

HB 21, HD2

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Assessments; Liens

Description: Amends procedures for reimbursement for common assessments by condominium associations after delinquency or foreclosure. Authorizes collection of specified amounts for deposit into a reserve account to pay for unpaid common assessments in the event of foreclosure, or unit sale or transfer. Effective July 1, 2112. (HB21 HD2)

Companion:

Package: None

Current Referral: CPN, JDL

Introducer(s): EVANS



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION
THE TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION OF 2013

Thursday, March 14, 2013
9:30 a.m.

TESTIMONY ON H.B. NO. 21, H.D.2
RELATING TO CONDOMINIUMS

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

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"), offering comments on H.B. No. 21, H.D.2, Relating to Condominiums, on behalf of the Department of Commerce and Consumer Affairs ("DCCA" or the "Department").

In its current form, this bill would authorize an association of apartment owners to collect from each apartment owner an amount equal to 12 months of the regular monthly common assessment ("monthly assessment") on the owner's apartment. This sum would be collectable monthly, at a rate of up to 10% of the monthly assessment ("10% assessment").

The new 10% assessment will be included in lender calculations when qualifying a borrower for a mortgage loan. The relatively small amount should not greatly affect the underwriting of most condominium loans. However, there are likely to be some buyers who meet lender debt to income ratios for a condominium mortgage loan without the new 10% assessment, who will not be able to make the ratios when the new 10% assessment is factored in as an expense. Also, lenders will need to determine which condo associations are requiring this assessment. Hopefully, the new 10% assessment, if implemented by an association, will be known to a borrower in advance of formal disclosure in the condominium documents that are typically ordered while a mortgage loan is being processed.

In its current form, this bill would not impact the banks' ability to lend.

Thank you for the opportunity to provide comments on this measure. I would be pleased to respond to any questions you may have.

March 14, 2013

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: H.B. 21, H.D.2, Relating to Condominiums

HEARING: Thursday, March 14, 2013 at 9:30 a.m.

Aloha Chair Baker, Vice Chair Galuteria, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,000 members. HAR **opposes** H.B. 21, H.D.2, which amends procedures for reimbursement for common assessments by condominium associations after delinquency or foreclosure and authorizes collection of specified amounts for deposit into a reserve account to pay for unpaid common assessments in the event of foreclosure, or unit sale or transfer.

While HAR believes H.B. 21, H.D.2 is a laudable and innovative concept, this measure may only exacerbate the issue of unpaid monthly common expenses. It may also create difficulty for potential homeowners to qualify for financing and, in some cases, put the ability to purchase a condominium out of reach. For example, the collection of up to 10% may permit an AOA to collect an additional \$50.00 based on monthly common maintenance of \$500.00. Such collections will occur until \$6,000.00 or 12-month worth of common maintenance is accrued, which resorts to a 10-year assessment of \$50.00 and that is only if the common maintenance is maintained at the \$500.00 level.

Additionally, H.B. 21, H.D.2 does not permit a homeowner to utilize the accrued common maintenance and only permits the use of the funds after foreclosure. This defeats the purpose to help homeowners that may have run into a financial emergency. Retired homeowners, homeowners on fixed income, or homeowners that are going through a hard time will be adversely affected by not being able to utilize this large accrued source and will only be foreclosed upon.

For these reasons, HAR opposes H.B. 21, H.D.2.

Mahalo for the opportunity to testify.



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Presentation to
Committee on Commerce and Consumer Protection
March 14, 2013 at 9:30 am
State Capitol Conference Room 229

Testimony in SUPPORT of H. B. 21, HD2

TO: The Honorable Rosalyn H. Baker, Chair
The Honorable Brickwood Galuteria, Vice Chair
Members of the Committee

My name is Neal Okabayashi and I represent the Hawaii Bankers Association (HBA). HBA is the trade association representing all FDIC insured depository institutions operating in the State of Hawaii.

The purpose of this measure is to assist condominium associations with the collection of unpaid common assessments by permitting the association to rent the unit obtained during foreclosure and thus enabling the association to recover their delinquency. The language is based on a bill which passed out of this committee in previous years. We agree with the intent of this bill and support it in its present form, except to amend the defective date.

Thank you for this opportunity to testify and please let us know if we can provide further information.

Neal Okabayashi
(808) 525-5785

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

March 14, 2013

Senator Rosalyn H. Baker, Chair
and members of the Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 21, HD 2 (Condominiums)**
Hearing Date/Time: Thursday, March 14, 2013, 9:30 a.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA supports this Bill as drafted.

The purposes of this Bill are to: (1) amend procedures for reimbursement for common assessments by condominium associations after delinquency or foreclosure; and to (2) authorize collection of specified amounts for deposit into a reserve account to pay for unpaid common assessments in the event of foreclosure, or unit sale or transfer.

This Bill enables a condominium association to cover delinquencies by setting up a reserve. This Bill also makes it clear that if a condominium association acquires title to an apartment after a foreclosure, and if that association is able to later rent out that apartment, once the association receives from the rental income all the specified obligations owed to the association for that apartment, then any "excess rental income" will be disbursed to existing lien holders (e.g. a mortgagee).

We understand that condominium association representatives are divided on this Bill.

We support this Bill as drafted and request that the only amendment should be to make the effective date "on approval".

Thank you for considering our testimony.



MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813-2918
March 12, 2013

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
REGARDING HOUSE BILL 21, HD2

Hearing Date: THURSDAY, March 14, 2013
Time : 9:30 a.m.
Place : Conference Room 229

Chair Baker, Vice Chair Galuteria, and Members of the Committee,

My name is John Morris and I am testifying in favor, with comments on HB 21, HD 2. As originally drafted, this bill provided condominiums and other homeowner associations with a lien for delinquencies that had an absolute priority over the lien of any mortgage. In other words, like real property taxes, the association's claim for delinquencies would always be ahead of the claim of any mortgage lender. Concerns were expressed that although associations would benefit from this bill, at least in the short term, the bill in its original form might have unintended consequences.

Specifically, the concern was that the original version bill of HB 21 might have an adverse impact on mortgage lending in Hawaii by eliminating the first priority position that most lenders require as a condition of making a loan to fund the purchase of a condominium or other type of home. For example, if the bill had caused lenders to require a larger upfront payment from a purchaser to cover the anticipated expenses of the unlimited lien created by the original HB 21, that might have been counter-productive for those owners who could barely afford to make the initial down payment to purchase a home anyway. There was also the possibility that Fannie Mae, Freddie Mac, FHA, and VA might not accept the change and might refuse to purchase or insure mortgages if Hawaii law provided homeowner associations with an unlimited priority lien over mortgages.

Apparently, as a result of those concerns, HB21, HD2 has eliminated the absolute priority lien for associations. Instead the HD2 establishes a procedure that allows an association board of directors to collect what is, in effect, a delinquency reserve from each owner in the project. Under that process, if one of the owners later becomes delinquent, the association can use that owner's delinquency reserve to pay off the owner's unpaid assessments in the event of foreclosure of the owner's unit.

TESTIMONY REGARDING HOUSE BILL 21, HD2

March 12, 2013

Page 2

This seems a reasonable procedure for any board of directors that wishes to establish delinquency reserves for its members. Nevertheless, since the association's absolute priority lien in the original version of HB 21 has been eliminated, subsection (l) of HB 21, HD2 should also be eliminated.

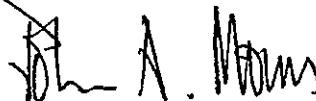
Subsection (l) provides that if the association: (i) collects rent while renting out a delinquent owner's unit; and (ii) eventually reaches the point where it is collecting more rent than it is owed in delinquent assessments, the surplus amount should go to the lender. That provision may have made sense when the association was being granted an absolute priority lien over the lender by the original version of HB 21. Under those circumstances, if the lender would end up paying the association for the unit owner's delinquency, the lender should receive some benefit from that obligation.

Under HB 21, HD2 as written, however, the provision no longer makes sense. There is no reason an association should pay surplus rent to the lender if the association is not receiving the benefit of an absolute priority lien over the lender. Instead, since HB 21, HD2 eliminates the absolute priority lien - in effect, returning to the same "every man for himself" scenario that currently exists under the law - the association should be able to retain any rent it collects. In other words, since there is no connection between the lender and the association under HB 21, HD2, each should be able to pursue its own remedies, subject to the current provisions of the law.

Otherwise, if the committee decides to keep the requirement that the association must pay surplus rental proceeds to the lender, the lender should also be required to pay any surplus proceeds it realizes from its collection procedures to the association. That would only be fair if the association has to provide the same collection service to the lender.

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

Very truly yours,



John A. Morris



P.O. Box 976
Honolulu, Hawaii 96808

March 12, 2013

Honorable Rosalyn H. Baker
Honorable Brickwood Galuteria
Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **HB 21 HD2/OPPOSE**

Dear Chair Baker, Vice-Chair Galuteria and Committee Members:

The undersigned are the Chair and the Vice-Chair of the CAI Legislative Action Committee. CAI opposes HB 21 HD2.

HB 21 HD2 lacks merit from a policy perspective and it is technically deficient. The HD2 version also reflects a complete reversal from the text and intent of the original bill.

The lien priority issue was addressed in 2011 and in 2012 in relation to the efforts of a mortgage foreclosure task force. Current law provides for a limited priority lien in favor of condominium associations.

A better bill can be crafted if the Committee perceives a need for action on this issue. In that case, the stakeholders could seek consensus and come to the legislature next session. There is no evident need for action at this time.

The deficiencies of HB 21 HD2 include:

Page 17, lines 1 to 21. This language lacks value and also casts doubt on a condominium association's authority to establish a budget pursuant to H.R.S. Section 514B-144. It is not appropriate.

- Associations already have the authority to take anticipated delinquencies into account when setting an annual budget.
- Charging a "premium" to owners who already cannot pay does not address the delinquency problem faced by condominiums.
- Adding complexity to an association's finances or accounting would increase association expenses.

Page 23, lines 13 through page 14, line 12

- The concept of "excess rental income" can only reasonably have meaning if the association has priority over lenders.
- HB 21 HD2 does nothing whatever to assure any recovery to associations. Lenders can still foreclose their superior liens at any time, including right after an association goes to the expense of foreclosing and paying for repairs to put a unit into rentable condition, and before it makes any recovery.
- There is no reasonable basis for making associations the rental agents of lenders.
- There is no reasonable basis for treating associations differently from any other purchaser at auction, so the language: "After any judicial or non-judicial foreclosure proceeding in which the association acquires title to the unit" (emphasis added) is unreasonable. Title received following an association foreclosure is subject to superior mortgages, but any purchaser at auction should have the same rights incident to ownership until the lender exercises its remedies.
- The obligation to pay "excess rental income" to others would put associations in legal jeopardy. The association would be liable to suit for paying the wrong claimant. The analogous problem faced by counties following real property tax foreclosures is addressed in H.R.S. Section 246-63. In that case:

If the officer is in doubt as to the person or persons entitled to the balance of the fund the officer may refuse to distribute the surplus and any claimant may sue the officer or the officer's successor in office in the circuit court in the circuit within which the property sold was situated. The officer may require the claimants to interplead, in which event the officer shall state the names of all claimants known to the officer, and shall cause them to be made parties to the action.

In all events, CAI maintains that consumers would be poorly served by the imposition of such unwarranted duties, risks and expenses onto condominium associations, essentially for the benefit of lenders that made poor underwriting decisions in the first place.

CAI had no role in the introduction of HB 21. That bill is technically deficient and lacks merit from a policy perspective. CAI respectfully requests that the Committee hold HB 21 HD2.

CAI, by,
Philip Nerney and Chris Porter

Jane Sugimura
98-340 Koauka Loop, #112
Aiea, Hawaii 96701

March 12, 2013

Sen. Rosalyn Baker, Chair
Sen. Brickwood Galuteria, Vice-Chair
Senate Committee on Commerce and Consumer Protection

Re: HB21, HD2 Relating to Condominiums
Hearing: Thursday, March 14, 2013, 9:30 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Galuteria and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO), but this testimony is made in my individual capacity as a board member of over 20 years of 2 condominium projects in the Pearlridge area.

This bill as amended will help condominium associations recover on their maintenance fee delinquencies by clarifying their rights to collect rent from units that they acquire through foreclosure (see amendments at page 9 of HB21 HD2).

Both of the associations that I serve as a Board member have acquired units in foreclosure and I have personal knowledge of the foreclosure process by which my associations acquired title to the units and the process used by both associations in renting the units and applying all rent income first to the current maintenance fee for the unit, then to any costs associated with the rental, e.g., cleaning and repairs of the unit, leasing commissions, and applying any excess to the maintenance fee delinquency associated with that unit.

Prior to the recent changes in the mortgage foreclosure laws, the condominium associations were seldom in a position where they could benefit from acquiring a unit in foreclosure. Associations typically paid a nominal amount (i.e., \$1 – several thousands of dollars) but not in excess of their lien against the foreclosed unit. The reason why associations were able to acquire title in foreclosure for such nominal amounts was due to the fact that the interest they acquired was subject to the lender's priority interest in the property. This meant that as and when the lender filed its own foreclosure action and a commissioner was appointed in that foreclosure action, the association lost its rights to collect the rental income from the unit because of the lender's superior rights under its mortgage to recover any income generated by its collateral. Associations, however, were entitled to receive payments from the Commissioner for the current maintenance fees on the unit.

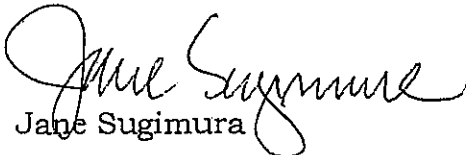
Testimony in Support of HB21 HD2 Re Condominiums

As a result of the recent changes in the mortgage foreclosure laws, associations are allowed to use the shorter non-judicial procedures to foreclose on their maintenance fee delinquencies; whereas, most mortgage lenders are required to use the time-consuming judicial procedures to foreclose on their mortgages and due to the court's backlog of cases, it takes longer for a lender to complete its foreclosure. This means that the associations are able to acquire their interest in a defaulting unit relatively quickly and then use the rental income from those units to pay the current maintenance fees, all leasing expenses and then applying any excess to the lien placed on the unit in respect of the delinquent maintenance fees. This benefits the association because the rental income increases its cash flow to pay for common expenses for all members, it is beneficial for the defaulting unit owner since any excess proceeds are used to reduce the amount of his or her lien on the unit and it benefits the lender because now the association is maintaining its collateral while it is required by new federal and state laws and regulations to remediate its mortgage with the defaulting mortgagor unit owners.

In both of the associations where I serve on the board, we have units, which we acquired in 2008 where the original maintenance fee delinquencies are almost paid and there has been discussion and debate as to who is entitled to the excess proceeds once the maintenance fee delinquency has been paid. Since the interest of the association is subject to the prior lien of the first mortgagee, it is my opinion (and there are many board members that I have talked to who agree with me) that any excess (i.e., rental income after payment of the (i) current maintenance fee, (ii) costs to repair, clean and maintain the unit, (iii) leasing commissions, and (iv) any administrative costs, should go to lender who has a superior lien on the unit. HB21 HD 2 addresses that concern and clearly balances the rights of the association, the unit owner and the lender with respect to how rental proceeds from a defaulting condominium unit should be equitably allocated among the interested parties.

Because I believe that HB21 HD2 resolves these issues in an equitable manner, I ask that you pass this bill out in its current form without any further amendments.

Thank you for allowing me to testify on this bill.


Jane Sugimura



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Testimony to the Senate Committee on Commerce and Consumer Protection
March 14, 2013

Testimony in Support of HB 21 HD2, Relating to Condominiums

To: The Honorable Rosalyn Baker, Chair
The Honorable Brickwood Galuteria, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 78 Hawaii credit unions, representing approximately 804,000 credit union members across the state. We are in support of HB 21 HD2, Relating to Condominiums.

Thank you for the opportunity to testify.



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

March 13, 2013

The Honorable Rosalyn H. Baker, Chair,
The Honorable Brickwood Galuteria, Vice Chair, and
Members of the Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

Re: House Bill 21, HD2 Relating to Condominiums

Chair Baker, Vice Chair Galuteria, and Members of the Senate Committee on Commerce and Consumer Protection:

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

The MBAH supports House Bill 21, HD2 Relating to Condominiums as it is written.

The MBAH suggests that the bill take effect upon approval.

Thank you for the opportunity to present this testimony.

LINDA NAKAMURA
President, Mortgage Bankers Association of Hawaii

Steve Glanstein
P. O. Box 29213
Honolulu, HI 96820-1613

March 13, 2013

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Brickwood Galuteria, Vice Chair
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 229
415 South Beretania Street
Honolulu, HI 96813

**RE: Testimony regarding HB21 HD2; Suggested Amendment;
Hearing Date March 14, 2013 9:30 a.m.; sent via Internet only.**

Aloha Chair Baker, Vice-Chair Galuteria, and Committee members,

Thank you for the opportunity to present testimony and comments on HB21 HD2.

I recommend that HB21 HD2 be replaced entirely with the original HB21, including an alignment so that changes are made to both Chapters 514A and 514B.

A brief history of this bill's background is an important prerequisite as the basis for these comments and recommendations

HB21

Placed condominium assessments ahead of first mortgages in the event of foreclosure in HRS Chapter 514B.

HB21 House CPC Hearing

Written testimony of 53 in favor of the bill, 3 opposed, and 2 with comments. The testimony in favor consisted of homeowners, board members, and property managers. The only opposition testimony was from banks and financial institutions.

HB21 HD1 (from House CPC)

1. Retained proposal to place condominium assessments ahead of first mortgages in HRS Chapter 514B.
2. Failed to include parallel changes to Chapter 514A.
3. Added provision that certain excess rental income from the units purchased by the association must be paid to the mortgagees in order of priority. This provision was not requested by any testifier.

HB21 HD1 House JUD Hearing

Written testimony of 51 in favor of the bill, 4 opposed, and 3 with comments. The testimony in favor consisted of homeowners, board members, and property managers. The only opposition testimony was from banks and financial institutions and the realtors.

HB21 HD2 (from House JUD)

1. Removed placement of condominium assessments ahead of first mortgages.
2. Retained provision that certain excess rental income from the units purchased by the association must be paid to the mortgagees in order of priority.

3. Added provision that board or manager (with over 50% association approval) could assess owners up to 10% additional maintenance fees per month until 1 year's fees were in a separate impound account per owner. Funds and interest returned to owner upon sale. Funds and interest can be used in foreclosure.
4. There was no testimony on item 3 above.
5. Placed changes in both Chapter 514A and 514B.

**A. The Current bill (HB21 HD2) doesn't help the consumer;
it provides an additional financial bailout to Lenders**

The current HB21 HD2 does nothing to help condominium associations.

It merely provides an added bailout for lenders to obtain rental income from associations that have purchased foreclosed properties and attempted to recover some of the delinquent maintenance fees.

I suggest that the committee restore the original HB21 and include a parallel amendment to HRS Chapter 514A in order to protect the older condominium consumers.

Hawaii's condominium community currently consists of about 1,715 condominium associations and a total of 159,501 homes. This represents a significant number of consumers.¹

The current delinquency situation with Hawaii's condominium community creates a vicious cycle that damages the condominium and community associations as well as prospective home buyers.

1. Association costs are increased due to unpaid delinquent condominium association fees that become partially or fully uncollectible.
2. These costs are passed on to the non-delinquent condominium or community association owners in the form of higher maintenance fees.
3. These higher maintenance fees make it more difficult for future buyers to qualify for loans to purchase a home.
4. Higher delinquency rates and maintenance fees are disclosed to lenders who increase the interest rate or qualification requirements to mitigate risk.
5. This added burden reduces the number of qualified buyers and this affects housing values.

B. Mortgage Servicing Institutions need to do their job

Mortgage servicing institutions are currently set up for advance collection of mandatory items such as lease rent and property tax. It is common for them to have a lease rent or property tax reserve.

¹This is from the Real Estate Commission website containing the "Association of Unit Owners Contact List" dated December 14, 2012, page 91.

Previous verbal testimony in the House Judiciary from lenders has been inconclusive about their ability to collect maintenance fees when necessary. One testifier wrote that they had spoken with Fannie Mae and were informed that condo loans from Hawaii will not be eligible for purchase. After a condo advocate pointed out that the Fannie Mae position appeared to be at odds with the Fannie Mae Seller Guideline, the testifier stated that they were referred to the legal department and had received no answer.²

The testifier also stated, "It should also be remembered that there are often situations where the first mortgage is current but the maintenance fees are delinquent and in that situation, the condo association must act prudently because the lender cannot foreclose on a current loan."

Their concept of "act prudently" would have the association spend legal fees to foreclose, eliminating the owner. Then, the mortgage would become delinquent and the mortgage company could time their foreclosure with market conditions or just after the association starts to rent the unit.

Attached ("Exhibit "A") is a standard Multi-state Condominium rider by Fannie Mae/Freddie Mac Form 3140. This form is current as of the date of this letter.³

The section on Condominium Obligations provides that the mortgagee is obligated to pay all condominium assessments. The section on Remedies provides the Lender with the option to pay unpaid assessments by the condominium association and add them to the amounts due by the borrower. The summary, also available on the website, is specific about modifications by lenders; these sections may not be modified.⁴

Lenders have the option of insuring their loans with Private Mortgage Insurance (PMI) and charging the cost to the borrower. Condominium associations have to accept all buyers. Condominiums don't have an insurance system to compensate them for maintenance fee losses.

If HB21 **in its original form** becomes law, then its effect would provide additional assurances that the condominium community would no longer suffer from Lender intransigence or hedging in the foreclosure process while associations attempt to recover maintenance fees by expensive renovations and rentals.

²Hawaii Bankers' Association letter to House Judiciary, Feb. 22, 2013, page 2

³https://www.fanniemae.com/content/legal_form/3140.pdf

⁴The same requirement exists with Planned Unit Developments (PUD). These riders and permitted form changes may be found at:
<https://www.fanniemae.com/singlefamily/riders-addenda>

C. Lenders warn that it will be harder to qualify for a loan⁵

Lenders admit they'd have to be extremely careful on condominium loans to avoid being junior to a large lien and it may be more difficult to qualify for a condo loan. Lenders may also reduce the amount of the condo loan which means the borrower will need to have a larger down payment.

This admission identifies one of the basic activities that created this foreclosure environment; Lenders made low down payment and sub-prime loans, and made loans to people who otherwise couldn't afford them. Now they complain when a consumer protection mechanism such as the original HB21 was introduced.

D. Realtors warn that it will be harder to qualify for a loan⁶

Their testimony stated in part, "HAR [Hawaii Association of Realtors] believes that the Government Sponsored Enterprises (GSEs) are critical to ensuring mortgage liquidity. The GSE's, or secondary market, such as Fannie Mae and Freddie Mac are of great importance to Hawai'i and the country. According to estimates, GSE loan volume ranges as high as two-thirds of all mortgage loans."

They failed to disclose that Fannie Mae and Freddie Mac:

- (a) have provisions in their standard condominium rider that provide a mechanism that CAN WORK WITH a priority lien for the condominium association community; and
- (b) already have requirements for delinquent HOA dues to be cleared immediately.⁷

Unfortunately for the condominium community, there is no clearly defined mechanism for condominium associations to know the current mortgagee since mortgages may have been resold several times and condominium associations may no longer know who holds the mortgage to a particular property.

Realtors receive their income from condominium sales, not servicing. In the short term, they have everything to gain from a condominium sale and nothing to lose from a subsequent foreclosure.

The long term approach is that a higher rate of delinquency in a condominium makes it HARDER to obtain mortgage financing. This difficulty adversely affects sales.

⁵Hawaii Bankers Association letter to House Judiciary, Feb. 22, 2013, page 2.

⁶Hawaii Association of Realtors letter to House Judiciary, Feb. 22, 2013, page 1.

⁷Fannie Mae Servicing Guide Announcement SVC-2012-05, dated April 11, 2012, Available at: <https://www.fanniemae.com/content/announcement/svc1205.pdf>.

Fannie Mae recognizes this long term view with their sales requirements.⁸ Their requirements include a statement that, “No more than 15% of owners can be delinquent on monthly dues.”

More delinquencies mean more difficulty obtaining mortgages. It’s that simple.

E. Foreclosure Attorneys warn about unintended consequences

One “unintended consequence” relates to HB21 HD1 and HB21 HD2 requirements that associations pay excess rental to the lending institution. The association is taking a large risk purchasing a condominium unit, renovating it, and renting it.

First, the association is not in the rental business and must engage a real estate broker for the rental. Second, the association may lose all of the renovation expense if the bank forecloses immediately following the renovations. Third, the proposals to pay excess rentals represents a difficulty for associations because they have no mechanism to determine the ultimate mortgagee.⁹

If the current bill becomes law, many associations will be unable to risk renting the unit if the mortgage has been transferred or otherwise flipped. This creates an additional loss to associations which would be borne by the remaining condominium owners.

Another “unintended consequence” in testimony related to the “has to do with potential impact of this bill on mortgage lending in Hawaii” argument.¹⁰ This has been addressed previously.

Significantly, the writer concedes: “Certainly, the bill might solve many of the problems condominium and other homeowner associations experience with delinquencies.”

If HB21 in its original form becomes law, there would be an unintended consequence to a lender who makes a substandard loan and expects to wait for market conditions to improve at the expense of the condominium community.

If HB21 in its original form becomes law, it would reduce the financial burden of foreclosure to the entire condominium community. It would enforce more responsible mortgage lending and servicing.

⁸Multiple references. The most concise reference found was:
<http://www.investopedia.com/university/condo-buyers-guide/condo-buyers-guide9.asp#ixzz2NQ24aUJQ>

⁹Community Associations Institute (CAI) testimony to the House Judiciary, dated Feb. 22, 2013.

¹⁰John Morris, esq. testimony to the House Judiciary, dated Feb. 21, 2013, page 1.

F. Verbal testimony in opposition has warned that Hawaii would be the first

What's wrong with that? With a large percentage of our population in condominium and community associations, we should seriously consider a solution that ensures (a) the condominium community and the borrower properly qualify for mortgages, and (b) the mortgage servicing is done in a responsible manner.

The condominium community is not an ATM machine nor should it be forced to take foreclosure risks that adversely affect their fellow owners.

I request that the committee take the courageous step to protect the 1,715 condominium associations (constituting 159,501 owners), restore the original HB21, and pass it out with parallel changes to HRS §514A-90.

Should you wish to discuss further, your call is most welcome. My phone number is 423-6766. Thank you for the opportunity to present information on this subject.

Sincerely,

Steve Glanstein

Digitally signed by Steve Glanstein
DN: cn=Steve Glanstein, o, ou, email=Stevegh1@gmail.com, c=US
Location: Honolulu, HI
Date: 2013.03.13 04:54:28 -10'00'

Steve Glanstein
Professional Registered Parliamentarian
SG:tbs/ATTACHMENT
D:\\$P\Legislative2013\HB21\Letter3.wpd

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this _____ day of _____, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to _____ (the "Lender") of the same date and covering

the Property described in the Security Instrument and located at:

[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of a condominium project known as:

[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. **Condominium Obligations.** Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. **Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, events which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied in the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the same secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. **Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the same secured by the Security Instrument as provided in Section 11.

E. **Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of reducing the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. **Remedies.** If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest

Multistate Riders and Addenda (Form 3140): PDF - 3140.pdf

https://www.farmlease.com/content/legal_form/3140

from the date of dishonourment of the Note note and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and conditions contained in this Condominium Rider.

(Seal)

-Borrower

(Seal)

-Borrower

Paul Davis
Secretary, Oahuan Tower Corporation
1710 Makiki St.
Honolulu, HI 96822

Hawai'i State Senate
Committee on Commerce and Consumer Protection
Hearing: Thursday, March 14, 2013; 9:30 AM

March 13, 2013

HB 21 RELATING TO CONDOMINIUMS

Dear Senator Rosalyn H. Baker, Chair, Senator Brickwood Galuteria, Vice Chair,
and Committee Members:

Aloha. My name is Paul Davis, Secretary of the Corporation of the Oahuan Tower, a Cooperative with 54 units in 10 stories. At its regularly scheduled meeting last night, the Board of the Corporation unanimously gave its support to HB 21 as originally submitted in the House.

The current situation, where owners who do not pay their share of fees, places a large burden on the other owners who do keep up with their financial obligations. A case in point: we now have one owner who abandoned a unit over two years ago. The unpaid fees now add up to over \$27,000 and, we anticipate, will continue to increase. Because our building has relatively few units, the burden of compensating for the unpaid fees falls heavily on the other owners, many of whom are senior citizens living on fixed incomes. The Board has had to increase fees twice in the last two years to make up for the unpaid fees and has also had to postpone making needed building repairs because of the situation.

We, therefore, strongly recommend passage of HB 21.

Mahalo,
Paul Davis
Secretary, for the Board
Oahuan Tower Corporation

HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Peter Sit	Apartment of Owners Association, Pono Kai Resort	Support	No

Comments: (a) Bring back the original House Bill 21 that was designed to "even the playing field" for the 1,700+ condominiums and their 179,000 homeowners. (b) Make sure condominiums are protected by INCLUDING BOTH Chapter 514A and 514B.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Gilmour	Kona West AOA	Comments Only	No

Comments: I am secretary/treasurer of the Kona West AOA Board in Kailua-Kona. Our association very much wants the language from original bill restored that provides HOA's like ours basic lien rights for unpaid assessments full priority over bank mortgages. This provision will provide banks with an incentive to expedite foreclosures and/or be more forthcoming on short sales. And with it the defaulting unit will become security for payment of delinquencies to our association and expedite the process for getting a fee paying new owner in the unit. Contrary to what you hear from the banks, the language we are advocating for is in keeping with the latest Fannie Mae guidelines. The net result will be a better housing stock and better maintained communities. Thank you.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Al Inoue	The Hilo Lagoon Centre AOAO	Comments Only	No

Comments: We manage a condominium association with 135 residential units. During the recession, we had a number of foreclosures that has deeply impacted our revenues from unpaid common area (CAM) fees. We may be forced to raise maintenance fees to compensate for the shortfall of revenue. Many of our owners are retirees on fixed income and will be deeply affected by any increases in the CAM. We request that you bring back to original HB 21 that was submitted to the House. We also request that the rental income bank bailout be removed. In order for us to rent a unit additional expenses may be needed to bring a unit to rent-able condition. We may not be able to recover this expense if the bank forecloses again on the unit. Thank you for your consideration.
Sincerely, Al M Inoue

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Rick Ball	OLS Hotels & Resorts	Comments Only	No

Comments: Comments: (a) Bring back the original House Bill 21 that was designed to "even the playing field" for the 1,700+ condominiums and their 179,000 homeowners. (b) Make sure condominiums are protected by INCLUDING BOTH Chapter 514A and 514B. (c) Demand that the bill be amended to remove the rental income bank bailout.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Roy Thompson	Castle Resorts & Hotels	Comments Only	No

Comments: I humbly ask that the Committee restores the wording and intent set forth in the original bill. It is very important that Associations have lien rights for unpaid assessments over bank mortgages. We ask you to support this restoration and move the bill forward.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Robin Graf	Castle Resorts & Hotels	Comments Only	No

Comments: In regards to HB 21, I would like to see the original wording restored where it gives HOA's the basic lien rights for unpaid assessments priority over bank mortgages. Thank you,

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Diane Pavao	AOAO Kaha Lani	Comments Only	No

Comments: I humbly ask for your consideration that the Committee restores the wording and intent of the original bill that gives the homeowner's association basic lien rights for unpaid assessments priority over bank mortgages. Mahalo.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jon McKenna	Associa Hawaii	Comments Only	No

Comments: As the second largest association management company in the State of Hawaii, representing some 48,000 unit owners, we fully support bringing back the original House Bill 21 that was designed to "even the playing field" for the 1,700+ condominiums and their 159,000 homeowners. Further, it is critical to ensure condominiums are protected by INCLUDING BOTH Chapter 514A and 514B. And finally, the bill should be amended to remove the rental income bank bailout.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
harry roffelsen	AOAO KAHA LINI	Comments Only	No

Comments: I want the wording from the original bill, that gives the HOAs' basic lien rights for unpaid assessments priority over bank mortgages.

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**TESTIMONY OF NICHOLAS BLONDER
RE HOUSE BILL 21,
RELATING TO CONDOMINIUMS**

TO: Senate Committee on Commerce and Consumer Protection

Chair: Hon. **Rosalyn H. Baker**
Vice-Chair: Hon. **Brickwood Galuteria**
and Committee Members

Hearing Date: March 14, 2013 @ 9:30 a.m.

Introduction

Hawaii's condominium associations (HOAs) are caught in a legal limbo that prevents them from collecting delinquent maintenance fees when a unit becomes "underwater" and is foreclosed by a mortgage holder. HB 21¹ will level the playing field by amending HRS §514B-146² to eliminate the mortgage holders' unwarranted priority over HOA liens.

This testimony is intended to reflect my views as an individual condominium owner and as a member of the board of directors of the Kaha Lani AOA, 4460 Nehe Road, Lihue, Kauai, HI 96766. Kaha Lani is a §514B entity.³

This testimony will explain why (1) HOAs should have priority over mortgage holders (pp. 1—6), and (2) the opponents' claims, about purported

¹ Please note that HB 21 was amended once by each of the two House committees that heard the bill. Unless otherwise indicated, references to HB 21 in this testimony are to the bill as originally drafted, that is, without either of the amendments.

² Unless otherwise indicated, all statutory references are to the Hawaii Revised Statutes.

³ Please note that this testimony is also intended to support the parallel amendment of §514A-90.

adverse effects of HB 21 on the secondary mortgage and real estate markets, are unfounded (pp. 6-15).

Background

HB 21 is intended to address a direct consequence of the “Great Recession,” which began in 2008. Before the economic downturn, foreclosures of condominium loans were rare. A default was usually due to temporary adverse circumstances intrinsic to an individual owner (e.g., loss of employment or divorce). Existing law has always given HOAs a basic lien right to secure payment of assessments, but it was seldom necessary to actually foreclose a lien.

In most cases the property had equity, so the owner had an incentive to cure the default. If the financial adversity was quickly remedied, the loan would be reinstated. If the problem was intractable, the property would be sold, enabling the owner to preserve most of his or her equity.

When the real estate bubble burst in 2008 there was a steep drop—often as much as 50%—in residential property values. A property owner is said to be “underwater” when the fair market value of his or her property falls below its mortgage balance. In many cases, the underwater owners have simply abandoned their property and stopped making payments. As a result, Hawaii condominiums are caught in a wave of slow-moving foreclosures.⁴ Before the mortgage crisis, nonjudicial foreclosures might only have taken a few months. But in the post-recession economic environment, foreclosures now can take years, during which time the HOAs are unable to collect assessment fees.⁵

⁴ The delay inherent in the foreclosure process has been increased by recent legislation limiting the availability of nonjudicial foreclosures. (Acts 48 [2011] and 182 [2012].) This legislation has dramatically increased the amount of time it takes to complete a foreclosure. Support of HB 21 is not inconsistent with the foreclosure relief legislation. It is mentioned here only to explain that the HOAs’ predicament has been exacerbated by the combination of (i) the substantial additional delay in the foreclosure process caused by the remedial legislation, and (ii) the unintended loophole (explained below) in the condo foreclosure law which enables banks to ignore, without adverse consequences, the cost of maintaining a portion of their security.

⁵ At Kaha Lani, two units have been delinquent since February, 2009, with no resolution in sight.

**Existing Law Is Out-of-Date and Unfairly Limits HOAs'
Ability to Recover Delinquent Maintenance Fees**

Existing law provides that HOAs may perfect a basic lien for unpaid assessment fees. The heart of the present controversy is the law's provision that HOAs' lien rights are subordinate to any mortgage that was recorded before the delinquent assessment lien. The HOA may foreclose on its lien; but when the owner has no equity, this remedy would accomplish no more than to place the HOA in the shoes of the underwater owner.⁶ Under these circumstances, the HOA's lien rights usually are worthless.

The bank's security interest, on the other hand, is subject only to liens for taxes. No matter how long it may take for the bank to complete the foreclosure process or consent to a short sale, the HOA is precluded, by the bank's lien priority, from recovering from the security any of the costs attributable to the delinquent unit's share of the property's common elements maintenance costs.

The HOA may also record a "special assessment" lien that is enforceable only against the next owner of the property.⁷ (§514B-146(g).) This would come into play if (1) a foreclosing bank takes title to the property and sells to a new owner, or (2) there is a short sale. In either case, the new owner is only responsible for up to six months of delinquent HOA fees. (§514B-146(h).) *Even if the HOA were to eventually receive the full six months of fees, this arbitrarily limited amount often will not come close to covering the HOA's aggregate loss, which likely will represent several years' worth of unpaid maintenance fees.*

Please note that the six-month maximum duration of the special assessment has remained in the law unchanged since 2000. Before 2008, the time necessary to complete a foreclosure was normally measured in months. But since 2008, the average time to complete a Hawaii foreclosure is now measured in *years*. There is no valid reason why the HOAs' recovery of unpaid assessments—through a lien against the unit—should be limited to any arbitrary period of time. From the HOAs' standpoint, the six-month limitation on lien duration is functionally obsolete.

⁶ House CPC amended HB 21, in harmony with HB 25, to facilitate an HOA's foreclosing its own lien and renting the unit out to recoup unpaid fees. However, this is an investment strategy whose risks outweigh its possible return.

⁷ This is Hawaii's version of the so-called "super lien," which is discussed in greater detail below.

The unfairness to the HOA is self-evident: the mortgage holder receives the full benefit of the HOA's continuing maintenance, for years, of the common elements, without having responsibility for the corresponding costs.⁸ The condominium lien law must be amended to take into account the new landscape of the real estate market. HB 21 accomplishes a reasonable adjustment of the stakeholders' interests. Simply put, a defaulted unit should be fully available as security to make the HOA whole with respect to unpaid maintenance fees.

**The Law Should Reflect the True Nature of the
HOAs' and the Banks' Respective Interests**

HOAs Perform Functions Similar to Those of Public Agencies

The HOA maintains the property's common elements (building exteriors, landscaping, parking lots, recreational amenities, etc.). In this respect, the HOA's role is analogous to that of local government, which maintains public buildings, streets, parks, fields, schools and libraries, and public safety institutions such as fire protection and police.⁹

In order to preserve local governments' ability to fund its necessary functions, the law provides that liens for property taxes and related fees have priority over virtually all other encumbrances, including mortgages. The HOAs' maintenance fees are analogous to property taxes and therefore should similarly have priority over mortgages, regardless of when the mortgage was recorded.¹⁰

⁸ Existing law states that the loss caused by a default in assessment fee payments shall be borne by the non-defaulting owners. (§514B-146(b).) This provision may have made sense when foreclosures were rare; but it likely was not intended to require the performing owners to absorb a substantial shortfall caused by the banks' ability to ignore these costs for years.

⁹ An appellate court recently observed: "Courts have recognized a homeowners association functions as a quasi-governmental entity, paralleling the powers and duties of a municipal government." (*Silk v. Feldman*, 208 Cal.App.4th 547, 553 (2012).)

¹⁰ It is commonly known that virtually all condominium units are subject to a monthly assessment that enables the HOA to maintain the property's common elements. The condominium project's founding documents, which are in the public record, normally contain CCRs that include the unit owners' responsibility to pay the assessment fees. It is reasonable to assume that all institutional lenders are fully aware of their borrowers' ongoing liability *before* closing escrow on a new loan.

Banks Are de facto Owners

The modern mortgage is a virtual partnership between the lender-bank and the borrower-buyer. The bank usually provides the bulk of the funds necessary to close the buyer's purchase. The buyer is the equitable owner of the unit, and the bank receives a mortgage as security for repayment of the loan. These parties alone should bear all risks of loss associated with the unit.

After a unit becomes underwater, the bank will have substantial control of the property. It can only be sold through a short sale, which requires the consent of the mortgagee bank. However, under existing law, the bank has no responsibility to pay the HOA fees accruing during the pendency of the foreclosure. Moreover, as explained above, the defaulting owner has little practical incentive to keep the HOA dues current.

If a bank were to complete a foreclosure and become fee owner of a unit, HOA fees likely would be its largest recurring expense of ownership. It has been suggested by some knowledgeable observers that, under these circumstances, banks are "slow-walking" the foreclosure process to avoid responsibility for HOA fees while waiting for market conditions to improve.

From the HOA's viewpoint, however, this is not a two-way street. The bank can ignore the fees which are legally chargeable only against the departed owner-mortgagor.¹¹ But the HOA remains obligated to continue to currently maintain *all* of the common elements.¹²

It is acknowledged that a mortgage holder is not the fee owner and, therefore, should not have *personal liability* for fees that accrue during the foreclosure period. For this reason, HB 21 only treats the property as *security* for HOA fees. This equitable result is achieved by deleting the banks' priority over HOA liens for delinquent fees.

¹¹ The HOA could seek a civil judgment against the delinquent homeowner. However, this remedy entails substantial legal expenses to obtain a judgment which, in most cases, will not be collectible.

¹² If a homeowner has not paid his or her property taxes, the municipal government could not withhold maintenance of the public road in front of the delinquent owner's property. The road must be maintained for the benefit of the entire community. HOAs operate under the same principle, but without the municipalities' secure source of funding.

Moral Hazard

At some point the HOA likely will have to either (1) increase its monthly fees or (2) impose multiple special assessments on the non-delinquent owners to restore the lost revenue. These financial burdens invoke the spectre of “moral hazard.” The owners who have been honoring their obligations also end up subsidizing the banks’ losses. As now written and applied, §514B-146 *compels* this result. A fee increase or special assessment under these circumstances amounts to a partial bailout of the banks. The HOA and the other owners are innocent bystanders; they are not parties to the bad loans made by the banks. They should not have to share or absorb *any* portion of the banks’ mortgage losses. If HB 21 is not passed with the full HOA-priority lien intact, the non-delinquent owners will be forced to indefinitely continue bailing out the negligent banks.

Fannie Mae Guidelines Are Not Inconsistent With HB 21

The Hawaii Bankers Association (HBA) and the Mortgage Bankers Association of Hawaii (MBAH) submitted written testimony before the House CPC and Judiciary Committees. Their testimony emphasized possible “unintended consequences” if the bill were to be passed in its original form. The principal basis for their opposition to HB 21 was the claim that it would harm the local market for condominium loans. The bankers asserted that Fannie Mae and Freddie Mac’s underwriting criteria may make it more difficult for originating lenders to sell their loans in the secondary mortgage market.¹³ HBA and MBAH both identified Fannie Mae as a prominent secondary market for Hawaiian mortgages.

There are serious problems with the bank lobby’s argument.

The Six-Month Limit Is Only a Guideline

The keystone of the banks’ argument is the purported six-month limit on HOA-priority liens, which are sometimes called “super liens.” Fannie Mae’s documentation has for many years referred to a six-month limit. However, this limitation is found within an extensive, diverse list of

¹³ Fannie Mae and Freddie Mac are also known as Government Sponsored Enterprises, or GSEs.

guidelines that lenders are instructed to use when evaluating a condominium unit as security for a mortgage. Fannie Mae's "Selling Guide," a compendium of lender guidelines, is 1,200+ pages long. The six-month limit is just one among many factors that lenders are advised to consider. Moreover, as explained below, *Fannie Mae recently amended this guideline to accommodate HOA-priority liens with a longer duration.*

The Six-Month Limit Is Obsolete in Hawaii

Please note that the six-month standard originated in 2000, long before the Great Recession and the ongoing foreclosure crisis. When this guideline was adopted, it took months, not years, to complete a foreclosure. In that context, it was reasonable to limit the HOA-priority lien to six months because, within that approximate time frame, the foreclosure would usually be completed and a new fee-paying owner would be taking over the unit. But while the Hawaiian real estate market has changed radically, the original durational limit for the lien has never been adjusted to be reasonably consistent with the amount of time normally required to complete a contemporary foreclosure.

As described below, Hawaii's HOAs are suffering from the *actual* "unintended consequences" of the outdated super lien statute. The super lien was originally intended to make HOAs substantially whole if a unit went into foreclosure—and six months of fees were usually adequate to cover all or most of the HOA's loss. Instead, the law's unintended effect has been doubly harmful: (1) it limits HOAs' eventual recovery to only a small fraction of the accrued obligation, and (2) makes it substantially more difficult for a new, current, fee-paying owner to acquire the delinquent unit. The latter consequence is a direct result of the banks' "right" to hold a unit in foreclosure limbo indefinitely without regard to the accruing unpaid maintenance fees.

Bank foreclosures at Kaha Lani are averaging more than three years from start to finish. As noted above, Kaha Lani has two units that have been, and remain, in foreclosure since February, 2009. Consequently, no maintenance fees have been paid to the AOA on either of these units for 48 months. Our corporate property manager, which handles several condominium properties, has confirmed that Kaha Lani's experience is representative of conditions found in the other properties it manages. The special assessment lien (§514B-146 (h)) offsets only a fraction of the actual loss suffered by the AOA due to nonpayment of maintenance fees. At Kaha Lani, for example, the recovery rate after completed foreclosures *is less than 12%*. In

our case, the super lien is not very “super”; it delivers too little, too late. These are tangible, adverse consequences, and could not possibly have been the legislature’s intent.

A significant cause of the delay is recent foreclosure reform (Acts 48 [2011] and 182 [2012]).¹⁴ However, the delay is not attributable only to the reform laws and the sheer quantity of foreclosures. It is generally accepted that the banks are manipulating the pace of foreclosures for their own financial advantage. Under existing law, after six months of delinquencies have accrued, the secured-party banks have *no incentive* (as far as maintenance fees are concerned) to expedite a foreclosure.

The out-of-date six-month limit has become almost fully detached from today’s marketplace reality. The Hawaiian version of the super lien, with its six-month limit, does not come close to offsetting the substantial losses being suffered by HOAs. In this era of volatile financial markets, there is no credible reason why the HOAs’ lien for unpaid maintenance fees should be limited to any arbitrary duration. The proper standard is one that enables an HOA to be made whole, that is, to recover all of its unpaid fees.

***Florida Unilaterally Increased
the Duration of Its Super Lien***

In 2010, Florida, one of the largest mortgage markets in the country, broke ranks and increased the duration of its super lien from six to 12 months (Florida Statutes, §718.116(b) 1 a). This increase of the limit apparently has had no material adverse effect (i.e., “unintended consequences”) on the closing of new Florida condominium loans or their transfer to the secondary mortgage market.

¹⁴ This testimony should *not* be interpreted as criticism of the reform legislation, which was intended to address multiple issues and represented a good-faith effort to aid homeowners confronting flawed foreclosure procedures. HB 21 only addresses the relationship between the HOAs and the mortgage holders. It will have no adverse effect on the rights of the homeowners who were the reforms’ intended beneficiaries. Moreover, HB 21 would encourage the banks and servicers to act more efficiently and responsibly, thus reducing the potential liabilities of owners of underwater units.

***The Banks Have Offered No Credible
Evidence to Support Their Dire Predictions
If the HOA-Priority Lien Period Is Increased***

In testimony before the House Judiciary Committee, the HBA wrote that it had spoken with an unnamed Fannie Mae employee who purportedly said the six-month rule still controlled. However, in the same paragraph, the HBA alludes to an inconsistency, between Fannie Mae policy and documentation, which had been referred, without resolution, to Fannie Mae's legal department. The legislature should not accept vague conclusionary statements, and sweeping generalizations based on those statements, as the basis for maintaining an unfair status quo.

***Fannie Mae Has Changed Its Guidelines
to Accommodate Longer Duration
for HOA-Priority Liens***

The GSEs do not operate in a vacuum. They likely are well aware of the extreme delays that have become epidemic in Hawaii's foreclosure process and should be reluctant to punish consumers (i.e., sellers and new borrowers) for states' efforts (such as HB 21) to improve the HOAs' solvency. As apparently occurred in Florida, it seems reasonably likely the GSEs relaxed enforcement of their guidelines to accommodate much-needed relief for the state's HOAs. After all, financially secure HOAs are vital to the health of the local condominium market.

The foregoing view is confirmed by Fannie Mae's recent amendment of its Selling Guide. Previous editions of the Selling Guide limited eligibility to loans subject to HOA-priority liens that were capped at six months. In late 2012, however, the guide was amended to allow HOA-priority liens to be

the ***greater*** of six months of regular common expense assessments, ***or the maximum amount permitted under applicable state law, to have limited priority over Fannie Mae's mortgage lien*** if the condo . . . project is located in a jurisdiction that has enacted

- the Uniform Condo Act
- the Uniform Common Interest Ownership Act; or
- other similar statutes that provide for regular common expense assessments, as reflected by the project's operating budget, to have such priority over mortgage liens.

(Selling Guide, Section B4-2.1-06, January 17, 2013, at page 607; emphasis added.)

This sea change guideline amendment was originally released on August 21, 2012, in Selling Guide Announcement SEL-2012-07, at page 5:

Fannie Mae is revising the *Selling Guide* to allow the greater of six months of regular expense (homeowners' association) assessments or the maximum amount permitted under applicable state law to have limited priority over Fannie Mae's mortgage lien.

According to John S. Forlines, Fannie Mae's Chief Credit Officer:

The change was driven by the fact that some states had *requirements* that more than 6 months of assessments were priority to our first lien. Prior to the Selling Guide change our guidelines were in conflict with these state laws. Obviously, we prefer a shorter period of time but we could *not require our lender customers to be in conflict with the state laws.*

(Email dated 2/20/13); emphasis added.) As a practical matter, this revised Fannie Mae guideline *invites* state governments to amend their condominium laws and thus tailor HOA-priority lien statutes to more reasonably address local financial and market realities. The Hawaii Condominium Law (§514B-1 et. seq.) is based on concepts from both of the above-referenced sets of uniform laws. HB 21 falls within the scope of the revised guideline.

The Hawaii condominium market is a lucrative source of business for the mortgage industry. Even if Fannie Mae's guideline had not been revised, it is likely that, as in Florida, banks would have been able to continue making condominium loans. The Committee should be skeptical of the industry's speculative negative predictions. Moreover, the recent modification of Fannie Mae's guidelines suggests that the banking lobby's argument may have inadvertently misstated current underwriting standards.

The foregoing discussion has focused on the inadequate, fixed six-month duration of the HOA-priority lien. HB 21, on the other hand, does not provide for a durational limitation on the HOA's basic lien for unpaid assessments because none is necessary. Please bear in mind that HB 21's maximum effect would do no more than restore to the HOAs funds they previously expended in good faith to *maintain the banks' security.*

“Unintended Circumstances” Regarding Loan Servicers Is Another Unwarranted Scare Tactic

The opponents also claim loan servicer guidelines would prevent the sale of mortgages to the secondary market if the original version of HB 21 becomes law. They suggest that limitations within the servicing agreements (between mortgage holders and servicing entities) will prevent loans from moving to the secondary market. This is yet another financial industry smokescreen intended to distract lawmakers from evaluating HB 21 on its substantive merits.

Loan “servicing” is a component of the underlying mortgage. It is the process by which the originating bank or a GSE, acting on its own or through a subsidiary, collects loan payments from the borrowers and performs a variety of ministerial tasks. Loan servicing is a fee-based enterprise governed by the terms of the servicer’s contractual relationship with the originating bank or GSE. The servicers’ profitability depends on their ability to efficiently and effectively perform their obligations under the servicing agreement.

HB 21’s opponents are ingeniously attempting to inject wholly extrinsic risk factors as a justification for retaining existing law and requiring HOAs to continue subsidizing maintenance of the banks’ security. For example, the HBA said it’s “clear from the guidelines that lenders will not want to make loans to sell to Fannie Mae because the servicer...will bear the brunt of the loss” if there’s a delinquency. Simply put, HOAs should not have to shoulder either the lenders’ or the servicers’ risks of loss.

The banks and GSEs on the one hand, and the servicers on the other, are powerful, sophisticated business entities that are fully capable of negotiating among themselves the allocation of financial risks, including the possibility of an HOA-priority lien default. Whether or not a loan servicer may be obligated to clear delinquent assessments is irrelevant to the question of whether the HOAs have to continue bearing losses for which they never assumed the risk. There is no justification for attacking HB 21 with contrived fallout from what is nothing more than part of the modern mortgage industry’s basic operating model.

As explained above, Fannie Mae has expressly endorsed the principle that states should be, and now are, allowed to establish HOA-priority lien rules that reasonably shift the risk of loss from innocent condominium owners to the security held by lenders who made the loans. *Prior* to July 1, 2012, Fannie Mae’s Single Family Servicing Guide provided:

If the [condominium] project is located in a state...that provides for up to six months of delinquent regular condo assessments to have priority over the mortgage lien, Fannie Mae will reimburse the servicer for up to six months of such advances.

(Servicing Guide, March 14, 2012, Part III, §202.) Tellingly, this guideline was originally adopted in 2003, *before* the current foreclosure crisis.

Fannie Mae recently announced a revision of the foregoing section, which provides:

For properties located in states providing priority for assessment liens over a previously-recorded document, servicers must...determine the amount to be paid in order to clear the HOA's claim of lien and preserve the priority of [Fannie Mae's] mortgage lien. The amount is generally the lowest of:

- the actual delinquent assessment balance and allowed costs,
- the maximum amount due from the foreclosing first mortgage entity based on the provisions in the project's declaration, or
- the *maximum amount due from a foreclosing first mortgage entity under the relevant state statute.*

The servicer must pay that amount immediately following, but not later than 30 days after, the foreclosure sale date or acceptance of a deed-in-lieu of foreclosure.

(Servicing Guide Announcement SVC-2012-05, page 1, April 11, 2012; effective July 1, 2012; emphasis added.)

As with the previously-described modification of the Selling Guide, Fannie Mae is again acknowledging, this time in the context of loan servicing, that a state may establish laws providing for an HOA-priority lien greater in length than six months.

The obvious conclusion to be drawn from Fannie Mae's guideline revisions is that lenders and servicers should work out the allocation of risk among themselves. And that risk includes the possibility that an HOA lien liability may be greater than six months. The lenders should not be permitted to hide behind out-of-date state lien laws to unfairly shift some of their losses onto innocent third parties (HOAs and their unit owners).

Foreclose and Rent

In testimony before the CPC Committee, the HBA recommended that HOAs achieve relief by foreclosing their own liens on delinquent units (which are already subject to a pending mortgage foreclosure) and renting them out to offset the uncollected maintenance fees. The HBA offered the following analysis:

[I]f this bill [HB 21] were to become law, there is little incentive for an association to act prudently knowing that eventually the entirety of the delinquent assessments will be paid.

The HBA appears to be arguing that the prudent course for an HOA is to *ignore* the obvious benefit of HB 21 (i.e., full payment of delinquencies) and, instead, begin investing in underwater units.

HB 25, pending in the current session, would amend the foreclosure law to facilitate nonjudicial foreclosures by an HOA. There may be some circumstances in which the possible benefits of foreclose-and-rent may outweigh the many risks.¹⁵ And the choices available to an HOA should not be limited. On February 13th, the CPC Committee recommended that HB 21 be “Passed, with amendments.” The amendment incorporated some details of a foreclose-and-rent remedy into HB 21. It clarifies how to determine an HOA’s net income from renting a foreclosed unit and provides that excess rent, as defined, shall be distributed to the other lienholders.

Since HB 21 HD1 retained the HOAs’ basic lien priority over mortgages, I did not oppose the amendment.

The Judiciary Committee retained the foreclose-and-rent provisions in HB 21 HD1, but deleted the changes in the original bill that established priority, for the HOAs’ basic lien, over mortgages. While foreclose-and-rent may occasionally benefit an HOA, it does not assure the necessary relief that would be provided by an effective basic HOA-priority lien.

¹⁵ My earlier CPC Committee testimony detailed many of the risks inherent in this approach. Chief among them were (i) substantial acquisition costs (including legal fees) (ii) refurbishment expenses, and, most significantly, (iii) the pending foreclosure of the first mortgage. As a practical matter, the HOA would be stepping into the shoes of the underwater unit owner.

**Voluntary Surcharge of Innocent Unit
Owners Is Not a Substitute For an
Adequate HOA-Priority Lien**

The Judiciary Committee also amended HB 21 to allow HOAs to surcharge their owners 10% of their maintenance fees to establish a reserve fund to cover delinquencies. I will not address the merits of this scheme because there are none. HB 21 HD2 represents a 180-degree reversal of HB 21's core objective: an effective HOA-priority lien that matches the duration of a foreclosure. If HOAs were to support the surcharge amendment, they would, in practical effect, be embracing and ratifying the same unfairness which prompted the introduction of HB 21 in the first place.

The sum total of the Judiciary Committee's amendments has been to gut the original bill and replace its former substance with two purported remedies which will only be of limited benefit to Hawaiian HOAs. HB 21 HD2 creates an illusion of relief whose only apparent purpose is to provide political cover for maintaining the status quo.

The Realtors' Opposition Is Misplaced

The gist of the Realtors' objections is that HB 21 may make it harder for buyers to qualify for loans and thus reduce home values. The Realtors, however, are ignoring the obvious: continuation of the unjustified allocation of accrued losses to HOAs and the performing owners will inevitably cause HOAs to significantly raise monthly fees and/or impose serial special assessments. This, in turn, will increase unit carrying costs, thus making it more difficult for purchasers, especially first-time buyers, to qualify for financing. If HB 21 is not enacted, the Realtors should be concerned that the continuing wave of delinquencies will threaten HOAs' solvency.

Any agent will tell you the first question asked by a prospective condo buyer always is "What are the monthly fees?" The heightened risk of increased levies will discourage buyers. Moreover, these known liabilities associated with unit ownership are circumstances which real estate agents are legally duty-bound to disclose to prospective buyers.

On the other hand, HB 21 allocates these costs where they properly belong, to the security for the mortgage holders who, as secured parties, have enjoyed the full benefit of the HOAs' maintenance efforts—while paying nothing for those services. By making the HOAs whole, the original version of HB 21 would enhance the financial health of this important segment of the real estate market. In the long run, the Realtors' interests

will be better served by laws which help—rather than hinder—HOAs’ ability to maintain their properties’ common elements.

Conclusion

Under existing law, foreclosing banks receive the full benefit of the HOAs’ maintenance of the banks’ security, but have no responsibility for the unit’s proportionate share of the corresponding costs. If given priority over the banks, the HOA’s basic statutory lien rights should enable them to be made whole. HB 21, as originally drafted, accomplishes this by updating §514B-146 to (1) reflect the post-recession realities of the condominium market and (2) rescind the banks’ unfair priority over HOA liens for delinquent maintenance fees.

The mortgage industry is using speculative and inaccurate scare tactics to discourage support for HB 21. However, nothing in the mortgage industry’s submissions eclipses the fair result that would be implemented by HB 21. Moreover, Fannie Mae’s suitability guidelines have recently been amended to accommodate legislation such as HB 21. Contrary to the industry’s prediction of dire consequences to the local mortgage market, HB 21 has much to offer:

1. It would remedy the HOAs’ long-standing problem with uncollectible maintenance fees for foreclosed underwater units.
2. It would fairly compensate the HOAs for maintaining the defaulting units’ shares the properties’ common elements.
3. It would cause the banks to become more forthcoming and cooperative in agreeing to and performing on short sales which, in turn, would sooner get new, paying owners into the delinquent units.
4. Banks and loan servicers would stop slow-walking their foreclosures because the units would become full security for payment of their accrued unpaid maintenance fees.
5. It would address the banks’ moral-hazard problem by relieving the nondefaulting unit owners from the burden of partially bailing out of the banks’ losses from bad loans.

I strongly support the enactment of HB 21, *as originally introduced*, with the only amendment being a parallel revision of §514A-90. Provided that the original wording of HB 21 is restored, I do not support or oppose the foreclose-and-rent amendment added in HB 21 HD1 and the surcharge amendment added in HB 21 HD2.

SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION (HB 21)

Please contact me at (415) 381-4340 (cell) or ngblonder@yahoo.com if the Committee has any questions about this testimony.

Dated: March 11, 2013.

Respectfully submitted,

/s/ Nicholas Blonder

Nicholas Blonder

4460 Nehe Road, #324

Lihue, Hawaii 96766

HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Frank Mead	Individual	Comments Only	No

Comments: I am a retired WA State Real Estate Broker; General Manager of Non Profit Homeowner Assoc.'s of over 1,000 units each for + 25 yrs, as well as a retired Marine Corps 1stSgt of 20 years active duty. I am an owner of a condo and a residential home, both belonging to an HOA. I was amazed at HI's laws disallowing HOA's from pursuing in some manner, delinquent Maint Fees or Dues plus costs, which is the lifeblood of all HOA's. As the GenMgr of HOA's in WA State, we filed liens as well as extensive use of the Small Claims Court system before the delinquent amount per unit exceeded the systems dollar limitation. We also suspended all rights & privileges of delinquent owners once the amount owed exceeded two months fees or dues. In addition the amounts owed which continued to accrue, plus interest and any relative costs, which in the event of a voluntary or foreclosure sale of the property, access to their newly acquired property was denied using common property to get there. This was harsh but necessary in order to ensure fees and costs were paid, otherwise the burden transferred to owners whose accounts were paid current, in order to keep the quality of the HOA property up to par and pay salaries and other related operational costs. In some cases I have seen first hand where members of the Board of Trustees have given or loaned the HOA money to pay vendors and meet payroll because there were insufficient funds available. I have served on two HOA Boards and the need to seek and receive delinquent funds and special assessments is critical to all HOA's and I would urge the HI Legislature to pass whatever legislation comes before them to provide for the necessary actions to do so and avoid the burden from being shifted to the owners who have paid in good standing.

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Veronique Bucherre-Frazier	Individual	Comments Only	No

Comments: Dear Sir, Dear Madam: I wish to call your attention of the wording of the following paragraphs of Article [§514B-146] Association fiscal matters; lien for assessments. Sub-paragraphs g. 2) and h., include detailed instructions about who pays; who does not pay; and even sets the limit of arrears to be paid by the subsequent purchaser. However detailed, they omit to specify or establish the terms concerning payment of the assessment during the phase between notice, foreclosure, transfer and sale of the property. Whoever –or whatever person- holds the Deed is responsible; be it an individual or a corporation. If this were to unduly prolong the foreclosure process, all arrears accumulated during such process shall be the responsibility of the person having legal access to the unit. It is expected that such details should also be included here. The contrary leads to the conclusion that the bank's debt is passed on to the second buyer, for the bank's benefit at the owners' expense and, ultimately, the community's. Fourteen states have already adopted laws regarding this. Please, make Hawaii number 15! Sincerely, Veronique Bucherre-Frazier, #310 Kona West

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jean McAuliffe	Individual	Comments Only	No

Comments: The current version of HB21 under consideration is greatly weakened compared to the original bill. I urgently request that the wording from the ORIGINAL BILL be restored that gives the HOAs basic lien rights for unpaid assessments full priority over bank mortgages. It is not fair that homeowners (like me) should suffer financially from the growing burden of delinquent association fees due to abandoned units. Why should homeowners have to pay the price for the banks' unacceptably long delays in foreclosing on these condos or for approving risky mortgages in the first place? In the last six years, I have seen my HOA fees increase by 15%. Small non-profit HOAs like ours deserve a fair chance at recouping delinquent fees so that homeowners like me who are working hard to meet our financial obligations do not have to suffer additional fee increases and/or reduced maintenance and services. I hope our legislators will give homeowners that chance by restoring HOAs' full priority over bank mortgages for these unpaid assessments. As our elected representatives, it is the right thing to do to put homeowners and our communities first.

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HB21

Submitted on: 3/13/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel Glanstein	Individual	Comments Only	No

Comments: Please go back to the original draft of HB21. The legislature needs to listen to their constituents, not to bank lobbyists. The original version of HB21 does what is right for condominium associations, which is where many constituents live. Please read the testimony provided by those of us who are condominium owners and who always have to pay more when other owners are delinquent. Banks don't move on foreclosures, which makes it impossible for our associations to ever collect all of what we are owed. This is unfair to let banks control the association's ability to pay its bills and take care of its property. Please return to the original version of HB21 that protects condominium associations, and make parallel changes to the older condo law, 514A. Mahalo!

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HB21

Submitted on: 3/13/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Al M. Camosso	Individual	Comments Only	No

Comments: I am the owner of unit 176A at Makaha Valley Plantation.. I am very interested in HB 21 and wish to have the following language reinstated. Please restore the language that gives the HOA's basic lien rights for unpaid assessments full priority over bank mortgages. Mahalo Nui Loa. Al M Camosso

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HB21

Submitted on: 3/13/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Donna Scott	Individual	Comments Only	No

Comments: I urge that the committee restore to this bill the lien priority given to the homeowners' associations for past due HO dues. Simply allowing the HO Assns to burden the homeowners by yet ANOTHER reserve obligation is no kind of relief at all, and is unfair to homeowners who are struggling to pay the present dues and assessments. The banks should pay a fair share!

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HB21

Submitted on: 3/13/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Lorraine kennedy	Individual	Comments Only	No

Comments: Pleaee restore the wording from the ORIGINAL bill, that GIVES THE HOAs' BASIC LIEN RIGHTS FOR UNPAID ASSESSMENTS, FULL PRIORITY OVER BANK MORTGAGES. Please support owners, not banks.... this is Hawaii.

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HB21

Submitted on: 3/13/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Damon Fairchild	Individual	Comments Only	No

Comments: Please bring back the original HB21 to support the consumers represented by ALL condominiums, i.e. 514A and 514B

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Agnes Arany-Makkai	Individual	Comments Only	No

Comments: Please restore the wording, from the ORIGINAL bill, that GIVES THE HOAs' BASIC LIEN RIGHTS FOR UNPAID ASSESSMENTS FULL PRIORITY OVER BANK MORTGAGES. WE are poorer than the damned banks!

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Brent Mukai	Individual	Comments Only	No

Comments: I am an owner of a condominium suffering from raised fees to cover delinquency. I favor giving the HOA's priority to basic lien rights over that of the mortgages owed to banks or lenders. We must be able to recapture our expenses without additional expenses being incurred. Please help us!

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Christine M Burton	Individual	Comments Only	No

Comments: I am very concerned about the overall financial health of our Hawaii condos and projects due to the numerous short sales and foreclosures in this economic meltdown. Please bring back the original HB21 to support ALL the homeowners / consumers of our condos / projects (514A & 514B). Ultimately, this will greatly help Hawaii keep our buildings and homedwellings safe and financially sound. Thank you for reading my comments. Sincerely, Christine M. Burton

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Stuart	Individual	Comments Only	No

Comments: As a condo owner I've had my condo fees rise significantly over the past few years. A large portion of the fee increases have been caused by the need to cover the cost of owner delinquencies, many of whom live off-island. HOA's need a mechanism to deal with this serious issue. I strongly favor giving HOA's priority in basic lien rights over that of the mortgages owed to banks and other lenders. HOA's should be able to recover their expenses from delinquent owners. Responsible condo owners should not be penalized due to the delinquency of irresponsible owners; the irresponsible owners should be penalized for their delinquency, and the condo HOA should be able to recover the value of delinquent payments. This is only fair.

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Rachanobol Prapatat	Individual	Comments Only	No

Comments: As an owner of a condo paying higher fees to cover delinquency, I favor giving the HOA'S priority to basic lien rights over that of the mortgages owed to banks or lenders. We should be able to recover our expenses in a manner before we on time payees are forced additional expenses that have the potential to bankrupt us as well.

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Grimes	Individual	Comments Only	No

Comments: As I understand it, the wording of the original bill gives homeowners' associations basic lien rights for unpaid assessments full priority over bank mortgages. But this was taken out in committee. As a member of the Homeowners' Association pertaining to Makaha Valley Plantation, I see rights for unpaid assessments having full priority over bank mortgages was taken out in committee. That places homeowners' rights in danger. Please restore the wording. initial

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Lucy Bridges	Individual	Comments Only	No

Comments: Please add in language that gives the HOA basic lien rights for unpaid assessments priority over those of a bank mortgage. HOA's are smaller entities that need their owed maintenance fees to insure the properties as a whole are maintained. I am an owner in a development where there have been foreclosures and the HOA really needs their funds to ensure the whole property looks good and in the end the banks will benefit by receiving a higher sale amount for the property because the surroundings are maintained. It is a win/win. Thank you for allowing me to comment. :)

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Adams	Individual	Comments Only	No

Comments: As an owner of a condominium suffering from raised fees to cover delinquency, I favor giving the HOA's priority to basic lien rights over that of the mortgages owed to banks or lenders. We must be able to recoup our expenses in a more favorable manor before we on time payees are forced additional expenses that have the potential to bankrupt us as well.

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Debbie Kelley	Individual	Comments Only	No

Comments: As an owner of a condominium suffering from raised fees to cover delinquency, I favor giving the HOA's priority to basic lien rights over that of the mortgages owed to banks or lenders. We must be able to recoup our expenses in a more favorable manor before we on time payees are forced additional expenses that have the potential to bankrupt us as well.

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March 12, 2013

HB21

We are disappointed that some of intent of HB21 has been eliminated.

Condominium Homeowners Associations have a need to receive full compensation from its members to fully execute their operating plans. When a condo property goes into receivership, with the law as it currently exists, revenue is lost to the associations forever. Further, financial institutions, as new owners of the property and with the current laws, have no incentive to sell 'until the market has recovered'. This could be months or even years.

