

HB 2656 HD1

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominium Associations; Managing Agent;
Condominium Boards

Description: Provides that condominium associations may call for the review and discharge of a managing agent hired by the association upon a majority vote by the association members. Effective July 1, 2050. (HB2656 HD1)

Companion: SB3127

Package: None

Current Referral: CPN

Introducer(s): TAKAI, BROWER



P.O. Box 976
Honolulu, Hawaii 96808

March 10, 2014

Honorable Rosalyn H. Baker
Honorable Brian T. Tanaguchi
Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **HB 2656 H.D. 1/OPPOSING**

Dear Chair Baker, Vice-Chairs Tanaguchi and Committee Members:

I am the Chair of the Community Associations Institute's Legislative Action Committee ("CAI"). CAI, which represents the association industry in this State, **opposes HB 2656 H.D. 1. However, if the amendments that were included in the companion Bill SB 3127 S.D. 1 were incorporated in HB 2656 H.D. 1, then CAI would support the Bill (as amended).**

Boards for condominium associations are responsible for the administration of their projects, and the hiring of all agents and vendors. This currently includes the right to hire and fire the managing agent.

Some associations have language in their governing documents, such as the Bylaws, that require the owners' approval of the retention of the managing agent. This type of a provision is cumbersome and not necessary, as associations have a hard enough time meeting the quorum requirements to just have an annual meeting. So there is no reason for owners to approve the retention of managing agents when all other agents and vendors are hired and fired by the Board of Directors.

The current draft of HB 2656 H.D.1 makes matters worst for associations. This Bill will "lock in" management companies and not allow them to be terminated by the principal, the Board or association, without a vote of the owners. As already noted above, this is a huge problem in that it is already hard for associations to reach quorum to conduct a meeting to elect directors. The current amendment is a step backwards for associations and the managing of their assets.

Thank you for your time and consideration, and we respectfully request the Committee **not pass HB 2656 H.D. 1 out unless it is amended to be consistent with SB 3127 S.D.1.**
Thank you.

Honorable Rosalyn H. Baker
Honorable Brian T. Tanaguchi
March 10, 2014
Page 2 of 2

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Porter', with a large, sweeping initial 'C' and a horizontal line extending to the right.

Christian P. Porter

McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

CHARLES E. PEAR, JR.

DIRECT #S:
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March 10, 2014

Sen. Rosalyn H. Baker, Chair
Sen. Brian T. Taniguchi, Vice Chair
Members of the Committee on Commerce
and Consumer Protection
Twenty-Seventh Legislature
Regular Session, 2014

Re: H.B. 2656, H.D. 1
Hearing on March 11, 2014, 9:30 a.m.
Conference Room 229

Dear Chair, Vice-Chair and Members of the Committee:

My name is Charles Pear. I am appearing as legislative counsel for ARDA Hawaii.

ARDA Hawaii opposes the bill as presently drafted and prefers the language of the Senate's companion bill S.B. 3127.

The bill would apply to time share condominiums.

In recent years, most time share resorts have been developed and are operated by major hospitality brands such as Disney, Westin, Hilton, Marriott and so on. In virtually every case, an affiliate of the brand owner serves as the managing agent of the condominium.

In addition, most of these hospitality companies own and operate a vacation club that allows owners of time share interests in a Hawaii resort to exchange their Hawaii use rights for the right to use other time share plans in their vacation club. For example, an owner in Disney's Aulani resort may choose instead to stay in the Animal Kingdom time share plan at Walt Disney World.

If the managing agent is discharged, however, then the project will no longer be branded as a Disney, Westin, Hilton or Marriott resort. In addition, the resort will no longer be a participating resort in the company's vacation club.

In time share plans, it is very common for only a handful of owners to attend a meeting of the association of owners. Under the bill as presently drafted, if a dozen owners attend a meeting and seven of them vote to terminate the management agreement, then the project would lose its branding and *all* of the owners could lose their rights to participate in the vacation club.

Chair, Vice-Chair and Members,
Senate Committee on Commerce
and Consumer Protection
March 10, 2014
Page 2

This is a very important decision for the members of a time share plan. While there may be valid reasons for an association to terminate its management agreement, such a decision should not be made without the consent of at least a majority of all of the owners, not just a majority of the handful that attend an association meeting.

