

SB369

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Associations; Board of Directors; Condominium Owners; Violations; Retaliation; Prohibition

Description: Prohibits associations of apartment owners, boards of directors, managing agents, resident managers, and condominium owners from retaliating or discriminating against a condominium owner who files a complaint; acts in furtherance of a complaint, report, or investigation of an alleged violation of the State's condominium laws or a condominium's governing documents; or exercises or attempts to exercise any right as a condominium owner.

Companion:

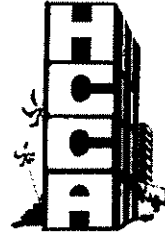
Package: None

Current Referral: CPH, JDL

Introducer(s): GALUTERIA, BAKER, ESPERO, GREEN, HARIMOTO, INOUYE, KIDANI, NISHIHARA, K. RHOADS, RUDERMAN, SHIMABUKURO, S. Chang, Dela Cruz, Gabbard, Taniguchi



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



January 28, 2017

Sen. Rosalyn Bakery, Chair
Sen. Clarence Nishihara, Vice-Chair
Senate Committee on Commerce, Consumer Protection & Health

Re: Testimony in Support (with comments) of
SB369 RELATING TO CONDOMIMUMS
Hearing: Tues., January 31, 2017, 9 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.

While HCAAO believes that the language in HRS 514B-106(a) that imposes a fiduciary duty on board members as to their relationship with association members already prevents board members from retaliating against unit owners, we have no objections to this bill. However, we suggest that the protection against retaliation as proposed by this bill be extended to other board members and association employees since I am aware of claims by minority board members and association employees of retaliation by the board.

HCCA respectfully requests that you include its suggested revisions to this bill. If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.

A handwritten signature in cursive script that reads 'Jane Sugimura'.

Jane Sugimura
President

COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH
HEARING ON JANUARY 31, 2017 AT 9 AM
SUPPORT FOR SB369

I support this measure to strengthen and improve protection for the rights of condominium owners, to prevent reprisals, and to help eliminate wrongdoing within homeowner associations by mandating that owners who report such wrongdoing should not fear retaliation nor suffer adverse consequences.

While the condo industry may claim high satisfaction in association living (because that satisfaction is necessary for the continuity of their businesses), a 2015 national survey by the Coalition for Community Housing Policy in the Public Interest revealed that 74% of its respondents said "homeowners' associations need to be significantly reformed" (49%), or "need to be phased out of existence" (25%). Of all respondents, 94% are residents in a homeowners' association. (source: <http://www.chppi.org/survey>)

A more detailed and extensive survey by Anne-Marie Ambert, PhD, stretched over six years (2009- 2015) and with over 5000 respondents revealed that "32% of owners also write about the fact that they end up intimidated, bullied, discriminated against, or threatened by boards/managers when they request services or make justifiable complaints. Many receive accusatory letters telling them to stop their "harassment" and numerous others receive unwarranted letters from the condo's lawyer and often have to pay for these letters...20% of [respondents'] letters are about condo lawyers sending owners unwarranted legal letters for which owners have to pay, abuse of liens, and even abuse of power of sale; lawyers who protect dysfunctional and/or dishonest boards and managers against owners. Also included is failing to do anything when there are fraudulent proxies gathered by managers and/or boards. Also mentioned are ...inventing or twisting rules to suit boards or to go against owners the board or manager doesn't like." (source: <http://www.condoinformation.ca/feedback>)

As the facilitator and nexus of Hui `Oia `i`o, an umbrella coalition made of smaller groups with hundreds of participants from over 135 homeowners' and condo associations in Hawaii, it is my observation that too many condo owners and residents claim (and can document) intimidation, especially the aforementioned "intimidation by attorney," and suffer or fear reprisals for revealing wrongdoing within their associations.

Although in 2015, the federal Fair Housing Act was expanded to protect against "*quid pro quo* harassment" (subjecting a person to an unwelcome request or demand and making submission to the request or demand, implicitly or explicitly, a condition related to the person's housing) and "hostile environment harassment" (subjecting a person to unwelcome conduct that is sufficiently severe or pervasive such that it interferes with or deprives the person the right to use and enjoy housing), the owners and residents of Hawaii's nearly 170,000 condo units need a more specific measure to address reprisals against critics and whistleblowers of condominium associations.

The opportunity to escape retaliatory harassment used to censor, intimidate and silence critics should not be limited to the individual or family moving out of that association, an oft repeated and unsatisfactory suggestion by lobbyists for the condo industry. Thus, this measure proposes to better protect owners who are victims of harassment and prohibited retaliatory practices. Please pass this measure. Mahalo. (submitted by Lila Mower of Hui `Oia `i`o and condo owner)

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 12:16 PM
To: CPH Testimony
Cc: schoenecker@email.phoenix.edu
Subject: Submitted testimony for SB369 on Jan 31, 2017 09:00AM

SB369

Submitted on: 1/30/2017

Testimony for CPH on Jan 31, 2017 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
JOY SCHOENECKER	Mauna Luan	Support	No

Comments: We believe that the language in HRS 514B-106(a) that imposes a fiduciary duty on board members as to their relationship with association members already prevents board members from retaliating against unit owners, we have no objections to this bill. However, we do suggest that the protection against retaliation as proposed by this bill be extended to other board members and association employees since we are aware of claims by minority board members and association employees of retaliation by the board. Please include the suggested revisions to this bill.

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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Telephone: (808) 523-0702
January 31, 2017

SENATE COMMITTEE ON CONSUMER PROTECTION AND HEALTH
REGARDING SENATE BILL 369

Hearing Date: TUESDAY, January 31, 2017
Time : 9:00 a.m.
Place : Conference Room 229

Chair Baker, Vice Chair Nishihara, and Members of the Committees,

My name is John Morris and I work as an attorney representing condominium and other homeowner associations and I am offering comments on this bill.

This bill seems unnecessary. The preamble includes no **documented** findings of widespread retaliation against owners by boards. Moreover, board members and property managers already have an obligation to act reasonably and in good faith in dealing with members of the association. Otherwise, they can be deemed to be in breach of their fiduciary duty to the members they represent. Therefore, if a board or property manager were to actually engage in any of the conduct outlined in SB 369, the owner would **already** have a claim. In fact, owners have brought cases in Hawaii based on the types of claims outlined in SB 369.

Unfortunately, the bill would also unnecessarily complicate **valid** enforcement actions of an association by creating confusion and delay. For example, an owner could be creating a significant nuisance for his or her fellow owners by making loud noise, smoking profusely, behaving in a threatening or belligerent manner towards the neighbors, or anything similar. If the association were to begin enforcement action against the owner, the owner could: (i) demand any of the many rights the statute already gives him/her - such as access to documents - or (ii) allege failure to follow the law - such as failure to post board meeting notices - and then argue the association's valid enforcement actions were "retaliation" under this bill.

Alternatively, as is quite common, the owner could argue that the people making the complaints about him or her were actually violating the documents, so the association's valid enforcement action was "retaliation." In other words, the owner could argue that

TESTIMONY REGARDING SENATE BILL 369

January 31, 2017

Page 2

the association is retaliating because he or she "complains or otherwise reports an alleged violation."

In summary, any of the claims outlined in this bill can be made by an owner anyway, and the bill seems to have the potential to undermine otherwise valid enforcement action by the association. Therefore, since the bill creates complications without resolving any real problem, the bill serves no purposes.

Thank you for this opportunity to testify.

John A. Morris

JAM:alt\G:\C\2017.01.29 - 2017 Testimony SB 369

CPH Testimony

From: Antonette Port <portr001@hawaii.rr.com>
Sent: Sunday, January 29, 2017 8:59 PM
To: CPH Testimony
Subject: SB 369 Relating to Condominiums

Richard J. Port

1600 Ala Moana Blvd. #3100

Honolulu, Hawaii 96815

Tel 808-941-9624

e-mail: portr001@hawaii.rr.com

Measure: SB 369 Relating to Condominiums

Date and Time of Hearing: 9:00 a.m. Tuesday, January 31, 2017

Committee: Committee on Commerce, Consumer Protection and
Health

Aloha Senator Rosalyn H. Baker and Members of the Committee,

I am testifying in strong support of SB 369, which would prohibit retaliation against condominium owners. I do note two changes that should be made to SB 369. On page 1, line 8 and on page 3, line 4 the words, “a board member or” should be added in front of the words, “a unit owner”.

Also on page 2, lines 8 to 12 and on page 3 lines 19 to 21 which carries over to page 4, lines 1 and 2, action should be able to be brought forward not only to circuit court, but also through evaluative mediation and/or arbitration.

Thank you for this opportunity to testify,

Richard Port

January 29, 2017

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair
Committee on Commerce, Consumer Protection
And Health
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Support for SB369**

Dear Chair Baker and Vice Chair Nishihara:

I am a partner with the law firm of Porter McGuire Kiakona & Chow, LLP. Our firm represents condominium associations throughout the State of Hawaii, and I am active on the Community Association Institutes' Legislative Action Committee ("LAC") and a member of the Board of Directors for the Condominium Council of Maui ("CCM"). This testimony is not being submitted on behalf of either LAC or CCM.