The intent of our original submission was to point out that the financial institutions are, in effect, co-signers with the condo purchasers with respect to the homeowners association and they themselves have taken on the liability of the Homeowners Association fees should the condo property owners default. Just as we are liable for any commitments made by us as co-signers, the financial institutions should be liable for the homeowners association fees when property owners default. (and by extrapolation maybe they would not be as quick to make mortgage loans to higher risk applicants).

We implore that legislators reinstate the language into HB21 that gives Homeowners Association fees a priority over financial institution mortgages. In fact, the wording should be strong enough that the financial institutions must pay these HOA fees on the same timetable as other owners in the condo association.

Thank You

George+Shirley Snead

owners: Kaha Lani, Kauai

HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Herman Mast III	Individual	Comments Only	No

Comments: Please RESTORE wording of the original bill GIVING HOA'S BASIC LIEN RIGHTS FOR UNPAID ASSESSMENTS FULL PRIORITY OVER BANK MORTGAGES. This is an extremely important provision which should be included in the bill's final form!!!! HOA's need authority to collect in order to perform their functions adequately.

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
David Medeiros	Individual	Comments Only	No

Comments: I think that the you should go back to the ORIGINAL wording in the ORIGINAL bill that gives the HOAs' basic liens rights for unpaid assessments FULL priority over bank morgages.

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Elizabeth Fernandez	Individual	Comments Only	No

Comments: Bring back original House Bill 21 for the 1700 plus condominiums and their 179,000 homeowners. Condos need to be protected by both Chapter 514A and 514B. I demand that the bill be amended to remove rental income bailout.

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Gina Harris	Individual	Comments Only	No

Comments: To the committee, I would like you to retore the wording from the original bill. The wording that allows the HOA's basic lien rights for upaid assessments priority over bank mortgages. Thank you very much Gina Harris

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Andrew Bisnar	Individual	Comments Only	No

Comments: Dear Committee, Will you please restore the wording from the original bill. The wording that allows the HOA's basic lien rights for unpaid assessments priority over bank mortgages. Thank you

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Terri Moody	Individual	Comments Only	No

Comments: I would like you to restore the ORIGINAL bill, that GIVES THE HOAs' BASIC LIEN RIGHTS FOR UNPAID ASSESSMENTS FULL PRIORITY OVER BANK MORTGAGES.

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Ben Easters	Individual	Comments Only	No

Comments: Please use the original wording of HB21. It's necessary for HOA's to receive the assessments due from owners that have defaulted so that those of us that haven't defaulted won't end up owning units in condemned complexes! Thank you.

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Melanie Easters	Individual	Comments Only	No

Comments: Please restore the wording to that used in the original bill, giving HOA's lien rights priority over bank mortgages. By leaving HOA assessments unpaid, other owners are forced to make up the difference to maintain their communities, causing more and more home owners to fall behind in mortgages and payments, thereby perpetuating the original problem rather than contributing to its solution. Mahalo.

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Charlotte Stokes	Individual	Comments Only	No

Comments: On HB 21: Please bring back the original form of this bill, including chapters 514A and 514B. There is no need for condo associations to bail out the banks. If a bank forecloses on a condo it should pay the maintenance fees. Currently they need not pay them even if the unit has been rented out by the bank. My association fees include water, sewer and garbage pick up. Banks do not need a free ride. The owners like me pick up these costs. Further, the current practice finances banks' dawdling, not giving loans to qualified buyers, moving along the properties. That is, doing the opposite of fostering a healthy real estate market. No matter what the banks say, Fannie Mae does not object to treating condos like other properties. Please reinstate the original for of HB21. Thank you, Charlotte Stokes

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Grebe	Individual	Comments Only	No

Comments: I urge you to revert to the original language in this bill. You need to restore the wording, from the ORIGINAL bill, that GIVES THE HOAs' BASIC LIEN RIGHTS FOR UNPAID ASSESSMENTS PRIORITY OVER BANK MORTGAGES. Mahalo.

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Tanya Urcavich, Ph.D	Individual	Comments Only	No

Comments: I urge you not to water down this bill to the point where it has no impact. Please consider using the wording from the original bill. Support owners, not banks!

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Morabito	Individual	Comments Only	No

Comments: (a) Please bring back the original House Bill 21 that was designed to “even the playing field” for the 1,700+ condominiums and their 179,000 homeowners. Represent your constituents and the voters, not special interest groups. (b) Please make sure condominiums are protected by INCLUDING BOTH Chapter 514A and 514B. (c) Definitely amend the bill to remove the rental income bank bailout for banks. (This occurs if the association has to risk buying, renovating, and renting the unit. The bank then forecloses again and gets the financial benefit of all of your condominium’s hard work.) This is totally unfair to the association members who are paying for bank delays already!

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
LeRoy C. Klemt	Individual	Comments Only	No

Comments: Please support HB21 which will give greater protection to condominium associations in foreclosure actions. Banks have already received significant benefits from both the federal government and the State of Hawaii.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
John Douponce	Individual	Comments Only	No

Comments: Restore original bill, that gives HOA's basic lien rights for unpaid assessments priority over Bank mortgages.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jean Lambert	Individual	Comments Only	No

Comments: Dear Committee Members, As an owner and a member of the Kaha Lani AOAO, I am asking you to restore the wording on the ORIGINAL HB21 bill, which gives the HOA,s basic lien rights for unpaid assessments priority over bank mortgages. Without that, banks have no incentive to sell the property, and we have had some properties at Kaha Lani in foreclosure for over 2 years! Month after month the unpaid maintenance fees grow, since the banks have no responsibility to pay these. Owners should not have to pick up after the banks! Sincerely, Jean Lambert, Secretary Kaha Lani AOAO

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
richard henriksen	Individual	Comments Only	No

Comments: please bring back the original House Bill 21 that was designed to “even the playing field” for the 1,700+ condominiums and their 179,000 homeowners. I am one of the owners. It is unfair that the banks who can protect their interests by foreclosing can delay and cost home owners associations alot of money. This is not fair. We need to make sure condominiums are protected by INCLUDING BOTH Chapter 514A and 514B. We need to amend the provision to remove the rental income bank bailout. This would be fair because putting the AOAO ahead of the banks will mean that the banks would either have to move fast on delinquencies or add the maintenance fees to the mortgage (like they do with lease rent and property tax). This could really help condos with respect to foreclosures. There may even be less condo foreclosures since the banks will watch delinquencies more closely. Many mortgages already give the banks the right to pay the maintenance fees and charge the homeowner. Hawaii could be the most progressive state for protecting the condominium owners/consumers. What's wrong with that? Thanks richard henriksen

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Debi Willis	Individual	Comments Only	No

Comments: In reading the current version of this bill, it seems the Commerce/Consumer Protection Agency has only been given the right to protect Banks rather than offering any sort of protection to Taxpayers who own property governed by a HOA. What happened to the language to provide HOAs with lien priority for unpaid assessments? How does removing that much needed stipulation protect Hawaii's consumers? I hope you will reconsider and restore that portion of this bill. Please fully consider the consequences of your actions. Me Ka Mahalo ihi.

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Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Sue and Dick Burriss	Individual	Comments Only	No

Comments: Please return the original language to this bill. The amendments have transformed the intent of the bill. We want to give Homeowner Associations lien rights for unpaid fees and assessments. These rights should have priority over the bank liens.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Doug Holien	Individual	Comments Only	No

Comments: Please restore the bill language that gives HOAs superior lien rights for unpaid assessments over bank mortgages.

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HB21

Submitted on: 3/11/2013

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Submitted By	Organization	Testifier Position	Present at Hearing
Debbie Gurule	Individual	Comments Only	No

Comments: "Please bring back the original HB21 to support the consumers represented by ALL condominiums, i.e. 514A and 514B."

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Maria Johnson	Individual	Comments Only	No

Comments: The AOA's should get all of the back maintenance fees before the banks receive any of the money due them. As a home owner we have to pay extra fees because of these people who let the maintenance fees go delinquent. It is very unfair to us as the banks should have never given a loan that was not secured. They have the funds to make up these losses as we DON'T!!! Please return this bill back to it's original wording and save all of us, the little guys who work hard to have these nice places not the big guys, banks!!!

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
W Wood Cole	Individual	Comments Only	No

Comments: This bill, as it was originally worded, gave some relief to the homeowners of condominium properties from other defaulting owners. As the original intent of the Horizontal Property Regimes Law was to provide a form of ownership much like a municipality with all the do's and don't associated with this "municipality". Now we find ourselves in last position and helpless to enforce something as simple as collecting our homeowner fees and reserve amounts. I believe it was over 20 years ago, the legislature passed a bill requiring all condominium associations to establish a "reasonable" reserve fund or 100% funding. That is, a 20 year roof would have, at 15 years .. 15 years of funding in the reserve. The concept of this was to provide homeowners a reasonable expectation of funding actual replacement costs without having to assess owners with a "special assessment". Our BOD at Kaha Lani has had to increase our homeowners fees over the last several years to cover our reserve and maintenance fees because of non-payment of other owners (including lending institutions). This year a special assessment became necessary. The legislature, it seems, has tried to provide some protection to associations of homeowners in the past, but seems more intent on protecting lending institutions at this point. If the point is to make sure that lending institutions are going to keep lending, please don't be taken in by the threat that these lenders will be reluctant to provide further lending. This is a competitive society and where one may pull out, the void will be taken up by someone else. If we, as homeowners, must continue to pay for others with no recourse for collecting, there may be no more homeowners to provide lending to anyway. Please REINSERT the wording from the original bill to provide HOA's BASIC LIEN RIGHTS FOR UNPAID ASSESSMENTS AND HOA FEES priority over lending institutions, as was originally intended by the Horizontal Property Regimes Law of 1961

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Arthur Kluvo	Individual	Comments Only	No

Comments: First, here is some background. I am an owner of a single bedroom unit at AOA Cathedral Point. I currently serve as board treasurer and have been in that position for eight years. AOA Cathedral Point is a 222 unit complex in a working level condominium. Our units cost about \$120,000 for a one bedroom unit and about \$140,000 for a two bedroom unit. We currently have \$300,000 in delinquent accounts. Nineteen (19) delinquent accounts are being handled by an attorney. Not sure why the original HB21 bill was modified and now gives favor to the banks. It appears the BANK lobby got to someone. The original HB21 bill leveled the playing field so that condominiums could get relief for their delinquent accounts. The modified bill reduced some of those provisions. Perhaps the major inequity of the modified bill is the rental income provisions. By the time an associations acquires a property through judicial or non-judicial foreclosure, they have expended many intangible resources that don't have a dollar amount. It is unfair that excess rental income must then be distributed to others. Another inequity is there doesn't appear to be any reimbursement for such expenditures such as renovation costs to a unit to make it rentable. At Cathedral Point we presently have three such rental units that were acquired after a lengthy and costly foreclosure. One unit required over \$10,000 in renovation while the other two units required more than \$5,000 per unit to renovate. It will take many months of rent just to break even from the delinquent amount owed. Bank foreclosure would allow the banks to recover the renovated unit without compensating the association for improvements made. In most cases the takeover by the banks, who are typically first in line during a foreclosure, would take place long before the association received enough rental income to cover their loses. This is unfair. Lastly, a sentence needs to be added to the bill to indicate it applies to condominiums that use HRS Chapter 514A AND 514B. Right now both chapters are mentioned separately and it is confusing.

