

SB297

Measure Title: RELATING TO RESIDENTIAL REAL PROPERTY.

Report Title: Real Property; Planned Community Associations; Condominiums; Management Companies; Managing Agents; Damages; Repairs

Description: Requires prompt repair of any damages to the common areas or common elements in a planned community association or condominium. Specifies that if a management company or managing agent is responsible for repairs on an association's behalf and fails to complete the repairs within six months, then the management company or managing agent shall be liable for double the amount of damages. Specifies that when a management company or managing agent fails to pay for damages, the association may deduct that amount from any fees the association owes to the management company or managing agent.

Companion:

Package: None

Current Referral: CPH

Introducer(s): DELA CRUZ, INOUYE, K. Kahele, Nishihara, Wakai

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 20, 2017 9:35 AM
To: CPH Testimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for SB297 on Feb 23, 2017 09:30AM

SB297

Submitted on: 2/20/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

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

Comments: The Board is responsible for repairs and may sign a contract with a vendor. The Board may hire a licensed project manager. The board may withhold are stop work due to a complaint about the contractor. Weather and availability of supplies affect completion. Hidden conditions may surface. Insurance or threatened litigation may come into play. The contractor can go out of business. In the end, managing agents will simply refuse to help if this Bill passes. The Bill attempts to put liability on an agent that has no inherent power to make decisions only the board.

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Honorable Rosalyn H. Baker,
Honorable Clarence K. Nishihara
Committee Members

My name is Allen Wilson. I am a Vice President of Hawaiiana Management Company and a member of the Legislative Action Committee of the Community Associations Institute.

This testimony is submitted to address concerns about Senate Bill 297. The intent of this bill is not an issue – it is intended to encourage the prompt repair of damages to common areas of community associations and condominium associations.

However, the methodology of implementing that encouragement is confusing, for the following reasons:

- 1) It is not clear whether the term “management company” refers to an association management company or to a rental management company handling an individual unit on behalf of an association. This point should be clarified as it may alter the impact of the remainder of the bill.
- 2) Whether the damage contemplated under the bill occurs in a community association or a condominium, the association’s board of directors is always the responsible party for ensuring that repairs to the common areas are completed in a timely and professional manner. All boards of directors have a ‘duty to maintain’ as part of the board’s fiduciary duties to the membership. If it is determined that the damage was caused by an individual, the board’s normal course of action is to have the repairs completed and to charge the individual for the repair costs. If it is determined that the damage is solely the responsibility of the association, then the board of directors usually directs the association management company to solicit proposals from licensed contractors for

repair of the damage, to present the proposals to the board of directors for evaluation and selection, and to complete the contract for repair with the selected contractor.

- 3) If the management company thereafter fails to engage the contractor and to effect the repairs as directed, the board of directors should terminate the management contract for material breach and seek another management company.
- 4) The association management company itself is never liable or responsible for completing the repairs unless the management company actually caused the damage in the first place.

Respectfully submitted,

Allen Wilson

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 8:14 PM
To: CPH Testimony
Cc: lila.mower@gmail.com
Subject: *Submitted testimony for SB297 on Feb 23, 2017 09:30AM*

SB297

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower	Hui `Oia`i`o	Support	No

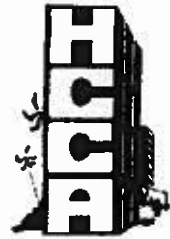
Comments:

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**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 22, 2017

Senator Roslyn Baker, Chair
Senator Clarence Nishihara, Vice-Chair
Senate Committee on Commerce, Consumer Protection and Health


Re: Testimony in opposition to
SB297 RELATING TO RESIDENTIAL REAL PROPERTY
Hearing: Thursday, February 23, 2017, 9:30 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Nishihara and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA). This organization represents the interests of condominium and community association members.

HCAAO opposed this bill because it is premised on a misconception that managing agents for Boards of planned unit developments and condominiums are the decision makers for the implementation of repairs and maintenance in the community or project and that they should be held accountable if those repairs and maintenance do not happen. That is not the case legally or factually. Especially with respect to condominiums, the Declaration and By-Laws expressly place the burden for maintaining and managing the project on the Board, who then hires a managing agent to implement the decisions of the Board. The Board is the one who make the decision and who should be held accountable if the project is not maintained and the repairs are not completed in a timely and satisfactory manner.

If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.


