

**LATE**  
**SB92**

1001 Bishop Street, Suite 780  
Honolulu, Hawaii 96813-3410  
February 7, 2011

LATE

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
SENATE COMMITTEE ON JUDICIARY AND LABOR  
REGARDING SENATE BILL 92

Hearing Date : TUESDAY, February 8, 2011  
Time : 9:15 a.m.  
Place : Conference Room 229

Chair Baker, Chair Hec, and Members of the Committees,

My name is John Morris and I am testifying on SB 92. I have been involved with condominiums since 1988, when I served as the first condominium specialist with the Hawaii Real Estate Commission (from 1988 to 1991). Since then, I have served as an attorney advising condominium associations.

I am testifying in support of SB 92 since it is an attempt to place more legislative weight behind encouraging mediation. While the condominium law has provided for mediation for many years, the process has often been seen as an ineffective and poor stepchild of more formal dispute resolution procedures. Part of the problem has been the way in which the process has been presented.

Nevertheless, as the Real Estate Commission has recognized for many years, mediation has one overwhelming advantage that "decision-making" types of ADR do not have, namely, the parties reach their own solution, instead of the solution being imposed by a third party. In the latter situation, there are always winners and losers, whereas, under mediation, the parties develop their own solution and neither side has to be either a winner or loser. That is an important consideration when the parties must continue to live together in the same project.

Certainly, some disputes can be resolved in mediation simply by having the mediator help the parties come to an agreement. In that process, the mediator has to have no particular knowledge of the subject area but merely the skills to facilitate the resolution of disputes.

Nevertheless, in condominium disputes, there is often a lot of law to be considered and there are frequently parties who are convinced they are correct in their interpretation of the law. Those parties could benefit considerably from an independent but qualified

TESTIMONY REGARDING SENATE BILL 92

February 7, 2011

Page 2

evaluation of the claims they are making. In that situation, following a full evaluation by a qualified person, the dispute could well be resolved. This process, often known as evaluative mediation, is considerably different from the mediation process in which the mediator simply tries to help people resolve their dispute.

I personally have had experience with evaluative mediation in which a qualified mediator put an end to the dispute about alleged defects in a parking lot by explaining to the board that their claims of defect were not justified under the standard that is typically applied to paving in Hawaii. In that way, he short-circuited what could have turned into a long, drawn-out court dispute between the association and the contractor.

While the "condominium court" established with the DCCA was certainly a worthwhile attempt, the very small number of cases considered by the court in its long existence suggest that it is not the ultimate solution to resolving condominium disputes. Although it has had ample opportunity to develop a following, that following has never materialized because parties seem unwilling to use its services, for whatever reason.

While even evaluative mediation may not be the "magic bullet" that eliminates all condominium disputes, it is certainly something that should be fully supported by the legislature because, again, it has the great advantage of providing disputing owners with information about their claims and providing them with the opportunity to resolve those claims without one side feeling that he has lost the dispute.

With respect to the mechanics of how the program is administered, the Real Estate Commission's concerns should certainly be given great weight. Nevertheless, formal legislative support for a program of developing evaluative mediation with mediators who are qualified in their subjects may help give mediation the boost it deserves.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

RECEIVED  
FEB -1 6 00

Very truly yours,



John A. Morris

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 07, 2011 11:35 PM  
**To:** CPN Testimony  
**Cc:** egklee@aol.com  
**Subject:** Testimony for SB92 on 2/8/2011 9:15:00 AM

LATE

Testimony for CPN/JDL 2/8/2011 9:15:00 AM SB92

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Edward Lee  
Organization: HKP AOA  
Address: PO Box 25391 Hoonolulu HI 96825  
Phone: 808-348-7332  
E-mail: [egklee@aol.com](mailto:egklee@aol.com)  
Submitted on: 2/7/2011

Comments: