

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2017 12:29 PM
To: CPCtestimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for HB1308 on Feb 14, 2017 14:00PM

HB1308

Submitted on: 2/13/2017

Testimony for CPC on Feb 14, 2017 14:00PM in Conference Room 329

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

Comments: Any study should balance the needs of the consumer. The association by law is a consumer. Same with homeowners. The study should study the needs of both.

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 CONSUMER PROTECTION AND COMMERCE
HEARING ON FEBRUARY 14, 2017 AT 2 PM

LATE

SUPPORT - HB1308 HD1

I support HB1308 HD1, but add these comments:

- (1) Owners of registered condominium associations are mandated to contribute towards the Condo Education Trust Fund (CETF) which does not benefit its contributors, failing to properly educate owners.

Just two years ago, DCCA/REC erroneously called that fund the Condo Management Education Trust Fund (see testimony for LY2015 HCR134/HR82) perhaps unintentionally exposing that its educational purpose is intended for condo management, not condo owners.

The condo industry should pay for its own education.

A Condo Specialist wrote in 2016, that \$49,000.05 was budgeted to producing education seminars. These funds currently subsidize luncheon seminars which, if an owner wants to attend, costs that owner \$70 per seminar, on top of which the DCCA/REC adds (subsidizes) another \$35 for the first 80 attendees and increases that subsidy to \$40 per attendee in excess of the first 80.

(Perhaps those subsidy funds may have better usage at this time to fund the cost of the Auditor's study.)

An owner who asked to bypass the luncheon part of the seminar because of the onerous expense was denied, thus contradicting the primacy of the educational aspect.

Some owners who attended those seminars were told that they were not supposed to attend or participate, implying that those owners were uninvited, discouraging future attendance.

Owners' funds, through the CETF, should be used to properly educate owners, utilizing third-party education vendors, such as the University of Hawaii, whose business model does not rely upon these owners or their associations board members. And by avoiding the use of condo industry "experts" who openly use these opportunities to network while using these "educational" opportunities to endorse their products, services, and political agenda.

- (2) Government measures should be focused on prevention rather than merely providing cures.

The legislature's current focus is "back-ended," focusing on measures such as mandatory mediation, binding arbitration, defaulted payment plans and foreclosure.

But preventative measures--such as education, enforcement of owners' rights to participate in their own governance, and ease of owners' access to records and documents so that they are informed about their own associations--should be primary.

- (3) The CETF is also used to subsidize mediation. However, mediation has largely failed.

Of the 36 mediation cases that were reported in 2016 by the Hawaii Condo Bulletin provided by the DCCA REB (Real Estate Branch), only 9 were mediated to agreement, 12 were mediated to no agreement, and there were 14 cases in which one or both parties declined to participate, withdrew their request for mediation, or did not respond to a request for mediation. (Those numbers add up to 35, but the Bulletin's records are for December, 2015 to November, 2016.)

In most endeavors, 25% success (9 out of 36) is considered a failure. Even 62%, which is the percentage of *evaluative* mediations which were mediated to agreement, is usually considered a fail rate.

Owners must pay all outstanding assessments before they can request mediation. Once paid, there is no incentive for associations to participate in mediation, especially if the dispute was over assessments, because the association has received what it wanted—payment—without giving that owner the opportunity to dispute that assessment.

Additionally, many associations, by Resolution or by By-Law, have adopted a “priority of payment” scheme* which carves out or “converts” peripheral charges such as attorneys’ fees, late fees, House Rules penalties from owners’ common assessment payments (e.g., maintenance fees), thus causing those owners to default on their common assessment payments, especially if unaware of those peripheral charges or if in dispute over those peripheral charges.

These payment schemes* force owners onto the slippery slope of default, which can quickly lead to *lis pendens*, then non-judicial foreclosure.

When the difficulties of acquiring a home and homelessness are front-page news, why does the government tacitly endorse policies which make it more difficult for owners to keep their homes?

Pending legislation does not convincingly address this “priority of payment” scheme* which converts peripheral charges into or from common assessment payments. The proposals only reiterate that common assessment payments must be current to request mediation and add that peripheral charges may be withheld until mediation. Nothing is mentioned to halt those fees and penalties into “conversion” as common assessment payments.

Pending legislation also addresses mandatory mediation which does little to help owners who are unable to afford legal counsel on equal footing with associations which can assess owners if more funds are necessary for the association’s legal fees.

Pending legislation also seeks to add “defective construction” disputes into the mediation process, however at a recent board meeting directors exposed that \$200,000 in legal fees were spent in mediation for the repair of two tennis courts. It would have been better and faster for the association to forego mediation and rebuild those two tennis courts at half the cost of legal fees.

