

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 21, 2016 1:56 PM
To: CPCtestimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for HCR152 on Mar 23, 2016 14:30PM

HCR152

Submitted on: 3/21/2016

Testimony for CPC on Mar 23, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Oppose	No

Comments: Let the new evaluative mediation program have a chance to work. Support education to condo owners and board members of its availability. An Ombudsman cannot interfere with the contract rights between an association and its owner. It will offer no better alternative than the existing but new evaluative mediation program.

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March 22, 2016

VIA WEB TRANSMITTAL

Hearing Date: Wednesday, March 23, 2016

Time: 2:30 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 re HCR 152 & HR 104**

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 recognizes and supports a study of the feasibility and suitability of establishing an ombudsman position that may intervene in private condominium disputes. We offer our resources and vast network of professionals to assist the Legislative Reference Bureau in this endeavor, and look forward to its report.

Thank you for your consideration.

Sincerely yours,

Christian P. Porter, Chair of CAI LAC Hawaii

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Wednesday, March 23, 2016
2:30 p.m.

**TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 152 AND HOUSE
RESOLUTION NO. 104, REQUESTING THE LEGISLATIVE REFERENCE BUREAU
TO STUDY THE FEASIBILITY OF ESTABLISHING A CONDOMINIUM
OMBUDSMAN.**

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 appreciates the opportunity to offer comments on House Concurrent Resolution No. 152 and House Resolution No. 104, with suggested amendments.

House Concurrent Resolution No. 152 and House Resolution No. 104 proposes that the Legislative Reference Bureau ("LRB") study the feasibility of establishing a condominium ombudsman to use as an additional option for the resolution of condominium disputes brought by condominium owners against their condominium associations.

The Commission supports the Legislature's efforts to consider alternative methods of dispute resolution for disputing condominium owners. Condominium unit owners often do not have the resources to utilize other more costly means of dispute resolution. House Concurrent Resolution No. 152 and House Resolution No. 104

directs the LRB to consider specific issues in its feasibility study, such as the need for an ombudsman for the exclusive use by the condominium community, the role of government intervention in what is traditionally considered disputes between private parties, and the specific funding mechanism for the proposed program.

The Commission recognizes that condominium management is an ongoing problem and that self-governance has proven to be untenable for many condominium owners. The Commission respectfully suggests that in addition to the above, consideration be given to expanding the LRB review to include a study of what might be an appropriate governance model to comprehensively address the resolution of condominium disputes.

The Commission looks forward to assisting the LRB in its feasibility study pursuant to House Concurrent Resolution No. 152 and House Resolution No. 104.

Thank you for the opportunity to provide comments on House Concurrent Resolution No. 152 and House Resolution No. 104.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 22, 2016 9:11 AM
To: CPCtestimony
Cc: alohaaclay@hawaii.rr.com
Subject: Submitted testimony for HCR152 on Mar 23, 2016 14:30PM

HCR152

Submitted on: 3/22/2016

Testimony for CPC on Mar 23, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Alice Clay	Hui Malama O Hale	Support	No

Comments: PLEASE PASS HCR152... OWNERS NEED A GOVERNMENT AGENCY TO OVERSEE CONDO PROBLEMS SINCE DCCA/RICO HAVE NO POWER TO RESOLVE CONDO ISSUES BETWEEN BOD'S, MA CO'S AND CONDO OWNERS. BOD'S HAVE THE DEEP POCKETS OF THE AOA'S MONEY ..OWNER HAS TO GO IN DEBT AND CHANCE LOSING THEIR ASSETS IN THEIR CONDO. FEAR OF & UNFAIR.. NEED GOVERNMENT HELP TO OVERSEE AND RULE SO CONDOS CAN RUN AS SELF-GOVERNMENT. SOME BOD'S RUN CONDO AS DICTATORSHIP AND OWNERS HAVE LOST THEIR OWNERSHIP RIGHTS. MORE BIG PROBLEMS WILL FOLLOW IN TIME WITH ALL THE NEW CONDOS BEING BUILT IN KAKAAKO AREA... MAHALO FOR ALLOWING TESTIMONY.

