

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 28, 2016 12:03 PM
To: CPCtestimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for HB1817 on Feb 1, 2016 14:00PM

HB1817

Submitted on: 1/28/2016

Testimony for CPC on Feb 1, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Oppose	Yes

Comments: I am the VP of Government Affairs for Associa, America's largest association management company representing approximately 550 Hawaii associations. I support the provision with respect to the payment plan requirements. I oppose the provision that allows by a vote of 67% to delete from governing documents existing statutory rights to foreclose on delinquent units. Associations are break even non profit organizations that need each owner to pay its share of common cost and the association's current statutory tights should remain in place. Such a provision adds confusion to the process and is unnecessary.

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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January 29, 2016

VIA WEB TRANSMITTAL

Hearing Date: Monday, February 1, 2016

Time: 2:00 p.m.

Place: Conference Room 325

Committee on Consumer Protection & Commerce
House of Representatives, the 28th Legislature
Regular Session of 2016

Re: Community Associations Institute's Testimony in **Opposition** to HB 1817

Dear Chair McKelvey, Vice Chair Woodson and Committee members:

I am the Vice Chair of the Community Associations Legislative Action Committee ("CAI"). CAI opposes HB1817 for the following concerns:

First, the proposed amendments regarding payment plan may cripple the Associations on collection from delinquent homeowners in competition with other creditors and appear to take away certain existing rights of the Associations to collect.

The languages used, e.g. subsection (a) "notice from an association regarding any delinquent assessments" and subsection (b) "remedies available pursuant to part IA of chapter 667", are vague and ambiguous. Does the notice actually mean the initial demand letter from the Association? Subsection (b) appears to say that once the owner proposes a reasonable payment plan, the Association's hands are tied up until the owner defaults on the plan and then the Association's only option to collect would be a judicial foreclosure per Part IA of Chapter 667. If that is the case, it seems that Part VI of Chapter 667 on the Association's alternate power of sale foreclosure process would be abolished by HB1817. Also, it is unclear as to when the Association can record its

statutory lien against a delinquent unit and whether that will be affected by HB1817. It is very important to allow the Association to record its lien as early as possible to preserve its priority as to other creditors, especially for planned community associations and for cases where the delinquent owner may file for bankruptcy.

Homeowners' timely payment of Association assessments is instrumental to Association's operation and performance of important obligations like funding reserves, purchasing insurance, and maintaining and repairing common elements for the projects. HB1817 would place Associations in a disadvantaged position compared with other creditors and would ultimately harm the Associations' financial condition and homeowners' ability to sell or refinance on their unit.

Second, the existing foreclosure law Chapter 667 provides owners with the right to propose payment plan and the Association's obligation to accept reasonable payment plan during the nonjudicial foreclosure process. See Section 667-1 Definition on "Association" and Section 667-92(c). This is applicable to both condominium and planned community associations.

Also, under the existing law, the delinquent owner can propose a payment plan at any time, and the Association's Board of Directors should be given the discretion to make a business judgment on whether the proposed plan is reasonable and acceptable to the Association given the circumstances. Using the legislative power to adopt a blanket rule to micromanage the Association's Boards would be contrary to the self-governance principle of condominium associations and planned community associations in Hawaii.

With regards to the proposed amendments regarding removal of foreclosure authority, CAI strongly objects to that for the following reasons:

(1) it would lead to the unintended result of encouraging unit owners to violate project covenants and refusing to pay for fines, penalties and Association's legal fees and costs arising from such violation;

(2) it will no doubt severely undermine the Associations' power and ability to enforce their project covenants, as the Associations are already prohibited from using nonjudicial foreclosure process when the delinquency arises solely from fines, penalties and legal fees and late fees;

(3) it would create inconsistency with the existing law under HRS 514B-146(c) that no unit owner shall withhold any assessment claimed by the Association;

(4) it would make it very difficult for the Association Board to fairly and equally enforce project covenants among all unit owners and may lead to more neighbor disputes and potential claims against the Board; and more importantly

(5) allowing unit owners' voting result to take away Association's existing statutory right and change covenants running with the land would cause significant slippery slope impacts that would may ultimately alter the nature of condominium property regimes and planned community associations.

CAI Hawaii represents thousands of condominium and community association homeowners and respectfully submits its position on HB1817 for your review and consideration.

Sincerely yours,

A handwritten signature in cursive script that reads "Na Lan".

Na Lan, Vice Chair of CAI LAC Hawaii

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 28, 2016 9:27 AM
To: CPCtestimony
Cc: joanipt@hawaii.rr.com
Subject: Submitted testimony for HB1817 on Feb 1, 2016 14:00PM

HB1817

Submitted on: 1/28/2016

Testimony for CPC on Feb 1, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Joanne Taylor	Individual	Oppose	No

Comments: House Bill 1817 oppose To: Honorable Rep. Mc Kelvey Chair Honorable Rep Woodson Vice Chair Committee Members The funding of Community Associations depends on all members fulfilling the commitment a perspective member agrees to at the time they purchase a unit within the community. The Board of Directors develops a budget each year to fund all services, i.e. water, electricity, ground maintenance, staff to name a few, plus maintenance projects necessary for upkeep during the following year. It is at this point that the BOD determines what monthly maintenance fees need to be collected to cover the cost. The association collects a finite amount of money to finance predetermined costs; there is no other source of income. Statutes preclude an association from imposing special assessments except in emergency. This proposed bill allows the cash flow of the association to be disrupted so that the association would be unable to fulfill the contractual commitments it has with its vendors. Is the legislature prepared to provide a slush fund for which an association can dip or are associations to submit a payment plan to the Board of Water? I oppose any measure that directs associations to provide services of a financial institution, which clearly exceeds the scope of their intended function. Please table this bill. Thank you for providing me with the opportunity to testify. Joani Taylor Past BOD member for 29 years and treasure for 15 years.

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 28, 2016 9:35 AM
To: CPCtestimony
Cc: kalelekai002@hawaii.rr.com
Subject: Submitted testimony for HB1817 on Feb 1, 2016 14:00PM

HB1817

Submitted on: 1/28/2016

Testimony for CPC on Feb 1, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Takumi	Individual	Oppose	No

Comments: I don't have a problem with the payment plan proposal, but am against the removing of the right to judicially foreclose if the owners so vote for it. How is the association going to enforce payments if they lose this option? I can imagine an owner who refuses to pay maintenance fees without the association having any means to force collection.

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 28, 2016 5:33 PM
To: CPCtestimony
Cc: koolmakaha@gmail.com
Subject: Submitted testimony for HB1817 on Feb 1, 2016 14:00PM

HB1817

Submitted on: 1/28/2016

Testimony for CPC on Feb 1, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dale Arthur Head	Individual	Support	No

Comments: I am testifying in favor of HB1817. I'm in residence at Makaha Surfside, a 456 condo complex in Hawaii, since 1987, and have served on its Board of Directors for 8 years. Oftentimes owners whom have temporary difficulty in making their maintenance fees on a timely basis are tagged with absurdly expensive 'legal fees' which can double and triple their debt to the Association pushing them to a breaking point wherein they lose their property to non-judicial foreclosure. Fines and late fees are often added which multiplies the problem.

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Sent: Friday, January 29, 2016 12:27 PM
To: CPCtestimony
Cc: albertd@hawaiianprop.com
Subject: Submitted testimony for HB1817 on Feb 1, 2016 14:00PM

HB1817

Submitted on: 1/29/2016

Testimony for CPC on Feb 1, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Al Denys	Individual	Oppose	No

Comments: Aloha Chair McKelvey, Vice Chair Woodson and Committee Members, I oppose HB 1817 as I know it will seriously hinder associations' ability to pay their monthly budgeted expenditures in a timely manner due to the fiscal constraints in collecting monthly maintenance fees required for the upkeep of the association. Also this would be duplicate statutory language already found in HRS 667. I also oppose removing the right of the association to move forward with a judicial foreclosure. Mahalo. warmest aloha, Al Denys

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LATE

Committee: Committee on Consumer Protection & Commerce
Hearing Date/Time: Monday, February 1, 2016, 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in Support of H.B.1817, Relating to Delinquent Assessments

Dear Chair McKelvey and Members of the Committee on Consumer Protection & Commerce:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B. 1817, which permits owners to submit a payment plan after receiving notice from an association regarding delinquent assessments.

Given the lack of affordable housing in Hawaii and the role that foreclosure may play in the State’s current rate of homelessness, foreclosure reform is needed to ensure that homeowners are permitted a reasonable amount of time to cure default. For this reason, ACLU of Hawaii supports this measure, which is a positive step towards keeping borrowers in their homes.

Thank you for the opportunity to testify.

Sincerely,

Mandy Finlay
Advocacy Coordinator
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

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LATE

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Testimony Regarding HB 1817

John Morris
888 Mililani Street
2nd Flr, Honolulu
(808) 523 0702

Chair McKelvey and Members of the Committee,

I work as an attorney representing condominiums and other homeowner associations and I am testifying in partial support of House Bill 1817. The bill will help standardize the meaning of a "reasonable payment plan" in the planned community and foreclosure laws. The bill also proposes to allow owners to amend their governing documents to eliminate judicial foreclosure as a remedy for collecting delinquent assessments.

The foreclosure law already states that if an association is proposing to nonjudicially foreclose and an owner proposes a "reasonable payment plan", the association must put the foreclosure on hold. As stated in HB 1817, a reasonable payment plan is defined in the foreclosure law as a payment plan that can be completed within 12 months.

In fact, many associations have adopted this 12 month standard for payment plans, even if the association has not actually started foreclosing. Therefore, this part of HB 1817 will confirm that practice.

It is not clear why the law needs to be amended to state that associations can prohibit judicial foreclosures by amending their governing documents. Association members already have that authority, so the proposed change does not seem to make a significant difference.

Thank you for this opportunity to testify