For the foregoing reasons, ARDA opposes the bill at least as to a time share plan. We fully understand that circumstance may differ for a condominium used as a principal residence by the owners who live in the project. But if the committee is inclined to advance the bill, we ask that you require that the vote of a majority of all the owners, not just a vote of a majority of owners present, be required in the case of a time share condominium.

Thank you for your kind consideration of this legislation. I would be happy to take any questions if you think that I may be of assistance.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

A handwritten signature in black ink, appearing to read 'Charles E. Pear, Jr.', with a stylized flourish extending to the right.

Charles E. Pear, Jr.

HB2656

Submitted on: 3/10/2014

Testimony for CPN on Mar 11, 2014 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Lynne Rackmil	ARDA Hawaii	Comments Only	Yes

Comments: Henry Perez, Chair of ARDA Hawaii will be testifying.

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



HAWAII STATE ASSOCIATION OF PARLIAMENTARIANS
LEGISLATIVE COMMITTEE
P. O. Box 29213
HONOLULU, HAWAII 96820-1613
E-MAIL: HSAP.LC@GMAIL.COM

March 9, 2014

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Brian T. Taniguchi, Vice Chair
Senate Committee on Commerce and Consumer Protection (CPN)
Hawaii State Capitol, Room 229
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony with COMMENTS regarding HB2656 HD1; Hearing Date March 11, 2014 at 9:30 a.m.; sent via Internet

Aloha Chair Baker, Vice-Chair Taniguchi, and Committee members,

Thank you for the opportunity to provide testimony on this bill on behalf of the Hawaii State Association of Parliamentarians ("HSAP"). I apologize for being unable to attend due to a previous prior engagement.

I will address the larger issues presented by this bill below.

The proposed wording completely changes the responsibility for "reviewing and discharging" a managing agent from a board of directors to a majority of members present at an association meeting.

The CURRENT wording in Section 1 presents the antithesis of good management and will have a completely negative effect on condominiums throughout the state.

A Managing Agent is a vendor with a fiduciary relationship to the association. The Managing Agent receives direction from the board of directors. The board of directors has a duty to take care of and act on behalf of the association.

A condominium association is not a plebiscite where the members at an association meeting decide every element of the management agreement.

A further problem exists with developer imposed bylaws that make it nearly impossible for either a board or the association to discharge a managing agent. For example, one association's bylaws make it impossible for the board to fire a managing agent without prior notice at an association meeting **and** an 80% vote of the owners.

We heard concerns in the House Committee and your Senate Committee hearings (SB3127) about the differences between time-sharing and condominiums regarding this

issue. Therefore, an exception has been proposed for associations which contain a majority of time-share units.

We propose the following:

1. The board must remain responsible for the hiring, supervising, and discharging a managing agent.
2. At an annual or a properly noticed special meeting, the owners by "vote of a majority of the unit owners" will have a simple right to reject a managing agent. This rejection shall act as an order for the board to find a different managing agent within a limited period of time.
3. This section would not apply to an association where a majority of the units are part of a time-sharing organization and regulated by the HRS Chapter 514E.

A majority of the unit owners currently has the power to remove and replace the entire board [HRS §514B-106(f)]. The voting requirement in the proposed change makes sense because it already provides for new management through a complete replacement of a board. That same voting level could easily extend to the board's subsequent removal of a managing agent

We believe this balances (a) the board's responsibility for hiring a proper managing agent with (b) the association's right to exercise veto power in a way that doesn't become micro-management.

We worked with the CAI to draft wording that was more in line with this principle. We made another technical proposed change to ensure that a majority of unit owners is the target vote needed for vetoing the managing agent. We recommend the following for Section 2:

SECTION 2. Section 514B-107, Hawaii Revised Statutes, is amended to read as follows:

"§514B-107 Board; limitations. (a) Members of the board shall be unit owners or co-owners, vendees under an agreement of sale, a trustee of a trust which owns a unit, or an officer, partner, member, or other person authorized to act on behalf of any other legal entity which owns a unit. There shall not be more than one representative on the board from any one unit.

