



P.O. Box 976  
Honolulu, Hawaii 96808

February 17, 2014

Honorable Angus L.K. McKelvey, Chair  
Honorable Derek S.K. Kawakami, Vice Chair  
Consumer Protection and Commerce  
and  
Honorable Karl Rhoads, Chair  
Honorable Sharon E. Har, Vice Chair  
Judiciary  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **HB 2401 H.D. 1 – OPPOSING**

Dear Chair McKelvey, Chair Rhoads, Vice Chairs Kawakami and Har, and Committee Members:

I am the Chair of the Community Association Institutes Legislative Action Committee (“CAI”). CAI opposes HB 2401 H.D. 1 for the following reasons.

**First**, condominium associations work on a system of self-governance. There are procedures and rules that are currently in place, including remedies for any violations of the association’s documents and the law (Chapters 514A and/or 514B, HRS). Therefore, another enforcement mechanism is not necessary.

**Second**, a new prepaid mediation program will be implemented in 2015 for condominium owners and associations, and this program, together with the other remedies (arbitration and court) should be considered first before implementing a new enforcement program.

We respectfully submit that the issues that are “driving” this Bill are not industry wide, and are the result of a “couple of bad projects”. However, this is the result of owners not being educated on the remedies available and does not provide a basis to creating another system. In order to address this need for education, we are working with the Hawaii Real Estate Commission, the Regulated Industries Complaints Office, the Hawaii State Association of Parliamentarians and Senator Rosalyn H. Baker’s office to generate an information pamphlet for condominium owners. We respectfully submit that this is where the focus should be and not implementing new law.

Honorable Angus L.K. McKelvey, Chair  
Honorable Derek S.K. Kawakami, Vice Chair  
Consumer Protection and Commerce  
and  
Honorable Karl Rhoads, Chair  
Honorable Sharon E. Har, Vice Chair  
Judiciary  
February 17, 2014  
Page 2 of 2

CAI represents the association industry, and **opposes the passage of HB 2401, H.D.1.**  
Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'CP', with a long horizontal flourish extending to the right.

Christian P. Porter

House Consumer Protection & Commerce Committee  
House Judiciary Committee  
Wednesday, February 19, 2014  
2:15 pm, Conf. Rm 325

Rep. McKelvey, CPC Chair  
Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
Rep. Har, JUD Vice Chair

RE: **Testimony In Support of HB 2401**, Relating to Condominiums; Transparency

I own a condominium at Sunset Towers located at 419 Atkinson Drive, Honolulu, HI. I support HB 2401 because it will give condo owners more protection from questionable and unethical activities conducted by Condominium Boards (Boards) and the Property Management Companies hired to support the Boards. The owners at Sunset Towers have had many problems obtaining information from our Board in a timely manner, including Board Meeting Minutes (which are required by law to be available to owners), budget and accounting information, information on the process used to select contractors that are making costly improvements to our building, and contract overruns/augmentations submitted by our contractors. I discovered that one of the subcontractors that was recommended, in a written notice, by the general contractor hired by our Board, to conduct work in our units, was not licensed or insured. A competitive bid process for selecting contractors is not always used. Owners are in the dark regarding how their money is being spent.

Currently, there is no government office to go to with our complaints. The only recourse we have to resolve our problems is to take them to mediation or court, options that are often cost-prohibitive. We need a state office to provide oversight management and investigate our complaints so all condo owners across the state can have equal protection from Boards and Property Management Companies, especially those who are not being open and honest with us.

I recommend that the following be added to this bill:

- Requirement that HREC provide an Annual Report to the Legislature that provides data on the number of complaints received, the type of complaints made, actions taken on the complaints, and final outcome.
- Augment the current requirement for annual financial audits with a requirement that management or process audits be conducted every 2 years for Property Management operations, condo reserve funds, and any other special Board actions/programs.
- Requirement that all Board members, Property Management staff, and resident managers attend HREC training on condo regulations, Board fiduciary responsibilities, and other related areas.

In closing, I ask that you please pass **HB 2401**. Thank you for your time and support on this matter.



Debra D. Loh  
[lohwong@surewest.net](mailto:lohwong@surewest.net)  
916-508-4821

## **kawakami3-Benigno**

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**From:** Kalei Fong <fongaloha46@yahoo.com>  
**Sent:** Sunday, February 16, 2014 1:45 PM  
**To:** CPCtestimony  
**Subject:** In Support of HB 2401, RE Condominiums

To the House Consumer Protection & Commerce Committee; House Judiciary Committee

I am the owner of a condominium in Hawaii and have been paying my monthly mortgage and HOA fees. I strongly support HB 2401 because it provides condo owners the protection against questionable and unethical managerial activities performed by property management companies and HOA boards, who are entrusted to manage the properties, budget the fees, and account for services on behalf of the condo owners.

Thank you for your support of this Bill.



House Consumer Protection & Commerce Committee (CPC)  
And House Judiciary Committee (JUD)  
Wednesday, February 19, 2014  
2:15PM – State Capitol – Conference Room #325

Rep. Angus McKelvey, Chair  
Rep. Derek Kawakami, Vice Chair

RE: **Testimony In Support HP 2401** – Relating to Condominiums Transparency

I, Amy Criscola, own a condominium at Ala Wai Plaza. I support **HB 2401** because it is a start to give condo owners protection from questionable and unethical decisions conducted by the Condo Board and/or the Property Management Co.

The ideal administrative operation is for all parties to totally understand their fiduciary duties and abide by the laws, procedures and duties of the position; free from any conflicts of interest and looking for personal gain.

Right now, when such conflicts arise, the condo owners are the first to take notice. Owners must also take action and ban together. It is unfortunate there isn't a government agency such complaints can be filed to apply pressure to the Board to comply with the laws and duties of their position. This process alone will make a Board take notice there is an uprising by owners. Because of the nature of the condo industry, there is a need for a "watch dog" should any entity go astray.

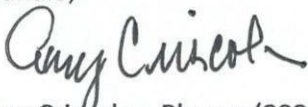
Unethical practices can come from many directions from the Board, Property Management Co., Resident Manager and contractors.

A few years ago, Ala Wai Plaza owners experienced a Board, lead by the Board President, to such extremes in the lack of transparency and out of the blue, dictating mandatory edicts that required owners to spend large sums of personal money without preliminary discussion.

We learn from mistakes. When a "group" applies the job responsibility of the position, whether it is the board members, property manager or resident manager, much progress can be made especially with the attention and needs of an aging building.

I ask that you please pass **HB 2401**. Thank you for your time and support on this matter.

Mahalo,



Amy Criscola – Phone: (808) 955-7576

[amycriscola@hawaii.rr.com](mailto:amycriscola@hawaii.rr.com)

**House Committee on Consumer Protection & Commerce**  
**House Committee on Judiciary**  
Wednesday, February 19, 2014  
2:15 pm, ConfRm 325

**Rep. Angus McKelvey, CPC Chair**  
**Rep. Derek Kawakami, CPC Vice Chair**

**Rep. Karl Rhoads, JUD Chair**  
**Rep. Sharon Har, JUD Vice Chari**

RE: **Testimony In Support of HB 2401**, Relating to Condominiums

My name is Laurie Hirohata, and I support **HB 2401** because condo owners need more protection from unethical and illegal activities conducted by the Property Management Co. (PM Co.) and the Condo Board (Board). I believe that the passage of HB 2401 would go a long way in protecting the condo owners from possible scams, fraud, and mismanagement of funds.

When HB 2401 was heard several weeks ago, the HI Real Estate Commission (HREC) testified that according to HRS-CH 514B, condominiums are supposed to have self-enforcing governance. Condominiums should have self-enforcing governance when it comes to House Rules and other daily operational management issues. However, when the PM Company or the Board is involved in gross negligence, or misconduct that may include fraud or other illegal activities, or misappropriation of funds that are in violation of state laws, or hiring unlicensed entities or entities not paying state taxes; then I believe the state has a fiduciary responsibility to implement and enforce rules and regulations to ensure the safety and well-being for all of the residents in Hawaii who live in condos.

