

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Thursday, February 2, 2017  
3:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 406, RELATING TO CONDOMINIUM  
PROPERTY REGIMES.**

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"), and I thank you for the opportunity to present testimony on House Bill No. 406, Relating to Condominium Property Regimes. The Commission does not support this bill due to its mandatory education component.

House Bill No. 406 proposes to require the Commission to establish, design, supervise, and administer a mandatory online ethics training course and examination for members of the board of directors of associations of twenty or more units.

The Commission strongly believes that overall education of unit owners and directors is the main ingredient for a healthy association of unit owners and creating an ethics course for directors is a step in the right direction. However, the Commission does not support this bill for the following reasons:

- Pursuant to §26H-6, HRS, "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 auditor for analysis. Referral shall be by concurrent resolution that identifies a specific legislative bill to be analyzed. . . ." As House Bill No. 406 proposes new regulatory controls over members of the board of directors of an association of unit owners, a sunrise analysis must be completed before consideration can be given to this measure;
- The Commission has consistently heard that finding volunteer members to serve on an association's board is difficult in itself. Requiring mandatory education for these volunteers may further make it problematic filling vacant seats; and
- House Bill No. 406 does not address the accommodations necessary for additional staffing to implement the proposed new regulatory measure.

Based on these reasons, the Commission does not support House Bill No. 406 and requests that it be held. However, should the Committee decide to pass this measure out, the Commission requests that the language of the bill be amended by deleting SECTIONS 2 – 4, and amending SECTION 1, as follows:

Testimony on House Bill No. 406  
Thursday, February 2, 2017  
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"§ 514B - **Condominium education.** The commission shall have the authority to set content and other requirements for condominium education courses, providers, and instructors."

Thank you for the opportunity to provide testimony on this measure.

**COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**  
HEARING ON FEBRUARY 2, 2017 AT 3 PM  
**SUPPORT FOR HB405 and HB406**

Through nothing more sophisticated than emails, phone calls, and coffee klatches, Hui `Oia`i`o, a true grassroots and volunteer coalition, has grown such that Hui participants own and in reside in at least 135 condominium associations and a dozen community associations in Hawaii.

Our homes and properties range from affordable apartments to multi-million-dollar single family residences.

Many of our participants are currently or have been association board directors. Of those, many hold or held offices on these boards.

Thus, the Hui does not have, as one condo industry member suggested, an adversarial view of the “association,” e.g., the board.

Instead, having board experience, our vantage may be more insightful, more keen, and perhaps more critical than that of “ordinary” owners.

The Hui recognizes that owners need to understand the responsibilities of association living, including understanding the rules and laws which govern or are applicable to our associations. We recognize that some of the problems that owners encounter may be due to their own ignorance and we do not blindly assign all problems to the ignorance or misguidance of those who govern and/or manage associations or advise those that do.

Thus, the Hui supports the intent of HB405 to provide owners with a “hotline,” an inexpensive means to access legal guidance. We hope that owners will be served fairly and well in using the hotline.

We support HB405 and HB406 regarding training in ethics for board members, and recommend including a class in “respecting owner’s rights.”

But, we also support educational mandates, including ethics training, for the association managers upon whom many boards rely.

Additionally, we believe that it is irresponsible for Legislators to allow these association managers who handle millions of dollars in assets to do so without the accountability that licensure would encourage.

And we suggest that many association managers are responsible—whether wholly or partially—for the problems that associations and/or their owners suffer, but escape accountability because they are not licensed.

Currently, a manager who is terminated can reappear, largely unscathed, to work in the same or similar position because confidentiality rights prevent disclosure of their ‘mistakes.’

While we support HB405 and HB406, we feel that these measures are incomplete, focusing only on one side (owners, including board members) of the condo and association paradigm.

Mahalo.

Submitted by Lila Mower of Hui `Oia`i`o

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, January 28, 2017 9:48 AM  
**To:** CPCtestimony  
**Cc:** mrckima@gmail.com  
**Subject:** Submitted testimony for HB406 on Feb 2, 2017 15:00PM

**HB406**

Submitted on: 1/28/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marcia Kimura	Individual	Support	No

Comments: I am in support of this measure. There is no excuse for Board members' ignorance of procedures relating to their fiduciary responsibilities. It is also essential that reliance on attorneys for basic governance functions and collections be severely limited.