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HCR152

Submitted on: 3/22/2016

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Submitted By	Organization	Testifier Position	Present at Hearing
Alice Clay	Hui Malama O Hale	Support	No

Comments: There is a need for this Resolution to pass to help condo owners when BOD's & Management CO's challenge Laws the Legislature pass. DCCA/RICO has no power to enforce the Laws. BOD's know most owners will not pursue hiring an attorney to challenge BOD's with the deep pockets of the AOA which is unfair and concern of owner possibly losing their main assets, their condo. Owners need a third party that BOD's and MA CO's will comply and follow Laws as made by the Legislators. I am submitting this testimony twice since I don't know if the first one I submitted went through.. Mahalo again for allowing me to testify for HCR152.

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A home is for most people the most significant asset they have. In mid-2015, the DCCA reported that there are 169,842 condominium units in associations with more than five units in Hawaii, or roughly 1/3 of the residences in Hawaii.

A Condominium Ombudsman will provide help to outmatched, overwhelmed condominium Owners who are fighting for their basic rights under our condominium laws. Many concerns reflect failures by association boards of directors to follow basic governance principles such as holding fair elections or fairly obtaining consent, providing key financial information about the association, and fairly imposing association fines. Some complaints are based on deliberate indifference by association boards to association bylaws or state condominium laws or a lack of full understanding of condominium association responsibilities, some of which may occur without hesitancy because boards and their condo lawyers know that statutory obligations placed on boards are largely not enforced or enforceable by the State.

The Hui contends that current condo law is biased against Owners, failing to address the costliest aspect for parties seeking justice, the "condo lawyers." Owners must hire, at their own expense, a lawyer to enforce their rights and responsibilities while the association boards of directors can defend themselves using association funds, raised through assessments on the Owners. Thus, Owners' funds are used to defend lawsuits brought by Owners themselves. We recognize that a board must have access to legal counsel in order to discharge its duties however, too often boards seek the costly services of a lawyer for matters which simply do not warrant the cost, such as to block an Owner who seeks to exercise his/her right to a copy of the Minutes of Board meetings.

It is our experience that the majority of Owners are not able to expend the large amounts of money and time required to assert their rights or to enforce compliance by their boards. The average minimum retainer a condominium lawyer requires from an Owner wishing legal representation is \$3,000 to \$5,000 for the simplest of matters. At an average cost of over \$250 per hour, that retainer will not provide much assistance to an Owner.

On the other hand, boards have access to unlimited funds contributed by Owners. Condominium lawyers have an abundance of experience and skill at prolonging matters to the point where a unit Owner can simply no longer afford to continue his/her action or claim. A board could even assess its association for more money if its lawyer needed more. Simply put, a board can financially out-lawyer almost any unit Owner.

The Ombudsman's Office provides an opportunity for a no-fee method for owners and Boards to resolve their disputes or alleged violations in a simple, neighborly approach. And for Condo Owners without resources to other costlier processes, the Ombudsman's Office may be the only means for resolution.

Hui 'Oia`i`o urges the passage of HCR152.

Equal access to the resources of the State, funded by Owners' own contributions into the Condominium Education Trust Fund, would encourage parties to diligently work on reaching agreements satisfactory to all and encourage voluntary compliance with the Statutes and associations' Declaration, By-laws and Rules. A Condo Ombudsman's Office would discourage boards from engaging the services of condominium lawyers to harass and intimidate Owners through letter writing campaigns which bury those Owners in unnecessary legal fees. It would encourage transparency and ethical governance, cause boards to grant access to records, seek Owners' approval for expenditures on repairs, replacements and improvements to the common elements or assets, and return integrity to the election process including the use of proxies.

Respectfully,

Lila Mower for Hui 'Oia`i`o

Testimony Submitted in support of HCR 152 , HR 104 by, John White Sr.


I am delighted to hear the attempts to establish a State Of Hawaii Office of Ombudsman lives.

I researched the latest available figures of the most recent four quarters concerning condominium mediation published on the DCCA's website " Hawaii Condominium Bulletin " which recaps quarterly mediation results. Either all of the cases are not listed or there are other types of mediation that DCCA funds and does not publicize or they are projecting a huge increase in participation of the mediation process. According to those reports there were a total of **35 request for mediation** of those 11 were successfully mediated and the other 24 either declined to participate in voluntary mediation or would not accept the mediator's ruling. The overwhelming majority of those who declined to participate were the boards of the associations. REMEMBER MEDIATION IS VOLUNTARY !

I am confused and concerned why the director of DCCA had requested such a large increase in the biennial fee's (\$1.50 x 170,000) that homeowners now contribute. This new money has been earmarked for the new mediation initiative to the tune of \$255,000.00 according to the attached article below . I think this money would be much better spent in the new office of OMBUDSMAN.