**I would like to recommend that 3 amendments be considered for HB 2401:**

- 1) [In addition to the annual financial audits which is currently required:] Add Language **to require Management or Performance Audits every 2-3 years on the condo's operations, including the PM Co's operations and the condo's reserve funds and any other special projects the condo board may have. The completed Management Audit shall be presented and discussed at the annual Condo Association Meeting and a copy of the final Management Audit Report shall be given to each condo owner.**

*Regular management audits would further protect the Condo Association from misconduct, fraud and misappropriation of funds in a timely manner. The findings from the management audit would be a useful tool for the Condo Association to minimize or mitigate their damages and would provide the supporting evidence needed to discharge a PM Company or Board.*

- 2) Add Language to require Condo Boards to **review and revise their condo by-laws every 3 years.** If no revisions are made, then an “official declaration” letter with the Board Member's and Managing Agent’s signature shall be attached to the by-laws. The by-laws shall be presented to the Condo Association for approval. The Condo Association approval shall be by the majority vote at the next Condo Association meeting.
- Once the by-laws are approved by the Condo Association, the by-laws shall be filed with the [State Bureau of Conveyance and/or HREC(?)] A copy of the by-laws shall be given to each condo owner.

*Updated by-laws are needed for the auditors to perform an in-depth and effective management audit. Having the Board members listed on the “official declaration” letter will assist anyone reading the by-laws to identify who was involved in the review and revision process.*

[NOTE: A number years ago, the Attorney General issued similar mandates for all non-profit (501-C-3) charitable organizations doing business with the state. Since the Condo Associations are non-profit (501-C-4) shouldn't they have similar mandates?]

- 3) **Reinstate the language to HB 2401 that requires** the HREC to provide to the Legislature an Annual Report of Complaints against condominium boards and the number and type of enforcement actions taken by the HREC. *This statement is important because it will provide the Legislature the ability to monitor and maintain HREC's accountability of its statutory duties without having to request a legislative audit.*

The PM Co. has a fiduciary responsibility to guide the volunteer Condo Board on ethical and legal practices and is supposed to have the knowledge & skills to provide technical assistance as needed. Dealing with an unscrupulous PM Co. and/or Board is very time-consuming and can be quite expensive. For example, the Moana Pacific Condo (MPC), which is a large [750 units] and high-end complex, has been involved in a drawn-out battle over their PEX [plumbing] pipes which has cost millions of dollars and has created a complex legal battle for such a new condo! (I was told that they have spent about \$2 million for legal fees till date.)

*(For more details on the MPC issue, go to the MPC Website @ <http://moanapacificinfo.com/>)*

The following is my interpretation of the MPC's PEX [plumbing] pipes problem. The MPC was about 2 years old when their PM Co. informed the MPC Board that the PEX pipes used in their complex were defective and subject to catastrophic breaks. The PM Co. encouraged the Board to take

out a \$10 million loan to replace the PEX pipes. The PM Co. hired an “Expert” engineer to conduct an evaluation of the MPC pipes to substantiate their claim.

Some of the owners objected to the loan and questioned why the problem was not being handled through the Developer’s or General Contractor’s insurance/bond or the manufacturer’s warranty, etc. The Board tried to pressure the owners to vote for the \$10 million loan to make the necessary repairs.

A dispute ensued, which eventually led to litigation. The opposing owners hired their own expert engineer (2<sup>nd</sup> engineer) to review the Expert’s findings. The 2nd engineer disagreed with the Expert. The Expert kept delaying the final report. The final report took approximately 2 years to complete. While the Expert worked on the final report, he provided photos of damaged and corroded pipes and brief summary updates to the owners to support his claims.

When MPC went to court the Expert admitted in the deposition that the photos and summary updates he provided to the MPC owners were not from the MPC. (I checked to see if this person paid state taxes for the 2 years he claimed to be conducting his study in Hawaii. He was not registered with the HI State Tax Office, so he probably didn’t pay any state taxes. Also, it is not clear whether the PM Co. submitted tax documents to the State Tax Office for the Expert witness they hired.)

The attorney who accompanied the Expert to the presentations was admonished by the HBA, Office of Disciplinary Council because he also provided false information to the MPC owners.

The PEX pipe manufacturer testified and provided evidence to substantiate that their product was not the defective product that was causing problems. The PM Co. & Board President continued to pressure the owners to vote for the \$10 million loan. The court ruled in favor of an injunction to stop the \$10 million loan process until the issue of whether the contractor’s insurance/bond would cover the cost for replacing the PEX pipes. The PM Co. and Board President continued to pressure the owners to replace their PEX pipes and to vote for the loan.

In the meantime, the Koolani Condo, which is another high-end condo a few blocks away, had the defective PEX pipes and was having problems with leaking and breaking pipes and had to change their PEX pipes. The irony is that the Koolani selected and replaced their defective pipes with the PEX pipes from the same company the MPC used. One would think that the Koolani did their research and would not have chosen a company with a low rating or a defective product to replace their deteriorating pipes. The MPC owners I spoke to said their condo is now about 6-7 years old and they have not had a single catastrophic leak or break in their PEX pipes till date.

In my opinion, this situation appears to be a major scam, which included fraudulent expert reports and deceitful practices by the PM Co. and it’s attorney and expert witness.

If it was not for the sharp eyes of our 82-year-old neighbor who spotted one of the MPC's articles in the newspaper, we would have never known about this situation! This story scared many of us at our condo and our neighboring condos because we all have, or had, the same PM Co. We have many stories that parallel the MPC's situation and now wonder if we have been scammed too!

Our condo is an older, moderately-priced, 200 units complex (with 3 buildings). For us, \$300,000 is a large contract! For us, hiring an attorney to fight our battles would be a terrible hardship! For us, a catastrophic plumbing or electrical problem would seriously harm many of our elderly residents and the cost to resolve the problem would probably bankrupt them.

***We are eager to tell our stories to anyone in authority, but till date we cannot find that entity!***

I am supporting HB 2401 because I feel that if the PM Co. and their affiliates were involved in a scam or deceptive practices; why hasn't the State, such as the DCCA, HREC or the Regulated Industries Complaints Office (RICO) investigated these matters? The MPC owners claimed that they filed a complaint with the HREC and the HREC responded that they do not have investigative or enforcement authority.

However, if it appeared that the PM Co violated their fiduciary responsibilities, or possible illegal activities had occurred, shouldn't the HREC have referred the MPC's complaint to the RICO and/or the State Tax Office for further investigation?

***If the RICO or State Tax Office discovered that a crime had been committed, wouldn't the State entity have had a 'duty' to inform the public, so we could better protect ourselves from the same PM Co? Condo owners cannot self-govern effectively if they are not provided timely information that may impact their safety & well-being.***

We need more tools to be able to enforce our self-governance. HB 2401 would be instrumental for many condo owners to increase their ability to enforce self-governance.

In closing, I humbly ask all of you to **please pass HB 2401 with my recommended amendments** to provide condo owners more tools to protect themselves from unscrupulous PM Companies and Condo Board Members.

Thank you very much for your time and attention to this matter.

Respectfully Submitted By:

**Laurie Hirohata**

Email: lhirohat@gmail.com

Cell: 398-3492



# An Open Letter to Moana Pacific Homeowners

## Dear Homeowners:

We are reaching out to you both as the developer of Moana Pacific and as fellow unit owners.

In the last two years, our Association of Apartment Owners (AOAO), Board of Directors has continually bombarded us with unsubstantiated threats of imminent catastrophe related to our PEX potable water system. Repeatedly, the Board has tried to force upon us, without a vote or our consent, a hefty \$10 million loan to unjustifiably re-pipe the entire system of both towers. In addition, the Board has imposed substantial special assessments on us (a remarkable sum of \$1.69 million so far) on avoidable attorney and consultant expenses.

The time has come for us to decide for ourselves. Let us begin by asking some important questions.

## Should Moana Pacific re-pipe entire buildings when, for 6 years, NO PEX water leaks or catastrophic failures have occurred?

- We cannot trust the AOAO Board's consultant when he made a mistake about the composition of the PEX plumbing system at Moana Pacific and where his findings are not scientifically sound.
- His 2011 report foreseeing imminent catastrophic failures in our system, erroneously referred to clamps, which have never been part of Moana Pacific's system.
- The consultant exaggerated his initial findings and just recently, after near two years, announced that he has finished his work. He has not submitted a new or revised report.
- The AOAO Board could not have adequately assessed the validity of the consultant's work (filing suit on the same day of the preliminary report submission). Furthermore, the Board did not seek

any second opinion and failed to act after learning that the consultant's initial report was erroneous and incomplete.

