It took two sessions to make the corrections that resulted in reinstatement of that program, which was intended to provide quick, economical resolution of disputes between unit owners and their boards when mediation failed and it has only been in operation since 2009. I was informed by the DCCA Office of Administrative Hearings that in 2009, 6 cases were filed and all were completed and in 2010, 6 cases were filed and 3 are still pending at this time. Attached is a copy of a page from the 2010 Real Estate Commission's Annual Report indicating that there were 34 requests for mediation in 2009 and 30 requests in 2010. Since mediation is a pre-requisite to the DCCA administrative hearings, based on the Commission's numbers, about 20% of the requests for mediation did not result in final resolution and proceeded to the DCCA administrative hearings where they were finally resolved.

The cost of the DCCA administrative hearings are paid from the Condominium Education Fund, which was established for the sole purpose <sup>2</sup>of educating Boards and association members as to their rights and obligations and to provide alternative dispute resolution programs so that they could avoid the time and expense to litigate their dispute.

Thank you for the opportunity to testify.

  
Jane Sugimura  
President

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<sup>1</sup> Because of a concern that "hundreds" of cases would be filed and would overwhelm the DCCA's limited resources, the law limited the number of requests for hearings to 30 per year.

<sup>2</sup> The Condo Education Fund was established by the legislative so as to minimize the effects of the notorious "condo wars" that were being litigated in the circuit courts in the early 1990's, which resulted in huge expenses to the associations, their unit owners, the boards and their insurance carriers. The monies in the Condo Education Fund do not come from the State's General Fund, but are collected from (i) the developers of new condominium projects and (ii) biennially (i.e., by June 30 of each odd-numbered year) from the owners of every condominium unit in the State through their associations.





P.O. Box 976  
Honolulu, Hawaii 96808

April 1, 2011

Honorable Gilbert S.C. Keith-Agaran  
Judiciary Committee  
Honorable Robert N. Herkes  
Commerce and Consumer Protection  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: SB1125/**OPPOSED**

Dear Chair Keith-Agaran, Chair Herkes and Committee Members:

I chair the CAI Legislative Action Committee. CAI opposes SB1125. This is so for a variety of reasons.

First of all, condo court has not functioned as its proponents wish it did, and it never will. The Office of Administrative Hearings ("OAH") adjudicates claims, based on legal standards. Condo court is not an informal process that brings people together.

Condo court adds no value whatever to the available options for adjudicating claims. The OAH Hearings Officers have no special expertise in condominium matters.

The established courts are available to adjudicate claims. Arbitration of condominium disputes is also provided for in H.R.S. Section 514B-162.

Moreover, condo court lacks significant utilization. The Office of Administrative Hearings has issued 16 decisions since July 2, 2004. That is just over two per year. What is the point?

The Real Estate Commission ("REC") is already authorized to provide informal interpretations of condominium law to consumers, pursuant to Subchapter 5, of Chapter 201 of Title 16 of the Hawaii Administrative Rules. That easy-to-access, low-cost and consumer-friendly resource is available now.

Honorable Gilbert S.C. Keith-Agaran  
Honorable Robert N. Herkes  
April 1, 2011  
Page 2 of 2

Mediation is also an option. The legislature should focus on improving the mediation opportunities available to consumers. CAI has proposed a minimal increase in the registration fee already paid by condominium associations in order to subsidize commercial quality mediation.

There are 156,444 registered condominium units, per the REC, so even a 15 cent annual increase per unit would yield \$23,466.60 per year. That would provide access to commercial quality mediation at subsidized rates, keeping in mind that demand for such services is relatively low and that some user fees would be appropriate. CAI has proposed this to the REC, which is reportedly considering the idea.

CAI entreats the legislature to simply abandon condo court. It was tried, it has done no good and the proper focus of legislative attention should be on supporting the availability of commercial quality mediation on a subsidized basis.

If SB1125 should move, however, please amend it in three particular ways. First, the sunset date should be 2012. The proponents have never objectively demonstrated an empirical case for condo court and they should finally be obliged to do so, without further delay.

If condo court is supposed to be a specialized small claims-type court, then (leaving aside that small claims court already exists) the jurisdiction must be limited. The whole notion is that condo court is supposed to be a simple and uncomplicated place to efficiently and economically attend to simple matters. Jurisdiction is presently too broad.