(b) No resident manager or employee of a condominium shall serve on its board.

(c) An owner shall not act as an officer of an association and an employee of the managing agent retained by the association. Any owner who is a board member of an association and an employee of the managing agent retained by the association shall not participate in any discussion regarding a management contract at a board meeting and shall be excluded from any executive session of the board where the management

contract or the property manager will be discussed.

(d) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses; provided that, with the approval of the board, directors may be reimbursed for actual expenditures incurred on behalf of the association. The minutes shall reflect in detail the items and amounts of the reimbursements.

(e) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments.

(f) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of subsection (d).

(g) Notwithstanding any provision in the declaration or bylaws, the board of an association managed by a managing agent shall have the authority to employ and terminate a managing agent, subject to the requirements of subsection (h).

(h) A managing agent may be terminated at an association meeting by vote of a majority of the unit owners. If the employment of a managing agent is terminated, the managing agent's contract shall continue for no more than three months from the date of termination and the board shall employ a different managing agent.

(i) A project in which a majority of the units have been submitted to one or more vacation plans, or in which one or more units have been submitted to a vacation plan established by the developer of the project or by an affiliate of the developers shall be exempt from subsections (g) and (h).

For purposes of this subsection:

"Majority of the units" means units to which are appurtenant more than fifty per cent of the common interests appurtenant to all units, other than any commercial units, in the project.

"Vacation plan" means a plan or program that constitutes a time share plan subject to chapter 514E, or that would constitute a time share plan subject to chapter 514E but for the fact that the period during which the owners have the right to use, occupy, or possess the units in the plan equals or exceeds sixty days per year."

If you require any additional information, your call is most welcome. I may be contacted via phone: 423-6766 or by e-mail: hsap.lc@gmail.com. Thank you for the opportunity to present this testimony.

Sincerely,

Steve Glanstein

Digitally signed by Steve Glanstein
DN: cn=Steve Glanstein, o, ou,
email=Steveghi@gmail.com, c=US
Date: 2014.03.10 01:58:02 -10'00'

Steve Glanstein, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee

SG:tbs



COMMUNITY ASSOCIATION MANAGEMENT
Queen's Court « 800 Bethel Street, Suite 501 « Honolulu, Hawaii 96813

February 18, 2014

HB 2656 – SUPPORT WITH AMENDMENTS

Dear Representatives,

I am submitting testimony on behalf of the Legislative Action Committee of Community Associations Institute (CAI). HB 2656 addresses to important issues condominiums face today. **Please find attached proposed amendment language that CAI supports to accomplish the Bill's intent.** Also, as President of Hawaii First one of Hawaii's largest association management companies, I also support HB 2656 with the amendments attached.

Annual Meeting Quorum: A loophole in the current law allows directors to serve without having to stand for reelection. The bylaws of a condominium provide for an annual meeting; a meeting where directors are reelected and a mandatory tax resolution to file the association's income tax is adopted. If the association fails to obtain a quorum, often a board declares that they conducted the annual meeting with a result of no quorum and no business. The boards wait another year before scheduling the next annual meeting. Thus a director whose term has expired never stands for reelection and serves beyond their term. There are examples where such practice has occurred for years, particularly when a board is under fire for its decisions by homeowners. Boards have some ability to influence a quorum by the process they take to solicit proxies. The unintended consequence is that the association never approves its tax resolution for the tax-free rollover over of its funds which potentially imposes a future tax liability on the association. HB2656 mandates a second meeting within 90 days and reasonably reduces quorum assuring that directors will stand for reelection at the end of their term. Requiring an annual meeting and thus an election is a fundamental obligation of an association.

Managing Agent Employment: There is an alarming trend in new associations where bylaws provide difficult or in some cases impossible circumstances for a board to terminate the Managing Agent. I have attached two examples of many of association bylaws that exemplify the problem. In these examples, the board has no authority to terminate a management contract without the prior vote of the majority of all homeowners, and in some cases as much as 80% of all homeowners. Clearly the board is charged with the fiduciary duty in the management of the association and should be free from constraints to make business decisions for the benefit of the association. In every new association, the owners inherited the Managing Agent and were not involved with the initial selection by the developer. A Managing Agent is no more than a business that should earn its contract through its efforts and trust of the board. The board will be most knowledgeable about its every day dealings with the Managing Agent. On the other hand, boards serve the homeowners, and of a majority of homeowners want a new Managing Agent the board should be required to comply.