- The AOAO Board has refused to reconsider its course and has pushed for a complete re-pipe without assessing all available information since learned and without considering other options.
- Moana Pacific's PEX system, has a 25 year warranty, and is not the same product as other Honolulu buildings with plumbing issues. In fact, some of those projects have replaced their systems with one similar to Moana Pacific's system.
- A well-recognized expert recently concluded that the Moana Pacific PEX system is "functional and up to required standards"; "provides a very reliable potable water system at Moana Pacific"; and has stated that "you will not see any leak or failure in the foreseeable future."

## Can we trust the AOAO Legal Team when its reputation was tainted by misrepresentation?

- In a letter of informal admonition against one of the AOAO's attorneys, from the Office of Disciplinary Counsel, dated February 12, 2013, "The Disciplinary Board Member determined that Mr. Agena violated HRPC 4.1 when he knowingly made a false statement of material fact or law to a third person on March 10, 2012, during a presentation to the homeowners of Moana Pacific."
- The attorney asserted that the Court had ruled that there were code violations in the Moana Pacific's PEX system. However, the Court did NOT make such a ruling.
- The attorneys have pressed to move forward with litigation, even though the Court has repeatedly ordered that the AOAO must comply with the Contractors' Repair Act process.

## Can we afford to borrow and spend millions of dollars for repairs that may not be necessary and continue to pay for exorbitant legal fees?

- The AOAO Board repeatedly tried to borrow \$10 million, (in February and May, 2012, and again in January, 2013). Every time, the Court disapproved.
- So far the AOAO Board has spent \$1.69 million in legal fees; with another \$600,000 budgeted for 2013.

## How can the AOAO Board be responsible and accountable?

- The Board should not manipulate the "high-risk component" clause to bypass owners and act on their own agenda (especially when there is no emergency).
- It must allow owners to decide whether any repair is warranted and, if so, to make their own repairs, and decide on their own financing, if necessary.
- Board members should proactively move forward in the right direction – diligently and objectively, assess information and research findings and obtain the owners' input and consent.
- Board meetings should be open. Board decisions should be well-founded and transparent.
- The Board must abide by the Contractor's Repair Act process, as ordered by the Court.

## What can homeowners do to resolve the PEX controversy and protect their interests?

- Exercise your right to vote.
- Attend meetings and seek timely and accurate information.
- Engage your neighbors to increase awareness.
- Insist on transparency and accountability from the AOAO Board.
- Elect Board members who are diligent, prudent and objective.

## Participate, Vote and Monitor.

For details, visit [moanapacificinfo.com](http://moanapacificinfo.com).

From KC Rainbow Development LLC, Developer

## New Twists & Turns

### AOAO Board, Consultant and Attorney Now Under Fire

Now in the forefront and under the limelight are AOAO Board's doubtful actions, and the cred-





## AOAO Board, Consultant and Attorney Now Under Fire

Now in the forefront and under the limelight are AOAO Board's doubtful actions, and the credibility of its consultant and attorney. Moana Pacific PEX has receded from center stage – no water leakage and no catastrophic failure have occurred.

Has the AOAO Board acted appropriately? It repeatedly asked homeowners, to consent to a \$10 million loan to re-pipe the building. The Board did not seek a second opinion. It solely relied on its consultant who admitted in Court depositions, that he did only 3 tests, far less than the 8 he falsely claimed. The consultant claimed that clamps in PEX systems were defective, but Moana Pacific's PEX system does not have clamps. Without past or imminent emergency, the Board insisted on the high risk component clause and deprived homeowners the right to vote. Furthermore, its attorney, Mel Agena, made false statements to homeowners and was admonished by the Office of Disciplinary Counsel. He told homeowners that the Court had ruled that there were code violations in Moana Pacific's PEX system. In fact, the Court did not rule.



Moana Pacific

## Questions for Moana Pacific Owners to Consider

**Q: Does the “high risk component” statute allow the Board to unilaterally impose a \$10 million debt upon homeowners?**

A: Absolutely not. (Google Hawaii Revised Statutes

**its consultant and legal team?**

A: No. The consultant has admitted to making mistakes and rendering opinions without first completing testing.

The Board's counsel was reprimanded by the Office of the Disciplinary Counsel for misrepresenting material facts to homeowners.

**Q: Do you think that a water leak exists in the Moana Pacific PEX system?**

A: No, there is no report of any leak at Moana Pacific

**further legal/professional fees, with apparent benefit?**

A: No, we have already spent \$1.69 million, with an additional \$600,000 already budgeted for 2013.

**Q: Do we have options?**

A: Yes. We should heed the Court's repeated orders to comply with the Contractor's Repair Act process (HRS Chapter 672E). This should have been completed before suit was filed. We also need to consider all available data

## Next Steps for Owners & AOAO Board

### Moana Pacific Home Owners

- Attend Board meetings ~ Ask questions ~ Obtain complete and accurate information
- Engage your neighbors ~ Educate yourself on key issues ~ Make informed decisions
- Exercise your voting rights ~ Elect objective Board members ~ Control spending

### Moana Pacific AOAO Board

- Follow the provisions of the Hawaii Contractor's Repair Act as ruled by the Court
- Re-assess data and investigative reports with due diligence and objectivity
- Engage owners in the decision-making process
- Be transparent
- Allow owners to have a



right to vote. Furthermore, its attorney, Mel Agena, made false statements to homeowners and was admonished by the Office of Disciplinary Counsel. He told homeowners that the Court had ruled that there were code violations in Moana Pacific's PEX system. In fact, the Court did not rule.



Moana Pacific

## Questions for Moana Pacific Owners to Consider

**Q: Does the "high risk component" statute allow the Board to unilaterally impose a \$10 million debt upon homeowners?**

A: Absolutely not. (Google Hawaii Revised Statutes Section 514B-138.)

**Q: Should the Board continue to blindly follow the advice of**

**its consultant and legal team?**

A: No. The consultant has admitted to making mistakes and rendering opinions without fully completing testing. The Board's counsel was reprimanded by the Office of the Disciplinary Counsel for misrepresenting material facts to homeowners.

**Q: Do you think that a water leak exists in the Moana Pacific PEX system?**

A: No, there is no report of any leak at Moana Pacific due to the PEX system.

**Q: Can we afford the costly and substantial burden of**

**further legal/professional fees, with apparent benefit?**

A: No, we have already spent \$1.69 million, with an additional \$600,000 already budgeted for 2013.

**Q: Do we have options?**

A: Yes. We should heed the Court's repeated orders to comply with the Contractor's Repair Act process (HRS Chapter 672E). This should have been completed before suit was filed. We also need to consider all available data, be better informed and more engaged in the decision-making process.

## Next Steps for Owners & AOA Board

### Moana Pacific Home Owners

- Attend Board meetings ~ Ask questions ~ Obtain complete and accurate information
- Engage your neighbors ~ Educate yourself on key issues ~ Make informed decisions
- Exercise your voting rights ~ Elect objective Board members ~ Control spending
- Monitor board decisions ~ Demand accountability and transparency

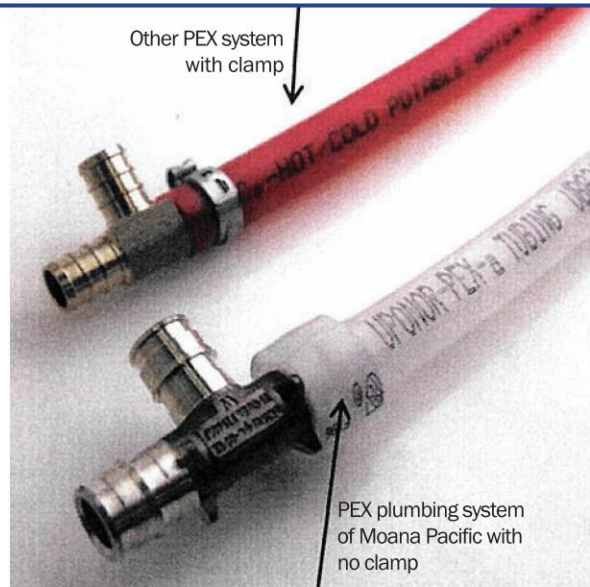
### Moana Pacific AOA Board

- Follow the provisions of the Hawaii Contractor's Repair Act as ruled by the Court
- Re-assess data and investigative reports with due diligence and objectivity
- Engage owners in the decision-making process
- Be transparent
- Allow owners to have a voice in their future and to vote on whether capital expenditures are needed

## Moana Pacific PEX System Passes Critical Testing

In June, 2012, the attorney for KCR Development LLC retained Dr. Behzad Bavarian to conduct a comprehensive scientific study on Moana Pacific's PEX system. Dr. Bavarian is a material / metallurgical engineering professor on the faculty of California State University at Northridge. He has 30 years' of experience in his specialized field of corrosion studies. In 2012, he received the NACE International Technical Achievement Award from the National Association of Corrosion Engineers, being recognized by his colleagues for his outstanding contribution in his field.

Based upon extensive scientific testing and related life modeling, completed in October, 2012, Dr. Bavarian has determined:



**PEX system for Moana Pacific with no clamp and other PEX system with clamp.**

- The brass fittings in Moana Pacific's PEX system meet or exceed all applicable international and national industry standards.
- The brass fittings have and will continue to maintain their physical shape and size. Even under excessive water pressure testing, the fittings remained properly joined to the piping.
- Metallurgical analysis and Micro-hardness measurements prove that the brass fittings have no internal defects or cracks and have not been compromised in their mechanical strength and integrity or their ability to perform.
- The corrosion/dezincification rate of the brass fittings is minimal and will decrease over time. Extensive analysis data results for modeling to determine the life use of these fittings confirms that the fittings will continue to perform for at least fifty (50) years, and possibly as long as one hundred (100) years.

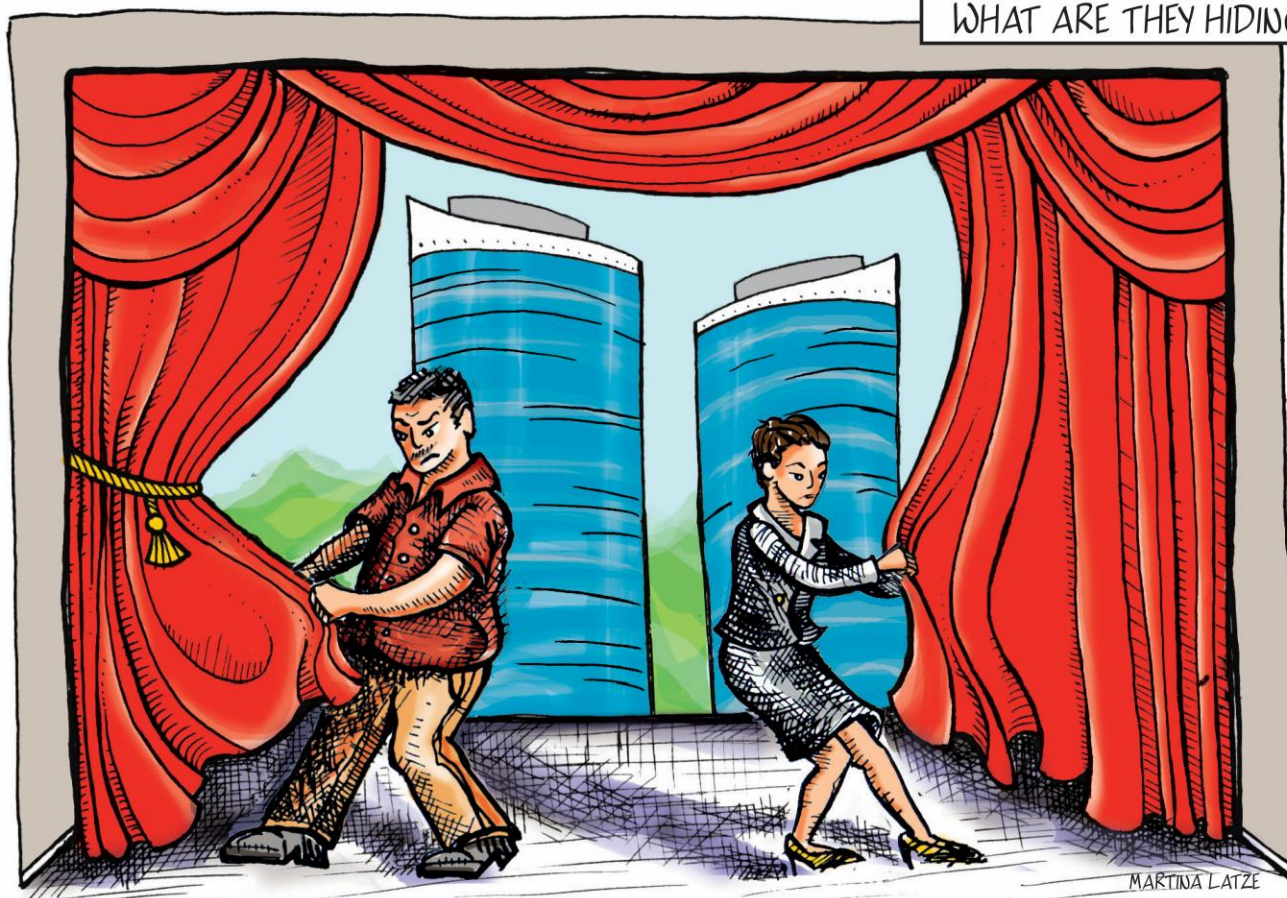
For details, visit [moanapacificinfo.com](http://moanapacificinfo.com).





# ...That the Moana Pacific Board Would Not Tell You

WHAT ARE THEY HIDING?



MARTINA LATZE

**To our fellow home owners of Moana Pacific:**

Like you, we own units in Moana Pacific. Like you, we want to be good neighbors and protect our investment. Together we thank the AOA Board members for volunteering their time to serve in a fiduciary capacity. We appreciate that the AOA Board is shouldering the burden of making wise decisions. However, the board members need to fulfill their fiduciary duties and be open and transparent.

As the PEX controversy evolved, a group of us began to scrutinize data, reports, and public records. We are sharing our findings and considered opinions with you. Unfortunately, so far, we have discovered many instances in which our AOA Board, rather than being open and candid, appear to have chosen to omit or conceal. To name a few:

- 1. Did the AOA Board tell you that it filed the PEX suit instantaneously, on the same day it received a consultant's report on February 24, 2011?** There was scarcely any time for diligent review and the Board overlooked the consultant's glaring mistake – his conclusion was based on an analysis of clamps which do not even exist in Moana Pacific's PEX system.
- 2. Were court depositions ever brought to your attention, so that you could realize that the AOA consultant's report is deficient?** The consultant admitted that he completed only three tests, not eight as he had claimed to have done. Therefore there was not sufficient data to support his premature conclusion.

- 3. Did the AOA Board admit that it never sought a second opinion on the need to replace the PEX system?** It did not look into a second opinion before filing suit and continued to resist a second opinion after the consultant's findings were questioned.

- 4. Did the Board retract its attorney's misrepresentation of facts?** Its attorney claimed in a meeting with homeowners that the court ruled that Moana Pacific's PEX system violated Hawaii plumbing codes. However, the Court had not and did not make such a ruling. Importantly, the Board never told you that, even should repairs be necessary, owners can opt to do their own repairs.

- 5. Were you ever told how the Board selects vendors or contractors for repairs and/or services at Moana Pacific?** Until recently, did the Board seek multiple proposals bids and conduct cost-benefit analysis prior to committing your money to

expensive repairs? Consistently, the Board apparently obtained and approved one bid from its selected contractor, stating only that the chosen one was the "best."

- 6. Did the Board accurately account for the money that you vested in their trust, especially expenditures relating to legal services by specific law suits?** At the time when cumulative spending on legal fees for the PEX controversy had already reached \$1.34 million (March, 2012), the Board president told homeowners that only \$600,000 had been spent. By the end of 2012, the cumulative total of fees had exceeded \$1.69 million. As for other non-PEX law suits, the Board did not identify the actual expenses by line item in its financial report. Nor did the Board budget any amount to cover the legal fees for these law suits for 2013 despite the fact that they already spent hundreds of thousands for these cases in 2012.
- 7. Are you aware that the Board reported that the**

**budget for 2013 went up by \$400K, but actually the budget is up \$1.2 million as the Board failed to tell that you the electrical bill budget for 2013 came down by \$600K and also there is a rebate of \$250K for 2013?**

- 8. Did the Board tell you that you can choose your TV, internet and telephone service providers?** The Board informed you that your service would be interrupted if you did not switch to Hawaiian Telcom. As a result, some owner might be now paying more for their services.

- 9. Did the Board explain their actions to you when it apparently did not conform to AOA by-laws and/or conducted business in a manner which raises ethical concerns?** The Board approved the AOA to purchase a storage unit from a Board vice president without a market analysis and without the required 65% consent vote from homeowners. The Board president Michelle Takemoto

and a Board member David Cheng called a special meeting on a Saturday, 4/18/09, to approve the construction defect lawsuit, only after David Cheng's refinancing was completed and recorded on the preceding day, 4/17/09.

- 10. Have you been told why the President of the Board, Michelle Takemoto, and board member Keith Otis voided the establishment of an audit/finance committee, when it is in everyone's interest to be financially transparent and accountable?** On December 17, 2012, when attending Board members made possible the declaration of a quorum, the majority overwhelmingly voted, except for one dissenting, from Keith Otis, to establish the audit/finance committee. On February 4, 2013, Board President Michelle Takemoto and Board member Keith Otis voided the December board meeting and the creation of audit/finance committee, which violates section 4.16 of the Bylaws.

**Please visit [www.mpowers.com](http://www.mpowers.com)**

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Publication Date: 03/17/2013

## INVITATION to Moana Pacific Owners to Attend

### Owner Information Meeting

Wednesday, March 20, 2013

Cupola Theatre, Honolulu Design Center

- 6:00 - 6:30 p.m. - Refreshments
- 6:30 - 8:00 p.m. - Invited Speakers \*
- 8:00 - 9:00 p.m. - Owners and Q & A

**\*Open Invitation to the Following Speakers:**

- All Moana Pacific AOA Board Members
- Moana Pacific Management Executive
- KCRD
- All Moana Pacific AOA Board Candidates
- Moana Pacific Owners

## ANNUAL MEETING

(Election of 3 Board Members)

March 30, 2013 – 9 a.m.

Cupola Theatre, Honolulu Design Center

**Be informed, be proactive, come and vote.**

If you cannot attend, please send in your proxy and ensure that you place a check mark (✓) in the 3rd box of the proxy form, and fill in the name of the person who you like to vote for or give the proxy to on the blank line that is located on the right of the box. Give the proxy to your proxy holder or the person you voted for and ask him or her to send original to Hawaiiana Management Company, Ltd. and keep a copy.

## Three Interesting Board Meetings

**1. April 18, 2009, Special Board Meeting:**

Timing coincidence or manipulation for self-interest? Michelle Takemoto, Board president called this special AOA Board meeting on a Saturday, April 18, 2009, to approve the filing of a construction defect claim. Both she and David Cheng, another Board member, had just completed and recorded the refinancing of their units (March 27, 2009 for Takemoto, and April 17, 2009, the preceding day, for Cheng). Did Takemoto and Cheng deliberately delay the approval of filing the law suit so that their refinancing would be completed first? Neither disclosed their actions before or at the meeting for the vote.

**2. July 16, 2012, Board Meeting**

Were transactions proper and reporting accurate? In its executive session, the Board approved the AOA's purchase of a storage unit from Don Jackson, the vice president of the Board. This transaction raises concerns of conflict of interest since no market analysis was done. Also, homeowner approval was not obtained as required by the Bylaws. The Board subsequently reported this approval was done in open session, but it does not appear in the minutes.

**3. December 17, 2012, Board Meeting**

Why was this meeting inappropriately declared "adjourned"? Was it to usurp the Board

members' majority vote and decision to create a finance/audit committee?

In this meeting, after a quorum was formed, the majority of Board members present voted in favor of forming a finance/audit committee; only one voted against the motion (Keith Otis). However, on February 4, 2013, Michelle Takemoto, President of the Board and Keith Otis wanted to invalidate this decision by claiming that the December 17, 2012 meeting had been adjourned for a lack of quorum, despite the meeting being valid pursuant to section 4.16 of the Bylaws. Why are AOA Board president Takemoto and member Otis resisting transparency and accountability?



# 10 QUESTIONS

To our elected officials serving on the Association of Apartment Owners (AOAO) Board:

Please stop the maneuvers to disenfranchise us. Do give equal opportunity to homeowners who want to be considered in the upcoming election for the AOAO Board membership. Do allow us, the electorate, to ask questions and to debate on legitimate matters of grave importance. The Association of Apartment Owners of Moana Pacific is meant to be a democracy, not an autocracy under the willful rule of one or a few individuals. **As concerned homeowners, we appreciate your service on the board. As you are no doubt aware, you have voluntarily chosen to assume a fiduciary relationship with us, the home owners. Therefore, we respectfully submit to you that we have the right to expect transparency and accountability.** We are compelled and obligated to ask hard questions when evidence is mounting to suggest negligence, non-performance, or malfeasance. Above all, we are seriously alarmed by your effort to manipulate or suppress the voting process in the upcoming AOAO Board election. It is time for you to answer our growing list of questions and concerns. Of utmost priority are the following.

**1. Why are you impeding the election of candidates who are not current AOAO Board members?** In your notice dated March 4, 2013, you only listed the candidacy

## ...Questions to the Moana Pacific AOAO Board



of current Board members with expiring terms. You completely ignored or implicitly negated the candidacy of other homeowners who have notified you of their intention to run. As you were acting in an official capacity and using homeowners' resources, it is not permissible to use your position to favor only those in your select group.

**2. Why is the proxy form designed to divert owners to inadvertently place their proxy in the hands of the Board?** Is it proper to give the Board of Directors proxy votes by default?

**3. Why do you close off debate by forbidding certain issues from being raised in our annual homeowners' meeting?** The annual meeting is our meeting and owners have right to participate, so why can we not discuss lingering matters of grave concern to us? In the notice of annual meeting dated March 4, 2013, it was highlighted that "the PEX Lawsuit and Non-PEX lawsuit, as well as other matters, will not be discussed."

**4. Who is serving whom in Moana Pacific?**

Hawaiiana is under contract to manage our property under the guidance and direction of the Board, not the management executive to manager the Board.

**5. Does the "volunteer" status (i.e. without a salary) of Board membership give you a license to make reckless decisions and manage our money carelessly?**

Does the Board understand what its duties entail? Serving without a salary does not mean you can act in haste, without due diligence, or without seeking a second opinion on critical matters.

We have yet to establish how much we have actually paid for legal fees for the various legal cases launched against the Board. We have sought such information but have yet to get detailed answers. Who is paying the bill? We, the homeowners are, despite the assertion that the AOAO was seeking reimbursement from insurance carriers.

**6. Are you abusing the power we entrusted in you when you appear to have used your position to retaliate against a dissenting**

**homeowner, to manipulate events to preserve your self-interest, and to conduct business to benefit your associates?**

• Michele Takemoto singled out owner Tom Bellman, one day after he made comments in an informational meeting. On Sunday, 3/11/2012, she emailed Management Executive John Bouchie from Hawaiiana, commenting that Bellman was "one of the major hecklers at the meeting... Can we proceed against him?" Was Bellman fined (over \$17,000) because he asked questions which the Board or the president did not want to hear?

• Did Board president Michele Takemoto and Board Director David Cheng use their power to hold off the approval of filing the lawsuit until their refinancing was complete?

• Was it improper for the Board to approve the purchase of a storage unit from Don Jackson, a Board vice-president, without a market analysis? The transaction also did not get 65% of approval

from the homeowners, a specific requirement as stated in the Bylaws.

**7. Have you been diligent, objective and honest in handling the PEX controversy?**

• Why did you accept your consultant's report without diligent study and file suit instantaneously on the same day? There were no subsequent second opinions.

• Why did you not take action when your legal team misled home owners and was admonished by the Hawaii Office of Disciplinary Counsel?

• Why did you continue to attempt to get a \$10 million loan to re-pipe the buildings despite the court rejecting such actions?

• Were you honest with the homeowners when you did not provide information regarding an "opt out" option with respect to the loan?

**8. Is each member of the Board performing duties according to the position he/she occupies?** Would accountability be compromised if the treasurer is impeded from performing his full responsibility for financial payments and comprehensive record keeping?

**9. Why do you not want to follow the law and bring closure expeditiously to issues which plague our community?** Three times the Court intervened and rejected your repeated request to immediately borrow \$10 million to re-pipe the entire buildings.

**10. Is there anything to hide by not allowing the establishment of an audit and finance committee?**

We recognize that you probably are overwhelmed by the many challenges. Please re-examine the issues and the evidence. Let us homeowners have a voice in the AOAO of Moana Pacific.

Please visit [www.mpowners.com](http://www.mpowners.com)



### ANNUAL MEETING (Election of 3 Board Members)

March 30, 2013 – 9 a.m.  
Cupola Theatre, Honolulu Design Center

Be informed, be proactive, come and vote.

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## Summary List of Bylaws and Code of Conduct

### Code of Conduct:

1. Board Members shall act in the best interest of the Association as a whole

### SECTION 4.9 Disclosure of Conflicts.

A Director who has a conflict of interest on any issue before the Board shall disclose the nature of

ments, and shall be responsible for the preparation on all required financial data. He shall be responsible for the deposit of all moneys and other valuable



homeowners who want to be considered in the upcoming election for the AOA Board membership. Do allow us, the electorate, to ask questions and to debate on legitimate matters of grave importance. The Association of Apartment Owners of Moana Pacific is meant to be a democracy, not an autocracy under the willful rule of one or a few individuals. **As concerned homeowners, we appreciate your service on the board. As you are no doubt aware, you have voluntarily chosen to assume a fiduciary relationship with us, the home owners. Therefore, we respectfully submit to you that we have the right to expect transparency and accountability.** We are compelled and obligated to ask hard questions when evidence is mounting to suggest negligence, non-performance, or malfeasance. Above all, we are seriously alarmed by your effort to manipulate or suppress the voting process in the upcoming AOA Board election. It is time for you to answer our growing list of questions and concerns. Of utmost priority are the following.

**1. Why are you impeding the election of candidates who are not current AOA Board members?** In your notice dated March 4, 2013, you only listed the candidacy

of current Board members with expiring terms. You completely ignored or implicitly negated the candidacy of other homeowners who have notified you of their intention to run. As you were acting in an official capacity and using homeowners' resources, it is not permissible to use your position to favor only those in your select group.

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Does the Board understand what its duties entail? Serving without a salary does not mean you can act in haste, without due diligence, or without seeking a second opinion on critical matters. We have yet to establish how much we have actually paid for legal fees for the various legal cases launched against the Board. We have sought such information but have yet to get detailed answers. Who is paying the bill? We, the homeowners are, despite the assertion that the AOA was seeking reimbursement from insurance carriers.

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when your legal team misled home owners and was admonished by the Hawaii Office of Disciplinary Counsel?

• Why did you continue to attempt to get a \$10 million loan to re-pipe the buildings despite the court rejecting such actions?

• Were you honest with the homeowners when you did not provide information regarding an "opt out" option with respect to the loan?

**8. Is each member of the Board performing duties according to the position he/she occupies?** Would accountability be compromised if the treasurer is impeded from performing his full responsibility for financial payments and comprehensive record keeping?

**9. Why do you not want to follow the law and bring closure expeditiously to issues which plague our community?** Three times the Court intervened and rejected your repeated request to immediately borrow \$10 million to re-pipe the entire buildings.

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## ANNUAL MEETING

(Election of 3 Board Members)

March 30, 2013 – 9 a.m.  
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Be informed, be proactive, come and vote.

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# Summary List of Bylaws and Code of Conduct

## Code of Conduct:

1. Board Members shall act in the best interest of the Association as a whole.
2. Board Members shall comply with governing documents and relevant law.
4. Board Members shall work within the Association's framework and refrain from unilateral action.
5. Board Members shall behave professionally at meetings.
6. Board Members shall maintain confidentiality when appropriate.
7. Board Members shall disclose conflicts of Interest.
8. Board Members shall refrain from defaming anyone in the community.
9. Board Members shall refrain from harassing Association Members or Residents

## Bylaws:

**SECTION 4.8 Conflict of Interest.** Unless permitted by law, a Director shall not vote at any Board meeting on any issue in which the Director has a conflict of interest.

## SECTION 4.9 Disclosure of Conflicts.

A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting.

**SECTION 4.10 Board Meeting.** All meeting of the Board of Directors shall be conducted in accordance with the most current edition of Robert's Rule of Order. All meetings of the Board of Directors, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board of Directors unless a majority of a quorum of the Board of Directors otherwise.

## SECTION 4.16 Decisions of Board of Directors.

The vote of a majority of Directors present at a meeting at which a quorum of Directors is present shall constitute the decision of the board.

**SECTION 5.6 Treasurer.** The Treasurer shall keep the financial records and books of account of the Association showing all receipts and disburse-

ments, and shall be responsible for the preparation on all required financial data. He shall be responsible for the deposit of all moneys and other valuable effects of the Association in such depositories as shall be designated by the Board of Director. He shall, in general, perform all the duties incident to the office of Treasurer of a corporation.

## SECTION 6.1 Management and Operation of the Project.

(b) Preparation annually of a budget of the common expenses

(q) Subject to the affirmative vote or written consent of at least sixty-five percent (65%) of the Apartment Owners, the Board may purchase or otherwise acquire any Apartment in the name of the Association on behalf of all Apartment Owners and may borrow money and give a mortgage.

## SECTION 7.4 Budget and Reserves.

At a minimum, the budget shall include the following:  
(1) The estimated revenues and operating expenses of the Association



House Consumer Protection & Commerce Committee  
House Judiciary Committee  
Wednesday, February 19, 2014  
2:15 pm, Conf. Rm 325

Rep. McKelvey, CPC Chair  
Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
Rep. Har, JUD Vice Chair

RE. Testimony In Support of HB 2401, Relating to Condominiums, Transparency

I, Jean Y. Yee own a condominium at 2752 Kaaha St. Kapiolani Banyan

I support HB 2401 because it will give condo owners more protection from questionable and unethical activities conducted by the Condo Board and the Property Management Co. hired by the Condo Board.

We have had a lot of problems with getting information in a timely manner from the Condo Board and the Property Management Co., including Board Meeting Minutes (which are supposed to be available to owners) and budget & accounting information. We also cannot get detailed information on how the vendors were selected by the Condo Board or review the signed contracts with the vendors.

We often are given only verbal information on upcoming projects then a notice is posted on the bulletin board to let us know when the repair or renovation work will begin. Although we have asked, we often do not know if the company the Condo Board hired has any prior complaints filed against them; have the necessary insurance or bond to cover the project; and have the required state professional licenses or certificates to do the job.

Currently, there is no government office to go to with our complaints. The only recourse we have to resolve our problems is to take it to mediation or go to court. We need a state office to provide oversight management and investigate our complaints so all condo owners across the state can have equal protection from Condo Boards and Property Management Co's., especially those who are not being open and honest with us.

We would also would like to see regularly scheduled management audits conducted and presented to the owners as well as regularly scheduled review and revision of the Condo by-laws added to the HRS 514B to provide more tools for condo owners to enforce self-governance.

In closing, I ask that you please pass HB 2401 with the above amendments. Thank you for your time and support on this matter.

Jean Y. Yee  
(Sign Name)

2752 Kaaha St, Honolulu, HI 96826  
(Email or Address)

Jean Y. Yee  
(Print Name)

\_\_\_\_\_  
(Phone optional)

House Consumer Protection & Commerce Committee  
House Judiciary Committee  
Wednesday, February 19, 2014  
2:15 pm, Conf. Rm 325

Rep. McKelvey, CPC Chair  
Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
Rep. Har, JUD Vice Chair

RE: **Testimony In Support of HB 2401, Relating to Condominiums; Transparency**

I, Margaret F. Ojima own a condominium at Hono Hale Towers

I support **HB 2401** because it will give condo owners more protection from questionable and unethical activities conducted by the Condo Board and the Property Management Co. hired by the Condo Board.

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In closing, I ask that you please pass **HB 2401 with the above amendments**. Thank you for your time and support on this matter.

Margaret F. Ojima  
(Sign Name)

2648 Kuilei St. C23 Hon. 96826  
(Email or Address)

Margaret F. Ojima  
(Print Name)

-  
(Phone-optional)

House Consumer Protection & Commerce Committee  
House Judiciary Committee  
Wednesday, February 19, 2014  
2:15 pm, Conf. Rm 325

Rep. McKelvey, CPC Chair  
Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
Rep. Har, JUD Vice Chair

RE: Testimony In Support of HB 2401, Relating to Condominiums; Transparency

I, Rui Xing Tan own a condominium at Hono Hale Towers

I support **HB 2401** because it will give condo owners more protection from questionable and unethical activities conducted by the Condo Board and the Property Management Co. hired by the Condo Board.