I have recapped the quarterly results below:

Volume 21, No. 1
June 2015



Hawaii Condominium Bulletin

Growing Mediation to Resolve Condominium Disputes

By Tracey Wiltgen

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To encourage the use of mediation in condominium-related disputes, in 2014 the Hawaii State Legislature amended the Hawaii Revised Statutes (HRS) §514B-72 to include an additional annual condominium education trust fund fee in an amount equal to the product of \$1.50 times the number of condominium units included in the registered project or association. HRS § 514B-71(a)(4) was also amended to require the Hawaii Real Estate Commission to "budget an amount and expend moneys from the condominium education trust fund specifically to support mediation of condominium related disputes utilizing professionally trained mediators for those parties and disputes specified in HRS § 514B-161."

The changes to HRS §514B-72 and HRS § 514B-71(a)(4) conveyed two important messages. First, that mediation is a valuable process for addressing condominium related disputes and should be used more frequently. And second, that the mediators who mediate condominium disputes specified in section 514B-161, must have specialized training and knowledge to provide the participants with the best possible opportunity for reaching a resolution. In direct response to the statutory changes, starting on July 1, 2015, more options for accessing mediators with the requisite training will be made available and the costs of participating in mediation will be covered by the condominium education trust fund.

June-Aug.2015

3 cases total

two declined or failed in mediation

Dec.2014-Feb.2015

14 cases total

7 declined or failed mediation

March2015-May2015

Nine cases total nine cases declined or failed mediation

Information posted in monthly

DCCA's - Hawaii Condominium Monthly

<http://cca.hawaii.gov/rico?s=hawaii%20condominium%20bulletin&type=network&searchblogs=1,3,4,5,6,8,9,10,11,12,13,14,15,16,17,19,29>

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 22, 2016 11:19 AM
To: CPCtestimony
Cc: mkimiem@hawaii.rr.com
Subject: Submitted testimony for HCR152 on Mar 23, 2016 14:30PM

HCR152

Submitted on: 3/22/2016

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Submitted By	Organization	Testifier Position	Present at Hearing
Mary Morioka	Individual	Support	No

Comments: Here's YOUR chance to add to the health of our social governance. Instead of taking sides and maintaining the divide between opinions, provide a way for both sides to hear the other one's concern and position. We need this independent "pubic advocate" to investigate maladministration and rehabilitate violators of the public's interests and rights. IT'S A NO BRAINER, so why we need to study it's feasibility is sad, sad, sad. But, so be it, we have to take it slow, change is scary.

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Cc: launahale@yahoo.com
Subject: *Submitted testimony for HCR152 on Mar 23, 2016 14:30PM*

HCR152

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Submitted By	Organization	Testifier Position	Present at Hearing
Benton	Individual	Support	No

Comments:

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Sent: Tuesday, March 22, 2016 11:47 AM
To: CPCtestimony
Cc: kalelekai002@hawaii.rr.com
Subject: Submitted testimony for HCR152 on Mar 23, 2016 14:30PM

HCR152

Submitted on: 3/22/2016

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

Comments: I've been in the association management business for 16 years and I would hope that the Legislative Reference Bureau reaches out to the industry experts for their inputs during this process.

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Cc: aycockburr@aol.com
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HCR152

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Submitted By	Organization	Testifier Position	Present at Hearing
Virginia Aycock	Individual	Support	No

Comments:

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Sent: Tuesday, March 22, 2016 12:21 PM
To: CPCtestimony
Cc: ralpheburr@aol.com
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HCR152

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Submitted By	Organization	Testifier Position	Present at Hearing
Ralph E. Burr	Individual	Support	No

Comments:

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Sent: Tuesday, March 22, 2016 2:31 PM
To: CPCtestimony
Cc: piercel001@netscape.net
Subject: *Submitted testimony for HCR152 on Mar 23, 2016 14:30PM*

HCR152

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Submitted By	Organization	Testifier Position	Present at Hearing
Lon Pierce	Individual	Support	No

Comments:

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Sent: Tuesday, March 22, 2016 4:08 PM
To: CPCtestimony
Cc: manbg@aol.com
Subject: *Submitted testimony for HCR152 on Mar 23, 2016 14:30PM*

