

SB391

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Condominium Property Regimes; Association of Apartment Owners; Condominium Owners; Cure of Default; Disputed Charges; Mediation; Common Expense Assessments

Description: Part I: Purpose section. Part II: Clarifies that when a unit owner and association reach a payment plan to cure a nonjudicial foreclosure, completion of the payment plan is required to cure the default; specifies that if a unit owner and an association have agreed on a payment plan to prevent a nonjudicial foreclosure from proceeding, any association fines imposed while the payment plan is in effect shall not be deemed a default under the payment plan; and clarifies the obligations of a unit owner and an association while a unit owner is not otherwise in default under a payment plan. Part III: Clarifies that the pay first, dispute later provisions in Hawaii's condominium law apply only to common expense assessments claimed by an association of apartment owners; specifies that a unit or apartment owner who disputes the amount of an assessment may request a written statement about the assessment from the association, including that a unit or apartment owner may demand mediation prior to paying contested charges, other than common expense assessments; specifies requirements for mediation on contested charges, except for common expense assessments; and repeals language that permitted associations to convert delinquent fines and late fees into delinquent common expense assessments, if certain conditions were met. Part IV: Makes conforming amendments.

Companion: [HB244](#)

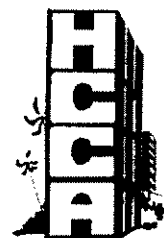
Package: None

Current Referral: CPH/JDL, WAM

Introducer(s): BAKER, ESPERO, KIDANI, S. Chang, Nishihara



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



February 1, 2017

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

Sen. Gilbert S.C. Keith-Agaran, Chair
Sen. Karl Rhoads, Vice-Chair
Senate Committee on Judiciary and Labor

Re: Testimony in Support of
SB391 RELATING TO CONDOMIMUMS
Hearing: Fri., February 3, 2017, 9:30 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Nishihara, Chair Keith-Agaran and Vice-Chair Rhoads and Members of the Joint-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 supports this bill. It addresses very important issues relating to the voluntary settlement of non-judicial foreclosures that would help the association collect its maintenance fees and allow the owner to keep his home; and clarifies the priority of payments provisions of the law and would allow an owners to dispute the validity of the association's claims without first requiring them to pay the association legal expenses.

For the reasons set forth, HCCA respectfully requests that you pass this bill. If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.

Jane Sugimura
President



P.O. Box 976
Honolulu, Hawaii 96808

February 1, 2017

Honorable Rosalyn H. Baker
Honorable Clarence K. Nishihara
Committee on Commerce, Consumer Protection and Health
415 South Beretania Street
Honolulu, Hawaii 96813

and

Honorable Gilbert S.C. Keith-Agaran
Honorable Karl Rhoads
Committee on Judiciary and Labor
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 391 - SUPPORT

Dear Chairs, Vice-Chairs and Committee Members:

I am a member of the Community Associations Institute Legislative Action Committee. CAI supports SB 391 in its current form.

SB 391 departs from the pay first, dispute later principle that is essential to the efficient and effective functioning of condominiums. CAI is concerned about any such departure.

The factors enabling CAI to support SB 391 in its current form are:

1. The exception to the pay first, dispute later principle is narrowly tailored and carefully crafted;
2. The process to be followed is clear; and
3. The impact on the finances and operations of condominiums should be manageable.

Honorable Rosalyn H. Baker
Honorable Gilbert S.C. Keith-Agaran
Honorable Clarence K. Nishihara
Honorable Karl Rhoads
February 1, 2017
Page 2 of 2

CAI is, therefore, pleased to support SB 391 in its current form.

Community Associations Institute, by

Philip Nerney

For its Legislative Action Committee

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 7:00 AM
To: CPH Testimony
Cc: albertd@hawaiianprop.com
Subject: Submitted testimony for SB391 on Feb 3, 2017 09:30AM

SB391

Submitted on: 2/2/2017

Testimony for CPH/JDL on Feb 3, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Al Denys	Hawaii CAI LAC & Hawaiian Properties	Support	No

Comments: Aloha, I support SB 391 in its current form. Mahalo. warmest aloha Al Denys

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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**COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH
SUPPORT WITH AMENDMENTS - SB391**

Common expense assessments (aka "maintenance fees"), must be paid to assure the continued operation and maintenance of their properties.

Some associations have enacted rules which convert peripheral fees-- such as attorneys' fees, late fees, penalties or fines for violations, bad check fees which are not essential to the operation of the association--into common expense assessments, using a "priority of payments" scheme that can reduce the amount that is credited to an owner's common expense assessment.

This may cause an owner to unintentionally default on his common expense assessment and unnecessarily put that owner on the rhetorical "slippery slope" towards foreclosure.

That "priority of payments" scheme also implies that those peripheral charges are more necessary to the association's operation than the actual common expense assessment.

Thus, while SB391 provides that owners may demand mediation prior to paying any contested charges other than common expense assessments, we ask for incontrovertible wording that associations should not convert peripheral fees into common expense and recommend that that 514B-105 (c) is amended as follows, deleting those sections which have been stricken:

~~"No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines, and interest) unless the board adopts and distributes to all owners a policy stating that: (1) Failure to pay late fees, legal fees, fines, and interest may result in the deduction of such late fees, legal fees, fines, and interest from future common expense payments, so long as a delinquency continues to exist; and (2) Late fees may be imposed against any future common expense payment that is less than the full amount owed due to the deduction of unpaid late fees, legal fees, fines, and interest from the payment"~~

And amend HRS667-94 to add:

Any fines owed to the association by a unit owner shall not be converted into any additional fees that may cause the unit owner to default.

Then, because it is possible that an association, and not the unit owner, may delay completion of the mediation to collect amounts due from an owner, the following provision should be properly re-phrased so that the ameliorative intent of SB391 is not vacated,

(4) The mediation shall be completed within sixty days of the unit owner's request for mediation; provided that if the mediation is not completed within sixty days or the parties are unable to resolve the dispute by mediation, the association may proceed with collection of all amounts due from the owner for legal fees, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense

And that legislators provide equitable consequences to associations that refuse to satisfy the sixty day resolution requirement.

Legislators should prohibit aggressive collection practices which can lead to the needless of seizure of homes, and halt potential homelessness whenever possible. Mahalo.

Lila Mower of Hui `Oia`i`o

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2017 1:33 PM
To: CPH Testimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for SB391 on Feb 3, 2017 09:30AM

SB391

Submitted on: 1/31/2017

Testimony for CPH/JDL on Feb 3, 2017 09:30AM in Conference Room 016

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

Comments: I support this Bill in its present form as it is a fair and equitable process to address the issue.

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COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH

Testimony Regarding SB 391

DATE: Tuesday, February 3, 2017
TIME: 9:30 AM
PLACE: Conference Room 016

John Morris
(808) 523 0702

Chairs Baker and Keith-Agaran and Members of the Committees,

I work as an attorney representing condominiums and other homeowner associations and I am testifying in support of SB 391 with one suggested change.

For many years, the condominium law has provided for a "pay first, dispute later" policy, under which owners have not been allowed to withhold any assessment claimed by their association. Instead, the owners are supposed to pay the disputed amounts and then exercise their right to mediation, arbitration, or Small Claims Court to resolve their dispute over the amounts owed. While this policy may seem to favour the association, it was first adopted to protect owners by giving them the opportunity to minimize or eliminate late fees, fines, and legal fees by paying what was owed and then disputing about the amounts owed.

This bill proposes to eliminate the pay first, dispute later policy for all association claims except maintenance fees (common expenses). Since maintenance fees are the "lifeblood of the association", preserving the policy from maintenance fees makes sense. Since, however, fines and late fees are not necessarily an out-of-pocket expense for the association, this bill's changes make sense with respect to those other amounts. Legal fees are an out-of-pocket expense for the association, but the bill is attempting to balance the association's rights on legal fees against those of the owner.

As part of that balancing process, the bill requires any disputes relating to legal fees, late fees, and fines to go to mediation, at the request of an owner. In addition, the bill requires the association to inform the owner of the availability of mediation for disputes over those types of charges. Moreover, the mediation has to be pursued promptly or the association can continue its collection efforts for the legal fees, late fees, and fines and other non-common expense

charges. This seems to be a reasonable trade-off between the rights of the owner and the rights of the association.

I would suggest one change to confirm that priority of payment policies are no longer permitted (see sections 4 and 6 of the bill). (Essentially, a priority of payment policy requires that any amounts received from an owner be applied, after notice to the owner, in a specific order of priority. For example, maintenance fee payments can be applied first to fines and late fees, then to legal fees and, finally, to maintenance fees. Thus, a priority of payment policy has the effect of converting those other charges into a maintenance fee delinquency. This means an owner who only pays his maintenance fees will find the maintenance fee amount being applied to everything but maintenance fees, leaving the owner with a maintenance fee delinquency.)

Many associations have the right to follow this policy written into their declaration and bylaws. Therefore, eliminating it from the law will not necessarily eliminate it from the declaration and bylaws of some associations. Therefore, I suggest the following change be made to section 514A-15.1 and 514B-105 (d), as follows:

§514A-15.1 Common expenses; prior late charges. Notwithstanding anything to the contrary in the declaration and bylaws of an association of apartment owners, ~~No~~ no association of apartment owners shall deduct and apply portions of common expense payments received from an apartment owner to unpaid late fees (other than amounts remitted by an apartment owner in payment of late fees) ~~unless it delivers or mails a written notice to such apartment owner, at least seven days prior to the first such deduction, which states that:~~

(1) ~~Failure to pay late fees will result in the deduction of late fees from future common expense payments, so long as a delinquency continues to exist.~~

(2) ~~Late fees shall be imposed against any future common expense payment which is less than the full amount owed due to the deduction of unpaid late fees from such payment."~~

§514B-105 Association; limitations on powers.

* * *

(c) Notwithstanding anything to the contrary in the declaration and bylaws of an association ~~No~~ no association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines, and interest). ~~unless the board adopts and distributes to all owners a policy stating that:~~

~~(1) Failure to pay late fees, legal fees, fines, and interest may result in the deduction of such late fees, legal fees, fines, and interest from future common expense payments, so long as a delinquency continues to exist; and~~

~~(2) Late fees may be imposed against any future common expense payment that is less than the full amount owed due to the deduction of unpaid late fees, legal fees, fines, and interest from the payment.~~

In that way, the legislature will make it clear that even if an association has authority in its governing documents, if this bill passes, a priority of payment policy will no longer be permitted.

Thank you for this opportunity to testify.

John Morris

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 8:34 PM
To: CPH Testimony
Cc: mrckima@gmail.com
Subject: *Submitted testimony for SB391 on Feb 3, 2017 09:30AM*

SB391

Submitted on: 1/30/2017

Testimony for CPH/JDL on Feb 3, 2017 09:30AM in Conference Room 016

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

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 9:38 AM
To: CPH Testimony
Cc: cporter@hawaiiilegal.com
Subject: Submitted testimony for SB391 on Feb 3, 2017 09:30AM

SB391

Submitted on: 2/2/2017

Testimony for CPH/JDL on Feb 3, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Christian Porter	Individual	Support	No

Comments: Having participated in the drafting of some of the language of the predecessors to SB391, I know that it is carefully worded to meet the goals of balancing owners' rights and association rights in the hotly contested area of fines and related disputes. I support the wording of SB391. Thank you for your consideration.

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CPH - JDL - WAM
Friday 3 February 2017
9:30am, Capitol Building, Room 016

Commerce, Consumer Protection, Health

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

Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair and Senator Karl Rhoads

Ways and Means

Senator Jill N. Tokuda, Chair and Senator Donovan M. Dela Cruz

RE: Testimony in support of SB 391

1. **I testify in support of Senate Bill 391, and very much appreciate the efforts of Senators Baker, Espero, Kidani, S. Chang, and Nishihara for introducing this.**

2. I reside in a large condo complex, the Makaha Surfside in Waianae, 456 units, and a great many people have lost their domicile due to pyramiding of charges, adding in late fees, fines, and the really really big one of questionable 'legal fees' pushing their debt so high that they cannot afford to keep their home.

3. As just one example, one of my friends fell behind by \$1,700 on maintenance fees, but after pyramiding of charges found the debt skyrocketed to over \$10,000 and she lost her home. Such issues should go to Small Claims Court in my opinion and condo collections attorneys should be 'cut out' of this.

4. Please vote in favor of and pass Senate Bill 391.

Respectfully, Dale A. Head (808) 696-4589 sunnymakaha@yahoo.com

Quote - "**Quote** - "When you see something that is not right, not fair, not just, you have a moral obligation to do something – to say something – and not be quiet." "You must have courage, you must be bold, and never ever give up". **U.S. Representative John Lewis.**