

SB 336

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Condominium Dispute Resolution; Office of Administrative Hearings

Description: Establishes the condominium dispute resolution program for condominiums. Permits a party to proposed or terminated mediation to file a request for a hearing with the office of administrative hearings of the department of commerce and consumer affairs.

Companion:

Package: None

Current Referral: CPN

Introducer(s): KEITH-AGARAN (Introduced by request of another party)

<u>Sort by</u> <u>Date</u>		Status Text
1/18/2013	S	Introduced.
1/18/2013	S	Passed First Reading.
1/22/2013	S	Referred to CPN.
1/25/2013	S	The committee(s) on CPN has scheduled a public hearing on 02-01-13 8:30AM in conference room 229.



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

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

Date: Friday, February 1, 2013
Time: 8:30 am
Conference Room: 229

**TESTIMONY FOR HEARING ON SB 336
RELATING TO CONDOMINIUMS**

TO THE HONORABLE ROSALYN H BAKER, CHAIR & THE HONORABLE BRICKWOOD
GALUTERIA, VICE CHAIR, AND MEMBERS OF THE SENATE COMMITTEE

The Office of Administrative Hearings (OAH) of the Department of Commerce and Consumer Affairs ("the Department") appreciates the opportunity to offer comments for the Committee's Hearing on Senate Bill 336, relating to Condominiums. My name is David Karlen, and I am the Senior Hearings Officer of the OAH.

The Bill provides for an alternative dispute resolution process for disputes between apartment owners and their condominium's board of directors that involves hearings before the OAH. The OAH has administered pilot programs for such hearings

from July of 2004 through June of 2011, when the pilot programs sunsetted by law. For the reasons set forth below, the Department does not support this bill.

While the Department shares the Legislature's concerns about providing a cost-effective and timely mechanism for resolving condominium disputes, based on OAH's seven years of experience with the condominium pilot program, the Department does not believe that the process as proposed in this bill is the appropriate answer to those concerns. OAH found that usage of the program was low. Moreover, the structure of the program both in the past and in this bill may actually deter rather than encourage mediation of condominium disputes.

1. Past experience did not demonstrate strong usage of the dispute resolution process culminating in an OAH hearing.

The statistics concerning past requests for OAH hearings on condominium disputes do not demonstrate a real demand for such hearings. A total of thirty-eight (38) hearing requests were filed in the seven years the pilot programs were authorized. This averaged out to less than six (6) requests per year.

Statistical analysis is made a bit more complicated because there were actually two pilot programs. The first was established by Act 164, 2004 Session Laws, and it applied to condominiums organized under HRS Chapter 514A. It sunsetted on June 30, 2006, but was then revived to operate from July 1, 2007 through June 30, 2011.

The second program was established by Act 277, 2006 Session Laws, and applied to condominiums organized under the newly enacted provisions of HRS Chapter 514B. This program operated from July 1, 2006 through June 30, 2011.

The two programs thus were both operational during the four years ending June 30, 2011. These four years would therefore be expected to experience, in combination, the most use of OAH hearings. During those years, however, there were a total of 25 hearing requests. This averages out to slightly more than six (6) requests per year.

2. The proposed legislation unfortunately discourages mediation

Mediation has been an increasingly favored method of alternative dispute resolution, and the Department strongly supports the resolution of condominium disputes through mediation. A professionally conducted mediation can often resolve disputes between owners and condominium boards (who, after all, must remain neighbors) while reducing antagonisms or hard feelings between the parties. Unfortunately, the preferred use of mediation is actually discouraged by the proposed legislation. This is because the party receiving the mediation demand, despite the mandatory language in HRS Sections 514A-121.5 and 514B-161, will often refuse to mediate, thereby allowing the requesting party to make a request for an OAH hearing without any prior mediation.

In the OAH's experience, almost all mediation demands were filed by unit owners. Further, the majority of condominium boards in OAH cases had refused to participate in the demanded mediation, so in those cases there were no alternative dispute resolution efforts prior to the OAH hearing.