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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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, January 29, 2017 2:48 PM  
**To:** CPCtestimony  
**Cc:** lynnehi@aol.com  
**Subject:** Submitted testimony for HB406 on Feb 2, 2017 15:00PM

**HB406**

Submitted on: 1/29/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
lynne matusow	Individual	Oppose	No

Comments: I am a condo owner and board member. I object to being required to take online ethics courses. I object to my email address being given to a state agency. If someone wants to contact me, regular mail suffices. Email is hackable, spammable, and getting to be a burden. We have enough problems getting people to run for the board. My condo has 396 units, and most owners will not serve as board members. There is a proposal that board members will have to file financial disclosure forms. Now a proposal that their email address must be given out and that they have to take an ethics course. Owners will not run because of work constraints, too much time, health issues, etc. These are VOLUNTEER positions. In addition, most associations have professional paid staff to guide them as well as property management companies that can make sure the boards are operating ethically. Condo boards are not state agencies, like the Board of Regents, which make decisions which affect the entire state. Also, there are condo board members in the state who do not use computers. How will they take the course? How will they take the exam? The more obligations you put on board members who are busy with their full time jobs, other volunteer work, vetting proposals, reading contracts, and understanding their properties, the fewer people will be willing to serve. Lynne Matusow 60 N. Beretania, #1804 Honolulu, HI 96817 531-4260

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 31, 2017 11:53 AM  
**To:** CPCtestimony  
**Cc:** cporter@hawaiiilegal.com  
**Subject:** \*Submitted testimony for HB406 on Feb 2, 2017 15:00PM\*

**HB406**

Submitted on: 1/31/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christian Porter	Individual	Support	No

Comments:

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**LATE**

John A. Morris  
888 Mililani Street, 2<sup>nd</sup> Floor  
Honolulu, Hawaii 96813  
(808) 523-0702

## COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

### Testimony Regarding HB 406

DATE: Thursday, February 2, 2017  
TIME: 3:00 PM  
PLACE: Conference Room 329

Dear Chair McKelvey and Members of the Committee:

I work as an attorney representing condominiums and other homeowner associations and I am testifying with concerns about HB 406.

This bill proposes to require every board member to undergo ethics training. The real estate commission records indicate there are over 1,600 associations in the state. Assuming each association board has an average of five members – it could be more – the real estate commission will have to arrange ethics training for 8,000 people.

Assuming that some of the directors burn out and resign during the year, the commission will then have to arrange ethics classes every subsequent year. If just 20 percent of the directors resign, the commission will have to arrange training for 1,500 to 1,600 people every year.

The commission will also have to confirm that each of the 8,000 directors has taken the class and enforce the law if the directors fail or refuse to do so.

There are no findings in the preamble as to why this bill is necessary. The bill makes no mention of specific, proven circumstances in which board members have suffered ethical breaches that justify forcing every director in the state into mandatory ethics training sessions. Even if that were the case, it seems unlikely that condominium directors have suffered ethical breaches on a percentage basis any greater than other citizens who are not required to undergo any such training.

Of course, the directors can always just resign. The bill seems to overlook the fact that all board members in Hawaii are volunteers. The directors, by law, receive no compensation whatsoever for taking the time to make the sometimes difficult decisions necessary to manage and operate their projects on behalf of their fellow owners. Often, directors have to grind through the difficult process of ensuring that the project is



TESTIMONY REGARDING HOUSE BILL 406

February 1, 2017

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properly maintained and repaired. This process often results in the directors being vilified by their fellow owners as well as being forced to undergo threats and various indignities at the hands of the owners.

Assuming owners who agree to serve on the board may find this bill to be the last straw and simply resign, the bill should anticipate that possibility and include a provision allowing for the State to provide emergency oversight of condominium associations in Hawaii if that occurs. Even if not all directors resign, a sufficient number may resign to make it impossible for the remaining directors to meet quorum at their meetings and make valid decisions. In those circumstances, State officials can then discover how difficult it is to manage and operate a condominium association.

Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Morris". The signature is written in a cursive style with some stylized flourishes.

John A. Morris

JAM:alt

Lourdes Scheibert  
Royal Court Condominium  
920 Ward Ave  
Honolulu, Hawaii 96814

**LATE**

February 1, 2017

Hearing Date: Thursday, February 2, 2017  
Time: 3:00 pm  
Place: Conference Room 329

Committee on Consumer Protection & Commerce  
House of Representative, the 29th Legislature  
Regular Session of 2017

**RE: Testimony supporting HB406**

Dear Chair McKelvey, Vice Chair Ichiyama and Committee members:

I support an ethics course offered through the Real Estate Commission be completed by each Director because this is a volunteer board.

Directors are not held responsible for bad decisions. I would like to see some kind of measurement of the Director's intent to seriously be committed to doing the work of maintaining the building and not just occupying a seat or not attending the meetings and/or attend meetings sporadically.

Thank-you.  
Lourdes Scheibert

**LATE**

February 1, 2017

Hearing Date: February 2, 2017

Time: 3:00 PM

Place: Conference Room 325

Committee on Consumer Protection & Commerce  
House of Representatives, the 29<sup>th</sup> Legislature  
Regular Session of 2017

**RE: Testimony for Support of HB 405 and 406** , Authored by Lila Mower , Endorsed and Submitted by John White Sr.  
[jwhite888@gmail.com](mailto:jwhite888@gmail.com)

Aloha, Chair McKelvey, Vice Chair Ichiyama and Committee Members ,

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by Lila Mower of Hui `Oia`i`o