



LATE

P.O. Box 976
Honolulu, Hawaii 96808

February 3, 2015

Honorable Angus L.K. McKelvey
Honorable Justin H. Woodson
Consumer Protection & Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **HB 104/OPPOSE**

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

This testimony is submitted on behalf of the CAI Legislative Action Committee. CAI opposes HB 104 and asks that it be held.

The basis for opposition is two-fold. First, the premise of the bill violates essential aspects of condominium law. Second, practical problems would result from attempting to apply it.

The obligation to pay is fundamental. It has been said that "homeowners associations would cease to exist without regular payment of assessment fees," Park Place Estates Homeowners v. Naber, 35 Cal. Rptr. 2d 51, 53 (Cal. App. 4 Dist. 1994) (denying an owner's claimed right to withhold assessments due to a grievance), and maintenance "charges are the financial life-blood of the Association[.]" Park Place East Condo. v. Hovbilt, 652 A.2d 781, 783 (N.J. Super. Ch. 1994).

Recognition of these facts can be found in the condominium statute. For example, Hawaii Revised Statutes ("HRS") Section 514B-146(c) (4) provides that:

(c) No unit owner shall withhold any assessment claimed by the association. A unit owner who disputes the amount of an assessment may request a written statement clearly indicating: * * *

(4) That under Hawaii law, a unit owner has no right to withhold assessments **for any reason**[.] (Emphasis added)

Honorable Angus L.K. McKelvey
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Page 2 of 2

Moreover, "Actions to collect assessments" are exempt from *mediation* pursuant to HRS Section 514B-161. "Actions to collect assessments which are liens or subject to foreclosure" are likewise exempt from *arbitration* pursuant to HRS Section 514B-162(b)(5) unless the assessed amount is first paid in full and other conditions are met.

HB 104 is inconsistent with essential premises of condominium law relating to their financial viability. Owners are free to pursue claims against associations but they are not entitled to withhold payment of common expenses for any reason.

The legislature took great pains to provide a non-judicial foreclosure remedy to associations as part of a major restructuring of foreclosure law. The effect of HB 104 would be to substantially impair the efficacy of that remedy.

The mere *allegation* that an association owes the owner money would thwart exercise of the non-judicial foreclosure remedy. The Association's has an "automatic lien" pursuant to HRS Section 514B-146(a), and that lien is essential. In contrast, however, HB 104 lacks even the minimal requirement that the owner be a judgment creditor.

Judgment creditors of associations have an adequate remedy at law, pursuant to HRS Section 514B-147(a). HB 104 is, therefore, also unnecessary.

Very truly yours,

Philip Nerney

Philip Nerney

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 03, 2015 3:42 PM
To: CPCtestimony
Cc: richard@hawaiifirst.com
Subject: Submitted testimony for HB104 on Feb 4, 2015 14:45PM



HB104

Submitted on: 2/3/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Richard Emery | Associa, Inc.. | Oppose | Yes |

Comments: Associa manages more than 600 associations through its companies Associa Hawaii and Hawaii First. The Bill establishes loopholes as it does not require any fact finder to affirm a debt owed to an owner by the association. It will simply open delays and arguments and legal fees during the associations good faith effort to foreclose and get an owner who pays their maintenance fees.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 03, 2015 7:49 PM
To: CPCtestimony
Cc: michelematsuo@yahoo.com
Subject: Submitted testimony for HB104 on Feb 4, 2015 14:45PM



HB104

Submitted on: 2/3/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| michele matsuo | Individual | Support | Yes |

Comments: Thank you Chair and members of the CPC for hearing this bill and for allowing us to testify. We wholeheartedly support this bill. Condo associations, which have been empowered to pursue alternative foreclosures, are lay boards and are now able to foreclose on people's homes without supervision. It has been our experience that this is way too much power to be exercised without supervision, but if they are going to have the power then at least require the associations to offset first any monies owed to the property owner prior to foreclosure. Thank you very much ! Aloha, Brad Mossman and Michele Matsuo

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