COMMUNITY ASSOCIATION MANAGEMENT

Queen's Court « 800 Bethel Street, Suite 501 « Honolulu, Hawaii 96813

Our proposed amendment to HB 2656 allows the board (the Principal) to employ and discharge the Managing Agent while respecting the rights of homeowners to require a management change. This issue is best addressed with a new Section 514B-107, HRS as attached. 514B-104 HRS should not be revised.

Community Associations Institute SUPPORTS HB 2656 with the amendments attached.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Emery".

Richard Emery
CAL Legislative Action Committee &
President, Hawaii First, Inc.



A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

the association is unable to obtain

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 514B, Hawaii Revised Statutes, is
2 amended by adding a new section to subpart B of part VI to be
3 appropriately designated and to read as follows:

4 "~~§514B-~~ Association meetings; failure to obtain a
5 quorum. (a) If a quorum is not present at the first annual
6 meeting of the association in any year, then the association
7 shall continue the meeting at least once for no more than ninety
8 days.

9 (b) If the association does not continue the first meeting
10 pursuant to subsection (a), then the board of directors shall
11 call a continuation of the annual meeting within ninety days.

12 (c) The quorum requirement at the continued meeting shall
13 be reduced to one-half of the requirement as stated in the
14 bylaws."

15 ~~SECTION 2. Section 514B-104, Hawaii Revised Statutes, is~~
16 ~~amended by amending subsection (a) to read as follows:~~

HB HMS 2014-1335



See suggested alternative and substitute language re Section 514B-107, HRS, attached hereto. Section 514B-104, HRS, should not be revised.

- 1 (a) Except as provided in section 514B-105, and subject
2 to the provisions of the declaration and bylaws, the
3 association, even if unincorporated, may:
- 4 (1) Adopt and amend the declaration, bylaws, and rules and
5 regulations;
 - 6 (2) Adopt and amend budgets for revenues, expenditures,
7 and reserves and collect assessments for common
8 expenses from unit owners, subject to section
9 514B-148;
 - 10 (3) Hire and discharge ~~[managing agents and other]~~
11 independent contractors, agents, and employees;
 - 12 (4) Institute, defend, or intervene in litigation or
13 administrative proceedings in its own name on behalf
14 of itself or two or more unit owners on matters
15 affecting the condominium. For the purposes of
16 actions under chapter 480, associations shall be
17 deemed to be "consumers";
 - 18 (5) Make contracts and incur liabilities;
 - 19 (6) Regulate the use, maintenance, repair, replacement,
20 and modification of common elements;
 - 21 (7) Cause additional improvements to be made as a part of
22 the common elements;



- 1 (8) Acquire, hold, encumber, and convey in its own name
2 any right, title, or interest to real or personal
3 property; provided that:
- 4 (A) Designation of additional areas to be common
5 elements or subject to common expenses after the
6 initial filing of the declaration or bylaws shall
7 require the approval of at least sixty-seven per
8 cent of the unit owners;
- 9 (B) If the developer discloses to the initial buyer
10 in writing that additional areas will be
11 designated as common elements whether pursuant to
12 an incremental or phased project or otherwise,
13 the requirements of this paragraph shall not
14 apply as to those additional areas; and
- 15 (C) The requirements of this paragraph shall not
16 apply to the purchase of a unit for a resident
17 manager, which may be purchased with the approval
18 of the board;
- 19 (9) Subject to section 514B-38, grant easements, leases,
20 licenses, and concessions through or over the common
21 elements and permit encroachments on the common
22 elements;