Even with a narrowed jurisdictional focus, there should be a determination of unsuitability provision, such as exists in H.R.S. Section 514B-162(c) (concerning arbitration). Condo court has no pretrial discovery and complicated matters simply should not be heard in such a venue.

There should also be trial de novo, such as exists in H.R.S. Section 514B-163 (concerning arbitration). Limited judicial review of a fixed record that omits pre-trial discovery, etc. really cannot provide justice.

Very truly yours,

/s/

Philip S. Nerney

## JUDtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, April 01, 2011 1:27 PM  
**To:** JUDtestimony  
**Cc:** richard@hawaiiifirst.com  
**Subject:** Testimony for SB1125 on 4/4/2011 2:15:00 PM

Testimony for JUD/CPC 4/4/2011 2:15:00 PM SB1125

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Richard Emery  
Organization: Hawai First Inc.  
Address:  
Phone:  
E-mail: [richard@hawaiiifirst.com](mailto:richard@hawaiiifirst.com)  
Submitted on: 4/1/2011

**Comments:**

Under current law, owners already have choices to resolve disputes such as mediation and a special form of arbitration. The pilot program has heard very few cases and the other options dominately used by owners. Currently the State is in a budget crunch and adding another alternative for dipsute resolution that hardly anyone uses that costs the State money makes no sense. Do what the NFL did with instant reply by going without it for awhile, Allow the condo court to sunset and revisit in the future. A waste of taxpayer dollars.

## JUDtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, April 01, 2011 1:42 PM  
**To:** JUDtestimony  
**Cc:** al@certifiedhawaii.com  
**Subject:** Testimony for SB1125 on 4/4/2011 2:15:00 PM

Testimony for JUD/CPC 4/4/2011 2:15:00 PM SB1125

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Al Denys  
Organization: Certified Hawaii  
Address:  
Phone:  
E-mail: [al@certifiedhawaii.com](mailto:al@certifiedhawaii.com)  
Submitted on: 4/1/2011

**Comments:**

Aloha,  
Please do not pass this bill. Condo Court hasn't worked and we need to move on. Mahalo.

## JUDtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, April 01, 2011 1:51 PM  
**To:** JUDtestimony  
**Cc:** stacey@certifiedhawaii.com  
**Subject:** Testimony for SB1125 on 4/4/2011 2:15:00 PM

Testimony for JUD/CPC 4/4/2011 2:15:00 PM SB1125

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Stacey Tokairin  
Organization: Individual  
Address:  
Phone:  
E-mail: [stacey@certifiedhawaii.com](mailto:stacey@certifiedhawaii.com)  
Submitted on: 4/1/2011

Comments:



## JUDtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, April 01, 2011 2:05 PM  
**To:** JUDtestimony  
**Cc:** tedwalkey@hmcmtg.com  
**Subject:** Testimony for SB1125 on 4/4/2011 2:15:00 PM

Testimony for JUD/CPC 4/4/2011 2:15:00 PM SB1125

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Ted Walkey  
Organization: Individual  
Address:  
Phone:  
E-mail: [tedwalkey@hmcmtg.com](mailto:tedwalkey@hmcmtg.com)  
Submitted on: 4/1/2011

Comments:  
Condo court has not proven worthy of even additional evaluation. LLet it die.

## JUDtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, April 01, 2011 2:15 PM  
**To:** JUDtestimony  
**Cc:** Alan@CertifiedHawaii.com  
**Subject:** Testimony for SB1125 on 4/4/2011 2:15:00 PM

Testimony for JUD/CPC 4/4/2011 2:15:00 PM SB1125

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Alan Takumi  
Organization: Individual  
Address:  
Phone:  
E-mail: [Alan@CertifiedHawaii.com](mailto:Alan@CertifiedHawaii.com)  
Submitted on: 4/1/2011

**Comments:**

I believe this is a confusing issue for association boards and owners. There are already other ways to resolve issues.

## JUDtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, April 01, 2011 2:16 PM  
**To:** JUDtestimony  
**Cc:** [kananik@certifiedhawaii.com](mailto:kananik@certifiedhawaii.com)  
**Subject:** Testimony for SB1125 on 4/4/2011 2:15:00 PM

Testimony for JUD/CPC 4/4/2011 2:15:00 PM SB1125

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Kanani Kaopua  
Organization: Certified Management, Inc.  
Address:  
Phone:  
E-mail: [kananik@certifiedhawaii.com](mailto:kananik@certifiedhawaii.com)  
Submitted on: 4/1/2011

Comments:

## JUDtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, April 01, 2011 3:01 PM  
**To:** JUDtestimony  
**Cc:** jneeley@alf-hawaii.com  
**Subject:** Testimony for SB1125 on 4/4/2011 2:15:00 PM

Testimony for JUD/CPC 4/4/2011 2:15:00 PM SB1125

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Joyce Y. Neeley  
Organization: Individual  
Address:  
Phone:  
E-mail: [jneeley@alf-hawaii.com](mailto:jneeley@alf-hawaii.com)  
Submitted on: 4/1/2011

Comments:

## JUDtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, April 01, 2011 3:41 PM  
**To:** JUDtestimony  
**Cc:** duncan@certifiedhawaii.com  
**Subject:** Testimony for SB1125 on 4/4/2011 2:15:00 PM

Testimony for JUD/CPC 4/4/2011 2:15:00 PM SB1125

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Duncan Graham  
Organization: Individual  
Address:  
Phone:  
E-mail: [duncan@certifiedhawaii.com](mailto:duncan@certifiedhawaii.com)  
Submitted on: 4/1/2011

Comments:

Ikaika Pestana  
Account Executive  
Certified Hawaii, AAMC®  
3179 Koapaka St.  
Honolulu, HI 96819

April 1, 2011

Honorable Gilbert S.C. Keith-Agaran  
Judiciary Committee  
Honorable Robert N. Herkes  
Commerce and Consumer Protection  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: SB1125/**OPPOSED**

Dear Chair Keith-Agaran, Chair Herkes and Committee Members:

I oppose SB1125. This is so for a variety of reasons.

First of all, condo court has not functioned as its proponents wish it did, and it never will. The Office of Administrative Hearings ("OAH") adjudicates claims, based on legal standards. Condo court is not an informal process that brings people together.

Condo court adds no value whatever to the available options for adjudicating claims. The OAH Hearings Officers have no special expertise in condominium matters.

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Moreover, condo court lacks significant utilization. The Office of Administrative Hearings has issued 16 decisions since July 2, 2004. That is just over two per year. What is the point?

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Mediation is also an option. The legislature should focus on improving the mediation opportunities available to consumers. CAI has proposed a minimal increase in the registration fee

Honorable Gilbert S.C. Keith-Agaran  
Honorable Robert N. Herkes  
April 1, 2011  
Page 2 of 2

already paid by condominium associations in order to subsidize commercial quality mediation.

There are 156,444 registered condominium units, per the REC, so even a 15 cent annual increase per unit would yield \$23,466.60 per year. That would provide access to commercial quality mediation at subsidized rates, keeping in mind that demand for such services is relatively low and that some user fees would be appropriate. CAI has proposed this to the REC, which is reportedly considering the idea.

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There should also be trial de novo, such as exists in H.R.S. Section 514B-163 (concerning arbitration). Limited judicial review of a fixed record that omits pre-trial discovery, etc. really cannot provide justice.

Very truly yours,

/s/

Ikaika Pestana

## JUDtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, April 02, 2011 11:45 PM  
**To:** JUDtestimony  
**Cc:** gomem67@hotmail.com  
**Subject:** Testimony for SB1125 on 4/4/2011 2:15:00 PM

Testimony for JUD/CPC 4/4/2011 2:15:00 PM SB1125

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Eric M. Matsumoto  
Organization: Mililani Town Association (MTA)  
Address:  
Phone:  
E-mail: [gomem67@hotmail.com](mailto:gomem67@hotmail.com)  
Submitted on: 4/2/2011

**Comments:**

MTA consists of nearly 16,000 homeowners of both single family dwellings and 59 AOAOS. Since the start of the demonstration period, the use by homeowners and AOAOS has seen very little acceptance and hence the low frequency of use. Having gone this long with the low acceptance level, should trigger a move towards a process that has more acceptance by the parties for whom the process is created. This bill should be deferred and Condo Court allowed to sunset as slated.



## JUDtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, April 01, 2011 4:48 PM  
**To:** JUDtestimony  
**Cc:** candy@certifiedhawaii.com  
**Subject:** Testimony for SB1125 on 4/4/2011 2:15:00 PM

Testimony for JUD/CPC 4/4/2011 2:15:00 PM SB1125

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: C Villarmia  
Organization: Individual  
Address:  
Phone:  
E-mail: [candy@certifiedhawaii.com](mailto:candy@certifiedhawaii.com)  
Submitted on: 4/1/2011

Comments: