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Sent: Saturday, February 06, 2016 8:50 PM  
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Subject: \*Submitted testimony for HB2515 on Feb 8, 2016 14:05PM\*

**HB2515**

Submitted on: 2/6/2016

Testimony for CPC on Feb 8, 2016 14:05PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jane Sugimura	HI Council of Assoc. of Apt. Owners a	Support	No

Comments:

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February 6, 2016

VIA WEB TRANSMITTAL

Hearing Date: Monday, February 8, 2016

Time: 2:05 p.m.

Place: Conference Room 325

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

Re: Community Associations Institute's **Testimony re** HB 2515

Dear Chair McKelvey, Vice Chair Woodson and Committee members:

I am the Chair of the Community Associations Legislative Action Committee ("CAI"). We represent the condominium and community association industry. CAI supports in part HB 2515 as it relates to amendments to HRS §667-94(a) & (b) that clarifies that an association does not have to rescind a notice of default when the unit owner and association have reached an agreement on a payment plan to cure the association's non-judicial foreclosure.

However, CAI opposes the suggested language regarding "fines" as this interferes with the administration of an association trying to effectively management the project. First, for the most part, an owner that is on a payment plan with the association so as to cease a non-judicial foreclosure is not violating the association's governing documents, including its house rules. Second, fines are a necessary tool for the association to attempt to bring under control an owner that does not want to abide by the association's governing documents, and is typically impacting the quiet enjoyment of all of the other owners in the project. Third, if the association has to go to mediation

every time an owner disputes a fine, this will be an administrative burden to the association and result in unnecessary additional attorneys' fees and delays.

There are condominium projects where the owner keeps current on his or her maintenance fees, but creates a disturbance for all other owners – for example, threatening the staff, threatening other owners, damaging association property, creating a continual noise disturbance, etc. – that fines are a tool to attempt to bring such behavior under control, and then once paid the owner can demand mediation. To force mediation first will only encourage such owners that “break the rules” to prolong the mediation process, and continue to violate the association documents, all to the detriment of the other owners at the project.

Thus, we respectfully submit that the balance of harm to the association weighs in favor of this Committee amending HB 2515 to drop the suggested language regarding fines. Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'C. Porter', written in a cursive style.

Christian P. Porter, Chair of CAI LAC Hawaii

## COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

### Testimony Regarding HB 2515

John Morris  
888 Mililani Street  
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(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 support of HB 2515. The bill will help encourage delinquent owners to follow through on their payment plans and clarify issues relating to fines.

Under the current law, if the association starts a nonjudicial foreclosure and the owner either 1) pays off the delinquency or 2) proposes a payment plan and the association accepts the payment plan, the association is supposed to “**rescind**” the notice of foreclosure and not proceed. Unfortunately, proposing a payment plan is not the same as actually following through on a payment plan and making payments under it. In other words, if an owner merely proposes a payment plan, there is no reason the association should have to rescind the notice of foreclosure and then have to start all over again if the owner stops paying on his or her payment plan.

Therefore, HB 2515 proposes to change the law so that if the owner merely proposes a payment plan, the notice of nonjudicial foreclosure is not rescinded but only put on hold until the owner completes the payment plan. In that way, the association can recommence the nonjudicial foreclosure if the owner fails to follow through on his or her propose payment plan.

HB 2515 also tries to deal with the difficult issue of fines. Under section 514B-105 (c), if an owner fails to pay fines, after notice the association can apply any payments received -- for example for maintenance fees -- to pay off the fines, which then causes the owner to become delinquent on his or her maintenance fees. HB 2515 states that if that occurs, payment applied to the fines will not be deemed to put the owner into default on the owner’s payment plan nor allow the foreclosure to proceed.

(In fact, under the current law, an association cannot file a NONjudicial foreclosure if the owner owes only fines. Instead, an association can only foreclose for fines, alone. by judicial foreclosure, so there will be involvement by a judge.)

HB 2515 also recognizes that – unlike maintenance fees and similar charges – the purpose of fines is not to generate revenue for the association. Instead, the purpose of fines is to encourage compliance with the governing documents of the association.

Therefore, HB 2515 requires the association and the owner to try to resolve their dispute about the fines through mediation, with the assistance of the neutral, third-party mediator. In that way, the change makes sense.

Nevertheless, it is possible that subsection(c) of the bill could be clarified to more clearly state its intent, such as:

*If the parties have agreed to a payment plan, any fines the association imposes on the unit owner while the payment plan is in effect shall not be deemed a default under the payment plan, even if processed pursuant to section 514B-105(c). Instead, as long as the owner is not otherwise in default under the payment plan, the association and the unit owner shall attempt to resolve any dispute over the fines through mediation before the association can commence foreclosure.*

Thank you for this opportunity to testify.

John Morris