

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Thursday, March 14, 2013
5:30 p.m.

TESTIMONY ON SENATE BILL NO. 505, S.D. 2, RELATING TO CONDOMINIUMS.

TO THE HONORABLE ANGUS L.K. MCKELVEY, 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 in support of Senate Bill No. 505, S.D. 2, Relating to Condominiums, subject to some clarifying amendments. Since 1990, pursuant to the then section 514A-131 (a) (3), HRS, and now section 514B-71 (a) (3), HRS¹, the Commission has strongly supported and continues to subsidize mediation of condominium disputes with funds from the Condominium Education Trust Fund (CETF). Senate Bill No. 505, S.D. 2, provides the additional support necessary for making the mediation program for the benefit of the condominium community more "robust." House Bill No. 24, H.D. 2, appears to be the companion bill to Senate Bill No. 505, S.D. 2. From an administrative standpoint, it appears that Senate Bill No. 505, S.D. 2, provides the Commission with

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 necessary administrative framework for supporting and carrying out a CETF subsidized mediation program.

Specifically, Senate Bill No. 505, S.D. 2, clarifies that the CETF fee that totals \$3 per unit is an additional CETF fee; requires, on June 30 of every odd-numbered year, any unexpended moneys initially dedicated to supporting mediation be used for other educational purposes; requires the Commission to continue to budget and use funds allocated for other educational purposes, if necessary, for mediation of condominium disputes utilizing professionally trained mediators between the effective date of the Act and July 1, 2015; changes the effective date to July 1, 2050, to facilitate further discussion on the measure; and makes technical nonsubstantive amendments for the purposes of style and clarity.

However, for clarification purposes, the Commission offers the following comments:

- Is it the intent of Senate Bill No. 505, S.D. 2, to set the additional CETF fee at \$3 total per unit (page 4, line 8) for each biennium (every two years) registration until the Commission adopts rules pursuant to chapter 91? If that is the intent, then should the additional annual CETF fee be \$1.50 instead of the proposed \$1 times the number of condominium units included in the registered project or association (page 4, line 4)?
- Is it the intent of Senate Bill No. 505, S.D. 2, by using the term "professionally trained mediators" on page 4, line 22, to direct the Commission to use the

CETF funds only to pay for mediators who are compensated for their services and exclude volunteer mediators who are not compensated but who undergo or have undergone training to become a mediator? Since 1990, the Commission has strongly supported and continues to subsidize mediation of condominium disputes provided by volunteer trained mediators. How then is "professionally trained mediators" to be defined? What criteria does the Commission rely upon to qualify a mediator? Is it sufficient that a mediator has undergone any education and training provided by a recognized mediation service including training as a volunteer mediator? The Commission respectfully requests "professionally trained" be deleted on page 4, line 22.

- The deletion of the reference to "commission" on page 4, line 9, and replacing it with "director of the department of commerce and consumer affairs" for purposes of being consistent with the measure's stated purpose on page 2, lines 3-4, section 26-9 (l), HRS, and section 514B-72, HRS.

Subject to the clarifications discussed in this testimony, the Commission strongly supports Senate Bill No. 505, S.D. 2, and respectfully requests this Committee to pass out or advance Senate Bill No. 505, S.D. 2. Thank you for the opportunity to present testimony and comments on Senate Bill No. 505, S.D. 2.



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March 12, 2013

Honorable Angus L.K. McKelvey
Honorable Derek S.K. Kawakami
Consumer Protection and Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **SB 505 SD2/SUPPORT**

Dear Chair McKelvey, Vice-Chair Kawakami and Committee Members:

I chair the CAI Legislative Action Committee. CAI supports SB 505 SD2. Its companion, HB24 HD2, has crossed over but SB 505 SD2 is preferred.

The first thing to note is that SB 505 SD2 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 SD2 supplies that deficiency without the expenditure of general funds.

SB 505 SD2 takes into account concerns raised by the Real Estate Commission before a 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. explained why. Mediators with subject matter expertise are better able to address condominium-related disputes.

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SB 505 SD2 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 SD2 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 SD2 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 is considered. Moreover, with the support of SB 505 SD2, 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 SD2 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 SD2.

Very truly yours,

Philip Nerney

Philip Nerney