Finally, mediation is not the neutral field that one imagines. Rather than a “jury of peers,” the typical owner must select a mediator with whom he is largely unfamiliar, in contrast to association attorneys whose familiarity, knowledge, and past experiences allows them to select mediators advantageously.

Alternative resolution methods which are less costly, less prohibitive, and less adversarial instead of the failed mediation/arbitration/litigation model are needed.

- (4) Owners should be recognized as “stakeholders” by the government which, instead, calls those involved in the business of condos “stakeholders.” This recognition would reflect a change in both attitude and perspective of government.

Owners and their association-governed communities can exist without “professional” assistance from the condo industry as many associations have proven.

However, the business model of these vendors who are members of the condo industry, cannot exist without owners and their properties.

It is unacceptable that condo industry members are invited to participate by government officials in discussions about condo law and governance but we owners are not. Although there is often a side-comment in the minutes of those meetings that one or two members own condos, those participants cannot fairly represent owners as they cannot be both vendor and vendee simultaneously.

- (5) The feasibility of licensure of association managers (the individuals) to encourage individual accountability should be studied. Currently, only one person, the Principal Broker, of an association management firm is required to be licensed although he may have dozens of employees who as association managers are responsible for hundreds of millions of dollars in hard and liquid assets of associations.

If any one of those dozens fails his duty, he can be terminated, but then re-hired in an equal position in another association management firm.

Further, he can skirt his responsibility by claiming that he was acting at the direction of the board.

However, in reality, many boards act at the direction of their “professional” manager because failure to do so, as was testified by an attorney in the February 2, 2017 House CPC hearing which can probably be accessed by video, would be contrary to the “business judgement rule,” implying the denial of D&O coverage.

What then of associations whose owner-members have had to suffer onerous common assessment expense increases, or special assessments in the tens of thousands of dollars that are due with less than two months’ notice, or properties that were so poorly maintained that desperate owners were compelled to ask City and County Inspectors to fine their associations in hopes of creating impetus to make repairs, or embezzlement in which management may have been complicit since they oversaw the association’s funds? Who is accountable to them?

The veil of “self-governance” behind which members of the condo industry hide their motives to mold associations into obedient purchasers has been pierced by owners who have realized that there is little that is “self-governed” in their associations when they are defrauded of honest and fair elections, unable to obtain documents to keep informed of their association, and prevented from participating in meetings. That is, unless “self-governance” is code for “controlled by vendors.”

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

*The following is an actual “priority of payment” scheme copied from an association’s Resolution:

“At any time there are unpaid Legal Fees, Late Fees, Fines, Bad Check Charges, Agreement of Sale Payments, or Special Assessment Fees on an Association Member’s account ledge, the next Association/Maintenance Fee payment received from that Association Member will be first applied to liquidating these fees in the order as stated above. After these fees are paid, the remaining amount, if any, will be credited to the Association’s Association/Maintenance Fee assessment account.

Owners should be aware that as a result of the Priority of Payments outlined above:

1. Failure to pay Late fees, Legal Fees, House rule Violations Fines, and interest from an Owner’s future Common Expense (Maintenance Fee) payments for as long as a delinquency continues to exist. Those deductions will continue for as long as the Owner fails to pay all such fees and fines in full.
2. Late Fees may be imposed against any future Common Expense (Maintenance Fee) payment that is less than the full amount owed because of the deduction of unpaid Late Fees, Legal Fees, House Rule Violation Fines, and interest from the payment.”

House Committee on Housing

Representative Tom Brewer, Chair and Representative Nadine K. Nakamua

House Consumer Protection & Commerce

Representative Angus L.K. McKelvey, Chair and Representative Linda Ichiyama, Vice Chair

House Committee on Finance

Representative Sylvia Luke, Chair and Representative Ty J.K. Cullen, Vice Chair

Tuesday, 02-14-17 2:00PM in House conference room 329

House Bill 1308 HD1

Measure Title: RELATING TO HOMEOWNERS ASSOCIATIONS.

Report Title: Homeowners Associations; Consumer Protection; Agency Establishment; Study

Description: Requires the Auditor to conduct a study, including a cost analysis, on the necessity and feasibility of establishing an agency within the Department of Commerce and Consumer Affairs to regulate homeowners associations, and to submit a report of its progress to the Legislature prior to the 2018 Regular Session.