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HB21

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Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Stephen Combs	Individual	Comments Only	No

Comments: Honorable Senators; The original House Bill 21 was designed to make sure condominium owners and HOA's were protected in their ability to collect past due maintenance fees from mortgagee holders after foreclosure. I ask that Chapter 514A and 514B be restored to this bill. 180,000 Hawaii homeowners need your help.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Andy Mina	Individual	Comments Only	No

Comments: While I fully support the intent of HB 21, it is no longer as effective it was originally written. Without HOA lien priority on delinquencies and unpaid assessments, individual owners remain responsible to make up for the excess costs to maintain even subsistence levels of property care. On the other hand, banks have no incentive to expedite foreclosure or short sale actions, placing a greater and greater burden on neighboring individuals to pay more to maintain the value of the bank's property. This is patently unfair and not in line with the intent of recent changes to Fannie Mae guidelines which clearly support initiatives such as HB 21 in its original form. The banks are saying that they need the primary lien position or they will lose money. I argue that the banking industry coupled with their insurers have far more capacity to absorb the relatively small losses of HOA delinquent assessments than do individual owners and taxpayers. HOAs are non-profit, banks are not. Damages to HOAs are direct and tangible damages to individual residents. Restore the original intent of HB 21 and grant HOAs priority lien position.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Derry Morris	Individual	Comments Only	No

Comments: Please restore original wording to HB21 that gives HOAs basic lien rights for unpaid assessments full priority over bank mortgages

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
BK Walker	Individual	Comments Only	No

Comments: It is very important to restore the wording of this bill to include giving the HOA's basic lein rights for unpaid assessments priority over bank mortgages.

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Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
S Walker	Individual	Comments Only	No

Comments: Please restore this bill to give the HOA's the basic lein rights for unpaid assessments priority over bank mortgages. This is imperative!

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Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Henry Magee	Individual	Comments Only	No

Comments: I am Vice President of the Association Of Apartment Owners (AOAO, same as HOA) of Country Club Village Phase 2, 469 units in two hi-rise towers in Salt Lake. Please restore to HB 21 wording from the ORIGINAL bill, wording that gives the AOAOs and HOAs basic lien rights for unpaid assessments full priority over bank mortgages. Recent changes in Fannie Mae guidelines clearly support states enacting laws like HB 21 as originally written. It is reasonable to expect that the full secondary mortgage market will follow the Fannie Mae lead on this issue. Please restore the cited original wording to HB 21.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Edward Taylor	Individual	Comments Only	No

Comments: I am extremely disappointed that the rewrite of HB21 eliminated the rights of the HOA's and the responsible, bill paying members of the associations. Delinquent owners and their mortgage'partners'have no incentive to proceed through the foreclosure process. They are quite willing to have the HOAs protect their interest via property maintenance for free,for extended periods of time. The most effective way to put these mortgage problems behind us is to incent banks to act. This can be done by the proper application of HOA lien rights over bank rights. What are the bank's added carrying costs without this? Essentially only the annual property tax, about 1% of value, and merely 1/3 of the HOA annual expense! Conceivably, they could hold on for years, waiting for appreciation to recover their loss. If you truly want Hawaii's real estate overhang to be resolved, revise this bill to place HOA's lien rights ahead of the lenders. Life is not necessarily fair but putting the banks ahead of the HOA's is absolutely UNFAIR.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Letitia Ann Desjardins	Individual	Comments Only	No

Comments: DEAR COMMITTEE, PLEASE RESTORE THE WORDING FROM THE ORIGINAL BILL THAT GIVES THE HOAs' BASIC LIEN RIGHTS FOR UNPAID ASSESSMENTS PRIORITY OVER BANK MORTGAGES.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jo Ayers	Individual	Comments Only	No

Comments: please restore the wording from the original bill that allows priority for the homeowners association over bank mortgages for the unpaid assessments. Mahalo

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Joyce and Jerry Gilbert	Individual	Comments Only	No

Comments: Please see that the original wording giving HOA's Basic Lien rights for unpaid assessments priority over Bank Mortgages. It isn't fair that other condo owners should have to pay additional fees for people losing their their condos. Banks make the loans and need to be more particular with loan applicants.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
henry sattig	Individual	Comments Only	No

Comments: I support the original version of HB 21. Please return the bill to it's original language and approve the bill.

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HB21

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Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Thomas Hamm	Individual	Comments Only	No

Comments: I want it to restore the wording, from the ORIGINAL bill, that GIVES THE HOAs' BASIC LIEN RIGHTS FOR UNPAID ASSESSMENTS PRIORITY OVER BANK MORTGAGES.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Glen M Hilton	Individual	Comments Only	No

Comments: Please consider restoring the original wording that provides HOAs' basic lien rights for full unpaid assessments over bank mortgages. Thank You for your consideration in protecting all the home owners who are impacted if the banks should continue to have priority.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Sheila Honeywell	Individual	Comments Only	No

Comments: I WOULD LIKE THE COMMITTEE TO RESTORE THE WORDING FROM THE ORIGINAL BILL THAT GIVES THE HOME OWNERS BASIC LIEN RIGHTS FOR UNPAID ASSESSMENTS PRIORITY OVER BANK MORTGAGES... I BELIEVE THIS IS FAIR!!!

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Orville Paschke	Individual	Comments Only	No

Comments: I would like to restore the wording from the original bill that gives HOA's basic lien rights for unpaid assessments priority over Bank Mortgages. I am an owner of a condo in Kaha Lani Resort Complex and it is an undo hardship for a retired couple (my wife and I) who are on Social Security to pay extra assessments from condos that have foreclosed and have not been current on there maintenance fees. The Mortgage holder should be responsible for these unpaid fees before the property is resold or it should be paid by the new owner who are getting fantastic deals on these foreclosed properties during a recession.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Wayne Cascio	Individual	Comments Only	No

Comments: HB 21 in its current form does nothing for HOAs in the State of Hawaii. Please restore to HOAs basic lien rights for unpaid maintenance fees and restore their priority over bank mortgages. Condominium owners were innocent third parties to the mortgages issued by banks, yet must bear the burden of unpaid maintenance fees (except for 6 months' recoverable fees). It is taking up to four years, in some cases, for properties to emerge from the foreclosure process.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Barry D Eisemann	Individual	Comments Only	No

Comments: This comment is to restore the wording from the ORIGINAL bill that provides the Home Owners Associations "BASIC LIEN RIGHTS FOR UNPAID ASSESSMENTS PRIORITY OVER BANK MORTGAGES."

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Tanguay	Individual	Comments Only	No

Comments: I wish to restore the wording from the ORIGINAL bill that gives HOA's basic lien rights for unpaid assessments priority over bank mortgages. This is so important to many private individuals who have to carry this financial burden at this time. Please help the common folk from the middle class!!!

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Tanguay	Individual	Comments Only	No

Comments: I wish to restore the wording from the ORIGINAL bill that gives HOA's basic lien rights for unpaid assessments priority over bank mortgages. This is extremely important and just. You should be representing the common "man" not big business (banks)!!! Thank you for listening.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Don Jackson	Individual	Comments Only	No

Comments: Restore the original language to the bill to give HOA's the basic right liens over banks. It's time to give HOA's a break, especially in light of the fact that banks CAUSED the real estate bubble to burst by GREED for profit through insane/fraudulent lending practices!

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
John James Lord	Individual	Comments Only	No

Comments: WHEN BIG BUSINESS, BANKS, MORTGAGE COMPANIES RUN INTO A PROBLEM THEY GET BAILED OUT. AN INDIVIDUAL LIKE MYSELF GETS LITTLE OR NO GOVERNMENT SUPPORT SINCE I CANNOT AFFORD A TEAM OF LOBBYIST. PLEASE RESTORE THE WORDING FROM THE ORIGINAL BILL THAT GIVES THE HOAs' BASIC LIEN RIGHTS FOR UNPAID ASSESSMENTS PRIORITY OVER BANK MORTGAGES. MAHALO FOR DOING THE RIGHT THING.

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HB21

Submitted on: 3/13/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
herb jaehne	Individual	Comments Only	No

Comments: do not make changes to original bill. changes will permit banks to steal money from condo owners and may financially ruin condo associations putting more people on welfare. be true to the little guy!

HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Walkey	Individual	Oppose	Yes

Comments: HB21 HD2 Testimony in Opposition My name is Ted Walkey. I am a condominium owner and have 24 years of experience in common interest community management. HB 21 was a pretty good amendment to HRS 514B. It placed the responsibility for the loss of monies squarely where they belonged; on the entity who gambled to make a profit on the mortgage. HB21 HD2 is completely wrong. 1. It amends HRS 541A which is unnecessary. HRS 514B Part IV applies to all condominiums in the state. Part IV contains Section 146 Association fiscal matters; lien for assessments. 2. It suggests the association make up for delinquent maintenance assessments by assessing the other members of the association, and it requires excess funds, if collected, to be given to the delinquent owner or his successor, which could be the foreclosing entity. 3. It presumes that a majority of the members of the association will vote to assess themselves to pay the delinquency. (In fact, the other members already pay the delinquency in the form of higher assessments.) Only through repayment by the responsible parties are the members able to forego raises in maintenance fees. 4. It makes the association a landlord for the mortgage holder. How quickly will the mortgagee consummate a foreclosure if it is receiving income from the property? The mortgagee assumed the risk of foreclosure when it lent money in expectation for turning a profit, it should accept the loss. HB21 HD2 should be defeated.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Johnson	Individual	Oppose	No

Comments:

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
John Schick	Individual	Oppose	No

Comments: This is not a good idea. it deprives associations of needed funds to maintain the property, consequently resulting in a lower sales value to the mortgage holder and an extra burden on the remaining paying owners.

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HB21

Submitted on: 3/11/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Mei Lee Wong	Individual	Oppose	No

Comments:

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Taraya	Individual	Oppose	No

Comments: This bill has gone through many revisions and it still does not address the real issue. This was never a problem when the banks foreclosed on their delinquent units and accepted responsibility for the maintenance fees. The solution lies with holding the lender responsible, not trying to empower the Association at the expense of the owners. The approach is all wrong and it needs to be reconsidered from the beginning.

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HB21

Submitted on: 3/12/2013

Testimony for CPN on Mar 14, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jim Keithahn	Individual	Oppose	No

Comments: I am submitting this testimony for the Valley Isle Resort AOA. HB 21 will put AOAOs in a worst position than they are already after a nonjudicial foreclosure has been conducted, as any "excess proceeds" need to be held for the banks and this is not the case now, as any excess proceeds (after all amounts owed to the association are paid) are applied to assist the associations with the other "bad debts", and the associations are not "making money" but just trying to break even and mitigate the damage to paying owners that is caused by defaulting owners.

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To: Hawaii State Legislature, CPN Committee

From: Gregory D. Dunn, 225 Queen Street #7A, Honolulu, HI 96813

Date: March 11, 2013

RE: Memo in opposition to HB 21

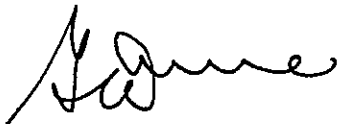
Please accept this testimony in OPPOSITION to House Bill 21.

House Bill 21 in it's current form is unacceptable. Condominium Associations are at their core groups of INDIVIDUALS who have agreed to enter into a contract to care for the common elements of building in exchange for peaceful enjoyment of their owned space. When one of the those individuals fails to uphold their agreed to obligation and goes into default, but have used their pro-rata share of utilities, taken advantage of insurance protections and enjoyed the use of common element amenities, their amounts due must be allowed to be collected as a primary debt by the Condominium Association.

Changing the ability of Condominium Associations to collect on moneys spent in good faith to upkeep and supply a member with services will cripple us, and place undue burden on the remaining members of the associations.

I own several condo units, and the thought that our elected representatives are planning to place the needs of condo owners beneath the desires of lenders is unconscionable.

Please vote down this terribly crafted piece of legislation.

A handwritten signature in black ink, appearing to read 'Gregory Dunn', written in a cursive style.

Gregory Dunn