Jane Sugimura
President

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 5:26 PM
To: CPH Testimony
Cc: aanderson@alf-hawaii.com
Subject: Submitted testimony for SB297 on Feb 23, 2017 09:30AM

SB297

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Individual	Oppose	Yes

Comments: S.B. 297 is not needed; it is one-sided; and it is punitive. First, if the owner is responsible for the repair, there is no stated time period for the repair to be made. However, if the Association or managing agent is responsible, there is a six month deadline with penalties. It may not always be possible to make repairs in six months even with all due diligence. Furthermore, the bill doesn't state to whom these "double" damages are to be paid. Additionally, generally the managing agent does not make repairs. The Association makes repairs. The language of the bill is at odds with the way that associations generally function. This bill is a bad bill. I urge you to defer any action on it. Sincerely, Anne Anderson

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 10:55 PM
To: CPH Testimony
Cc: sunnymakaha@yahoo.com
Subject: Submitted testimony for SB297 on Feb 23, 2017 09:30AM

SB297

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

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

Comments: I support this bill. I have paid over \$100,000 in 'maintenance fees' over the past 29 years and cannot persuade the Board to replace a rusted out section of our perimeter cyclone fence facing the ocean.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 8:12 PM
To: CPH Testimony
Cc: mrckima@gmail.com
Subject: Submitted testimony for SB297 on Feb 23, 2017 09:30AM

SB297

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Marcia Kimura	Individual	Support	No

Comments: I am in favor of any measure which holds condo management companies accountable for any negligence and faulty decisions they make. For far too long, condo owners have been imperiled by and liable for failure by management to maintain safety and structural standards they are paid to sustain.

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Lourdes Scheibert
920 Ward Ave
Honolulu, Hawaii 96814

February 22, 2017
Hearing Date: Thursday, February 23, 2017
Time: 9:30 AM
Place: Conference Room 229

Chair Rosalyn H Baker
Vice Chair Clarence K Nishihara
Committee Commerce, Consumer Protection & Health
The Senate
The Twenty-Ninth Legislature
Regular Session of 2017

RE: Testimony on Support of SB297:

Requires prompt repair of any damages to the common areas or common elements in a planned community association or condominium. Specifies that if a management company or managing agent is responsible for repairs on an association's behalf and fails to complete the repairs within six months, then the management company or managing agent shall be liable for double the amount of damages. Specifies that when a management company or managing agent fails to pay for damages, the association may deduct that amount from any fees the association owes to the management company or managing agent.

Dear: Chair Baker, Vice-Chair Nishihara and Committee Members,

My name is Lourdes Scheibert, a condominium owner testifying in support of SB297 based on my experience with poor management of my condominium and communication problems with my Board of Directors on the common elements and limited common elements. Repair for my leaking ceiling first reported March 9, 2009 and final repair completed by industry standard in March 22, 2014. Today the water infiltration has not reappeared.

SB297 would comply with:

City & County Building Code 3401.2 MAINTENANCE:

- 1) 3401.2 Maintenance: Buildings and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices or safe guards which are required by this code shall be maintained in conformance with the code edition under which installed. The owner or the owner's designated agent shall be responsible for the maintenance of buildings and structures. To determine compliance with this subsection, the building official shall have the authority to

require a building or structure to be reinspected. The requirements of this chapter shall not provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures.

Thank-you

Lourdes Scheibert
Hawaii Condominium Owner

I am submitting testimony in opposition to SB 297. It not only completely misunderstands the relationship between the managing agent and association; it is also patently unfair to the managing agent.

The managing agent of a homeowner association a condominium is just that: an agent. In other words, as an agent, the managing agent is supposed to implement or assist in implementing the decisions of the principal, which, in this case, is the association acting through its board of directors.

As an agent, the managing agent has no ability to take over the association and assess the owners for the association's debts. Instead, the board is supposed to take that action. For example, if the association has a debt or is supposed to make certain repairs, the board is responsible for initiating that action, including, if necessary, assessing the association members to pay the debt of the association. Once the board has made a decision, the managing agent can assist in implementing the decision. Moreover, if the managing agent doesn't do its job, it is up to the board to follow up with the managing agent. Nevertheless, the managing agent is NOT responsible for actually making the decision in the first place.

Despite those fundamental principles, this bill indicates that if the association is supposed to do something and it isn't done, the managing agent can be held fully and completely responsible for the lack of action by the association (or board)! In fact, the managing agent can be liable for double the amount of the actual damages under this bill.

I have never seen a set of condominium or homeowner association documents that allowed the managing agent to take over the association and do something that the board was supposed to do if the board failed to act. If this bill is intended to overturn the accepted relationship of principal and agent that is been in place for decades, it should clearly state that it intends to put the managing agent in charge of the project and association and eliminate the role of the board.

Thank you for this opportunity to testify.