Aloha:

1. I support passage of HB 1308 HD1.

2. I have resided in a large condo complex, the Makaha Surfside (456 units), since 1987 and have been on our Board of Directors for nearly nine years now. As homeowners associations are unregulated, whenever Board members misbehave there is no check and balance to inhibit bad behavior. The once a year election is not a sufficient means to deal with misconduct as twelve months is too long a period to correct bad behavior. Yes, while a 'Special Election' can be invoked to remove such person(s), that is too daunting an undertaking. For instance, my complex is less than 9% owners occupied, the rest being tenants. While modern media makes possible rapid communication with owners, we are DENIED anything other than a mailing list and must at times struggle to get even that.

3. We really need a state agency with enforcement capability to require respect for state condo laws, which does not now exist.

4. Please vote in favor of and pass HB 1308 HD1.

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

Historic quote to live by:

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.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 12, 2017 7:22 PM
To: CPCtestimony
Cc: mkhan@hawaiiintel.net
Subject: Submitted testimony for HB1308 on Feb 14, 2017 14:00PM

HB1308

Submitted on: 2/12/2017

Testimony for CPC on Feb 14, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn Khan	Individual	Comments Only	No

Comments: Aloha, I am trying again. At the heart of many complaints is the failure to communicate to homeowners. Thus, again, recommend that any study include evaluating a Board's transparency and communications with homeowners, for example, does the Board allow for participation of homeowners in Board meetings, does it post meeting announcements where they can be seen and in a timely manner, does it consult with homeowners about projects that will affect the common areas and/or their lifestyle, such as consulting on TV and telephone services. At the heart of complaints is often the failure of the Board to communicate or consult with homeowners. Is there someone that homeowners can consult with when they have questions of interpreting HRS 514B? Please amend the bill to include this provision of evaluating transparency and communication by Association boards. Mahalo for the opportunity to testify.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2017 9:39 AM
To: CPCtestimony
Cc: mrckima@gmail.com
Subject: Submitted testimony for HB1308 on Feb 14, 2017 14:00PM

HB1308

Submitted on: 2/13/2017

Testimony for CPC on Feb 14, 2017 14:00PM in Conference Room 329

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

Comments: If this is a sincere effort by the "auditor" to determine the total lack of effectiveness prevalent in the state's agency network, the audit is long overdue. How is it that after years of explicit dissatisfaction of condominium owners with what is claimed to be available redress for our grievances, the proposal to investigate existing activities finally surfaces? Needless to say, the audit should be done by non-industry parties.

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LATE

Lourdes Scheibert
920 Ward Ave
Honolulu, Hawaii 96814

February 14, 2017
Hearing Date: Tuesday, February 14, 2017
Time: 2:00 PM
Place: Conference Room 329

Chair Angus L K McKelvey
Vice Chair Linda Ichiyama
Committee On Consumer Protection & Commerce
House of Representatives
The Twenty-Ninth Legislature
Regular Session of 2017

RE: Testimony on Support of HB1308, relating to Homeowners Association

Requires the Department of Commerce and Consumer Affairs to conduct a study on the necessity and feasibility of establishing an agency within the department to regulate homeowners associations.

Dear: Chair McKelvey, Vice-Chair Ichiyama and Committee Members,

Quote from Myoung Oh testimony Feb 7 2017:

HRS Chapter 421J, HRS Chapters 514A and 514B oversees the condominium associations. This common law form couples private ownership of individual units with ownership of the “common elements” or the property used in common by all residents, in the owners’ association. The community is held together with a set of covenants, conditions, and restrictions which accompany each sale of a unit and which “run with the land”. These are the glue which holds the community together.

My name is Lourdes Scheibert, a condominium owner testifying in support of HB 1308 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. The following is only one example.

In March 2009, rain water infiltrated into my lanai ceiling. Management’s unqualified opinion reported to the Association’s insurance claims adjuster that the cause of the water leak is the alteration by the owner with a window and wall installation enclosing the lanai. A wall was not constructed. The lanai window is mounted to the interior wall of the lanai identified by building inspectors as a “plug-in”.

The claim was denied based on a telephone conversation, between the property manager, the resident manager and the Association's insurance property claims adjuster.

I pay for insurance coverage with monthly maintenance fees for the building's common area. I have never been late on my maintenance fees.

This is a Consumer Protection problem when a property claims adjuster does not perform her professional duty of an on-site inspection to gather claim facts of the property damages.

On November 2, 2012, I filed a complaint with the City and County Building inspection office. On November 11, 2012, both the Association and myself were cited for the following violation:

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.

The building inspector concluded that the rain water was coming from the side of the building's exterior wall. Management stubbornly said that the building inspector is not a structural engineer. I would have to hire a structural engineer to find the leak.