HCR152

Submitted on: 3/22/2016

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Submitted By	Organization	Testifier Position	Present at Hearing
Benjamin Mandelheim	Individual	Support	No

Comments:

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Charlotte A. Carter-Yamauchi
Acting Director

Research (808) 587-0666
Revisor (808) 587-0670
Fax (808) 587-0681

LATE



LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
Honolulu, Hawaii 96813

LATE TESTIMONY

Written Comments

HCR 152
REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO STUDY THE
FEASIBILITY OF ESTABLISHING A CONDOMINIUM OMBUDSMAN

Comments by the Legislative Reference Bureau
Charlotte A. Carter-Yamauchi, Acting Director

Presented to the House Committee on Consumer Protection and Commerce

Wednesday, March 23, 2016, 2:30 p.m.
Conference Room 325

Chair McKelvey and Members of the Committee:

Good afternoon Chair McKelvey and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Acting Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on H.C.R. No. 152, Requesting the Legislative Reference Bureau to Study the Feasibility of Establishing a Condominium Ombudsman.

The purpose of this measure is to request that:

- (1) The Legislative Reference Bureau study the feasibility of establishing a condominium ombudsman to resolve grievances brought by residents against their condominium associations without resorting to litigation;
- (2) The Legislative Reference Bureau consider issues such as the public need for the creation of an ombudsman position, the suitability of establishing a government entity to intervene in private condominium related disputes, the proper scope of duties of the position, staffing and funding needs, and the appropriate source of such funding;
- (3) The Real Estate Commission provide any assistance and information requested by the Legislative Reference Bureau so that it may complete this study in a timely manner; and

- (4) The Legislative Reference Bureau submit findings and recommendations, including any proposed legislation, to the Legislature not later than twenty days prior to the convening of the Regular Session of 2017.

The Legislative Reference Bureau takes no position on this measure, but submits the following comments for your consideration.

As stated in the measure:

- (1) The Director of Commerce and Consumer Affairs may already appoint condominium specialists to assist consumers with information, advice, and referral on any matter relating to condominium associations or otherwise concerning condominiums; and
- (2) The Real Estate Commission has been required since 2013 to use the condominium education trust fund to support mediation of condominium related disputes, pursuant to section 514B-71(a)(4), Hawaii Revised Statutes;
 - (A) In addition to condominium education trust fund moneys, mediation of condominium related disputes are also subsidized by an increase in the annual condominium education trust fund fee pursuant to section 514B-72(a)(2), Hawaii Revised Statutes; and
 - (B) The Real Estate Commission has been using an evaluative mediation service as a means of dispute resolution, which employs trained mediators who possess subject matter expertise in various areas of the law.

It seems that, since the Real Estate Commission has been operating an evaluative mediation dispute resolution program for the past three years, a more useful evaluative tool would be to have the Real Estate Commission report on the efficacy of this program. If the Real Estate Commission reports that its mediation dispute resolution program is not effective, the Commission itself would be in the best position to determine why the program is not meeting its intended objective and what types of alternative dispute mediation programs would be most efficacious. Conducting a feasibility study on whether an ombudsman program should be established prior to any efficiency audit of an existing dispute resolution program would not remedy any underlying problems associated with the current process. In addition, establishing a new dispute resolution program would most likely include an additional increase in fees against condominium associations.

Furthermore, since generally speaking ombudsman positions established in Hawaii (Office of the Ombudsman and Long-term Care Ombudsman) have no enforcement powers

Honorable Angus L. K. McKelvey
House Committee on Consumer Protection and Commerce
Page 3

bestowed upon them, it seems that the condominium specialist positions established pursuant to section 514B-63, Hawaii Revised Statutes, already serve as de facto condominium ombudspersons, since their enabling statutes state, in relevant part:

"The director of commerce and consumer affairs may appoint condominium specialists, not subject to chapter 76, to assist consumers with information, advice, and referral on any matter relating to this chapter or otherwise concerning condominiums."

Consequently, it seems that establishing another program to provide essentially similar services as to those already provided to condominium owners, at a potentially additional cost, would be unnecessarily duplicative.

However, if the Legislature feels that this measure is an appropriate use of the Bureau's resources, then the Bureau notes that it should be able to conduct the study under this measure in the timeframe allotted; provided that the Real Estate Commission can timely provide any information required and the scope of the requested study is not expanded.

Thank you again for this opportunity to provide written comments.