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DEPUTY DIRECTOR

PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE  
ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH STATE LEGISLATURE  
REGULAR SESSION, 2016

MONDAY, FEBRUARY 8, 2016  
2:05 P.M.

TESTIMONY ON HOUSE BILL NO. 2619  
RELATING TO PLANNED COMMUNITY ASSOCIATIONS

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND TO THE HONORABLE JUSTIN H. WOODSON, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 2619, Relating to Planned Community Associations. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following comments on the bill.

House Bill No. 2619 creates a new part in Chapter 421J, Hawaii Revised Statutes ("HRS") for the administration of the Chapter by the Real Estate Commission ("Commission"). The bill sets forth the Commission's general powers

and duties, including the power to bring a court action, without prior administrative proceedings, for violations of the Chapter.

House Bill No. 2619 also gives the Commission the authority to investigate violations of Chapter 421J, HRS, issue cease and desist orders, bring a court action to enjoin continuing violations of Chapter 421J, HRS, and provides for civil and criminal penalties for non-compliance. House Bill No. 2619 also amends §467-4, HRS, to add enforcement of Chapter 421J, HRS, to the Commission's powers and duties.

RICO defers to the Commission on the issue of the Commission's administration of Chapter 421J, HRS, as required in the bill, and whether oversight of planned community associations is appropriate in relation to the State's approach to self-governance in communal real property interests.

RICO believes, however, the volume of complaints will increase as a result of the Commission's expanded authority under House Bill No. 2619, and notes the bill does not provide for an appropriation to cover enforcement costs. RICO appreciates the Legislature's recognition of the need to provide the necessary resources for proper enforcement of consumer complaints and investigations,<sup>1</sup> and we ask that should this Committee move this measure forward, it also fully consider the impact a new regulatory program for planned community associations would have on RICO's operations.

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<sup>1</sup>See House Bill No. 1627, HD1, Relating to Medical Investigations by the Regulated Industries Complaints Office (establishing a division within RICO to specialize in medical investigations and providing an appropriation for positions to staff that new division).

Testimony on House Bill No. 2619

February 8, 2016

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Thank you for the opportunity to testify on House Bill No. 2619. I will be happy to answer any questions the Committee may have.

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2016

Monday, February 8, 2016  
2:05 p.m.

**TESTIMONY ON HOUSE BILL NO. 2619 – RELATING TO PLANNED COMMUNITY  
ASSOCIATIONS.**

TO THE HONORABLE ANGUS L. K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Nikki Senter and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission opposes House Bill No. 2619 as proposed and further recommends the Legislative Auditor's sunrise review.

This bill proposes to give the Commission administration and enforcement powers over planned community associations. Currently, planned community associations exist as originally envisioned as self-enforced and self-governed entities.

The Commission's objections are as follows:

- A "new regulatory measure" requires a "sunrise review" by the Auditor. This bill appears to propose a "new regulatory measure", as this bill would regulate a new class of unregulated activity, planned community associations. Presently, and as originally intended in 1997, planned community associations are self-governed. The Commission believes this bill is premature as it has not undergone the required analysis by

the Auditor, pursuant to section 26H-6, Hawaii Revised Statutes ("HRS"). Section 26-H-6, HRS, which requires that all "new regulatory measures being considered for enactment that, if enacted, would subject unregulated professions and vocations to licensing or other regulatory controls shall be referred to the legislative auditor for analysis." Known as a "sunrise" review, the Auditor will provide an objective opinion, whether a new regulatory scheme is warranted or not.

- The proposed measure will require significant resources to implement. The implementation of an additional area of probable registration will adversely impact the Commission's already-limited resources during these difficult economic times and will adversely impact priorities and the program of work. It is currently unknown how many associations are in existence and what types of issues arise from them. The Commission's operating funds are specifically dedicated to fund those programs it was designed to be used for. Therefore, if a new regulatory area is created, a new source of revenue must be created to fund its operations for operating and personnel costs.

For these reasons, we strongly oppose passage of House Bill No. 2619 and recommend a "sunrise review" by the Auditor.

Thank you for this opportunity to testify on House Bill No. 2619.

From: mailinglist@capitol.hawaii.gov  
Sent: Friday, February 05, 2016 10:53 AM  
To: CPCtestimony  
Cc: richard.emery@associa.us  
Subject: Submitted testimony for HB2619 on Feb 8, 2016 14:05PM

**HB2619**

Submitted on: 2/5/2016

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>
Richard Emery	Associa	Comments Only	Yes

Comments: PCA or homeowner associations are very different from a condominium association. The association is managed by a volunteer board of directors and typically hires its own employees and retains legal counsel. They are self-managed. None of the above are real estate licensees which makes it difficult to require the real estate commission or RICO to enforce such provisions. Furthermore the same logic applies to RICO. I may be wring but I think RICO's funding comes from payments by licensees. It is unfair to use these financial resources from its intended use. There have been issues regarding the requirement to provide documents to PCA owners but this is not the proper solution.

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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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 opposing** HB 2619

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.

From the language of HB 2619 it is difficult to determine what the suggested legislation seeks to address. The language of HB 2619 implies that the system of self-governance of planned community associations ("PCA") or homeowner associations ("HOA") needs to be supervised. However, we would respectfully submit that this is not needed, and that such associations and their boards, like Mililani Community Association and Wailea Community Association are effective at self-governance.

If there is a specific issue that needs to be addressed, like access to documents, then the current statute (HRS Chapter 421J) can be amended. However, without evidence of a system wide problem of self-governance of such associations, the opposite must be true and this legislation is not necessary.

Lastly, PCAs and HOAs are different from condominiums. Most PCAs or HOAs are self-managed, meaning that they do not hire one of the management companies that condominiums must retain. Therefore, there is no licensed individual, like a license real estate broker that is responsible for the management company that would come under the jurisdiction of the Regulated Industries Complaints Office. Therefore, some of the language of HB 2619 is not applicable to PCAs and/or HOAs.

We respectfully submit that HB 2619 be deferred. 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



From: mailinglist@capitol.hawaii.gov  
Sent: Thursday, February 04, 2016 6:06 PM  
To: CPCtestimony  
Cc: Karen@RedwoodGames.com  
Subject: Submitted testimony for HB2619 on Feb 8, 2016 14:05PM

**HB2619**

Submitted on: 2/4/2016

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>
Karen Chun	Individual	Support	No

Comments: Please pass this bill. Although chapter 421J provides rules for ALL homeowner associations there is no agency that insures HOAs for planned communities act within the law. Right now people who live in condos can get help with illegally acting HOAs but planned community HOA members are left out in the cold with no remedies other than paying tens of thousands of dollars to hire a private attorney - even though the HOA is clearly violating state law. Since many people who live in planned communities have only moderate incomes, it is usually impossible to find tens of thousands of dollars to bring the HOA into compliance with the law. There is nothing worse than being tormented by a HOA which can lien your home and is acting blatantly illegally but not have any recourse to enforce the law and require them to do things legally.

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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Dear The Hawaii State House and The Hawaii State Senate,

We are pleased to present you with this petition affirming this statement:

**"Hawaii law provides that the RICO office will assist homeowners whose Association is acting illegally. But the RICO office has interpreted this to mean only for condo owners. These bills clarify that RICO will also help low income housing and planned community owners whose associations are acting illegally. SB2252, SB2253, HB2619, HB2620."**

Attached is a list of individuals who have added their names to this petition, as well as additional comments written by the petition signers themselves.

Sincerely,  
Karen Chun

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jonna napuunoa  
mililani, HI 96789  
Feb 6, 2016

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raven o m tyner  
Kailua-Kona, HI 96740  
Feb 2, 2016

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John Fitzpatrick  
Kihei, HI 96753  
Feb 1, 2016

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Leimomi Harris  
Kailua Kona, HI 96745  
Feb 1, 2016

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Shaun Campbell  
Honolulu, HI 96815  
Jan 31, 2016

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Ann Bjorklund  
Los Altos Hills, CA 94023  
Jan 31, 2016

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Hannibal Starbuck  
Pukalani, HI 96768  
Jan 31, 2016

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Lin ter Horst  
Kula, HI 96790  
Jan 31, 2016

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Keith Kessler  
KIHEI, HI 96753  
Jan 31, 2016

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Jamie Kawauchi  
Naalehu, HI 96772  
Jan 31, 2016

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Erin Avallone  
Kihei, HI 96753  
Jan 31, 2016

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H Kathryn Lamat  
Pahoa, HI 96778  
Jan 31, 2016

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barbara uwekoolani  
Kahului, HI 96732  
Jan 31, 2016

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Please protect homeowners from over zealous HOA's.

