



P.O. Box 976
Honolulu, Hawaii 96808

February 20, 2013

Honorable David Y. Ige
Honorable Michelle N. Kidani
Ways and Means
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **SB 505 SD1/SUPPORT**

Dear Chair Ige, Vice-Chair Kidani and Committee Members:

I chair the CAI Legislative Action Committee. CAI supports SB 505 SD1.

The first thing to note is that SB 505 SD1 involves the expenditure of **zero** public dollars. The proposed increase to the condominium education trust fund is to be paid entirely by private funds. Developers and condominium associations pay into the fund through registration fees.

CAI is the relevant national industry organization representing condominium associations, so its support for this initiative should be regarded as significant. The missing piece in the search for consumer-friendly means of resolving condominium-related disputes has always been funding for mediation. SB 505 SD1 supplies that deficiency without the expenditure of general funds.

SB 505 SD1 takes into account concerns raised by the Real Estate Commission before the prior committee. For example, the funding increase was delayed to accommodate REC's registration cycle.

REC's February 1, 2013 testimony stated that there has been "a decline in the use of mediation" under its leadership and suggested that mediation was "an educational purpose not widely used by its beneficiaries[.]" The February 1, 2013 testimony of the Executive Director of the Mediation Center of the Pacific, Inc. explains why. Mediators with subject matter expertise are better able to address condominium-related disputes.

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SB 505 SD1 will enable consumers to access professional mediation services that would otherwise be unaffordable. This should enable the resolution of more condominium-related disputes. That, in turn, should reduce the incidence of litigation related to such disputes.

The non-adversarial resolution of condominium-related disputes is especially important because of the value of preserving relationships in communities. SB 505 SD1 serves important policy objectives by enabling broader use of professional mediators.

That is, professional mediators should be available to consumers, on a subsidized basis, when complex, challenging and vexing problems arise in the condominium context. SB 505 SD1 provides the funds to subsidize such access.

Many retired judges, for example, serve as professional mediators. They quite reasonably charge rates corresponding to their years of experience in law practice and on the bench. There is an obvious benefit to consumers by making the services of professional mediators available to consumers and distributing the expense throughout the entire condominium community via registration fees paid into the trust fund.

Many litigation cases are referred to mediation by judges anyway. It is better to provide a robust mediation opportunity to consumers in the first place, so condominium-related disputes can be resolved before legal action in *any* adjudicatory forum is considered. Moreover, with the support of SB 505 SD1, courts faced with condominium-related disputes will have the option to refer such disputes back to mediation knowing that the cost of mediation will not be a burden on consumers.

In summary, SB 505 SD1 will provide real benefit to consumers. The funding for this initiative will come entirely from condominium associations and developers. General funds are not involved. REC discretion over other trust funds is not impinged.

CAI represents the condominium industry, and endorses this approach. We respectfully request the Committee to pass SB 505 SD1.

Very truly yours,

Philip Nerney

Philip Nerney

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**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON
WAYS AND MEANS

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Friday, February 22, 2013
9:00 a.m.

WRITTEN COMMENTS ONLY

COMMENTS ON SENATE BILL NO. 505, S.D. 1, RELATING TO CONDOMINIUMS.

TO THE HONORABLE DAVID Y. IGE, 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 the following comments on Senate Bill No. 505, S.D. 1, Relating to Condominiums.

Senate Bill No. 505, S.D. 1, (1) adds support for mediation of condominium related disputes as one of the educational purposes supported by the condominium education trust fund; (2) imposes an additional annual condominium education trust fund fee dedicated to supporting mediation of condominium related disputes beginning with the July 1, 2015, biennium registration; (3) specifies the total fee payable into the condominium education trust fund; and (4) requires the real estate commission to make adjustments to the condominium education trust fund to ensure adequate funds are available for mediation of condominium related disputes and any mediation requests are fully accommodated prior to the commencement of the additional annual condominium education trust fund fee.

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 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. Attachment 1 is a copy of that report for FY 2012.

The Commission is in agreement with a stated purpose of Senate Bill No. 505, S.D. 1, namely, "to encourage and provide a robust mediation opportunity for condominium owners throughout the State." Thus, the Commission supports, in part, certain provisions of Senate Bill No. 505, S.D. 1, and opposes certain other provisions of the measure as follows.