- 1 (10) Impose and receive any payments, fees, or charges for
- 2 the use, rental, or operation of the common elements,
- 3 other than limited common elements described in
- 4 section 514B-35(2) and (4), and for services provided
- 5 to unit owners;
- 6 (11) Impose charges and penalties, including late fees and
- 7 interest, for late payment of assessments and levy
- 8 reasonable fines for violations of the declaration,
- 9 bylaws, rules, and regulations of the association,
- 10 either in accordance with the bylaws or, if the bylaws
- 11 are silent, pursuant to a resolution adopted by the
- 12 board that establishes a fining procedure that states
- 13 the basis for the fine and allows an appeal to the
- 14 board of the fine with notice and an opportunity to be
- 15 heard and providing that if the fine is paid, the unit
- 16 owner shall have the right to initiate a dispute
- 17 resolution process as provided by sections 514B-161,
- 18 514B-162, or by filing a request for an administrative
- 19 hearing under a pilot program administered by the
- 20 department of commerce and consumer affairs;
- 21 (12) Impose reasonable charges for the preparation and
- 22 recordation of amendments to the declaration,



- 1 documents requested for resale of units, or statements
2 of unpaid assessments;
- 3 (13) Provide for cumulative voting through a provision in
4 the bylaws;
- 5 (14) Provide for the indemnification of its officers,
6 board, committee members, and agents, and maintain
7 directors' and officers' liability insurance;
- 8 (15) Assign its right to future income, including the right
9 to receive common expense assessments, but only to the
10 extent section 514B-105(e) expressly so provides;
- 11 (16) Exercise any other powers conferred by the declaration
12 or bylaws;
- 13 (17) Exercise all other powers that may be exercised in
14 this State by legal entities of the same type as the
15 association, except to the extent inconsistent with
16 this chapter;
- 17 (18) Exercise any other powers necessary and proper for the
18 governance and operation of the association; [and]
- 19 (19) By regulation, subject to sections 514B-146, 514B-161,
20 and 514B-162, require that disputes between the board
21 and unit owners or between two or more unit owners
22 regarding the condominium be submitted to nonbinding



1 alternative dispute resolution in the manner described
2 in the regulation as a prerequisite to commencement of
3 a judicial proceeding[-]; and
4 (20) Notwithstanding any provision of law to the contrary,
5 beginning July 1, 2014, review the hiring or continued
6 employment of a managing agent at an association
7 meeting. A managing agent may be discharged subject
8 to review under this paragraph if voted on by a
9 majority of unit owners present at an association
10 meeting. Managing agents discharged under this review
11 shall be employed on a month-to-month basis until a
12 replacement managing agent is employed."

13 SECTION 3. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect on July 1, 2014.

16 INTRODUCED BY: F. L. Oll
TOM Bunn

JAN 23 2014

SECTION 2. Section 514B-107, Hawaii Revised Statutes, is amended by adding new section (g), (h), and (i), to read as follows:

(g) Notwithstanding any provision of the declaration and bylaws, the board of an association managed by a managing agent shall have the authority to employ and terminate a managing agent subject to subsection (h).

(h) Such employment may be terminated by vote of a majority of the unit owners at an association meeting. If the employment is terminated, the managing agent contract will continue for no longer than three months from the date of termination, and the board shall employ a different managing agent.

(i) An association where a majority of units are a member of a time share organization and regulated by HRS 514E is exempt from subsection (g) and (h).

H.B. NO. 2656

Report Title:

Condominium Associations; Managing Agent; Condominium Boards

Description:

Establishes provisions for condominium association annual meetings and quorum requirements. Provides that condominium associations may call for the review and discharge of a managing agent hired by the association upon a majority vote by the association members present. Effective July 1, 2014.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

HB HMS 2014-1335



(1) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice;

(2) A decision not to renew the Management Contract cannot be made by the Board alone; the Board has no power or authority to do so; and

(3) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice before a Majority of the Owners vote not to renew the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

E. CANCELLATION BY THE ASSOCIATION. The Management Contract must give the Association the right to cancel in each of the following situations:

1) FOR CAUSE. The Association must have the right to cancel the Management Contract whenever the Managing Agent breaches or fails to observe or perform a material part of the Management Contract and fails to cure its breach or default within the time permitted by the Management Contract;