I submit this testimony in favor of SB369 as someone interested in making certain that owner's rights are protected as much as an association's rights. I believe that the intent of the proposed Bill is good, but a definition of "retaliation" may be helpful to any court trying to determine if there has been a violation of this proposed legislation.

I respectfully submit that retaliation may be defined as including, but not limited to, taking action that is not supported by the association's governing documents and/or applicable state statute, and/or an abuse of power.

Thank you for your consideration.

Very truly yours,



Christian P. Porter

COMMENTS ON
SB 369, RELATING TO CONDOMINIUMS

Committee on Commerce, Consumer Protection, and Health
Tuesday, January 31, 2017, 9:00 a.m., Conference Room 229

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair
and Members

Aloha mai kākou

I am writing to comment on SB 369, Relating to Condominiums, that would prohibit associations of apartment owners, boards of directors, managing agents, resident managers, and condominium owners from retaliating or discriminating against a condominium owner who files a complaint; acts in furtherance of a complaint, report, or investigation of an alleged violation of the State's condominium laws or a condominium's governing documents; or exercises or attempts to exercise any right as a condominium owner. It is clear from the number of legislators who introduced this bill that you are concerned and for that we mahalo you.

I fully support an avenue for a homeowner to pursue an alleged complaint of retaliation and/or discrimination, but am not sure bringing a civil action in district court is the best avenue for all involved. Certainly, it would be costly on both ends, may aggravate an already busy calendar of the Judiciary, and take years to be settled.

As the legislature is working on an Office of Condominium Complaints and Enforcement in the Dept of the Attorney General to intervene in condominium disputes, that may be the better avenue.

At the heart of many complaints is the lack of open, transparent communications with homeowners; and an election system that is partial to re-electing Board of Directors. I would urge lawmakers to also address these condominium self-governance deficiencies.

Mahalo for the opportunity to comment.

Respectfully

(by on line testimony)
MARILYN L. KHAN
Homeowner, Moana Pacific

January 29, 2017

Hearing Date: Tuesday, January 31, 2017

Time: 9:00 a.m.

Place: Conference Room 229

Committee on Consumer Protection & Commerce

The Senate, the 29th Legislature

Regular Session of 2017

RE: Testimony supporting SB369

Testimony supporting HB35 and SB177. For your information these testimony copies are included in efforts to present related experiences in one picture.

Dear Chair Baker, Vice Chair Nishihara and Committee members:

I support SB369, this measure is needed to protect all owners because retaliation exists. Many unhappy owners will not stand up to be counted. Many suffer quietly. This measure helps to bring balance to Condominium-Self-Governance. Together with HB35 will help in preventing bad Boards using retaliatory tactics who govern in a defensive manner under the guise of protecting the Association. This is my experience and opinion.

Should these bills become law, I am hopeful that the Community Association Institute (CAI) would make this a priority in their educational curriculum to teach board directors as well as other owners the importance of fairness. After all, CAI, an independent vendor is contracted by the Real Estate Commission thru the condominium education trust fund supported by fees collected from all condo owners. In fact, I believe CAI should adopt a mission statement of "no condo owner left behind."

In the testimony for SB35, I refer to 6 disparaging motions recorded in the minutes and now a permanent record. As a director, I was required to submit motions 10 days prior to the board meeting along with 11 copies for the purpose to include a copy in each of the director's meeting packets. Packets are delivered a week before the meeting giving each director time to review the agenda and information. A copy was given to the property manager and resident manager. These 6 disparaging motions were not included in my packet but rather presented at the meeting. This was a blind-sided sucker-punch and left me shaken and at a disadvantage with no chance to prepare to defend myself. The motions were approved and minutes ratified under my protest. This is only one example.

What the other directors don't understand is that I represented a number of owners who asked me to run for a position on the board to address their concerns over one major issue. Their rights were damaged as well.

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

January 29, 2017

VIA EMAIL

Supersedes January 28, 2017 submission

Hearing Date: Tuesday, January 31, 2017

Time: 2:00 pm

Place: Conference Room 329

Committee on Consumer Protection & Commerce

House of Representative, the 29th Legislature

Regular Session of 2017

RE: Testimony supporting HB35

(Testimony supporting HB177 and SB369 prohibits retaliating or discriminating against a condominium owner. For your information these testimony copies are included in efforts to present related experiences in one picture.)

Dear Chair McKelvey, Vice Chair Ichiyama and Committee members:

I support HB35 which establishes more viable means for condominium owners to address the wrongs and abuses they are subjected to by unethical persons governing them and their properties. My mediation process of Dispute and Resolution failed because my board refused to participate.