We have had a lot of problems with getting information in a timely manner from the Condo Board and the Property Management Co., including Board Meeting Minutes (which are supposed to be available to owners) and budget & accounting information. We also cannot get detailed information on how the vendors were selected by the Condo Board or review the signed contracts with the vendors.

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We would also would like to see regularly scheduled management audits conducted and presented to the owners as well as regularly scheduled review and revision of the Condo by-laws added to the HRS 514B to provide more tools for condo owners to enforce self-governance.

In closing, I ask that you please pass **HB 2401 with the above amendments**. Thank you for your time and support on this matter.

  
\_\_\_\_\_  
(Sign Name)

Ruixing Tan  
\_\_\_\_\_  
(Print Name)

Rui  
chris888@gmail.com  
\_\_\_\_\_  
(Email or Address)

\_\_\_\_\_  
(Phone-optional)



House Consumer Protection & Commerce Committee  
 House Judiciary Committee  
 Wednesday, February 19, 2014  
 2:15 pm, Conf Rm 325

Rep. McKelvey, CPC Chair  
 Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
 Rep. Har, JUD Vice Chair

RE: **Testimony In Support of HB 2401, Relating to Condominiums; Transparency**

I, Xing hua Li own a condominium at Hono Hale Towers

I support **HB 2401** because it will give condo owners more protection from questionable and unethical activities conducted by the Condo Board and the Property Management Co. hired by the Condo Board.

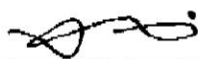
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Currently, there is no government office to go to with our complaints. The only recourse we have to resolve our problems is to take it to mediation or go to court. We need a state office to provide oversight management and investigate our complaints so all condo owners across the state can have equal protection from Condo Boards and Property Management Co's., especially those who are not being open and honest with us.

We would also would like to see regularly scheduled management audits conducted and presented to the owners as well as regularly scheduled review and revision of the Condo by-laws added to the HRS 514B to provide more tools for condo owners to enforce self-governance.

In closing, I ask that you please pass **HB 2401 with the above amendments**. Thank you for your time and support on this matter.



(Sign Name)

Xing hua Li

(Print Name)

Lui 8883 @ G mail. Com

(Email or Address)

808-728-8470

(Phone-optional)

House Consumer Protection & Commerce Committee  
 House Judiciary Committee  
 Wednesday, February 19, 2014  
 2:15 pm, Conf. Rm 325

Rep. McKelvey, CPC Chair  
 Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
 Rep. Har, JUD Vice Chair

RE: **Testimony In Support of HB 2401**, Relating to Condominiums; Transparency

1. Tojan Lee own a condominium at Hono Hale Towers

I support **HB 2401** because it will give condo owners more protection from questionable and unethical activities conducted by the Condo Board and the Property Management Co. hired by the Condo Board.


We have had a lot of problems with getting information in a timely manner from the Condo Board and the Property Management Co., including Board Meeting Minutes (which are supposed to be available to owners) and budget & accounting information. We also cannot get detailed information on how the vendors were selected by the Condo Board or review the signed contracts with the vendors.

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In closing, I ask that you please pass **HB 2401 with the above amendments**. Thank you for your time and support on this matter.

  
 (Sign Name)

TOJAN LEE  
 (Print Name)

2651 Kuiki St. # B-64, Hon. HI 96826  
 (Email or Address)  
 tojan.lee@hawaii.com

\_\_\_\_\_  
 (Phone-optional)

House Consumer Protection & Commerce Committee  
 House Judiciary Committee  
 Wednesday, February 19, 2014  
 2:15 pm, Conf. Rm 325

Rep. McKelvey, CPC Chair  
 Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
 Rep. Har, JUD Vice Chair

RE: **Testimony In Support of HB 2401, Relating to Condominiums, Transparency**

I, Karen M. Kagawa own a condominium at Hono Hale Tower.

I support **HB 2401** because it will give condo owners more protection from questionable and unethical activities conducted by the Condo Board and the Property Management Co. hired by the Condo Board.

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In closing, I ask that you please pass **HB 2401 with the above amendments**. Thank you for your time and support on this matter.

Karen M. Kagawa  
 (Sign Name)

2648 Kuilei St #2116 Hon HI 96826  
 (Email or Address)

Karen M. Kagawa  
 (Print Name)

942-5549  
 (Phone-optional)

House Consumer Protection & Commerce Committee  
House Judiciary Committee  
Wednesday, February 19, 2014  
2:15 pm, Conf. Rm 325

Rep. McKelvey, CPC Chair  
Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
Rep. Har, JUD Vice Chair

RE: **Testimony In Support of HB 2401, Relating to Condominiums; Transparency**

I, Sueko Higa own a condominium at West Park Garden.

I support **HB 2401** because it will give condo owners more protection from questionable and unethical activities conducted by the Condo Board and the Property Management Co. hired by the Condo Board.

We have had a lot of problems with getting information in a timely manner from the Condo Board and the Property Management Co., including Board Meeting Minutes (which are supposed to be available to owners) and budget & accounting information. We also cannot get detailed information on how the vendors were selected by the Condo Board or review the signed contracts with the vendors.

We often are given only verbal information on upcoming projects then a notice is posted on the bulletin board to let us know when the repair or renovation work will begin. Although we have asked, we often do not know if the company the Condo Board hired has any prior complaints filed against them; have the necessary insurance or bond to cover the project; and have the required state professional licenses or certificates to do the job.

Currently, there is no government office to go to with our complaints. The only recourse we have to resolve our problems is to take it to mediation or go to court. We need a state office to provide oversight management and investigate our complaints so all condo owners across the state can have equal protection from Condo Boards and Property Management Co's., especially those who are not being open and honest with us.

We would also would like to see regularly scheduled management audits conducted and presented to the owners as well as regularly scheduled review and revision of the Condo by-laws added to the HRS 514B to provide more tools for condo owners to enforce self-governance.

In closing, I ask that you please pass **HB 2401 with the above amendments**. Thank you for your time and support on this matter.

Sueko Higa  
(Sign Name)

\_\_\_\_\_  
(Email or Address)

Sueko Higa  
(Print Name)

\_\_\_\_\_  
(Phone optional)

House Consumer Protection & Commerce Committee  
House Judiciary Committee  
Wednesday, February 19, 2014  
2:15 pm, Conf. Rm 325

Rep. McKelvey, CPC Chair  
Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
Rep. Har, JUD Vice Chair

RE: **Testimony In Support of HB 2401**, Relating to Condominiums; Transparency

I, Eugenie Brown own a condominium at Olaloe.

I support **HB 2401** because it will give condo owners more protection from questionable and unethical activities conducted by the Condo Board and the Property Management Co. hired by the Condo Board.

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In closing, I ask that you please pass **HB 2401 with the above amendments**. Thank you for your time and support on this matter.

Eugenie Brown  
(Sign Name)

\_\_\_\_\_  
(Email or Address)

Eugenie Brown  
(Print Name)

\_\_\_\_\_  
(Phone-optional)

House Consumer Protection & Commerce Committee  
 House Judiciary Committee  
 Wednesday, February 19, 2014  
 2:15 pm, Conf. Rm 325

Rep. McKelvey, CPC Chair  
 Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
 Rep. Har, JUD Vice Chair

RE: **Testimony In Support of HB 2401, Relating to Condominiums; Transparency**

I, June Shin own a condominium at Kukui Plaza.

I support HB 2401 because it will give condo owners more protection from questionable and unethical activities conducted by the Condo Board and the Property Management Co. hired by the Condo Board.

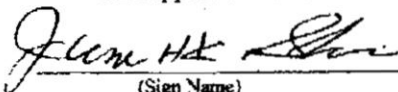
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In closing, I ask that you please pass **HB 2401 with the above amendments**. Thank you for your time and support on this matter.



(Sign Name)

JUNE H.K. SHIN

(Print Name)

(Email or Address)

808 371-8188

(Phone-optional)



House Consumer Protection & Commerce Committee  
House Judiciary Committee  
Wednesday, February 19, 2014  
2:15 pm, Conf. Rm 325

Rep. McKelvey, CPC Chair  
Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
Rep. Har, JUD Vice Chair

RE: **Testimony In Support of HB 2401**, Relating to Condominiums; Transparency

I, Ange Grmolges own a condominium at Max Oha Ocean View

I support **HB 2401** because it will give condo owners more protection from questionable and unethical activities conducted by the Condo Board and the Property Management Co. hired by the Condo Board.

