

LATE TESTIMONY

PRESENTATION OF THE REAL ESTATE COMMISSION

TO THE HOUSE COMMITTEE ON
FINANCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Wednesday, February 20, 2013
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 24, H.D. 1, RELATING TO CONDOMINIUMS.

TO THE HONORABLE SYLVIA LUKE, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nikki Senter and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on House Bill No. 24, H.D. 1, Relating to Condominiums. House Bill No. 24, H.D. 1, requires that an unspecified amount of fees be paid into the Condominium Education Trust Fund which shall be used to support mediation of condominium-related disputes. The Commission supports in part the intent of House Bill No. 24, H.D. 1, to encourage mediation in condominium settings but opposes the bill as drafted for the following reasons.

- Since 1990, pursuant to the then section 514A-131(a) (3), HRS, and now section 514B-71 (a) (3), HRS ¹, the Commission has supported and continues to subsidize mediation of condominium disputes with funds from

¹ **[§514B-71] Condominium education trust fund.** (a) The commission shall establish a condominium education trust fund that the commission may use for educational purposes. Educational purposes shall include financing or promoting:

(1) Education and research in the field of condominium management, condominium project registration, and real estate, for the benefit of the public and those required to be registered under this chapter;

(2) The improvement and more efficient administration of associations; and

(3) Expeditious and inexpensive procedures for resolving association disputes. (Emphasis added.)

(b) The commission may use any and all moneys in the condominium education trust fund for purposes consistent with subsection (a).

the Condominium Education Trust Fund (CETF). Annually the Commission reports on the condominium community's usage of CETF subsidized mediation of condominium disputes in a required annual report to the Governor and the Legislature. Attached is a copy of that report for FY 2012.

- Mediation services, both facilitative and evaluative, continue to be available on all islands pursuant to contracts the Commission has with mediation providers on Oahu, Maui, Hawaii, and Kauai.
- As drafted on page 2, lines 11-18, House Bill No. 24, H.D. 1, allocates annually an unspecified amount from the CETF for the payment of mediation services for the benefit of condominium owners and associations. The Commission would support the unspecified amount be in addition to the amount currently collected. Currently CETF fee amounts are established by rules adopted by the director of DCCA. It is unclear from the proposed language whether the unspecified amount includes an additional amount to be imposed and then allocated for the support of mediation or whether additional amounts for the support of mediation shall be taken from the current CETF fund balance. The current CETF fund balance is based on an approved allocated budgetary ceiling amount approved by the legislature. Based on the legislatively approved allocated budgetary ceiling amount, the Commission has already allocated an

amount for subsidizing both facilitative and evaluative mediation. Thus, if the proposed increased allocation for the support of mediation is required to be allocated **from existing** CETF balance amounts such a proposal would **leave unfunded** other worthwhile earmarked, budgeted, and approved educational programs.

- The proposed deletion on page 3, lines 10-11, appears to have created an unintended consequence; in that, the proposed language deletes the DCCA's director's authority to adopt any CETF fees while proposing to allow the director to increase the CETF fees to support **only** the mediation of condominium-related disputes. To address what appears to be an unintended consequence, the Commission recommends keeping the proposed deleted language on page 3, lines 10-11;
- The proposed language of Section 4 on page 3, lines 16-22, is unclear and ambiguous. The proposed language on page 3, lines 11-15, appears to require that a fee amount, and any increase in fee amounts, be specifically used for the support of condominium-related disputes. Section 4 proposes that the Commission adopt rules establishing a CETF amount. A CETF amount already exists and a fee increase has recently been adopted by the Director of DCCA and approved by the Governor. Is it the intent of proposed Section 4 to apply only to any increased CETF amount for mediation of condominium-related disputes?

- CETF fee contributions are paid by the condominium associations on a biennial basis (every two years). Thus, House Bill No. 24, H.D. 1, proposes an effective date of July 1, 2013, which does not provide a workable administrative start date.
- On page 1, lines 7-8, the Commission notes an incorrect reference about fees paid into the CETF, namely, condominium developers which register condominium projects with the Commission prior to offering to sell units in the condominium also contribute and pay fees into the CETF.

Although the Commission opposes House Bill No. 24, H.D. 1, as drafted, it does prefer most of Senate Bill No. 505, S.D. 1, with amendments on this same subject. The Commission agrees with one of its stated purposes "to encourage and provide a robust mediation opportunity for condominium owners throughout the State." Towards these ends, Senate Bill No. 505, S.D. 1, proposes that an additional amount be imposed and be paid into the CETF beginning with the condominium association's biennial registration period July 1, 2015. Senate Bill No. 505, S.D. 1, leaves intact the Commission's already legislatively approved budget ceiling expenditure amount and the CETF planned educational programs, including a subsidized amount for mediation.

For the reasons discussed, the Commission opposes House Bill No. 24, H.D. 1, as drafted. Thank you for the opportunity to testify.

to reflect changes in the law and for distribution to the condominium community on the Commission website.

Condominium Association Registration – The Commission administered the condominium association registration program, including a review of submitted applications and the assessment of Commission registration policies and procedures. It also considered appeals, subpoenas, and requests for records under Office of Information Practices rules and procedures. For FY 2012, the Commission continued its biennial condominium association registration. There were 1,649 condominium projects registered, representing 156,846 condominium units, registered with the Commission (See Chart 17). In addition, the Commission continued the implementation of an online registration process and continued to make available on the Commission website a list of all association contact information. The Commission also responded to requests for lists of pet-friendly,

leaseholds, and Neighbor Island-specific condominium associations.

Condominium Seminars and Symposiums – The Commission continued to produce seminars for the condominium community utilizing Commission staff, procured providers, and volunteer faculty of representatives from the condominium governance, development, and real estate community. The Commission continued to administer CETF subsidies for Commission-approved seminars, including the following for FY 2012:

- July 2011 – Legislative Update
- August 2011 – Dealing with Criminal Elements in Associations
- October 2011 – Covenants Enforcement
- January 2012 – Board Blunders
- March 2012 – Insurance – How Much is Enough? (Kona)
- May 2012 – Insurance – How Much is Enough? (Honolulu)

Chart 16. Condominium Governance Mediations