In addition, the legislation does not realistically provide for consequences to condominium boards that refuse to mediate in the cases that need mediation the most, namely cases filed by *pro se* unit owners. The only possible sanction available to the

court or a hearings officer if the condominium board refuses to mediate and the *pro se* unit owner then prevails at hearing (which is not typical), is an award of costs and attorney's fees. However, in the normal case those costs would not be substantial, and there would by definition be no attorney's fees because the *pro se* apartment owner is not represented by an attorney.

Given the lack of a history of use of the prior program, the Department believes that parties to a condominium dispute may be better served by strengthening the existing condominium mediation option rather than permitting the parties to avoid mediation and use OAH to resolve their differences.

Thank you for the opportunity to provide comments on this proposed legislation.



P.O. Box 976
Honolulu, Hawaii 96808

January 29, 2013

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

Re: **SB 336/OPPOSED**

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

I am the vice-chair of the CAI Legislative Action Committee. CAI prefers the approach reflected in SB 505.

SB 336 seeks to revive "condo court" which had a fair trial in the past. CAI urges the legislature to support mediation instead.

Mediation is better for consumers than condo court. Notably, mediation empowers consumers through self-determination. That is, mediation allows consumers to craft their own solutions to problems, and to preserve or develop relationships within the condominium community. Condo court only provides for one party to win and for one party to lose.

Mediators facilitate peaceful dialogue in a safe setting, and can serve as a neutral, unbiased resource for information. Consumers can informally air concerns, test out ideas and explore creative ways to come to agreement in mediation. In contrast, a condo court hearings officer simply receives evidence and argument then makes either/or decisions based on formal legal standards and procedures.

SB 505 provides support for mediation by increasing contributions to the condominium education trust fund. Those contributions will be paid by condominium associations, through registration fees, and will not come from the general fund.

Honorable Rosalyn H. Baker
Honorable Brickwood Galuteria
January 29, 2013
Page 2 of 2

CAI has a fair basis for being aware of what is most likely to provide real benefit to consumers. Subsidized access to professional mediation services, which SB 505 enables, will provide real benefit to consumers.

CAI opposes SB 336 and respectfully requests that the Committee decline to pass it. SB 505 is a better alternative.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chris Porter", with a large, sweeping flourish at the end.

Chris Porter

SB336

Submitted on: 1/28/2013

Testimony for CPN on Feb 1, 2013 08:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Eric Matsumoto	Individual	Oppose	No

Comments: The life of "Condo Court" was extended far beyond its useful life, as a program draining dollars from the General Fund, while not fullfilling it epxectations of use by AOAOs and its members. The experiment did not work and to resurrect it would be again throwing away needed dollars unnecessarily, while avoidance by the consumeers, AOAOs and their members, of this avenue for dispute resolutions will continue. It's time to move on. Recommend this measure be held.

Honorable Senator Baker and Chair of the CPN Committee:

I am submitting testimony in support of SB336. Since the demise of the CDRP in June of 2011, Hawaii's homeowners who have had unresolved disputes with their HOAs and for whom mediation and/or arbitration has failed have been forced to seek redress or resolution through the courts. As a result, Hawaii's homeowners and their HOAs have not been on a level playing field.

This is because HOAs have "deep pockets", i.e., they have access to homeowners' maintenance fees which enables them to be able to afford to hire attorneys and engage in costly litigation instead of engaging in mediation and/or arbitration. The average Hawaii homeowner's financial resources are minuscule in comparison to his or her HOA's financial clout.

Without an independent arbiter (Hearing Officer) of the CDRP, an aggrieved homeowner must often endure an unfair or inequitable situation, simply because he or she cannot afford the tens of thousands of dollars (or more) that it will cost to settle even the simplest matter in the courts. Not to mention the CDRP can serve to alleviate the crowded court dockets we experience in Hawaii.

I urge you to support SB336 in order to restore equity and fairness to the dispute resolution process between Hawaii's homeowners and their HOAs.

Thank you for your consideration,

Thomas A. Marino

SB336

Submitted on: 1/30/2013

Testimony for CPN on Feb 1, 2013 08:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
christine johnson	Individual	Support	No

Comments: Thank you for this bill. I believe that there always needs to be another authority to oversee any one or group that tries to maintain absolute control.

Submitted By	Organization	Testifier Position	Present at Hearing
Elizabeth Shoup	Individual	Support	No