2) WITHOUT CAUSE. The Association must have the right to cancel the Management Contract on not more than sixty (60) days' written notice. The Management Contract may provide that the Association cannot give this notice of cancellation unless (i) the Board recommends such action, and (ii) 80% of the Owners vote to do so at an annual or special meeting of the Association held within one year before such notice of cancellation. If the Management Contract contains such a provision, then:

(a) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice of cancellation;

(b) A decision to cancel cannot be made by the Board alone; the Board has no power or authority to do so; and

(c) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice of cancellation before a Majority of the

Owners vote to cancel the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

F. CANCELLATION BY THE MANAGING AGENT. The Management Contract must provide that Managing Agent has the right to cancel the Management Contract on not more than sixty (60) days' written notice.

G. FEES. The Management Contract must specifically state the fees to be paid to the Managing Agent by the Association. The fees do not have to be stated as a dollar amount. For example, the management fee may be set to a percentage of the Project's Common Expenses or to cost plus a percentage profit.

H. BOND. From time to time, the Managing Agent must provide evidence satisfactory to the Board that the Managing Agent is bonded under a fidelity bond in the minimum amount required by the Condominium Property Act.

7.3 EMPLOYMENT OF RESIDENT MANAGER. The Board may also employ a resident manager or may cause the Managing Agent to do so. In either case, the Board will set the compensation of any resident manager. The Board may delegate to the resident manager any of its powers and duties except those that, by law or under the Condominium Documents, it cannot delegate.

7.4 LIMITATIONS ON AUTHORITY TO ENTER INTO CONTRACTS. Neither the Association nor the Managing Agent may enter into a contract with someone else to furnish goods or services for the Common Elements or to the Association for a period longer than one year unless authorized by the vote or written consent of a Majority of the Owners Voting. The Developer must abstain from this vote. This rule does not apply, however, to:

- ❖ The Management Contract.
- ❖ A contract with a public utility company if the rates charged by it are regulated by the Public Utilities Commission. The term of the contract, however, must be the shortest term the supplier will accept at the regulated rate.
- ❖ Prepaid casualty and/or liability insurance policies not lasting more than three years, provided that the policy permits "short-rate cancellation" by the insured.

1. Bylaws of the Association of Apartment Owners of Hokuia at 1288 Ala Moana Document number 3023804, Dated November 6, 2003, pages 15-16 (See item 7)

of the Association in litigation, arbitration, mediation, or administrative proceedings in matters relating to (i) enforcement of the Condominium Documents; (ii) damage to the Common Elements to the extent that the Association is obligated to maintain and repair it; (iii) damage to any part of any Apartment to the extent that the Association is obligated to maintain and repair it; or (iv) damage to the Apartments which arises out of, or is integrally related to, damage to any the Common Elements or to any part of any Apartment to the extent that the Association is obligated to maintain and repair them. If the Board or an Owner requests mediation of a dispute, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If the Board or an Owner refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding costs and attorneys' fees.

7.2 MANAGING AGENT.

A. MANAGING AGENT. The Association must hire and at all times it must have a Managing Agent.

B. QUALIFICATIONS. The Managing Agent must be properly registered with the Real Estate Commission of the State of Hawaii. The Managing Agent may be the Developer or an affiliate of the Developer.

C. SELECTION. The Developer has the right to choose and employ the first Managing Agent for the Project. (At the outset, the Developer is the only Member of the Association.) If the first Managing Agent must be replaced for any reason, the Board will choose the replacement. The Board must use its best efforts to hire and keep a responsible company as the Managing Agent.

D. MANAGEMENT CONTRACT. The Managing Agent must sign a written contract (the "Management Contract"). Subject to the requirements of the Condominium Property Act:

1) POWERS AND DUTIES. The Management Contract may delegate to the Managing Agent any of the Board's powers and duties except those that, by law or under the Condominium Documents, it cannot delegate. It may also permit the Managing Agent to delegate its power and duties to one or more sub-agents for any period and upon any terms it deems proper. In all cases, the Managing Agent and any sub-agents will be subject to the

direction of the Board and to the limits listed in Section 7.4.

2) TERM. The Management Contract:

(a) May provide for an initial term of not more than one year from the Starting Date. The "Starting Date" is the date on which the Managing Agent must begin its performance. Unless otherwise provided in the Management Contract, the Starting Date will be the later of (i) the first date on which a deed of an Apartment is recorded, or (ii) the first date on which the City and County of Honolulu issues a temporary or permanent certificate of occupancy for an Apartment in the Project.

(b) May provide that after the first term and each later term ends, the contract will be renewed automatically unless a written notice canceling the Management Contract is sent by either party at least sixty (60) days before the renewal date. The Management Contract may provide that the Association cannot give this notice unless a Majority of the Owners vote to do so at an annual or special meeting of the Association held within one year before the renewal date. If the Management Contract contains such a provision, then:

(1) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice;

(2) A decision not to renew the Management Contract cannot be made by the Board alone; the Board has no power or authority to do so; and

(3) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice before a Majority of the Owners vote not to renew the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

E. CANCELLATION BY THE ASSOCIATION. The Management Contract must give the Association the right to cancel in each of the following situations:

1) FOR CAUSE. The Association must have the right to cancel the Management Contract whenever the Managing Agent breaches or fails to observe or perform a material part of the Management Contract and fails to cure its breach or default within the time permitted by the Management Contract;

Senate Commerce & Consumer Protection Committee
Tuesday March 11, 2014
9:30 am, Conf Rm 229

Sen. Rosalyn Baker, Chair
Sen. Brian Taniguchi, Vice Chair

RE: Testimony In Support of HB 2656, Relating to Condominiums

I support HB 2656 because it would provide more tools to allow condo owners the ability to enforce open and honest self-governance in their condos.

Condo owners have had a lot of problems with getting information in a timely manner from the Condo Board and Managing Agent, including Board Meeting Minutes (which are supposed to be readily available to owners) and budget & accounting information. Owners often are not provided with detailed information on how the vendors were selected by the Board or allowed to review the executed vendor contracts.

Owners are often given only verbal information on upcoming projects then a notice is posted on the bulletin board to let all of the residents know when the repair or renovation work will begin. Although owners have inquired, they often do not know if the company the 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.

The Managing Agent 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 Managing Agent and/or Board is very time-consuming and can be quite expensive.

I would like to emphasize that deceptive business practices such as giving false statements to the owners, showing photos & diagrams that misrepresent the situation, and providing inaccurate projected expenses or budgets are not legal. I believe the kinds of problems condo owners are sharing with the Legislature this Session are way beyond mediation and probably warrant class action litigation.

What I don't understand is the Attorney General's Office has instituted many policies & procedures in recent years to crack down on deceptive business practices for 501(c) 3, Charitable Organizations. So, why are Condo Boards and Managing Agents allowed to run rampant at this time? Condo Associations are 501 (c) 4, Non-profit entities so shouldn't they have to follow the same policies and procedures instituted by the Attorney General's Office?

The HREC has consistently responded to condo owner's complaints with, "they are not authorized to investigate and enforce HRS, CH 514B," which addresses Condominium Boards and its Managing Agents. Who is supposed to have the oversight and management duties for the scams, fraud and mismanagement of funds instigated by the Condo Boards and/or its Managing Agent?

Condo owners cannot self-govern effectively if they are not provided timely information and effective tools that may impact their safety & well-being. Condo owners need more tools, such as the ability to discharge the Managing Agent, have regular Management Audits conducted, and regular reviews of the Condo By-laws to be able to enforce their own self-governance.

HB 2656 would give more authority to the condo owners to insure that the managing agent is providing objective, highly skilled and ethical services that is equitable for all condo owners; if not, the condo owners should have the right to seek "professional service" elsewhere.

In closing, I humbly ask all of you to **please pass HB 2656** because it would be a step in the right direction in providing condo owners more tools to protect themselves from unscrupulous Managing Agents and Condo Boards.

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

Respectfully Submitted By:

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HB2656

Submitted on: 3/10/2014

Testimony for CPN on Mar 11, 2014 09:30AM in Conference Room 229

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

Comments: Language in SB3127SD1 is preferable and as such this bill should be gutted and replaced with language of SB3127SD1.

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.

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