

HAWAII CHAPTER


community
ASSOCIATIONS INSTITUTE

LATE

P.O. Box 976
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February 3, 2013

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

Re: SB 1368/OPPOSE

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

I Chair the CAI Legislative Action Committee. CAI opposes SB1368.

The Real Estate Commission ("REC") has broad powers pursuant to Hawaii Revised Statutes Sections 514B-65 (investigative powers), 66 (cease and desist orders), 67 (termination of registration) and 68 (power to enjoin). The need for this bill is, therefore, unclear.

SB 1368 is overbroad and vague. SB 1368 also omits meaningful due process protection. For example, it is useful to contrast SB 1368 with Section 514B-66, which is reprinted below:

[§514B-66] Cease and desist orders. In addition to its authority under sections 514B-67 and 514B-68, whenever the commission has reason to believe that any person is violating or has violated this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, or the rules of the commission adopted pursuant thereto, it may issue and serve upon the person a complaint stating its charges in that respect and containing a notice of a hearing at a stated place and upon a day at least thirty days after the service of the complaint. The person served has the right to appear at the place and time specified and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law or rules charged in the complaint. If the commission finds that this chapter or the rules of the commission have been or are being violated, it shall make a report in writing stating its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court. (Emphasis added)

SB 1368 omits similar due process provisions.

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SB 1368 provides that "whenever the commission has reason to believe" a violation exists "the commission may take whatever enforcement action is necessary to ensure compliance with this chapter." It appears from the bill, and in contrast with 514B-66, for example, that the commission may act without notice and without providing an opportunity to be heard.

Due process is a fundamental constitutional right. Notice and an opportunity to be heard are basic elements of due process.

CAI could be supportive of a narrowly tailored solution to a demonstrated real-world problem that is not already addressed by existing law; provided that:

- 1) meaningful notice and opportunity to be heard are included; and
- 2) "whatever enforcement action is necessary" is reworked to particularly describe reasonable enforcement actions that might be considered.

Very truly yours,

Philip Nerney

Philip Nerney

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February 5, 2013

Senator Rosalyn H. Baker, Chair
Senator Brickwood Galuteria, Vice Chair
Senate Committee on Commerce & Consumer Protection

Re: SB 1368 Relating to Condominiums
Hearing: Tuesday, February 5, 2013, 8:30 a.m. Conference Room 229

Dear Senator Baker,

I am in complete support of SB 1368. I have been testifying at Legislative hearings regarding condominium bills for more than a quarter century. A number of bills have been approved by the Legislature to help owners who have disputes with their Boards of Directors and/ or management companies

However, the Real Estate Commission does not have the authority to enforce many of the provisions that are available to protect condominium owners. This bill will make it possible for the Real Estate Commission to enforce the provisions of condominium law, although it will not guarantee such enforcement. Nevertheless SB 1368 is a valuable first step to protecting the rights of condominium owners already available under Chapter 514B.

I urge your committee to support SB 1369 Relating to Condominiums.

Sincerely,

Richard Port
Richard Port