The property manager is assigned the duties of repair and maintenance of the common area and limited common area and thru this assignment the management contract states that the authority is the managing agent. The board yields to the better business judgement rule and sides with management. My ceiling continues to leak rain water, I persisted until the Board approved for the structural engineers of Wiss Janey Elstner to perform a water leak investigation. As a director, I promised that if it was the lanai window alteration, I would pay for WJE's investigation, remove my window and repair the building. On July 28, 2013, within an hour, the engineer for WJE found the origination of the water leak at the as-built exterior wall of the building between the joists at the levels of 8 and 7 running down between the walls into my lanai ceiling level 6.

The repair was completed by American Coating in March 22, 2014. Today, February 13, 2017, there are no signs of water infiltration.

This is a Consumer Protection problem when an unqualified and unlicensed property manager make unqualified decisions that effect the health and welfare of its owners.

Governing is based on intelligent professional people usually measured thru professional licensing, advanced education and experience in the area of government. Boards are made up of inexperienced owners who depend on the good business judgement rule by its property manager who attend the meetings and advises the board.

Community Association Institute supports Condominium Self-Governance and emphasis on education. However, there are cases of consumer abuse as I have demonstrated that requires an office of over site to regulate this part of the **management** of homeowners associations. Condominium Self-Governance is a separate issue.

The system of Condominium Self-Governance is broken when the fees paid by condo owners to support the education trust fund is being used, in part, for legal fees to pay for mediation and arbitration. Legal fees should be funded under a separate category for fees paid by the condo owners to show accountability if, indeed, this program works or is it a waste of money? The education trust fund can easily be depleted by legal fees.

Thank-you

Lourdes Scheibert
Hawaii Condominium Owner

From: Kate Paine <kate@hula.net>
Sent: Monday, February 13, 2017 1:46 PM
To: CPCtestimony
Subject: HB 1308 HD1

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
HEARING FEBRUARY 14, 2017 AT 2 PM

SUPPORT - HB1308 HD1

Committee,

This bill *can be* a much needed checks and balances option available to condominium owners who actively participate in their condo business.

In its current iteration, the "condo management industry" is involved in protecting its relationship with HOAs that has morphed into an often self-interested, predatory business arrangement. DCCA and RICO state regulatory agencies, CAI and HCCA, condo legal/auditor/reserve study as adjunct private sector businesses, provide no deterrent to predatory practices nor offer needed assistance to home owners seeking answers to fiscal and management questions.

In our own building there's been documented inflated proposals and work orders, binding proposals without protective contracts, secretive communication between unprofessional board members with and without the management company, an inability to view or get condo records, unsubstantiated claims for urgently needed work, lack of proof of separate banking records, and other malfeasance and non-disclosure incidents.

It is true that owners en masse expect honesty and protection without any of their own personal involvement, which does invite said inappropriate business practices. Sadly, it's the buildings that suffer when it's they that should be protected in perpetuity for the good of the whole community.

Hopefully, owner-protection laws, such as non-industry audit options, will be enacted that will check the present day malfeasance and insider ill-gained profit stream.

Kate Paine
Condo Owner

From: Leialoha Perkins <leialohaperkins@gmail.com>
Sent: Tuesday, February 14, 2017 12:45 PM
To: CPCtestimony
Subject: HSB 1308

14 Feb.2017

Hearing Date: Tuesday Feb. 14. 2017

Time: 2:00 pm

Place: Conference Room 329

Chair A.L.K. McKelvey
Vice-Chair L. Ichiyama
Committee on Consumer Protection and Commerce
House of Representatives
Twenty-Ninth Legislature
Regular Session of 2017

Re: Testimony on Support of HB1308 , relating to Homeowners Assoc.

Requires the Department of Commerce and Consumer Affairs to Conduct a study of necessity and feasibility of establishing an agency within the department to [help] regulate homeowners' associations

Dear Chair McKelvey, Vice Chair Ichiyama and Committee Members

My name is Dr. Lily Leialoha Apo Perkins, I ask that you approve of including Condo Owners in an Oversight Regulatory service by helping condos owners to a more just union with Condo Association Management Corporations. After thirty years in this condo, I find increasing evidence of serious mismanagement that leads Owners to be charged higher and higher fees by Management that trickily are in the end not used for what was claimed to resolve the maintenance problem but got nonrefundable sums unaccounted for, "legally" we are told covered by the advice of the Management's Attorney (chosen for us!). Or Management hiring an Owner to be Manager, his wife to be Board Chair, and the two in concerted action conducting business for Management. That Manager, by the way, was discovered to have been a murderer in another state, taken into custody and prosecuted. We need guidance, especially as a considerable number of us are Retired Citizens. We ask for justice, meaning just representation in facets of regulation from state law.

Please help us. Thank you.

Lily Leialoha Apo Perkins
85-175 Farrington Hwy, A334
Wai'anae, Hi 96792