I am a condominium owner submitting my opinions based on documents supporting my experiences of abuse by my board. I believed that my circumstances were unique. However, as a participant of HUI 'OIA'I'O, I was surprised to find that my circumstances were common among the participants. Where I am unique, is the chronic abuse caused harmful emotional anguish to my deceased husband, former director Todd Scheibert, myself and effected my entire family. This abuse has to stop.

I served as a board director 2011-2013. At the March 2011 meeting, the minutes recorded 6 disparaging motions made against director Lourdes Scheibert. The motions totaled 806 words. The motions, I believe were the opinions of the other eight (8) 2011 board directors based on my 2010 letters of opinions questioning certain alterations made to the limited common areas. One of the six motions accused me of failing my fiduciary duty. Another accused me of not disclosing my financial conflict of interest. I full-filled my service as a director from 2011-2013 under duress.

During this March 2011 meeting I was told by the President that the Board has the authority to remove an owner or tenant from the property. I believe that these motions were the first step to my removal. Being fearful, I hired attorney Terrance Revere and Associates to intervene on my behalf. Revere started the mediation process June 2015 and by October 2016, I was notified that the Board refused to participate.

The abuse stems from my questions concerning the Declaration, By-laws, Map 64, unpermitted building construction activity and City & County Building Code 3401 Maintenance involving the majority of the 2011 directors including my unit.

In 2009, the Declaration with Amendment 5 & By-laws were applied to my unpermitted lanai window installation installed by the previous owner. I believe the same documents were not fairly applied to the other director's who completed their own alterations to the limited common areas.

The question of the past and continued payment of lanai repairs by the Association is still an issue. I believe, claims should be filed with both the Association's & the owner's H06 insurance and reviewed by both property claims adjuster. Together they decide who is financially responsible for the repairs before any Association money is spent. This determination should not be made by an unqualified and unlicensed property manager or resident manager.

HB 35 would take away some of the absolute power wielded by those intimately involved with condominium association government.

Sincerely yours,

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

January 29, 2017

Hearing Date: Tuesday, January 31, 2017

Time: 2:00 pm

Place: Conference Room 329

Committee on Consumer Protection & Commerce

House of Representative, the 29th Legislature

Regular Session of 2017

RE: Testimony supporting HB177

Testimony supporting HB35 and SB369. For your information these testimony copies are included in efforts to present related experiences in one picture.

Dear Chair McKelvey, Vice Chair Ichiyama and Committee members:

I support HB177, this measure is needed to protect all owners because retaliation exists. Many unhappy owners will not stand up to be counted. Many suffer quietly. This measure helps to bring balance to Condominium-Self-Governance. Together with HB35 will help in preventing bad Boards using retaliatory tactics who govern in a defensive manner under the guise of protecting the Association. This is my experience and opinion.

Should these bills become law, I am hopeful that the Community Association Institute (CAI) would make this a priority in their educational curriculum to teach board directors as well as other owners the importance of fairness. After all, CAI, an independent vendor is contracted by the Real Estate Commission thru the condominium education trust fund supported by fees collected from all condo owners. In fact, I believe CAI should adopt a mission statement of "no condo owner left behind."

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

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 25, 2017 7:56 PM
To: CPH Testimony
Cc: mrckima@gmail.com
Subject: Submitted testimony for SB369 on Jan 31, 2017 09:00AM

SB369

Submitted on: 1/25/2017

Testimony for CPH on Jan 31, 2017 09:00AM in Conference Room 229

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

Comments: I support SB369. If the truth were revealed about the basis of so many violation allegations against owners, it would indicate retaliation against the owners' pursuit of their civil liberties, including the right to challenge or question association management actions. This is a major flaw of so called self government of condos and other community associations. Without oversight, all manner of abuse, usually at catastrophic peril to individual owners abounds.

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2333 Kapiolani Blvd., #2708
Honolulu, HI 96826
29 January 2017

Hawaii State Senate
29th Legislature Regular Session of 2017
Committee on Consumer Protection & Commerce
State Capitol
415 S Beretania St
Honolulu, HI 96813

RE: Testimony in Support of SB369
Hearing Date: Tuesday, January 31, 2017 / 09:00 am / Conference Room 229

Dear Chair Baker and Committee,

As a constituent and Honolulu condominium owner, I am writing in support of SB369, prohibiting retaliation against condominium owners who seek to address, prevent, or stop a violation of chapter 514A of the HRS or governing documents of an association of apartment owners.

I believe this bill will establish more robust protections for condominium owners to address issues which may arise when confronting problems with management or governing Boards of their properties.

Sincerely,



DIANN K LYNN
Marco Polo Condominium Owner
Member, Hui`oia`i`o