Specifically the Commission supports:

- Imposing an additional annual condominium education trust fund fee dedicated to supporting mediation of \$1 **in addition** to the amount prescribed by rules adopted by the director of commerce and consumer affairs (current fee is \$7 adopted December 31, 2012);

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).

- Imposing the proposed additional annual condominium education trust fund fee to begin with the July 1, 2015, biennium registration of associations. The proposed begin date provides the Commission with the needed administrative start time to implement the collection of the added CETF fee since associations register with the Commission on a biennium (every two years) basis.

Specifically the Commission opposes:

- Specifying the total CETF fee payable into the condominium education trust fund at \$3 (page 4, lines 10-12). The current biennial (every 2 years) condominium education trust fund (CETF) fee is \$7 per unit (\$3.50 per year). This new CETF fund fee was approved by the Governor on December 21, 2012, after a public hearing and became effective December 31, 2012. Thus, the proposed total of \$3 contribution to the CETF proposed to begin on July 1, 2015, places the fund at an unacceptable and far worse funding case scenario than the revenue generated by the original \$4 imposed since 1989. Specifically, the original \$4 CETF fee structure prescribed over 20 years ago does not generate sufficient funds to meet the cost of financing and promoting those educational purposes mandated by the condominium law (§514B-71, HRS).

However, if the proposed language on page 4, line 10, would be amended to read "The **additional** condominium education trust fund fee shall total \$3

per unit until the commission adopts rules pursuant to chapter 91. **On June 30 of every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation of condominium related disputes, as required by section 514B-72 (a) (2), Hawaii Revised Statutes, shall be used for educational purposes as provided in section 514B-71 (a) (1), (2), and (3), Hawaii Revised Statutes.**" Such an amendment would provide for the additional amounts to be paid into the CETF fund and leave intact the current \$7 CETF fee structure needed to meet the cost of financing and promoting other statutorily defined educational purposes.

Additionally, the Commission has concerns that the \$3 cap may be mathematically inconsistent with the proposed required annual \$1/\$2 biennially.

- The proposed language of Section 4, page 4, lines 13-22, requires the commission to make adjustments to the **current budgeted** condominium education trust fund to "ensure adequate funds" are available for mediation of condominium related disputes and any mediation requests are "fully accommodated" prior to the commencement of the additional annual condominium education trust fund fee. The Commission has concerns that the proposed language "to ensure adequate funds" and "fully accommodate" has some unintended consequences in that the proposed language could be

read to require the Commission to expend an unlimited CETF amount (in the worse case scenario the entire CETF) to subsidize the cost for example of one or two complex mediation cases at the expense of other requests for mediation and leave unfunded the Commission's other educational program of work items. See attachment 2 for the educational programs the Commission has planned for FY 2013 and has budgeted accordingly.

Thus to address any unintended consequences and to clarify the intent or purpose of proposed Section 4, the Commission suggests deleting and replacing the language of Section 4 of Senate Bill No. 505, S.D. 1, with the following language:

"SECTION 4. Between the effective date of this Act and July 1, 2015, the real estate commission, pursuant to section 514B-71 (a) (4), HRS, shall continue to budget an amount and expend monies from the condominium education trust fund specifically to support mediation of condominium related disputes for those parties and disputes specified in section 514B-161, HRS. In the event that a fiscal year budgeted amount for mediation is fully expended and the commission receives additional requests for condominium education trust fund subsidies for the mediation of condominium related disputes the commission may consider expending the budgeted amount allocated to another educational purpose program of work item for mediation of condominium related disputes. The real estate commission and department of commerce and consumer affairs

professional and vocational licensing division shall make adjustments as needed to their budgets to meet the requirements of this section."

- The proposed replacement of "may" with "shall" on page 2, line 17, and page 3, line 8. As the law is currently read, the Commission has discretion to expend condominium education trust fund monies for any of the enumerated educational purposes in section 514B-71 (a), HRS. However the change proposed in deleting "may" and replacing it with "shall" could be read to require that the Commission for any fiscal year to expend monies for every enumerated defined educational purpose. As such, the Commission is then precluded from deciding that its educational efforts would be devoted in a fiscal year to expending monies for one or two of the defined educational purposes instead of all 3 of the enumerated purposes.

