

SB2284

Measure Title: RELATING TO RESIDENTIAL REAL PROPERTY.

Report Title: Condominiums; Residential Real Property; Associations

Description: Requires that condominium property managers, associations of apartment owners, and planned community associations make association documents available to owners under reasonable terms, including through a property management company's or association's website, if one exists, and for reasonable costs.

Companion:

Package: None

Current Referral: CPN

Introducer(s): GABBARD, RYAN, Dela Cruz, Kahele, Shimabukuro

<u>Sort by</u> <u>Date</u>		Status Text
1/20/2012	S	Introduced.
1/23/2012	S	Passed First Reading.
1/23/2012	S	Referred to CPN.
1/31/2012	S	The committee(s) on CPN has scheduled a public hearing on 02-22-12 9:00AM in conference room 229.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Wednesday, February 22, 2012
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 2284 - RELATING TO RESIDENTIAL REAL
PROPERTY.**

TO THE HONORABLE ROSLYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Carol Ball and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on Senate Bill No. 2284, Relating to Residential Real Property. Senate Bill No. 2284 requires that condominium property managers, associations of apartment owners, and planned community associations make association documents available to owners under reasonable terms, including through a property management company's or association's website, if one exists, and for reasonable costs.

The Commission appreciates the opportunity to provide comments limited only to the sections of the measure relating to condominiums. It appears that certain proposed amendments have some unintended consequences:

- There are two condominium laws, Chapter 514A, Hawaii Revised Statutes ("HRS"), and Chapter 514B, HRS. The amendment made in Section 2, page 2, line 6, proposes to amend section 514A-84.5, HRS, by adding the association's "annual operating budget" as one of the documents that must

be kept at the managing agent's office. There appears no similar amendment proposed for Chapter 514B, HRS. A similar amendment should be proposed for Chapter 514B, HRS. If a 514A, HRS, association is experiencing an issue with the availability of an annual operating budget, a 514B association would be having a similar problem;

- Amendments proposed in section 3 require financial records be made available as hard copies for a reasonable fee and makes sets forth a protocol for the availability of certain records in electronic form. The proposed amendments on page 4 lines 7 to 16 relating to making the records available "in electronic form" appears ambiguous and vague and internally inconsistent. Additionally, the proposed amendments may be inconsistent with the intent of Chapter 489E, HRS, "Uniform Electronic Transactions Act" which allows for parties to agree to conduct transactions by electronic means. The proposed amendments may be best addressed by each condominium association through bylaw amendments;
- The proposed amendment on page 8, lines 18 to 19 that deletes references to sections 514B-152 and 514B-153, HRS, appears to have deleted the reasonable cost of \$1 per page for pages not exceeding 8 ½ inches by 14 inches (\$1 includes administrative and duplicating costs) for association records maintained pursuant to sections 514B-152 and 514B-153, HRS, but keeps the \$1 reasonable costs only for section 514B-154, HRS, records. The \$ 1 reasonable costs should be consistent for records made available for

sections 514B-152, 514B-153, and 514B-154, HRS. Subsection (j) of 514B-154, HRS, specifies what a "reasonable fee" is for obtaining copies of association records; namely not more than \$1 per page for pages not exceeding 8 ½ inches by 14 inches (\$1 includes administrative and duplicating costs). The proposed deletion on page 8, lines 18 to 19 makes subsection 514B-154(d), HRS, applicable **only** to association records maintained pursuant to section 514B-154, HRS. In limiting the application, the proposed amendments in effect deletes the requirement that the managing agent provide copies of association records to owners, prospective purchasers and their prospective agents for those documents and records specified in the current subsections 514B-153 (b), (c), and (d), HRS.

Thank you for the opportunity to provide comments on Senate Bill No. 2284.

February 21, 2012

**TESTIMONY SB 2284
OPPOSITION**

Community Associations Institute is OPPOSED to SB 2284 unless certain amendments are incorporated.

Association documents are available to owners through many sources to include a) governing documents are given to the owners as a part of the purchase b) the documents are recorded and available at the Bureau of Conveyances c) documents are often outsourced to independent companies such as local title companies that make them available for a fee d) from the management companies & e) from the Association. The documents are already available to owners under current Hawaii law. If the owner wants certain documents they may currently obtain same for a fee.

The problem with the Bill is that expands the obligations to prospective buyers and the owner's agent. Hawaii is known for its strong real estate laws that protect the buyer through strong disclosure. It is a process of providing written documentation of all disclosures to a buyer than in the event of a problem there is a written factual record. The Bill expands the availability of records to the prospective buyer and the owner's agent.

In essence, this Bill makes the management company a free administrative assistant to Realtors who are trying to make a sale without any consideration to liability and costs to perform such services. Association documents are typically not static but are documents subject to change on a regular basis.

- ✓ The management company has to ensure that the documents provided are the most recent available and are accurate. There is a labor cost.
- ✓ Management companies purchase liability insurance to protect itself from errors in services rendered. It is possible that a Buyer may allege that a document it reviewed without making a copy was not correct. RICO complaints are filed against management companies. Litigation and arbitration has been conducted on the correctness of document provided. There is a liability risk inherent with this service to the management company.
- ✓ Maintaining a web site is not free, there is a cost to develop and timely maintain a web site. The site is not a "public" site as the Association's information is private for Association members. **In today's world, downloading and changing or falsifying a document is easy.**
- ✓ Management companies cannot simply allow original documents to be reviewed in its office without supervision. An unsupervised owner or agent could simply take an important document that may be important for current litigation or other dispute. **There is a labor cost to protect the security of documents.** Management companies are the legal custodian

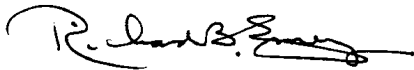
- of records. The management company should not be required to service every potential buyer who may be just casually interested in the property.
- ✓ There is an administrative cost to charge and record for the payment for copies of documents. Management contracts do not include this service as an association expense.

Although the Bill provides for a reasonable fee, it still brings the management company into the circle of the real estate sale which is not to the benefit of the consumer.

From our experience, rarely does an owner request these documents. The documents are requested regularly by Realtors. Management companies should not be required to service the prospective buyer or the owner's agent. The current real estate process protects the consumers through proper disclosures with verifiable chain of custody of records.

CAI opposes SB 2284 if the language includes obligations to prospective buyers and the owner's agent.

Warmest aloha,

A handwritten signature in black ink, appearing to read "Richard Emery". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard Emery