Hula Helen  
Las Vegas, NV 89113  
Jan 31, 2016

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Judy Stanger  
Kihei, HI 96753  
Jan 30, 2016

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Karen Sabog  
Ewa Beach, HI 96706  
Jan 30, 2016

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Lynn Austin  
PAIA, HI 96779  
Jan 30, 2016

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Michael Greenough  
Kailua, HI 96734  
Jan 30, 2016

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Lou Morejohn  
Kailua-Kona, HI 96740  
Jan 30, 2016

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Phil johnson  
Kula, HI 96790  
Jan 30, 2016

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John Turner  
Hilo, HI 96720  
Jan 30, 2016

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All property owners should have equal opportunity

Robbie Porter  
Albany, OR 97321  
Jan 30, 2016

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Alexandra Evans  
Volcano, HI 96785  
Jan 30, 2016

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Barbara Barry  
Haiku, HI 96708  
Jan 30, 2016

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Richard M Rodrigues Jr  
Honolulu, HI 96813  
Jan 30, 2016

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Linda Thomas  
Paia, HI 96779  
Jan 30, 2016

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raisbeckSarah  
Wailuku, HI 96793  
Jan 30, 2016

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Trinette Furtado  
Ha'iku, HI 96708  
Jan 30, 2016

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Anela Gutierrez  
Kihei, HI 96753  
Jan 30, 2016

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Brad Edwards  
Kihei, HI 96753  
Jan 30, 2016

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Arnold Kotler  
Kihei, HI 96753  
Jan 30, 2016

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Elizabeth Levings  
Paia, HI 96779  
Jan 30, 2016

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I have been intimidated by a poorly informed board in a condo complex in the past, being forced to do hours and hours of research and appear like a criminal in front of a board. Fortunately, we had well informed friends and we were able to prevail. I now live in a residence that has an HOA and I never want to have that happen again. Please help protect homeowners from often ill informed, self serving HOA's.

Gail Dornstreich  
Kihei, HI 96753  
Jan 30, 2016

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William Lansford  
Makawao, HI 96768  
Jan 30, 2016

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Stephanie Austin  
Haiku, HI 96708  
Jan 30, 2016

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My neighbor is trashing my property value with 200 roosters despite a no-roosters covenant that the board refuses to enforce.

Cory Harden  
Hilo, HI 96720  
Jan 30, 2016

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Ramona Hussey  
Honolulu, HI 96839  
Jan 30, 2016

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Claudia  
Paia, HI 96779  
Jan 30, 2016

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Let's help make a difference to the HOA's in small subdivisions. We need to have a voice in the place we call home.

Susan Boucher  
Paia, HI 96779  
Jan 30, 2016

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Patricia Osborne  
Kihei, HI 96753  
Jan 30, 2016

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GREG GODWIN  
PAIA, HI 96779  
Jan 30, 2016

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Please help low income housing people act against the illegal acts of Homeowners associations!

Charles Laquidara  
Kihei, HI 96753  
Jan 30, 2016

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Tyler Divino  
Makawao, HI 96768  
Jan 29, 2016

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Jeff Lind  
Makawao, HI 96768  
Jan 29, 2016

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Lars Lind  
Makawao, HI 96768  
Jan 29, 2016

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Martha Lind  
Makawao, HI 96768  
Jan 29, 2016

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Please we need help desperately with Low Income Housing and Planned Communities it is a mess...Please pass the bill!

Carmie Spellman  
Lahaina, HI 96761  
Jan 29, 2016

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J. Mitchell  
Kailua, HI 96734  
Jan 29, 2016

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Robert Bergman  
Mesa, AZ 85206  
Jan 29, 2016

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Thank You Karen Chun for letting us know.

Darnell Lei Estrella  
Kaneohe, HI 96744  
Jan 29, 2016

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Michael Gagne  
Haiku, HI 96708  
Jan 29, 2016

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Rene Umberger  
Lanai City, HI 96763  
Jan 29, 2016

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Tina Wildberger  
Kihei, HI 96753  
Jan 29, 2016

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Maui Iani HOA is currently being sued, and I believe acts "heavy handed" and biased.

Joseph ventura  
Kahului, HI 96732  
Jan 29, 2016

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Sharron Cushman  
Keaau, HI 96749  
Jan 29, 2016

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Karen Chun  
Paia, HI 96779  
Jan 29, 2016



I am writing in SUPPORT of HB 2619

(relating to planned community associations)

Please pass this bill. Although chapter 421J provides rules for ALL homeowner associations there is no agency that insures HOAs for planned communities act within the law. Right now people who live in condos can get help with illegally acting HOAs but planned community HOA members are left out in the cold with no remedies other than paying tens of thousands of dollars to hire a private attorney - even though the HOA is clearly violating state law. Since many people who live in planned communities have only moderate incomes, it is usually impossible to find tens of thousands of dollars to bring the HOA into compliance with the law. There is nothing worse than being tormented by a HOA which can lien your home and is acting blatantly illegally but not have any recourse to enforce the law and require them to do things legally.

Mahalo nui loa,

Jan Mitchell  
Kailua, Oahu