In closing, should your committee decide to pass out of committee Senate Bill No. 505, S.D. 1, the Commission respectfully requests that your committee consider:

1. The Commission's suggested amendments as outlined in this testimony; and
2. Reflecting in your Committee's report that the Commission has since 1990, well over 20 years, supported and provided for CETF subsidies for mediation of condominium related disputes and continues to provide such CETF subsidies of mediation.

Thank you for the opportunity to provide comments on Senate Bill No. 505, S.D. 1.

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

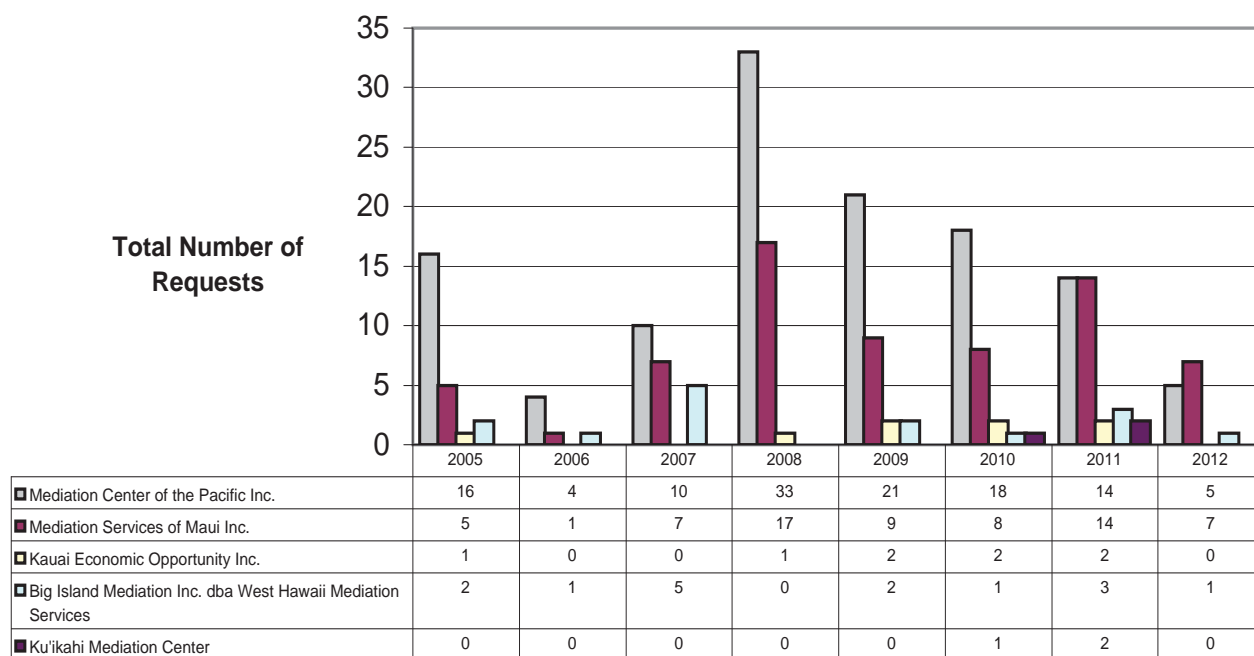
Condominium Association Registration – The Commission administered the condominium association registration program, including a review of submitted applications and the assessment of Commission registration policies and procedures. It also considered appeals, subpoenas, and requests for records under 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



Real Estate Commission FY 2013 Condominium Program of Work

Condominium Laws and Education
Advice, Education, and Referral
Condominium Project and Developer's Public Reports
Hawaii Condominium Bulletin
Condominium Mediation and Arbitration Program
Condominium Association Registration
Condominium Seminars and Symposium
CRC Educational Advisory Group
Condominium Managing Agents Registration
Rule-Making, Chapter 107
Meetings
Government and Legislative Participation and Report
Legislative Acts and Resolutions
Interactive Participation with Organizations
Neighbor Island Outreach
Condominium Education Fund (CEF)
Consumer Education
Rule-Making, Chapter 53
CPR Project Workshop and Meetings
Condominium Specialist of the Day
Condominium Speakership Program
Technology and Website
Case Law Review Program
Start-Up Kit for New AOAOs
Records Management
Cooperative Education, Research, and Administrative Program
Division and Department Program
Staff and Commissioners Development
Condominium Reference Library