

SB 2979

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Common Elements Damage; Deductible

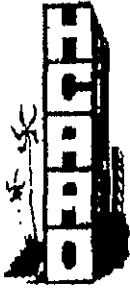
Description: Repeals the authority of a condominium board to require owners to pay the insurance deductible for damage to common elements affecting their units if the damage was not caused by them or did not originate from their units.

Companion: [HB2556](#)

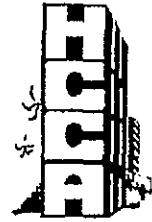
Package: None

Current Referral: CPN, JDL

Introducer(s): IGE



**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations
1050 Bishop Street, #366, Honolulu, Hawaii 96813



January 31, 2014

Sen. Rosalyn H. Baker, Chair
Sen. Brian T. Taniguchi, Vice-Chair
Senate Committee on Commerce and Consumer Protection

Re: SB2979 RELATING TO CONDOMINIUMS
Hearing: Wed., Feb. 5, 2014, 9 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Taniguchi and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA).

HCAAO agrees with position in John Morris' testimony on this bill, a copy of which is attached to this testimony and we agree that the better way to address this issue to mandate that all unit owners obtain an HO6 insurance policy to address the concern described in this bill. Accordingly, we ask that you defer this bill.

Thank you for the opportunity to testify on this matter.

Jane Sugimura
President

888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813-2918
February 1, 2014

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
REGARDING SENATE BILL 2979

Hearing Date: WEDNESDAY, February 5, 2014
Time : 9:00 a.m.
Place : Conference Room 229

Chair Baker, Vice Chair Taniguchi, and Members of the Committees,

My name is John Morris and I work as an attorney representing condominium and other homeowner associations. I am testifying in opposition to SB 2979 because it would undermine the benefits created by the system of insurance established under Chapter 514B. That system of coverage contemplates that the association and the individual owners should, between them, obtain coverage to cover most of the losses that may occur at a condominium project. In that way, many unnecessary disputes over relatively small amounts can be eliminated. SB 2979 also reintroduces a concept of fault that Chapter 514B tried to eliminate.

As SB 2979 notes, Section 514B-143(d) allows a condominium association board to allocate the deductible on the association policy. A typical association policy nowadays has a deductible of at least \$5,000 because associations are unable to obtain a deductible of less. Section 514B-143(d) allows the board to: 1) pay the association deductible as a common expense; 2) allocate the deductible to an individual owner if the damage originated in that owner's unit; or 3) allocate the deductible among the owners who benefit from the association's insurance coverage on a particular claim. Although SB 2979 proposes to significantly change the third option, it is not inherently unreasonable that owners who receive the benefit of the association's policy should share in paying the association's deductible.

Regardless, SB 2979 fails to address an equally important provision in Section 514B-143, namely, Section 514B-143(g). That section allows the board, *with the approval of a majority of all of the owners*, to require every owner to obtain his or her own insurance policy - an HO-6 policy for owner occupants and an HO-4 policy for landlords. That coverage has important benefits for owners and often costs just \$200 - \$300 per year.

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Specifically, the association's policy generally provides coverage to restore the project, including individual owners' units, to their "as-built" condition. Nevertheless, the association's policy generally does not cover personal property in the unit or any upgrades made to the unit. In contrast, an individual owner's policy covers not only personal property and unit upgrades but the individual owner's liability. The liability coverage under an individual owner's policy includes liability for the deductible on the association's policy, provided the board has the authority to allocate the deductible to the owner.

Under the current wording of Section 514B-143(d), the board has that authority. For example, if (i) a loss damages three units in the project, and (ii) the association has a \$5,000 deductible, the board can rely on Section 514B-143(d) to allocate the deductible to each of the three unit owners. Then, each of the owners would be liable for one-third of \$5,000, namely, \$1,666.66. If, however, the three owners have their own insurance policies, they can tender the claim for the association's deductible to their own insurance policy and receive coverage.

Each owner's policy may also have a small deductible. Nevertheless, a large part of the \$5,000 deductible on the association's policy will be paid not by the owners but by their individual policies. In this way, rather than lawsuits and disputes about damage at the project, each of the four parties -- namely the association and the three owners who tender their claims to their own insurance companies -- receives coverage through their own companies.

In contrast, if SB 2979 passes, the association may no longer have the authority to allocate the deductible to an individual owner. As a result, that individual owner will no longer be liable for the association's deductible, so that individual owner would no longer be able to make a claim for that deductible under his or her own policy.

In light of the above, a better way to amend the insurance provisions in Section 514B-143 would be to amend Section 514B-143(g), as follows, to make individual owner policies mandatory and not optional:

(g) ~~The board, with the vote or written consent of a majority of the owners, may~~ shall require unit owners to obtain reasonable types and levels of insurance. The liability of a unit owner shall include but not be limited to the deductible of the owner whose unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.

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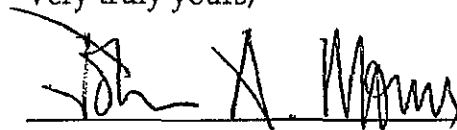
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In that way, every owner will be required to have his or her own policy and can obtain the benefits outlined above, including coverage for the deductible on the association's policy.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Morris", is written over a horizontal line.

John A. Morris