We have had a lot of problems with getting information in a timely manner from the Condo Board and the Property Management Co., including Board Meeting Minutes (which are supposed to be available to owners) and budget & accounting information. We also cannot get detailed information on how the vendors were selected by the Condo Board or review the signed contracts with the vendors.

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In closing, I ask that you please pass **HB 2401 with the above amendments**. Thank you for your time and support on this matter.

Ange Grmolges  
(Sign) Name

styleswithmange@yahoo.com  
(Email or Address)

Ange Grmolges  
(Print Name)

(213) 344 7593  
(Phone-optional)



House Consumer Protection & Commerce Committee  
House Judiciary Committee  
Wednesday, February 19, 2014  
2:15 pm, Conf. Rm 325

Rep. McKelvey, CPC Chair  
Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
Rep. Har, JUD Vice Chair

RE: **Testimony In Support of HB 2401**, Relating to Condominiums; Transparency

I, East S. Pereira own a condominium at Hono Hale Towers

I support **HB 2401** because it will give condo owners more protection from questionable and unethical activities conducted by the Condo Board and the Property Management Co. hired by the Condo Board.

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In closing, I ask that you please pass **HB 2401 with the above amendments**. Thank you for your time and support on this matter.

East S. Pereira

(Sign Name)

(Email or Address)

East S. Pereira

(Print Name)

(Phone-optional)

House Consumer Protection & Commerce Committee  
 House Judiciary Committee  
 Wednesday, February 19, 2014  
 2:15 pm, Conf. Rm 325

Rep. McKelvey, CPC Chair  
 Rep. Kawakami, CPC Vice Chair

Rep. Rhoads, JUD Chair  
 Rep. Har, JUD Vice Chair

RE: **Testimony In Support of HB 2401**, Relating to Condominiums; Transparency

I, Marcus Young own a condominium at Makaha Ocean View.

I support **HB 2401** because it will give condo owners more protection from questionable and unethical activities conducted by the Condo Board and the Property Management Co. hired by the Condo Board.


We have had a lot of problems with getting information in a timely manner from the Condo Board and the Property Management Co., including Board Meeting Minutes (which are supposed to be available to owners) and budget & accounting information. We also cannot get detailed information on how the vendors were selected by the Condo Board or review the signed contracts with the vendors.

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We would also would like to see regularly scheduled management audits conducted and presented to the owners as well as regularly scheduled review and revision of the Condo by-laws added to the HRS 514B to provide more tools for condo owners to enforce self-governance.

In closing, I ask that you please pass **HB 2401 with the above amendments**. Thank you for your time and support on this matter.

  
 \_\_\_\_\_  
 (Sign Name)

Marcus Young  
 \_\_\_\_\_  
 (Print Name)

myungjoo@dd.com  
 \_\_\_\_\_  
 (Email or Address)

\_\_\_\_\_  
 (Phone-optional)

**LATE**

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2014

Wednesday, February 19, 2014  
2:15 p.m.

**TESTIMONY ON HOUSE BILL NO. 2401, H.D. 1, RELATING TO CONDOMINIUMS.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
TO THE HONORABLE KARL RHOADS, CHAIR,  
AND MEMBERS OF THE COMMITTEES:

My name is Scott Sherley and I am the Condominium Review Committee Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on House Bill No. 2401, H.D. 1, Relating to Condominiums. House Bill No. 2401, H.D. 1, clarifies the Real Estate Commission's enforcement authority by authorizing the award of attorneys' fees and, in certain cases, authorizing the Commission discretionary power to decline to bring enforcement actions.

The Commission supports the intent and purpose of House Bill No. 2401, H.D. 1, to encourage more transparency in the actions of condominium association boards of directors. The Commission however opposes the bill as drafted and has questions and concerns with House Bill No. 2401, H.D. 1, as follows:

- A similar bill, Senate Bill No. 2363 was heard in the Senate Commerce and Consumer Protection Committee on January 29, 2014 and was deferred indefinitely;
- Sections 2 and 3 of H.D. 1 appear to result in some unintended consequences and inconsistencies. Section 2 expands the Commission's enforcement powers for any violations of the condominium laws to all of the provisions relating to the management of condominiums (Governance - Elections and Meetings, Operations). When the legislature recodified the condominium law in 2006, it maintained the original basic tenet of the condominium law as one of self-enforcement of the laws and rules by the owners, with limited government involvement. This public policy is reflected throughout the condominium law. See, e.g., §§514A-46, 47 and 48; and §§514B-65, 66 and 68, HRS. The language on page 1 line 17 to page 2 lines 1-17 of the H.D. 1 would (1) run counter to that public policy, and (2) create significant internal inconsistencies in the chapter regarding the Commission's authority and jurisdiction. Additionally, Section 3 proposes to keep the current jurisdiction to those limited areas enumerated in section 514A-48, HRS, while expanding the Commission's jurisdiction in chapter 514B, HRS.
- The current law limits the Commission/government involvement to the basic areas in governance matters to violations where the unit owners are unable

to obtain from the board necessary information to govern themselves and to oversee the board's actions. Such information include, for example, records relating to the current membership of the association, financial records, contracts, invoices of expenses and expenditures, bank statements, management contracts, and more; all as enumerated in sections 514B-152, 514-B-153, and 514B-154, HRS, and in sections 514A-46, 514A-47, and 514A-48.

- The Commission has historically planned, budgeted, and procured for low cost alternative dispute resolution services to help resolve condominium disputes. However, with the aforementioned amendment intruding into and litigating potential violations, the Commission will need additional funding to support the increased workload.

For the reasons discussed, the Commission opposes House Bill No. 2401, H.D. 1, and respectfully request the Committees to defer the bill indefinitely. Thank you for the opportunity to testify.

**kawakami3-Benigno**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 18, 2014 8:47 PM  
**To:** CPCtestimony  
**Cc:** john-a-morris@juno.com  
**Subject:** Submitted testimony for HB2401 on Feb 19, 2014 14:15PM



**HB2401**

Submitted on: 2/18/2014

Testimony for CPC/JUD on Feb 19, 2014 14:15PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
John Morris	Individual	Support	No

Comments: Chairs McKelvey and Rhoads and Members of the Committees I am testifying in support of HB 2401, HD 1. The HD 1 version of this bill is much improved when compared to the bill as originally submitted. Instead of forcing the real estate commission to intervene in a dispute involving owners and boards at a condominium project, the HD1 of this bill allows the real estate commission to review the situation and intervene only if it believes intervention is necessary. Allowing the real estate commission to exercise discretion in deciding whether to intervene in a dispute between owners or owners and their board avoids the problem of forcing the commission to become involved in every minor dispute, even when there are means, such as mediation, for the owners and boards to resolve the dispute themselves. Therefore, I support this bill and encourage the committees to pass the bill out of committee.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

# LATE

**Subject: Hb2401 being heard on feb. 19 @ 2:15 by consumer protection and Jud house committees**

My name is sandie Wong and I am a condo resident and owner and I support hb2401 and an amendment to include section 3 of hb2046. Chapter 514b is slanted in favor of the condo boards and leave condo owners w/limited rights and protections. My condo board only lets owners speak for 2 minutes and then they do not let us participation in board discussions and deliberations. Something needs to be done to level the playing field. Board members are forgetting that we are all owners and that we need to collaborate and work together.



**LATE**

**kawakami3-Benigno**

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**From:** Kimberly Pereira <kepereira@aol.com>  
**Sent:** Thursday, February 20, 2014 6:40 PM  
**To:** kawakami3-Benigno  
**Subject:** Sheila Pereira Bill 2401 follow-up on testimony given on Feb.20, 2014

Aloha Kakou,

My name is Sheila Pereira. I'm here to support House Bill 2401. I am an owner and have resided at Hono Hale Towers for over 36 years. The property has 3 buildings with 200 units. There are a mix of elderly people, students and families.

In 2012 we were given information about a spalding project that would take 7 months and cost \$79,000.00. It is now 2014, a year and 1/2 years later. Only 1 and 1/3 buildings have been worked on, at a cost of approximately \$500,000.00 or 1/2

million dollars. The glass railing have a flawed design and 6 condos are without glass guards.

We need to have RICO and the Real Estate Commission have some teeth with accountability for the consumer.

Thank You for you time on House Bill 2401. I seriously hope for the passage of this bill which will encourage for more transparency.

I hope to be able ton continue to enjoy my golden years living in my condo.

Mahalo.